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# Delaware Register of Regulations

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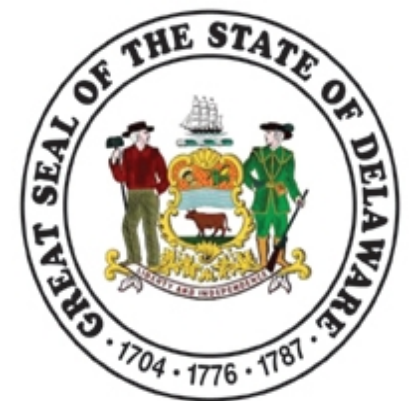


## IN THIS ISSUE:

Regulations:

- Errata
- Emergency
- 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, 2016.

Cover Photo By  
Dr. Brian Kutner

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

19 **DE Reg.** 1100 - 1102 (06/01/16)

Refers to Volume 19, pages 1100 - 1102 of the *Delaware Register* issued on June 1, 2016.

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
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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## DIVISION OF RESEARCH STAFF

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

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

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
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**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

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

**1301 Regulations Governing Solid Waste**

**Please Note:** The Proposed Regulation for *1301 Regulations Governing Solid Waste* that was published in the April 1, 2016 issue of the *Delaware Register of Regulations* (19 DE Reg. 905 – 911) has been further amended by the Solid and Hazardous Waste Management Section. Subsection 12.3 is printed below as an Errata. Since the Subsection 12.3 is being further amended, the public comment period regarding this proposed amendment to Section 12.3 will now be re-opened by DNREC for an additional 30 days. Public comment will be accepted by DNREC from August 1, 2016 through close of business on August 31, 2016, at which time the hearing record will once again close regarding public comment. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. No additional hearing will be held.

**1301 Regulation Governing Solid Waste  
(Break in Continuity of Sections)**

**12.0 Scrap Tire Facilities**

**(Break in Continuity Within Section)**

**12.3 Implementation Date**

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

**12.3.1.1** Scrap tire facilities meeting the requirements of Group 1 must apply to the Department for a permit pursuant to these regulations no later than [June 30, 2016 90 days after the effective date of these regulations].

**12.3.1.2** Scrap tire facilities meeting the requirements of Group 2 must apply to the Department for a permit pursuant to these regulations no later than [September 30, 2016 180 days after the effective date of these regulations].

**\*Please Note:** The full text of the proposed regulation is not being republished. Please see 19 DE Reg. 905 for the proposed amendments to 1301 Regulations Governing Solid Waste. A copy of the published regulation is available at:

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

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**Symbol Key**

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

**Emergency Regulations**

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

**§ 10119. Emergency regulations.**

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

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

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

**ORDER****Covered Outpatient Drugs for the Categorically Needy – Nonprescription Drug Products****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding Covered Outpatient Drugs for the Categorically Needy, specifically, *to clarify covered non-prescription drug products*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department will publish its notice of proposed regulation simultaneously with this emergency regulation, pursuant to 29 **Del.C.** §10115, in the August 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2016 at which time the Department will receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is issuing an emergency regulation to amend the Title XIX Medicaid State Plan regarding Covered Outpatient Drugs for the Categorically Needy, specifically, *to clarify covered non-prescription drug products*.

**Statutory Authority**

- 1927(d)(2) of the Social Security Act, *Limitations on coverage of drugs, drugs subject to exclusion*
- 1935(d)(2) of the Social Security Act, *Coverage of certain excludable drugs*
- Center for Medicaid and CHIP Services (CMCS) Informational Bulletin 060116, *Medicaid Benefits Available for the Prevention, Detection and Response to the Zika Virus*
- Del.C., Title 29, Ch. 101, §10119, *Administrative Procedures, Emergency Regulations*

**Background**

Zika is a virus that is spread to people primarily through the bite of an infected, day-time active *Aedes* species mosquito. The Zika virus can also be sexually transmitted from a man to his partner(s) regardless of gender. The Centers for Disease Control and Prevention (CDC) urges that men at risk of or with recent Zika virus infection use condoms or abstain from sex to prevent transmission. The most common symptoms of Zika infection are fever, rash, joint pain, and conjunctivitis (red eyes). In past outbreaks, the illness has usually been mild with symptoms lasting for several days to a week after being bitten by an infected mosquito. People usually don't get sick enough to go to the hospital and they very rarely die of Zika infection. For this reason, many people might not realize they have been infected.

Zika virus infection during pregnancy can lead to serious health consequences. The CDC has stated that Zika virus can be passed from a pregnant woman to her fetus, and infection during pregnancy has been linked to a serious birth defect of the brain called microcephaly, which involves incomplete brain development, and other severe brain defects. Other problems have been detected in fetuses and infants infected with Zika virus, such as defects of the eye, hearing deficits, and impaired growth. A mother infected with the Zika virus near the time of delivery can pass on the virus to her newborn around the time of birth. Zika has also been linked to Guillain-Barré syndrome (GBS), a rare disorder that can cause muscle weakness and paralysis for a few weeks to several months. Most people fully recover from GBS, but some have permanent damage.

The Center for Medicaid and CHIP (CMCS) Services issued a CMCS Informational Bulletin 060116 on June 1, 2016 to inform Medicaid agencies and interested stakeholders about how Medicaid services and authorities can help states and territories prevent, detect, and respond to the Zika virus, including efforts to prevent the transmission and address health risks to beneficiaries from the Zika virus. Since there is no vaccine available for Zika, the major means of prevention currently available are mosquito control, protection against mosquito bites, and contraception for women of childbearing age who do not wish to become pregnant.

Mosquito repellents that are applied to the skin can aid in preventing infection of the Zika virus. CDC recommends people use Environmental Protection Agency (EPA)-registered insect repellents. As a general matter, over the counter insect repellents would not be covered by Medicaid. However, state Medicaid programs may choose to cover mosquito repellents when prescribed by an authorized health professional and these products would be eligible for Federal Financial Participation (FFP) under such circumstances.

**Summary of Proposal***Purpose*

To amend the Medicaid State plan to allow DMMA to provide nonprescription drugs, such as mosquito repellent as a preventative measure to protect Medicaid beneficiaries against the Zika virus, when guidance is issued from CMCS.

*Summary of Proposed Changes*

Effective for services provided on and after July 1, 2016, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 3.1.A.1 Page 2, 2a, and 2b of the Medicaid State Plan to ensure coverage of nonprescription drugs, such as mosquito repellent as a preventative measure to protect Medicaid beneficiaries against the Zika virus, when guidance is issued from CMCS.

The agency's proposal involves no change in the definition of those eligible to receive pharmaceutical services.

*Public Notice*

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is issuing an Emergency Order. Pursuant to Title 29 §10119, Emergency regulations, of the Administrative

Procedures Act (APA), an agency may issue an Emergency Order if it determines there is an imminent peril to the public health, safety or welfare that requires the adoption, amendment or repeal of a regulation with less than the notice required by §10115. This Emergency Order may be effective for a period not longer than 120 days and may be renewed once for a period not exceeding 60 days. DMMA will file a Proposed Regulation, per the APA, for public comment prior to issuing a Final Order, so that the agency may receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

#### *CMS Review and Approval*

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

#### *Provider Manual Update*

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

#### **Fiscal Impact**

The cost of including an Over the Counter (OTC) product to the drug benefit is evaluated based on cost of a legend product to the OTC. Products in this category will only be added if the coverage of the product will reduce the legend drug costs or is anticipated to reduce other medical costs. As an example, the cost of the 'drug' to prevent or reduce the chance of a mosquito bite will be under \$25 per prescription. DMMA does not anticipate a significant number of practitioners and clients utilizing their drug benefit for this coverage. The cost of product will be offset by the avoidance of the Zika laboratory test that has an estimated cost of \$200. The coverage of insect repellants that lead to the prevention of even one situation where the fetus is negatively impacted eliminates the financial risk to the program.

#### **FINDINGS OF FACT:**

The Department finds that a compelling public interest exists which necessitates promulgation of an emergency regulation and requests emergency approval of these rule amendments to amend the Medicaid State plan to allow DMMA to provide nonprescription drugs, such as mosquito repellant as a preventative measure to protect Medicaid beneficiaries against the Zika virus. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, that to protect Medicaid beneficiaries against the Zika virus, the amendment to the Medicaid State plan modifying provisions regarding nonprescription drugs, specifically, *to provide nonprescription drugs, such as mosquito repellant as a preventative measure to protect Medicaid beneficiaries against the Zika virus*, be adopted on an emergency basis without prior notice or hearing, effective July 1, 2016.

Rita M. Landgraf, Secretary, DHSS

#### **DMMA EMERGENCY REGULATION #16-019 REVISION**

Attachment 3.1.A.1  
Page 2

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

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

# EMERGENCY REGULATIONS

Pursuant to 1927(d)(2) and 1935(d)(2) of the Social Security Act, the Medicaid Agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit - Part D.

**The following excluded drugs are covered:**

- (a) 1.) Agents when used for anorexia, weight loss, and weight gain. Products in these categories require prior authorization; see specific drug categories below:
- a.) Megestrol Acetate,
  - b.) Somatropin, and
  - c.) Lipase Inhibitor
- (b) Agents when used to promote fertility; see specific drug categories below:
- (c) Agents when used for cosmetic purposes or hair growth; see specific drug categories below:
- (d) Agents when used for the symptomatic relief cough and colds; see specific drug categories below:
- (e) Prescription vitamins and mineral products, except prenatal vitamins and fluoride; see specific drug categories below:
- (f) Nonprescription drugs; see specific drug categories below.

2.) Nonprescription drugs, prescription vitamins and mineral products (except prenatal vitamins and fluoride), and other over-the-counter products, such as agents used for the symptomatic relief of cough and colds, as listed in the Delaware Medicaid and Medical Assistance (DMMA) Pharmacy Provider Manual Appendix A - Covered Over-the-Counter Drugs.

Attachment 3.1.A.1  
Page 2a

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

### STATE: DELAWARE

#### MEDICAID PROGRAM: REQUIREMENTS RELATING TO PAYMENT FOR COVERED- OUTPATIENT DRUGS FOR THE CATEGORICALLY NEEDY

Citation (s)	Provision (s)
1927(d)(2) and 1935(d)(2) —	<p><del>ii (g) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee (see specific drug categories below)</del></p> <p><del>(The Medicaid agency lists specific category of drugs below)</del></p> <p><del>(a) Agents when used for anorexia, weight loss, weight gain: Megestrol Acetate, Somatropin, Lipase Inhibitor. Products in these categories require prior authorization.</del></p> <p><del>(d) Agents when used for the symptomatic relief cough and colds: Antihistamines, Antitussive, Decongestants, and Expectorants.</del></p> <p><del>(e) Prescription vitamins and mineral products, except prenatal</del></p>

~~vitamins and fluoride: Single-entity vitamins, Multiple vitamins w/ minerals, Nicotinic acid, Calcium salts, and Dialysis replacement products~~

Attachment 3.1.A.1-  
Page 2b

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

~~STATE: DELAWARE~~

~~MEDICAID PROGRAM: REQUIREMENTS RELATING TO PAYMENT FOR COVERED-  
OUTPATIENT DRUGS FOR THE CATEGORICALLY NEEDY~~

~~Citation(s)~~

~~Provision(s)~~

~~1927(d)(2) and 1935(d)(2)~~

~~CONTINUED~~

~~(f) Nonprescription drugs: Analgesic oral and rectal; Heartburn; Antiflatulents; Antidiarrheal; Antinauseants; Cough & Cold, oral; Cough & Cold, topical; Contraceptive Drugs; Laxatives & Stool Softeners; Lice Control Preparations; Nasal Drug Preparations; Nicotine Cessation Preparations; Ophthalmic Drug Preparations; Topical Anesthetics; Topical Antibacterials; Topical/Vaginal Fungicidals; and, Digestive Enzymes.~~

~~— No excluded drugs are covered.~~

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Chapter 40 (7 **Del.C.** Ch.40)  
7 **DE Admin. Code** 5101

**SECRETARY'S ORDER NO: 2016-WS-0029**

*Pursuant to Senate Bill 253 with Senate Amendment 2*

### **5101 Sediment and Stormwater Regulations**

#### **AUTHORITY**

Pursuant to Senate Bill 253 with Senate Amendment 2 (SB 253 W/ SA 2), signed by the Governor on June 24, 2016, which amends Title 7, Chapter 40 of the Delaware Code, the Department of Natural Resources and Environmental Control (Department) will continue to utilize the previously-adopted 2016 Emergency Delaware Sediment & Stormwater Regulations, (7 **DE Admin Code** 5101) that incorporates the April 2016 Technical Document. In addition, the Department will apply the new provisions in SB 253 W/ SA 2, to review and approve Sediment and Stormwater Management Plans, pending promulgation of comprehensive new regulations currently being developed by the Department and the Regulatory Advisory Committee (RAC).

**REASON FOR THE ORDER**

SB 253 W/ SA 2 adds provisions to 7 **Del.C.** Ch. 40 that will be incorporated into Del. Administrative Code 5101 Sediment and Stormwater Regulations. However SB 253 W/ SA 2 waives the Administrative Procedures Act limitation that emergency regulations are only effective for up to 180 days, thereby allowing the emergency regulations to remain in effect while the Regulatory Advisory Committee continues to develop proposed changes to the regulations and supporting technical documents. The RAC will make recommendations for incorporation of these elements of SB 253 W/SA 2 into the regulations prior to promulgation of the comprehensive new regulations. These comprehensive new regulations will comply with the Regulatory Flexibility Act (29 **Del.C.** Ch. 104) as specifically directed by SB 253 W/SA 2. Therefore, during the interim period, the Department and its Delegated Agencies will utilize the previously-adopted 2016 Emergency Delaware Sediment & Stormwater Regulations incorporating by reference the April 2016 Technical Document, in addition to the new provisions in SB 253 W/ SA 2, to review and approve Sediment and Stormwater Management Plans. The new provisions in SB 253 W/ SA 2 allow applicants seeking approval for a Sediment & Stormwater Plan to:

- Continue to utilize standards established in the 2016 emergency regulations until new comprehensive regulations are adopted;
- Use alternative methodology for determining the Resource Protection Event runoff volume (RPv);
- Use additional BMPs that are determined to be functionally equivalent to existing BMPs under existing emergency regulations;
- Utilize standard plans for agricultural structures, including poultry houses, that disturb less than 10 acres;
- Exempt residential construction projects that disturb less than one acre from post construction stormwater management requirements; and
- Allow plans approved after the effective date of SB 253 W/ SA 2 and this order to be valid for five years.

**EFFECTIVE DATE OF ORDER**

This Order shall take effect at 12:01 AM on June 25, 2016 and shall apply to all activities subject to these regulations as of June 25, 2016, and shall remain in effect until the Department formally adopts comprehensive new regulations pursuant to the APA.

**ORDER**

It is hereby ordered, the 25<sup>th</sup> day of June 2016 that the above referenced 2016 Emergency Delaware Sediment & Stormwater Regulations with the April 2016 Technical Document, along with the new provisions in SB 253 W/ SA 2, are adopted and supported by the evidence contained herein.

A copy of the 2016 Emergency Delaware Sediment & Stormwater Regulations and the April 2016 Technical Document can be viewed at the following link:

<http://regulations.delaware.gov/register/may2016/emergency/19%20DE%20Reg%20963%2005-01-16.htm>

David S. Small, Secretary

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**Symbol Key**

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

**Proposed Regulations**

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

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

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 706

**PUBLIC NOTICE****Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States****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** 706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States. The purpose of amending this regulation is to provide guidance and clarity relative to military service for salary calculation for employees paid under 14 **Del.C.** §1305, and as referenced in 14 **Del.C.** §1312(a).

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address 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 does not address students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not 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 amended regulations does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated do not change because of the amendment.
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 amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/august2016/proposed/20 DE Reg 89RFA 08-01-16.pdf>

## 706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States

### **1.0 Purpose**

The purpose of this regulation is to provide guidance relative to military service for salary calculations for employees paid under 14 Del.C. §1305, and as referenced in 14 Del.C. §1312(a).

### **2.0 Definitions**

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

“Active Duty” means full-time duty in the active military service of the United States, to include, but not be limited to, full-time training duty, annual training duty, and attendance while in the active military service, at a school designated as a service school by law or by the Secretary of a military department.

“Armed Forces” means the following branches of the United States armed forces: Army, Air Force, Marine Corps, Navy, and Coast Guard or National Guard of the State.

“Course of Professional or Vocational Training” means work leading to the attainment of a certificate, diploma or degree, and offered by a public or private, non-profit or proprietary institution as approved or accredited by an appropriate State agency or National/Regional organization. A person engaged in such course of instruction shall have been enrolled on a full-time basis, under regulations of the institution in effect at the time of attendance, and shall have completed the course of instruction in which enrolled, by continuous attendance, so as to complete the course of instruction on a scheduled date. Interruption of attendance may be occasioned only by reason of personal medical problems which militate against regular attendance or full-time military duty during war or other declared emergency.



## 43.0 Credit for Active Duty Experience

- 43.1 Credit for Experience for full time ~~a~~Active e~~Duty~~ service, not in excess of six (6) years in the ~~a~~Armed services Forces of the United States, shall be granted provided the individual became a teacher, principal, or superintendent, or other administrative employee in a Delaware public school pursuant to 14 Del.C. Ch. 1305, and as referenced in 14 Del.C. §1312(a):
- 43.1.1 Within five (5) years after completion of ~~a tour of duty being on~~ Active Duty; or
- 43.1.2 Within five (5) years after completion of a ~~e~~Course of p~~Professional or vVocational t~~Training, if such e~~Course was begun within five (5) years after completion of the individual's ~~tour of duty being on~~ Active Duty.~~

## 2.0 Instruction

~~Any instruction in Military Science given during years of enlistment shall be included in the six (6) years in the armed services of the United States.~~

## 34.0 Calculation of Service Time

- 34.1 Credit for service in the ~~a~~Armed f~~Forces~~ of the United States shall be calculated as follows:
- 34.1.1 One (1) year of experience shall be allowed for each creditable year of full time ~~a~~Active e~~Duty~~ service.
- 3.1.2 ~~In the case of a teacher, principal, superintendent or other administrative employee a combined total of ninety one (91) days of service and employment in any of these positions during any one school year will count as a year of experience.~~
- 34.1.32 No more than one (1) year of experience may be credited for any one (1) calendar year.

(Non regulatory Note: See 14 Del.C. §1312(a) and §1327 Leave of Absence for Persons in Military Service).

(Non-regulatory Note: See State of Delaware Pension Plan FAQs)

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Covered Outpatient Drugs for the Categorically Needy – Nonprescription Drug Products

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 U.S.C., §1902(a)(13)(A) of the Social Security Act, 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Covered Outpatient Drugs for the Categorically Needy, specifically, *to clarify covered non-prescription drug products*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Kimberly Xavier, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email at [Kimberly.xavier@state.de.us](mailto:Kimberly.xavier@state.de.us), or by fax to 302-255-4425 by August 31, 2016.

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

**SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Covered Outpatient Drugs for the Categorically Needy, specifically, *to clarify covered non-prescription drug products*.

**Statutory Authority**

- 1927(d)(2) of the Social Security Act, *Limitations on coverage of drugs, drugs subject to exclusion*
- 1935(d)(2) of the Social Security Act, *Coverage of certain excludable drugs*
- Center for Medicaid and CHIP Services (CMCS) Informational Bulletin 060116, *Medicaid Benefits Available for the Prevention, Detection and Response to the Zika Virus*
- Del.C., Title 29, Ch. 101, §10119, *Administrative Procedures, Emergency Regulations*

**Background**

Zika is a virus that is spread to people primarily through the bite of an infected, day-time active *Aedes* species mosquito. The Zika virus can also be sexually transmitted from a man to his partner(s) regardless of gender. The Centers for Disease Control and Prevention (CDC) urges that men at risk of or with recent Zika virus infection use condoms or abstain from sex to prevent transmission. The most common symptoms of Zika infection are fever, rash, joint pain, and conjunctivitis (red eyes). In past outbreaks, the illness has usually been mild with symptoms lasting for several days to a week after being bitten by an infected mosquito. People usually don't get sick enough to go to the hospital and they very rarely die of Zika infection. For this reason, many people might not realize they have been infected.

Zika virus infection during pregnancy can lead to serious health consequences. The CDC has stated that Zika virus can be passed from a pregnant woman to her fetus, and infection during pregnancy has been linked to a serious birth defect of the brain called microcephaly, which involves incomplete brain development, and other severe brain defects. Other problems have been detected in fetuses and infants infected with Zika virus, such as defects of the eye, hearing deficits, and impaired growth. A mother infected with the Zika virus near the time of delivery can pass on the virus to her newborn around the time of birth. Zika has also been linked to Guillain-Barré syndrome (GBS), a rare disorder that can cause muscle weakness and paralysis for a few weeks to several months. Most people fully recover from GBS, but some have permanent damage.

The Center for Medicaid and CHIP (CMCS) Services issued a CMCS Informational Bulletin 060116 on June 1, 2016 to inform Medicaid agencies and interested stakeholders about how Medicaid services and authorities can help states and territories prevent, detect, and respond to the Zika virus, including efforts to prevent the transmission and address health risks to beneficiaries from the Zika virus. Since there is no vaccine available for Zika, the major means of prevention currently available are mosquito control, protection against mosquito bites, and contraception for women of childbearing age who do not wish to become pregnant.

Mosquito repellents that are applied to the skin can aid in preventing infection of the Zika virus. CDC recommends people use Environmental Protection Agency (EPA)-registered insect repellents. As a general matter, over the counter insect repellents would not be covered by Medicaid. However, state Medicaid programs may choose to cover mosquito repellents when prescribed by an authorized health professional and these products would be eligible for Federal Financial Participation (FFP) under such circumstances.

**Summary of Proposal***Purpose*

To amend the Medicaid State plan to allow DMMA to provide nonprescription drugs, such as mosquito repellent as a preventative measure to protect Medicaid beneficiaries against the Zika virus, when guidance is issued from CMCS.

*Summary of Proposed Changes*

Effective for services provided on and after July 1, 2016, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 3.1.A.1 Page 2, 2a, and 2b of the Medicaid State Plan to ensure coverage of nonprescription drugs, such as mosquito repellent as a preventative measure to protect Medicaid beneficiaries against the Zika virus, when guidance is issued from CMCS.

The agency's proposal involves no change in the definition of those eligible to receive pharmaceutical services.  
*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the coverage of outpatient drugs for the categorically needy. Comments must be received by 4:30 p.m. on August 31, 2016.

### *CMS Review and Approval*

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

### *Provider Manual Update*

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

### **Fiscal Impact**

The cost of including an Over the Counter (OTC) product to the drug benefit is evaluated based on cost of a legend product to the OTC. Products in this category will only be added if the coverage of the product will reduce the legend drug costs or is anticipated to reduce other medical costs. As an example, the cost of the 'drug' to prevent or reduce the chance of a mosquito bite will be under \$25 per prescription. DMMA does not anticipate a significant number of practitioners and clients utilizing their drug benefit for this coverage. The cost of product will be offset by the avoidance of the Zika laboratory test that has an estimated cost of \$200. The coverage of insect repellants that lead to the prevention of even one situation where the fetus is negatively impacted eliminates the financial risk to the program.

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

<http://regulations.delaware.gov/register/august2016/proposed/20 DE Reg 91RFA 08-01-16.pdf>

### **DMMA PROPOSED REGULATION #16-020 REVISION:**

Attachment 3.1.A.1  
Page 2

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

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

Pursuant to 1927(d)(2) and 1935(d)(2) of the Social Security Act, the Medicaid Agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit - Part D.

**The following excluded drugs are covered:**

(a) 1.) Agents when used for anorexia, weight loss, and weight gain. Products in these categories require prior authorization; see specific drug categories below:

# PROPOSED REGULATIONS

- a.) Megestrol Acetate.
- b.) Somatropin, and
- c.) Lipase Inhibitor

- (b) Agents when used to promote fertility; see specific drug categories below:
- (c) Agents when used for cosmetic purposes or hair growth; see specific drug categories below:
- (d) Agents when used for the symptomatic relief cough and colds; see specific drug categories below:
- (e) Prescription vitamins and mineral products, except prenatal vitamins and fluoride; see specific drug categories below:
- (f) Nonprescription drugs; see specific drug categories below.

2.) Nonprescription drugs, prescription vitamins and mineral products (except prenatal vitamins and fluoride), and other over-the-counter products, such as agents used for the symptomatic relief of cough and colds, as listed in the Delaware Medicaid and Medical Assistance (DMMA) Pharmacy Provider Manual Appendix A - Covered Over-the-Counter Drugs.

Attachment 3.1.A.1  
Page 2a

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

MEDICAID PROGRAM: REQUIREMENTS RELATING TO PAYMENT FOR COVERED-  
OUTPATIENT DRUGS FOR THE CATEGORICALLY NEEDY

Citation (s)	Provision (s)
1927(d)(2) and 1935(d)(2)	<p><del>(g) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee (see specific drug categories below)</del></p> <p><del>(The Medicaid agency lists specific category of drugs below)</del></p> <p><del>(a) Agents when used for anorexia, weight loss, weight gain: Megestrol Acetate, Somatropin, Lipase Inhibitor. Products in these categories require prior authorization.</del></p> <p><del>(d) Agents when used for the symptomatic relief cough and colds: Antihistamines, Antitussive, Decongestants, and Expectorants.</del></p> <p><del>(e) Prescription vitamins and mineral products, except prenatal vitamins and fluoride: Single entity vitamins, Multiple vitamins w/ minerals, Nicotinic acid, Calcium salts, and Dialysis replacement products</del></p>

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

MEDICAID PROGRAM: REQUIREMENTS RELATING TO PAYMENT FOR COVERED  
OUTPATIENT DRUGS FOR THE CATEGORICALLY NEEDY

Citation(s)

Provision(s)

~~1927(d)(2) and 1935(d)(2)~~

CONTINUED

~~(f) Nonprescription drugs: Analgesic oral and rectal; Heartburn; Antiflatulents; Antidiarrheal; Antinauseants; Cough & Cold, oral; Cough & Cold, topical; Contraceptive Drugs; Laxatives & Stool Softeners; Lice Control Preparations; Nasal Drug Preparations; Nicotine Cessation Preparations; Ophthalmic Drug Preparations; Topical Anesthetics; Topical Antibacterials; Topical/Vaginal Fungicidals; and, Digestive Enzymes.~~

~~— No excluded drugs are covered.~~

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF ENERGY AND CLIMATE

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

REGISTER NOTICE # 2105  
SAN 2014-08

### 2105 Evaluation, Measurement and Verification Procedures and Standards

#### 1. TITLE OF THE REGULATIONS:

2105 Evaluation, Measurement and Verification Procedures and Standards

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

These regulations define the standards for evaluation, measurement and verification (EM&V) procedures as they are administered by the Energy Efficiency Advisory Council (EEAC). EM&V is a vital tool in creating consensus around the impact of current and future investments to reduce energy use and peak demand in Delaware. Results from EM&V are critical to the assessment of progress in meeting Delaware's energy efficiency and peak demand targets outlined in the Energy Efficiency Resource Standards Act, the State's "Lead by Example" policy, and the Delaware Sustainable Energy Utility's legislated goals. The results from EM&V provide valuable feedback to improve programs during implementation or suggest their cancellation, inform the development of new programs, and guide the allocation of resources.

The purpose of these EM&V regulations is to: develop an overall approach to the evaluation of energy efficiency and demand response programs in Delaware; standardize evaluation approaches for the assessment of energy efficiency and demand response programs; provide specific guidance to Program Administrators, contractors and stakeholders for the evaluation of energy efficiency and demand response programs; and ensure

consistency between Program Administrators' energy efficiency evaluations plans, analysis, and reporting efforts.

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

None

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

29 Delaware Code §8059(h)

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

None

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed regulations 2105 Evaluation, Measurement and Verification Procedures and Standards will be open August 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on August 29, 2016 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**7. PREPARED BY:**

Emily St. Clair [Emily.stclair@state.de.us](mailto:Emily.stclair@state.de.us) (302) 735-3366

Robert Underwood, Administrator, Division of Energy & Climate - 7/14/2016

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

<http://regulations.delaware.gov/register/august2016/proposed/20 DE Reg 95RFA 08-01-16.pdf>

**2105 Regulations Governing Evaluation, Measurement, and Verification Procedures and Standards**

**1.0 Authority**

These regulations are promulgated pursuant to 29 **Del.C.** §8059(h).

**2.0 Purpose**

The purpose of these EM&V regulations is to:

- Develop an overall approach to the evaluation of energy efficiency and demand response programs in Delaware;
- Standardize evaluation approaches for the assessment of energy efficiency and demand response programs;
- Provide specific guidance to Program Administrators, contractors and stakeholders for the evaluation of energy efficiency and demand response programs, and
- Ensure consistency between Program Administrators' energy efficiency evaluations plans, analysis, and reporting efforts.

**3.0 Definitions**

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

"Baseline" means conditions, including energy consumption and related emissions that would have occurred without implementation of the subject measure or project. Baseline conditions are sometimes referred to as "business-as-usual" conditions and are used to calculate program-related efficiency or emissions savings. Baselines can be defined as either project-specific baselines or performance-standard baselines.

**“Coincident Peak”** means the time period of highest system load; for purposes of this regulation, the definition of coincident peak is equivalent to PJM’s definition of energy efficiency performance hours under the Reliability Pricing Model (RPM), defined as the hours ending 15:00 through 18:00 Eastern Prevailing Time (EPT) during all days from June 1 through August 31, inclusive, that is not a weekend or federal holiday.

**“Deemed Savings”** means a measurement of energy savings or demand savings for a single unit of an installed energy efficiency measure or adopted efficiency practice that (a) is determined *ex ante* and applied to all such measures without further measurement or verification, and (b) has been developed from data sources and analytical methods that are widely considered acceptable for the measure and purpose. Deemed savings values are agreed upon by the EEAC in advance of program implementation. If evaluation results indicate a need to change a deemed savings value, the new value will only be applied prospectively to measures not yet installed. Individual parameters or calculation methods can also be deemed.

**“Delaware TRM”** means a Delaware-specific Technical Reference Manual, as that term is defined in this section.

**“Demand Response (DR)”** means the temporary reduction of customer energy usage at times of peak usage in order to help system reliability, to reflect market conditions and pricing, or to support infrastructure optimization or deferral of additional infrastructure. Demand response programs may include contractually obligated or voluntary curtailment, direct load control, and pricing strategies.

**“Department of Natural Resources and Environmental Control (DNREC)”** means the entity established by 29 Del.C. §8001.

**“Effective Useful Life (EUL)”** means the average time over which an energy efficiency measure results in energy savings, including the effects of equipment failure, removal, and cessation of use. The Delaware TRM shall be the primary source of EUL data.

**“Energy Efficiency Advisory Council (EEAC or Council)”** means the body created by 29 Del.C. §8059(h)(1)(a).

**“Energy Efficiency (EE) Programs”** means energy efficiency, peak demand reduction, and emission-reducing fuel switching programs which seek to decrease consumption of electric energy or natural gas.

**“Equity-of-service”** means that programs cannot exclude otherwise eligible groups of ratepayers (who are paying into the program) because of their different attitudes or opinions about energy use or energy savings.

**“Evaluation”** means the performance of studies and activities aimed at determining the effects of an efficiency program.

**“Evaluation, Measurement and Verification (EM&V)”** means any and all independent research and analytical activities occurring during or after implementation of efficiency programs intended to assess or estimate the accuracy of measure or program impacts, or assessment of the efficiency and effectiveness of the program design and implementation.

**“Ex-Post Evaluated Savings”** means savings estimates developed and reported by an Independent Evaluation Contractor (IEC) resulting from an energy impact evaluation of past efficiency program activity. These can be either gross or net savings, as defined in this section.

**“Free riders”** mean participants who participate in a program, but who would have adopted some or all of the efficiency measures without the benefits of the program.

**“Gross Savings”** means the change in energy consumption and/or demand that results directly from program-related actions taken by participants in a program, regardless of whether the savings are ultimately attributable to the program. Gross savings may be deemed per unit based on ex-ante estimates or evaluated ex-post results.

**“Impact Evaluation”** means an evaluation that quantifies the direct and indirect results and benefits of a program or project using measured or deemed savings methods.

**“Independent Evaluation Contractor (IEC)”** means a contractor hired by a Program Administrator to perform evaluation activities and products.

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## PROPOSED REGULATIONS

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**“Market Effect”** means the change in the structure or functioning of a market, or the behavior of participants in a market, that results, or is expected to result, from one or more program efforts.

**“Measurement and Verification (M&V)”** means data collection, monitoring, and analysis associated with the calculation of gross energy and demand savings from individual sites or projects.

**“Mid-Atlantic TRM”** means the Technical Reference Manual applicable to select states within the Mid-Atlantic region, which is developed collaboratively by participating members in the Mid-Atlantic region.

**“Net Present Value (NPV)”** means the value of a stream of future costs and/or benefits converted to a single sum in a specific year, usually the first year of the analysis, using a discount rate as specified in these regulations. It can also be thought of as the equivalent worth of all costs and benefits relative to a base point called the “present.” NPV takes into account the time value of money by discounting future streams of costs and benefits.

**“Net Savings”** means (Gross Savings) – (savings attributable to Free Riders) + (savings attributable to Spillover) + (savings attributable to Market Effects). Net savings are the energy savings that are attributable to a program’s intervention in the market, exclusive of other reasons for changes in energy use.

**“Net-to-Gross Ratio (NTG)”** means a factor or ratio representing Net Savings divided by Gross Savings.

**“PJM”** means PJM Interconnection LLC, the organization that manages electricity transmission and wholesale electricity market for the region that serves Delaware or its successor at law.

**“Process Evaluation”** means an evaluation that indicates how to improve the structure and delivery of a program or project. These evaluations typically survey program stakeholders, analyze their feedback, and use this information to identify opportunities for program improvement.

**“Program Administrator (PA)”** means investor-owned or municipal utilities and other entities administering any energy efficiency program governed by 29 Del.C. §8059(h).

**“Program Implementer”** means an entity hired by the Program Administrator to plan, implement, and deliver EE programs on their behalf.

**“Program Year”** means the annual regulatory period for which an approved program operates, and aligns with the program annual budget and impact targets. In Delaware, the energy efficiency program year runs from January 1 through December 31.

**“Public Advocate”** means the entity established by 29 Del.C. §8716.

**“Public Service Commission (PSC)”** means the entity established by 26 Del.C. §103.

**“Realization Rate”** means the ratio of evaluated Gross Savings to initial pre-evaluation claimed Gross Savings. The basis for a realization rate varying from 1.0 can include several considerations such as the following: 1) adjustments for data errors, 2) differences in implemented measure counts as a result of Verification activities, and/or 3) other differences revealed through the evaluation process, such as with respect to adjustments to baseline assumptions or per unit savings estimates.

**“Reliable Pricing Model (RPM)”** means PJM’s capacity market.

**“Renewable Energy Credit (REC)”** means a tradable instrument defined by 26 Del.C. §352(18) used to demonstrate compliance with the percentage requirements set forth in 26 Del.C. §354(a).

**“Rigor”** means the level of effort expended to minimize uncertainty due to factors such as sampling error and bias. The higher the level of rigor, the more confident one is that the results of the evaluation are both accurate and precise.

**“Solar Renewable Energy Credit (SREC)”** means the tradable instrument defined by 26 Del.C. §352(25) used to demonstrate compliance with the percentage requirements set forth in 26 Del.C. §354(a).

**“Spillover (free drivers)”** means EE or DR measures that are not directly counted as resulting from program participation, but are taken as a result of the program’s influence on customers or markets. There are two general types of spillover: (1) participant spillover, in which program participants adopt additional efficiency measures or practices that are not counted directly as part of the program tracking system; or (2) non-participant spillover in which actions are taken by non-participants due to the general influence or awareness-raising effects of the program.



“**Technical Reference Manual (TRM)**” means an operating manual that describes the standardized approaches to be used for estimating savings from the installation of energy efficiency measures or adoption of efficiency practices. It provides a common comparable approach for estimating energy savings across programs and market sectors for the measures typically installed via the energy efficiency programs.

“**Verification**” means an independent ex-post assessment of an energy efficiency or demand response program that confirms: (1) the installation rate of measures installed through the programs; (2) the installation meets reasonable quality standards; (3) the measures are operating correctly and have the potential to generate the predicted savings; and (4) tracked savings estimates are properly calculated based on agreed upon deemed values or rules in the TRM. Verification may include one time or multiple activities over the effective useful life of the measures.

## **4.0 Incorporation by Reference**

- 4.1 The Delaware TRM, published by the Delaware Department of Natural Resources and Environmental Control on July 1, 2016, is hereby adopted and incorporated by reference.
- 4.2 The Delaware TRM consists of the Mid-Atlantic TRM version 6.0, as published by the Northeast Energy Efficiency Partnership’s Regional EM&V forum in May 2016, plus additional measures to address Delaware-specific conditions.

## **5.0 EEAC, DNREC, Program Administrators and Independent Evaluation Contractors EM&V Responsibilities**

- 5.1 The EEAC and DNREC shall provide oversight of EM&V for PA energy efficiency portfolios in Delaware. These parties will work together to plan, implement, and review evaluations, including impact, process, market assessments, cost-effectiveness analysis, and baseline research. The following entities shall be engaged in and have responsibilities for EM&V in Delaware, as summarized in the remainder of this section, and including all specific responsibilities defined in greater detail in subsequent sections.
- 5.2 EEAC Responsibilities
  - 5.2.1 The EEAC shall oversee, plan and guide Delaware energy-efficiency program evaluations and EM&V related activities both pursuant to and not explicitly expressed in these regulations. The EEAC will approve portfolio-level EM&V plans and budgets.
  - 5.2.2 The EEAC shall establish a schedule for meetings to discuss progress of on-going work and to plan and manage new research. The EEAC may establish subcommittees as needed to handle details best suited for smaller groups or matters that affect a sub-set of all PAs.
  - 5.2.3 The EEAC shall review, approve or ask for modifications to, all EM&V analyses and work products produced by IECs.
  - 5.2.4 The EEAC shall work collaboratively with the PAs to develop EM&V plans. EM&V plans should clearly outline the approach for each program or portfolio evaluation including detailing level of expected rigor and reliability of results.
  - 5.2.5 The EEAC shall be responsible for developing or approving the following planning documents related to EM&V in Delaware.
    - 5.2.5.1 Three-Year Plan: The EEAC shall develop a comprehensive 3-year EM&V plan, including overall EM&V budgets in the year prior to the start of the new 3-year cycle.
    - 5.2.5.2 Annual Portfolio Plan Updates: The EEAC shall develop a general plan of EM&V activities to be conducted in the upcoming year. Annual EM&V plans shall allow for modifications, with justification, to the overall Three-Year Plan to accommodate new information or program or portfolio changes. The EEAC shall reach agreement on the Annual EM&V plans in advance of the launch of the program year to which the EM&V plan pertains.
- 5.3 DNREC Responsibilities
  - 5.3.1 DNREC may hire an EEAC Consultant to represent the EEAC and to assist with the planning and oversight of EM&V activities in Delaware. DNREC’s oversight responsibilities related to acquiring

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EM&V services include: 1) competitively acquiring EEAC Consultant services, and 2) establishing, managing, and overseeing EEAC Consultant service acquisition process and the day-to-day management responsibilities required to successfully implement the EEAC Consultant's efforts.

5.3.2 DNREC will post all final evaluation reports and results on the Delaware EEAC website, except when doing so would compromise customer privacy or data security.

## 5.4 PA Responsibilities

5.4.1 Each PA is expected to be an active participant in the EEAC's EM&V activities. PAs will also enter into contracts to procure the IECs and provide day-to-day and contractual management of IECs.

5.4.2 PAs are responsible for the direct development and implementation of all EM&V activities required for their energy efficiency portfolio in adherence with these regulations, and for ensuring that efforts are consistent with the policies, procedures, approaches and timelines that meet Delaware's needs.

5.4.3 The PAs shall inform the EEAC of major changes to existing programs prior to their implementation so that the EEAC can develop or approve any necessary EM&V plans. Each PA must ensure that data is supplied to IECs as needed and in a timely fashion. The PAs must ensure that their program third-party implementers also track necessary data and cooperate fully with IECs in support of all EM&V activities.

5.4.4 Each PA shall annually submit an EM&V report to the EEAC highlighting findings from the past program year. The report shall be submitted within 30 days of completion of all annual EM&V reports for the following year and include the following information.

5.4.4.1 A summary of EM&V activities completed in a manner that is consistent with these regulations and with EM&V Plans approved by the EEAC.

5.4.4.2 A summary of process evaluation findings, as appropriate by program.

5.4.4.3 A summary of impact evaluation findings, as appropriate by program and for the portfolio as a whole, showing original PA tracked savings, actual evaluated gross and net savings performance, original program goals, evaluated NTG ratios, and evaluation realization rates. For programs not undergoing impact evaluations for that year, the summary should provide the tracked and claimed gross and net savings consistent with prior agreements, deemed savings and the TRM, and indicate these are unevaluated results.

5.4.4.4 Estimates of ex-post evaluation estimated savings and cost-effectiveness results by program and for the portfolio as a whole, performed and calculated in a manner consistent with the EM&V regulations.

5.4.5 The PAs shall provide quarterly progress reports that include updates on progress towards EM&V goals and expenditures and participate in update meetings as requested by the EEAC.

5.4.6 PAs are encouraged to offer their eligible program resources into the PJM RPM capacity market so long as it is cost-effective and the evaluation of such resources remains compliant with these regulations.

## 5.5 IEC(s) Responsibilities

5.5.1 The IEC(s) shall provide technical advice and information to the EEAC, develop and recommend EM&V plans and budgets, and conduct all EM&V research and tasks.

## 6.0 Evaluation Requirements

### 6.1 Reporting

6.1.1 EM&V reports shall provide an assessment of EM&V activities completed in a manner that is consistent with these regulations. Reports shall be provided as determined by the EEAC. The final reporting timeline shall be established so that it can efficiently and cost-effectively meet the needs of the PAs, EEAC and the PJM RPM capacity market compliance cycle whenever possible.

6.1.2 Program cycle reporting shall include both impact and process evaluations findings, as appropriate by program, and will be used to measure performance against program goals. Impact evaluations shall report energy impact estimates for each year of the program's operations and for the program cycle in total, when available. This reporting shall allow the evaluation to document

program-cycle impacts as well as annual impacts that support program planning and restructuring efforts to maintain high performing programs and portfolios.

6.1.3 Evaluation reports shall contain, at a minimum, the following:

- 6.1.3.1 Cover;
- 6.1.3.2 Title Page;
- 6.1.3.3 Abstract;
- 6.1.3.4 Table of Contents;
- 6.1.3.5 Executive Summary (including impact findings and process recommendations);
- 6.1.3.6 Introduction and Purpose of the Study;
- 6.1.3.7 Description of Programs Covered in Study;
- 6.1.3.8 Study Methodology;
- 6.1.3.9 Assessment of the Reliability of Study Findings;
- 6.1.3.10 Detailed Study Findings (impact and process evaluation);
- 6.1.3.11 Recommendations for Program Changes, and
- 6.1.3.12 For impact studies, ex-post cost-effectiveness results

6.1.4 The following information shall be included in a table format or bullet list within both the Executive Summary of the draft and final evaluation reports as well as in the sections of the report in which those items are presented and discussed. The goal of this requirement is to allow efficient and rapid extraction of key results to better understand the study results.

6.1.4.1 Energy Impact

- 6.1.4.1.1 Program and portfolio level first year annualized gross and net energy impacts
- 6.1.4.1.2 Program and portfolio level gross and net lifecycle energy impacts
- 6.1.4.1.3 For electric programs, program and portfolio level gross and net coincident peak kW
- 6.1.4.1.4 Program NTG ratios and estimated components
- 6.1.4.1.5 Program and portfolio level first year annualized gross original PA-tracked ex-ante savings
- 6.1.4.1.6 Program and portfolio level first year annualized gross realization rates
- 6.1.4.1.7 Program and portfolio level impact goals
- 6.1.4.1.8 Program and portfolio level achievement as a percentage of goal, based on ex-post evaluation results
- 6.1.4.1.9 Program and portfolio level calculated benefit-cost results based on ex-post evaluation net savings

6.1.4.2 Process Evaluation

- 6.1.4.2.1 Key findings from the process evaluation
- 6.1.4.2.2 Summary of recommendations made by the evaluation team

6.1.4.3 Market Effects

- 6.1.4.3.1 Timeline describing years covered by the reported effects
- 6.1.4.3.2 Key findings from the market effects evaluation aligning with priorities identified by the EEAC.
- 6.1.4.3.3 Estimated annual and lifecycle net energy savings estimated from market effects (per technology, technology class, or market sector as appropriate)
- 6.1.4.3.4 Listing of major technologies and/or practices affected by market effects

6.2 Benefit-Cost Analysis

- 6.2.1 Energy Efficiency portfolios in Delaware must meet the benefit-cost requirements outlined in these regulations. PAs shall develop program and portfolio plans to achieve overall positive net benefits based on the cost-effectiveness test described below. PAs are responsible for providing prospective planned cost-effectiveness test results to EEAC for review at the program and portfolio level. In addition, the IECs and PAs must provide the EEAC with retrospective cost-

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effectiveness test results at the program and portfolio level. Portfolios shall be developed to maximize long term cost-effectiveness and consider investing in the activities and resources needed to establish the groundwork for programs in the future.

## 6.2.2 Cost-Effectiveness Test

6.2.2.1 Programs are considered cost-effective when the benefit-cost ratio as determined by the Total Resource Cost (TRC) test is greater than one. The TRC test compares the costs and benefits of energy efficiency programs as a resource option from the perspective of the entire economy. The formula for the TRC test is:

Benefit-Cost Ratio = Benefits / Costs, where:

Benefits = Net Present Value of (Avoided Supply Costs + Other Benefits)

Costs = Net Present Value of (Participant Costs + Utility Costs – Federal Tax Credits)

6.2.2.2 The costs are the total costs of the program, whether incurred by participants or Program Administrators. Costs include:

6.2.2.2.1 equipment and installation costs (but only those that are incremental to baseline costs),

6.2.2.2.2 increases (or decreases) in operation and maintenance costs,

6.2.2.2.3 cost of removal (less salvage value),

6.2.2.2.4 administrative costs directly attributable to the programs,

6.2.2.2.5 costs for EM&V activities, utility performance incentives, and Federal tax credits (as a reduction in cost).

6.2.2.3 Benefits include all benefits to the utility, its ratepayers, and other Delaware constituents that result from changes in energy consumption resulting from energy efficiency programs. The benefits calculated in the TRC shall include, when determined by the EEAC to be reasonably quantifiable:

6.2.2.3.1 avoided electric supply costs, based on energy costs in the respective zone of the PJM Regional Transmission Organization;

6.2.2.3.2 avoided electric transmission, distribution, and generation capacity costs, valued at marginal cost for the periods when there is a load reduction, based on relevant costs in the respective zone of the PJM Regional Transmission Organization;

6.2.2.3.3 reduced SREC and RECs requirements;

6.2.2.3.4 avoided gas supply and delivery costs;

6.2.2.3.5 the effect of lower prices for electric and gas energy and capacity in wholesale markets resulting from reductions in the quantity of energy and capacity sold in those markets, sometimes referred to as Demand-Reduction-Induced Price Effect (DRIPE);

6.2.2.3.6 non-primary fuel benefits, such as reduction in heating fuel needs (regardless of fuel type) resulting from improvements in the building envelope or other systems; and

6.2.2.3.7 avoided environmental compliance costs, where such costs can be directly tied to changes in energy use.

6.2.2.4 The benefits shall be calculated using net savings.

6.2.3 To set a standard that allows TRC tests conducted on Delaware's energy efficiency programs and portfolio to be comparable, the following guidance shall be followed.

6.2.3.1 Net present value - Cost-effectiveness of an energy efficiency measure, program, or portfolio will be calculated based on the net present value of the costs and benefits valued in the TRC test, discounted over the effective useful life of the measures installed.

6.2.3.2 Discount Rates - The discount rate used in energy efficiency and demand reduction cost-effectiveness tests shall be 4.0% on a real basis.

6.2.3.3 EUL - Measures installed via Delaware's energy efficiency programs shall have their energy savings counted and valued over the full EUL of the installed measures.

6.2.3.4 With the exception of program-specific data, inputs to cost-effectiveness tests shall not be different for different programs.

6.2.4 Although the TRC test will serve as the primary criterion for determining program cost-effectiveness, customer rate and bill impacts shall be provided in portfolio plans to help inform the planning process. The results of additional cost-effectiveness tests may also be reported.

6.2.4.1 Portfolio plans shall include projected short and long term customer rate and bill impacts for each customer class.

6.2.5 EEAC Responsibilities for Benefit-Cost Analysis

6.2.5.1 Develop or approve energy savings forecasts, avoided costs, line losses, and/or other major inputs to the benefit-cost analysis.

6.2.5.2 Monitor that Program Administrators are following the benefit-cost approaches as outlined in these regulations.

6.2.5.3 Review and approve program and portfolio level benefit-cost analysis completed by Program Administrators and/or IECs on energy efficiency portfolios and programs.

6.2.6 DNREC Responsibilities for Benefit-Cost Analysis

6.2.6.1 Coordinate with the PSC and the Public Advocate to provide advice on benefit-cost metrics, metric values, and calculation approaches.

6.2.7 Program Administrator Responsibility for Benefit-Cost Analysis

6.2.7.1 Develop estimates of avoided costs and line losses, for review, discussion and approval by the EEAC.

6.2.7.2 Perform benefit-cost analysis for energy efficiency measures, programs and portfolios for planning purposes using Delaware TRM values and best available information as appropriate.

6.2.7.3 Provide IECs with appropriate input data and ensure that the IECs perform required benefit-cost analyses based on ex-post evaluation results and submit timely reports to the EEAC.

6.2.7.4 Report planned and ex-post benefit-cost calculation results to EEAC.

6.2.7.5 Provide data and benefit-cost analyses models to the EEAC for review, if requested

6.3 Energy Impact Baseline

6.3.1 Prescriptive Measures

6.3.1.1 The baseline used for prescriptive measures shall be established in the Delaware TRM. Baselines for prescriptive measures shall follow the approaches outlined below.

6.3.1.2 For program models that are market driven, including replace on failure or end of life, new construction, renovation, remodel, or any other reason the customer is already planning to install equipment, the Delaware TRM shall use one of the following approaches to establish deemed baselines, unless specified in the Delaware TRM to be site or customer-type specific:

- **Code or standard:** Energy impact baseline is set at the minimum building code or the minimum appliance standard without compliance adjustments
- **Typical Code or Standard with Compliance Adjustment:** Energy impact baseline is set at the typically applied building code or appliance standard adjusted for estimated compliance
- **Market Mean or Mode:** Energy impact baseline is set at the mean or mode market practice for that equipment, depending on the distribution

6.3.1.3 For programs models that result in equipment replaced earlier than what would have occurred without the program (early replacement or "retrofit"), or where additional or optional equipment is added to existing equipment of systems, the baseline condition is the energy use condition prior to the program-induced change for the remaining useful life of the replaced measure. Once the remaining useful life has expired, the baseline should be established using one of the three methods outlined in subsection 6.3.1.2 and applied to the remaining useful life.

6.3.2 Custom Measures

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6.3.2.1 Baseline conditions for custom measures will be set for each project being evaluated so that it reflects the typical conditions associated with that custom application, consistent with the above guidelines for prescriptive measures. The IEC will review baseline assumptions established by project engineers, and if appropriate, suggest modifications.

6.3.3 EEAC Responsibilities for Energy Impact Baseline

6.3.3.1 Provide guidance to IECs and PAs regarding appropriate baseline approaches, assumptions and estimations.

6.3.3.2 Collaborate with the IECs and PAs on the evaluation efforts and review baseline approaches and savings assumptions to be used in the evaluation efforts ensuring they are developed in a manner consistent with the baseline approach established in these regulations.

6.3.3.3 Work to resolve any disagreements between the IECs and PAs, or other stakeholders, regarding baseline assumptions.

6.3.3.4 Approve any IEC suggested deviations from the required approach for setting baseline conditions if properly justified and explained.

6.3.4 Program Administrator Responsibilities for Energy Impact Baseline

6.3.4.1 Provide guidance to IECs on program baseline assumptions.

6.3.4.2 Develop, in coordination with the IECs, custom baseline assumptions on a project-specific basis to support calculations of custom project gross savings.

6.4 Application of Savings

6.4.1 Program results and goal achievement in Delaware shall be reported as Ex-Post Verified Net savings. Gross program savings that are verified by evaluation activities are then adjusted using previously-determined net-to-gross (NTG) ratios to yield an ex-post, verified net savings value.

6.4.2 Gross savings will be calculated using the Delaware TRM where applicable. For measures not included in the Delaware TRM, gross savings will be calculated by other appropriate methods.

6.4.2.1 Gross savings do not account for the effects of free riders, spill over or market effects on the total program savings.

6.4.2.2 For deemed savings, ex-post savings shall be verified by the IEC and may reflect installation rate, quantity, and adjustments for errors in data collection.

6.4.2.3 Custom projects shall require engineering, metering, or other evaluation estimates that will be applied retroactively.

6.4.3 Net savings, those savings that are caused by the program's intervention in the market and that account for free riders, participant spillover and market effects, shall be used for purposes of assessing goal achievement and to provide program design and marketing guidance that can support planning for upcoming program years. An assessment of net-to-gross ratios may also be used by the EEAC, and other policy makers to assess when a program should be redesigned or terminated as a part of the Delaware portfolio.

6.4.3.1 The EEAC shall develop or approve NTG ratios to be applied to each program prospectively each year. These NTG ratios can be derived from specific research or from other best available information. The EEAC, in consultation with the IEC, shall agree on NTG values to use going forward, informed by evaluations and all other best available information.

6.4.3.2 Estimated net-to-gross assumptions used in portfolio planning analyses shall be included with the portfolio plan submitted to EEAC.

6.4.4 Retroactive vs. prospective savings calculation

6.4.4.1 Changes in deemed energy savings or other deemed assumptions that result from program evaluation shall not be applied retrospectively, but shall be applied to the program and portfolio prospectively in the next program cycle.

6.4.4.2 Changes to deemed savings assumptions shall be coordinated through the annual process of updating the Delaware TRM.

## 6.4.5 Transmission and Distribution Losses

6.4.5.1 All transmission and distribution loss factors applied to customer or meter-level savings in order to estimate generation-level savings shall be based on estimates of marginal system line losses rather than average loss factors.

## 6.4.6 EEAC Responsibilities for Savings Calculations

6.4.6.1 The EEAC shall develop or approve gross savings analyses completed by IECs on energy efficiency portfolios and programs.

6.4.6.2 The EEAC shall coordinate with the DNREC to provide updates to the Delaware TRM so that savings used in Delaware reflect the most recent information available, including information gathered through program EM&V completed in Delaware.

6.4.6.3 The EEAC shall review and approve Program Administrator assumptions regarding savings attributable to avoided transmission and distribution system losses.

6.4.6.4 The EEAC shall reach consensus on all forward looking NTG ratios to apply to the following year.

## 6.4.7 PA Responsibilities for Savings Calculations

6.4.7.1 The PAs shall coordinate with the DNREC and the EEAC to provide advice on benefit-cost metrics, metric values, and calculation approaches.

## 6.4.8 IEC Responsibilities for Savings Calculation

6.4.8.1 The IEC shall provide to the EEAC all EM&V reports. Reports shall include, as a minimum, evaluated gross and net savings for each program.

6.4.8.2 The IEC shall recommend to the EEAC any proposed prospective modifications to the Delaware TRM or other deemed assumptions.

6.4.8.3 The IEC shall advise the EEAC, as requested, on issues related to reaching consensus on NTG ratios for each program.

## **7.0 Evaluation Budgeting and Budget Management**

7.1 For any given program cycle, the EEAC will review evaluation budgets proposed by the PAs and the IECs to ensure funding is at a level sufficient to cover EM&V.

7.2 The EEAC shall consider the following when approving the proposed EM&V Plans and when recommending EM&V activities:

7.2.1 Programs that are expected to save more energy (in both the near-term and over their measure lifetimes) or have high demand reduction impacts should have evaluation approaches that are more rigorous than those that are expected to save less energy.

7.2.2 Programs that represent larger portions of the portfolio budget should have a level of evaluation rigor that matches the importance of the program's total financial investment.

7.2.3 Measures that have a high risk around the accuracy of the savings should have a high level of evaluation rigor, thus reducing the level of uncertainty around the energy saving estimates of that program and for the portfolio.

7.2.4 Field measurement and verification efforts should focus on the components of the portfolio that have the greatest risk of lowering the reliability of the total impact estimates.

7.2.5 Sampling approaches, sample-size targets, and confidence limits should provide the highest level of accuracy achievable balanced with the available resources. Large programs and programs that are important for reaching energy saving targets should have sampling approaches that reflect that importance. Low impact or smaller programs may have lower precision and confidence levels.

7.2.6 Budgets devoted to process evaluations should consider the likely opportunities to identify program improvements, the current success of the program in terms of participation and overall program implementation, and the likely duration of the program effort

7.2.7 In order to reduce costs and remain consistent with other regional evaluation efforts, evaluations and related activities shall leverage, to the extent possible, the activities of other entities such as

the Northeast Energy Efficiency Partnership's Regional EM&V Forum and the Department of Energy's Uniform Methods Project.

7.2.8 Where possible, evaluation activities should support the ability of the PAs to meet the EM&V requirements for participation in the PJM RPM capacity market.

### **8.0 Delaware Technical Reference Manual (TRM) Purpose and Updating Process**

- 8.1 The Delaware TRM shall serve as the source for deemed gross savings and the associated calculation approaches used in Delaware.
- 8.2 Updates to the Delaware TRM will be aligned with the update process for the Mid-Atlantic TRM and shall be completed annually by July 1. PAs planning to launch programs the following January 1 or later will use the updated Delaware TRM in planning for the subsequent year. PAs launching new programs in advance of January 1 of the subsequent year will use the standing values until the start of their next program year, at which time they will adopt the updates from the Delaware TRM for all forward-planning and reporting purposes.
- 8.3 EEAC Responsibilities for Delaware TRM Updates
  - 8.3.1 Participate in the Mid-Atlantic TRM development process.
  - 8.3.2 Initiate and manage the update process for the Delaware TRM.
  - 8.3.3 Lead the various aspects associated with the coordination process to ensure that all necessary information is assembled to inform discussions regarding proposed changes to the TRM.
  - 8.3.4 Obtain opinions from evaluation and program implementation experts as needed to inform modification and other update decisions.
  - 8.3.5 Solicit feedback from other interested parties as part of the updating process.
  - 8.3.6 Develop and document all procedures and policies related to the Delaware TRM, its use, update schedule, and application.
  - 8.3.7 Approve the Delaware TRM.
- 8.4 PA Responsibilities for Delaware TRM Updates
  - 8.4.1 Develop recommendations for changes and new measures and participate in discussions as appropriate.
  - 8.4.2 Inform the EEAC promptly of the desire for additional and characterization of any new measures to support program design and implementation activities.
  - 8.4.3 Provide feedback and insight into the updating process for the Delaware TRM, including direct feedback and findings resulting from EM&V activity in Delaware.
  - 8.4.4 Provide opinions, comments, or responses on the recommended changes provided by others.
- 8.5 IEC Responsibilities for Delaware TRM Updates
  - 8.5.1 Identify appropriate modifications and updates to the EEAC, provide recommendations for new assumptions, and assist in developing Delaware TRM updates.

**Please Note: Due to the size of the Delaware Technical Reference Manual, it is not being published here. The link to the manual is provided below:**

**DE TRM complete 2016 ([http://regulations.delaware.gov/register/august2016/proposed/DE TRM complete 2016.pdf](http://regulations.delaware.gov/register/august2016/proposed/DE_TRM_complete_2016.pdf))**

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

### 3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID DISPENSERS

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 Del.C. §3706(a)(1))  
24 DE Admin. Code 3700

#### PUBLIC NOTICE

#### 3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

Pursuant to 24 Del.C. §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board") proposes revisions to its rules and regulations.

On October 1, 2015, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 4. Specifically, the Board's proposed amendments struck the current Section 9.2.1.4, which addresses practice by telecommunications, and added a new Section 10.0, pertaining to telepractice. The new Section 10.0 sets forth standards and requirements in order to allow licensees to engage in telepractice while protecting the public.

A public hearing was held on November 17, 2015 before the Board, and the public comment period for written comment was held open for another 15 days. The Board deliberated on the evidence submitted at its meeting on January 19, 2016. Based on those deliberations, the Board made substantive revisions to the proposed rules and regulations. Therefore, the Board strikes the rules and regulations as proposed in the October 1, 2015 *Register of Regulations* and proposes revised rules and regulations attached hereto as Exhibit A.

A public hearing will be held on September 20, 2016 at 2:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be October 5, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

#### Nature of the Proceedings

A public hearing was held before the Board on November 17, 2015 in the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public were invited to offer comments on the proposed amendments to the rules and regulations. Members of the public were also invited to submit written comments. In accordance with 29 Del.C. §10118(a), the written public comment period was held open until December 2, 2015, which was 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on January 19, 2016.

#### Summary of the Evidence

At the November 17, 2015 hearing, the following exhibits were made part of the record:

**Exhibit 1:** *News Journal* Affidavit of Publication.

**Exhibit 2:** *Delaware State News* Affidavit of Publication.

**Exhibit 3:** October 22, 2015 letter from Robert Overmiller of the Governor's Advisory Council for Exceptional Citizens.

Mr. Overmiller requested a limited exception to Section 10.2.1.2 to permit occasional telepractice sessions with a regular client in the jurisdiction where the client is located.

**Exhibit 4:** October 28, 2015 letter from Daniese McMullin-Powell of the State Council for Persons with Disabilities.

Ms. McMullin-Powell shared the concerns set forth in Exhibit 3.

**Exhibit 5:** November 6, 2015 letter from Judith Page, of the American Speech Language Hearing Association.

Ms. Page expressed concern regarding the requirement that the client be located in Delaware. She also commented that Delaware licensees, who may be recognized in their field, would be limited to providing services to clients located in Delaware. Ms. Page made a number of suggestions for inclusion in the proposed rules and regulation: Telepractice services must be equivalent to face-to-face services; licensees must comply with professional standards and must have the knowledge and skill to deliver services by telepractice; the use of technology must be appropriate for each client; include calibration of instruments; assess client's candidacy; provide written notification of the right to refuse services by telepractice; and maintain the confidentiality of records;

**Exhibit 6:** Undated written comments from the Delaware Speech Hearing Association.

The comments include a request that Section 10.2.1.2 be amended to reflect the client's legal status as a Delaware resident and to include a consultation exemption.

**Exhibit 7:** November 17, 2015 email and written comments from Illene Courtright.

Ms. Courtright objected to the geographic borders requirement and suggested using instead the legal resident status of the client. She requested an exemption to this requirement for episodic services or informal consultation. Ms. Courtright commented that the informed consent requirement should include the risks and limitations of telepractice.

In addition, testimony was presented, as follows:

Leia Heckman, from the Delaware Speech Hearing Association, addressed the Board regarding her concerns with the proposed regulations. Specifically, Ms. Heckman noted that services provided by telepractice must be equivalent to services face-to-face. Ms. Heckman objected to the requirement that the client must be located in the State of Delaware. This proposed language would limit services for clients who leave the state. Ms. Heckman suggested inclusion of ASHA's model language pertaining to informed consent. Ms. Heckman advised the Board that DSHA supports ASHA's model language, and requested that the Board consider adopting the consultation exemption.

Christine Cook, a Delaware speech/language pathologist, addressed the Board regarding her concerns pertaining to proposed Section 10.2.4.2, which requires that consultations be conducted face-to-face. Ms. Cook stated that the Board had advocated for an increase in access to services. This section will limit access. Clients should be able to consult with out of state providers by telepractice. Ms. Cook requested the elimination of Section 10.2.4.2.

Liesel Looney, an audiologist from the Nemours Children's Hospital, addressed the Board with her concerns pertaining to proposed Section 10.2.4.2. Ms. Looney reported that there is only one audiologist in Kent and Sussex County who is conducting follow-ups for newborns who fail hearing screenings. Due to the shortage, children are not getting subsequent follow-up appointments. Section 10.2.4.2 would prevent the provision of services by telepractice to this population. There is a need for providing remote services to families who live far from the hospital and lack transportation. Children in underserved areas aren't getting infant hearing screenings and timely intervention. The professional should be responsible for assessing appropriate care.

During the 15-day window for submission of additional written comments, as required by 29 **Del.C.** §10118(a), the Board received the following documents, which were marked as Exhibits on January 19, 2016:

**Exhibit 8:** December 1, 2015 letter from Michael Kurliand of Nemours, Alfred I. DuPont Hospital for Children.

Mr. Kurliand objected to inclusion of Sections 10.2.4.2 and Section 10.2.4.1. These sections require face-to-face meetings for initial evaluation, re-evaluations and scheduled discharges. Mr. Kurliand stated that these Sections will dramatically limit access to care, particularly in underserved southern Delaware. Mr. Kurliand also objected to Section 10.2.1.2, which requires clients to be located within the borders of Delaware. Mr. Kurliand suggested that the proposed rules and regulations be amended to permit a Delaware licensee to follow established patients that are not physically in the state of Delaware.

**Exhibit 9:** December 1, 2015 letter from Yell Inverso of Nemours, Alfred I. DuPont Hospital for Children.

Ms. Inverso objected to the face-to-face requirements in Section 10.2.4.2. Ms. Inverso stated that this

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language will limit access to care for many patients, including patients in southern Delaware. Ms. Inverso commented on the impact on audiology services. Due to the limited access to audiology services in southern Delaware, infants are not receiving hearing screenings and recommended follow-up services.

### **Findings and Conclusions**

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's rules and regulations.

Pursuant to 24 **Del.C.** §3706(a)(1), the Board has statutory authority to promulgate rules and regulations. The proposed changes seek to establish standards for the delivery of services by telepractice for the professions regulated by the Board.

During deliberations, the Board considered the testimony of witnesses and the documents marked as exhibits. The Board addressed the concerns presented through this evidence. The Board discussed the objection to proposed Section 10.2.1, which requires that the licensee shall have an active Delaware license, and during telepractice treatment, the client shall be located within the borders of the State of Delaware. Certain individuals offering public comment expressed reservations with respect to continuity of care and limiting access to needed services.

The Board declined to amend Section 10.2.1. Care occurs where the client is physically located. A licensee who is licensed in Delaware only would be engaging in unlicensed practice if permitted to treat a client who has left Delaware and is located in another state. The Board would have no jurisdiction with respect to care provided in another state. Section 10.2.1 serves the interests of public protection by ensuring that clients located in Delaware receive care from practitioners properly licensed by the Board.

The Board also addressed the benefits and disadvantages regarding Section 10.2.4.2, which requires that all evaluations be done in a face to face setting. The Board recognized the access problem presented by this language, and decided to amend this Section to specify that only initial evaluations must be performed face to face and not through telepractice. The method of treatment for subsequent evaluations will be left to the discretion of the licensed professional.

The Board noted that other concerns voiced by members of the public are addressed in proposed Section 10.0. In the delivery of services by telepractice, the licensee must meet all standards and requirements applicable to onsite care. See Section 10.2.4.3. The licensee who deliver services by telepractice must possess the specialized knowledge and skills needed for the particular technology. See Section 10.2.4.5. The licensee is responsible for determining that telepractice is appropriate for the particular client. See Section 10.2.4.1. The proposed rules and regulations also require that licensees obtain written, informed consent which includes an outline of the risks of telepractice. See Section 10.2.2.

Finally, the Board decided to strike the last sentence of Rule 10.1 as unnecessary.

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

<http://regulations.delaware.gov/register/august2016/proposed/20 DE Reg 107RFA 08-01-16.pdf>

### **3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers (Break in Continuity of Sections)**

#### **2.0 Licensure Requirements for Speech-Language Pathologists and Audiologists (Break in Continuity Within Section)**

##### **2.6 Application Process -Permanent Licensure**

- 2.6.1 Speech/Language Pathology and Audiology applicants must complete the application on a form approved by the Board and submit the appropriate fee.
- 2.6.2 An applicant who has ASHA Certification must comply with subSection 2.6.1 and submit a copy of current ASHA certification.

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

**3.0 Licensure Requirements for Hearing Aid Dispensers**

*(Break in Continuity Within Section)*

## 3.2 Original Licensure

3.2.1 Education: Applicants must have earned a high school diploma or its equivalent.

## 3.2.2 Training:

*(Break in Continuity Within Section)*

3.2.2.4 Upon completion of the training period, temporary Hearing Aid Dispensing licensees must submit verification of completion of the training period on a Board-approved form, which shall include the notarized signature of the Delaware-licensed sponsor stating that the training was completed under his or her direct supervision in accordance with ~~Regulation~~ subsection 3.2.2.2. Upon receipt and approval of the training verification, the Board will authorize the applicant to take the examination.

## 3.2.3 National Examination

*(Break in Continuity Within Section)*

3.2.3.2 Applicants who fail two (2) examinations may not be reexamined for a period of one (1) year following the second failure. After a second exam failure, an applicant must complete an additional training period pursuant to ~~Regulation~~ subsection 3.2.2 before the Board will grant authorization to retake the exam.

*(Break in Continuity Within Section)*

**4.0 Expired Licenses and Inactive Status**

*(Break in Continuity Within Section)*

## 4.2 Inactive Status

4.2.1 A licensee may apply to the Board for inactive status for up to five years. The license may be reactivated upon application on a form approved by the Board and proof of CEs completed within the preceding 24 months as required by ~~Regulation~~ subsection 8.2.3, and payment of the fee established by the Division of Professional Regulation.

*(Break in Continuity of Sections)*

**7.0 Electronic Equipment Calibration**

*(Break in Continuity Within Section)*

7.2 Audiologists and Hearing Aid Dispensers shall indicate by attestation in the course of license renewal whether they have complied with ~~regulation~~ subsection 7.1 Audiologists who do not have such equipment shall attest to that fact during the course of renewal.

**8.0 Continuing Education For All Licensees:**

*(Break in Continuity Within Section)*

## 8.2 Continuing Education Criteria

*(Break in Continuity Within Section)*

8.2.5 CE is required for license renewal and shall be completed by July 31 of odd-numbered years.

8.2.5.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of ~~Rule~~ Section 8.0

*(Break in Continuity Within Section)*

8.2.8 In response to the audit, audiologists and hearing aid dispensers shall submit documentation of calibration of electronic equipment used to assess hearing, as set forth in ~~Rule~~ Section 7.0.

8.2.9 Licensees who are not audited shall retain their CE documentation for three (3) years after renewal.

8.2.10 Licensees who renew their license under the late renewal provision shall be audited for CE completion (and equipment calibration, if applicable). These licensees shall submit documents that evidence satisfactory completion of their CE requirements (and annual equipment calibration pursuant to ~~regulation Section~~ 7.0, if applicable) for the prior licensure period.

*(Break in Continuity Within Section)*

8.3 Acceptable CE Courses/Activities

8.3.1 CE activities sponsored by accredited professional organizations, such as ASHA or AAA, are acceptable, provided the topics are relevant to the improvement of the licensee's clinical skills or professional growth as defined in ~~Rule subsection~~ 8.2.3.

*(Break in Continuity Within Section)*

## 9.0 Code of Ethics for Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers

*(Break in Continuity Within Section)*

9.2 Standards of Professional Conduct

9.2.1 A licensee who violates the following Standards of Professional Conduct may be guilty of illegal, negligent, or incompetent practice and disciplined pursuant to 24 **Del.C.** §3715(a)(2).

*(Break in Continuity Within Section)*

9.2.1.4 ~~Licensees shall not evaluate or treat a client with speech, language, or hearing disorders solely by correspondence. Correspondence includes telecommunication.~~

~~9.2.1.5~~ Licensees shall delegate responsibility only to qualified individuals as permitted by law with appropriate supervision.

9.2.1.6~~5~~ Licensees who have evidence that a practitioner has violated the Code of Ethics or other law or regulation shall present that information by complaint to the Division of Professional Regulation for investigation.

*(Break in Continuity Within Section)*

## 10.0 Telepractice

10.1 Telepractice is the application of telecommunications technology to the delivery of speech/language pathology, audiology and hearing aid dispensing professional services at a distance by linking clinician to client or clinician to clinician for intervention and/or consultation, subject to subsection 10.2.4.5, intervention and/or consultation.

10.2 The Speech/Language Pathologist, Audiologist, or Hearing Aid Dispenser (referred to as "licensee" for the purpose of this section) who provides treatment through telepractice shall meet the following requirements:

10.2.1 Location of client during treatment through telepractice.

10.2.1.1 The licensee shall have an active Delaware license in good standing to provide services through telepractice in the state of Delaware.

10.2.1.2 During the telepractice treatment session, the client shall be located within the borders of the State of Delaware.

10.2.2 Informed consent.

10.2.2.1 Before services are provided through telepractice, the licensee shall obtain written, informed consent from the client, or other appropriate person with authority to make health care treatment decisions for the client. At minimum, the informed consent shall inform the client and document acknowledgement of the risk and limitations of:

10.2.2.1.1 The use of electronic communications in the provision of care;

10.2.2.1.2 The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of care; and

10.2.2.1.3 The potential disruption of electronic communication in the use of telepractice.

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## PROPOSED REGULATIONS

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10.2.3 Confidentiality: The licensee shall ensure that the electronic communication is secure to maintain confidentiality of the client's health and/or educational information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices and technology, including disposal of electronic equipment and data.

10.2.4 Competence and scope of practice.

10.2.4.1 The licensee shall be responsible for determining and documenting that telepractice is an appropriate level of care for the client only after an initial face to face evaluation.

10.2.4.2 Initial evaluations shall be performed face to face and not through telepractice.

10.2.4.3 The licensee shall comply with the Board's law and rules and regulations and all current standards of care requirements applicable to onsite care.

10.2.4.4 The licensee shall limit the practice of telepractice to the area of competence in which proficiency has been gained through education, training and experience.

10.2.4.5 Licensees who deliver telepractice services must possess specialized knowledge and skills in selecting interventions that are appropriate to the technology and that take into consideration client and disorder variables.

10.2.4.6 The licensee shall document in the file or record which services were provided by telepractice.

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

101.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

101.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

101.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

101.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

101.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 101.8 of this section.

- 101.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 101.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
  - 101.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
  - 101.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
  - 101.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
  - 101.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
  - 101.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 101.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 101.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 101.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 101.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 101.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 101.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

**142.0 Crimes substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing.**

- 142.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing in the State of Delaware without regard to the place of conviction:
- 142.1.1 Assault in the second degree. 11 **Del.C.** §612.
  - 142.1.2 Assault in the first degree. 11 **Del.C.** §613.
  - 142.1.3 Assault by abuse or neglect. 11 **Del.C.** §615.
  - 142.1.4 Terroristic threatening; felony. 11 **Del.C.** §621
  - 142.1.5 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.
  - 142.1.6 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
  - 142.1.7 Murder in the second degree. 11 **Del.C.** §635.
  - 142.1.8 Murder in the first degree. 11 **Del.C.** §636.
  - 142.1.9 Unlawful Sexual Contact in the first degree. 11 **Del.C.** 769
  - 142.1.10 Rape in the fourth degree. 11 **Del.C.** §770
  - 142.1.11 Rape in the third degree. 11 **Del.C.** §771
  - 142.1.12 Rape in the second degree. 11 **Del.C.** §772
  - 142.1.13 Rape in the first degree. 11 **Del.C.** §773
  - 142.1.14 Sexual extortion. 11 **Del.C.** §776
  - 142.1.15 Continuous sexual abuse of a child. 11 **Del.C.** §778
  - 142.1.16 Dangerous crime against a child. 11 **Del.C.** §777
  - 142.1.17 Sex offender unlawful sexual conduct against a child. 11 **Del.C.** §777A
  - 142.1.18 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree. 11 **Del.C.** §778
  - 142.1.19 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree. 11 **Del.C.** §778A
  - 142.1.20 Kidnapping in the second degree. 11 **Del.C.** §783
  - 142.1.21 Kidnapping in the first degree. 11 **Del.C.** §783A
  - 142.1.22 Identity theft. 11 **Del.C.** §854
  - 142.1.23 Forgery. 11 **Del.C.** §861
  - 142.1.24 Insurance fraud. 11 **Del.C.** §913
  - 142.1.25 Health care fraud. 11 **Del.C.** §913A
  - 142.1.26 Dealing in children. 11 **Del.C.** §1100
  - 142.1.27 Endangering the welfare of a child. 11 **Del.C.** §1102
  - 142.1.28 Crime against vulnerable adult. 11 **Del.C.** §1105
  - 142.1.29 Sexual exploitation of a child. 11 **Del.C.** §1108
  - 142.1.30 Unlawful dealing in child pornography. 11 **Del.C.** §1109
  - 142.1.31 Possession of child pornography. 11 **Del.C.** §1111
  - 142.1.32 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
  - 142.1.33 Sexual solicitation of a child. 11 **Del.C.** §1112A
  - 142.1.34 Perjury in the first degree. 11 **Del.C.** §1223
  - 142.1.35 Hate crimes (felony). 11 **Del.C.** §1304(a)
  - 142.1.36 Stalking; felony. 11 **Del.C.** §1312A
  - 142.1.37 Duty to report child abuse or neglect. 16 **Del.C.** §903
  - 142.1.38 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136.



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- 142.1.39 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 **Del.C.** §4753A
  - 142.1.40 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767
  - 142.1.41 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768
  - 142.1.42 Abuse, neglect, mistreatment or financial exploitation of an infirm adult. 31 **Del.C.** §3913
  - 142.2 Crimes substantially related to the practice speech/language pathology, audiology, and hearing aid dispensing shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this section.

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

**3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers**

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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.

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

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 922

**REGULATORY IMPLEMENTING ORDER****922 Children with Disabilities Subpart A, Purposes and Definitions****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** 922 Children with Disabilities Subpart A, Purposes and Definitions. This regulation is being amended to change the terminology of "Emotional Disturbance" to also be known as "Emotional Disability" within the regulation, as these terms are used interchangeably.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2016 and June 1, 2016, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the use of both terms.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions in order to change the terminology of "Emotional Disturbance" to also be known as "Emotional Disability" within the regulation, as these terms are used interchangeably.

### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions 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** 922 Children with Disabilities Subpart A, Purposes and Definitions amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions 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, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 21<sup>st</sup> day of July 2016.

#### Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 21<sup>st</sup> day of July 2016

#### State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Nina L. Bunting

\*Please note that no changes were made to the regulation as originally proposed and published in the May 2016 issue of the *Register* at page 967 (19 DE Reg. 967). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**922 Children with Disabilities Subpart A, Purposes and Definitions**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

**Long-Term Care Facilities - Eligibility Determinations and Post-Eligibility Treatment; Undue Hardships**

### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated

proceedings to amend the Delaware Social Services Manual (DSSM) by adding a provision regarding long-term care eligibility, specifically, *to modify language regarding undue hardship provisions to align with current federal regulations and DMMA policy*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del.C. §10114 and its authority as prescribed by 31 Del.C. §512.

The Department published its notice of proposed regulation changes pursuant to 29 Del.C. §10115 in the June 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 1, 2016 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### SUMMARY OF PROPOSAL:

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) by modifying provisions regarding long-term care eligibility, specifically, *to modify language regarding undue hardship provisions to align with current federal regulations and DMMA policy*.

#### Statutory Authority

- §1902(17)(c) of the Social Securities Act, *Reasonable evaluation of income and resources*
- §1912(a)(1)(A) of the Social Security Act, *Assignment of rights of payments*
- §1917 of the Social Security Act, *Liens, Adjustments and Recoveries, and Transfers of Assets*
- §1924(a)(3)(b) of the Social Security Act, *Methodology and standards for determining and evaluating income and resources for institutionalized spouses*
- §1924(c)(3)(c) of the Social Security Act, *Assignment of support rights*
- 42 CFR 435.602(c), *Financial responsibility of relatives and other individuals*

#### Background

Section 1902(a)(18) of the Act states that a state plan for medical insurance must comply with the provisions of §1917 of the Act with respect to liens, adjustments, and recoveries of medical assistance correctly paid, transfers of assets, and treatment of certain trusts.

The Delaware Department of Health and Social Services (DHSS), in order to comply with Section 1917 of the Social Security Act as amended by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), has established policies and procedures for treating the transfer of assets and trusts in eligibility determinations and post-eligibility treatment with regard to long-term care (LTC) facilities. Section 1917 provides provisions for the treatment of an individual's assets, including applicable trusts, when calculating resources for eligibility purposes.

Sections 1917(b)(3)(A), 1917(c)(2)(D), and 1917(d)(5) of the Act, allow for a state agency to establish procedures under which the agency waives requirements of Section 1907 of the Act in determining eligibility with regard to assets and trusts of an individual if such requirements would create an undue hardship on the individual as determined on the basis of criteria established by the Secretary.

Furthermore, §1924(c)(3) of the Social Security Act, Assignment of support rights, states that an institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where-

- (A) The institutionalized spouse has assigned to the State any rights to support from the community spouse;
- (B) The institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or
- (C) The State determines that denial of eligibility would work an undue hardship.

#### Summary of Proposal

##### *Purpose*

To modify language in the Delaware Social Services Manual (DSSM) regarding eligibility determinations and post-eligibility treatment for long-term care (LTC) Medicaid applicants or Medicaid recipients residing in LTC facilities. This regulation modifies language regarding undue hardship provisions to align with current federal regulations and DMMA policy emphasizing personal choice and placement in the most integrated settings.

## *Summary of Proposed Changes*

If implemented as proposed, plan amendment will accomplish the following, effective August 11, 2016:

Align undue hardship provisions, 20350.11 and 20400.12.1, of the DSSM with current federal regulations and DMMA policy emphasizing personal choice and placement in the most integrated settings.

## *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the modification of the undue hardship provisions. Comments were to be received by 4:30 p.m. on July 1, 2016.

## *Provider Manuals Update*

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

## **Fiscal Impact**

This regulation does not change the way in which the Division of Medicaid and Medical Assistance applies the undue hardship provisions, but rather modifies language to match current federal regulations and DMMA policy. Therefore, there is no fiscal impact projected.

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

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

This amendment to the DSSM regulations eliminates a provision that only allows a hardship exception to the transfer of asset and trust provisions for Medicaid long term care eligibility if there is no state facility that could take the applicant (DSSM 20350.11 and 20400.12.1). This is consistent with existing federal regulation, current DMMA practice, and Olmstead principles.

Council *endorses* the proposed regulation.

**Agency Response:** Thank you again for your review and feedback related to the proposed amendment to the Delaware Social Services Manual (DSSM) to modify language regarding undue hardship provisions. DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

## **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the June 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) by modifying provisions regarding long-term care eligibility, specifically, *to modify language regarding undue hardship provisions to align with current federal regulations and DMMA policy*, is adopted and shall be final effective August 11, 2016.

Rita M. Landgraf, Secretary, DHSS

July 15, 2016

**DMMA FINAL ORDER #16-018a**  
**REVISIONS:****20350.11 Undue Hardship**

A transfer of assets is exempt from consideration if the penalty would cause undue hardship. Undue hardship exists when application of the transfer of assets provisions would deprive the individual of medical care such that his/her health or his/her life would be endangered. Undue hardship also exists when application of the transfer of assets provisions would deprive the individual of food, clothing, shelter or other necessities of life ~~and there is no State facility available to take care of this individual in the absence of Medicaid eligibility.~~

**DMMA FINAL ORDER #16-018b**  
**REVISIONS:****20400.12.1 Undue Hardship**

Undue hardship exists when application of the trust provisions would deprive the individual of medical care such that his/her life would be endangered. Undue hardship also exists when application of the trust provisions would deprive the individual of food, clothing, shelter or other necessities of life ~~AND there are no State facilities available to take care of this individual in the absence of Medicaid eligibility.~~

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF WATERSHED STEWARDSHIP****SHORELINE AND WATERWAY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code, Section 6803(c) (7 **Del.C.** §6803(c))  
7 **DE Admin. Code** 5102

Secretary's Order No.: 2016-WS-0023

**5102 Regulation Governing Beach Protection and the Use of Beaches**

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

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

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

The *revised* regulatory amendments that will be adopted through this Order represent the culmination of many years of work and extensive public outreach by the Department, which includes (but is certainly not limited to) multiple discussions with stakeholders, legislators, and, of course, the public in general. These *revised* regulatory amendments are responsive to the concerns that have been raised in said discussions and through the Department's regulatory development process which has taken place over the course of the last few years.

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

This Order relates to the proposed *revised* regulatory amendments to 7 **DE Admin. Code** 5102: *Regulation Governing Beach Protection and the Use of Beaches* ("regulatory amendments", "Amendments"). The purpose of this action is to (1) incorporate legislative changes to Delaware's *Beach Preservation Act* (7 **Del.C.** Ch. 68); (2) incorporate Division policies and construction standards that will result in less damage to structures and more protection of the dune and beach resources; and (3) provide consistency and additional clarity by harmonizing various provisions of the aforementioned existing Regulation.

Delaware's Beach Preservation Act was passed in 1972 as the General Assembly recognized that Delaware's

beaches were rapidly deteriorating due to a combination of natural processes and continuing encroachment. The Department was charged through this act to enhance, preserve and protect the public and private beaches of the state and to mitigate beach erosion and minimize storm damage.

A significant amendment to the Act was passed by the General Assembly in 1996 which required the Department to take additional steps to minimize the impacts on the beach and dunes from any construction that took place seaward of the building line. The legislation, among other things, amended 7 **Del.C.** Ch. 68, by adding a new sentence at the end of subsection 6805(d) that reads as follows:

*If any structure proposed to be built in whole or in part seaward of the building line could reasonably be reduced in size or otherwise altered in order to eliminate or diminish the amount of encroachment over the building line, the Department shall require such reduction or alternation as a condition of granting the permit or letter of approval.*

The methodology by which to achieve the objective stated in the legislation was developed by the Department as a set of procedures and guidance that became known as "The Four Step Process." This guidance has not, until now, been incorporated into the Beach Regulations. By incorporating the Four Step Process into the regulation, as it has existed and been applied during the past 20 years, assures consistency, transparency and certainty for the public.

Pursuant to 7 **Del.C.** §6803(c), the Department's Division of Watershed Stewardship ("Division of WSS", "WSS"), Shoreline and Waterway Management Section ("SWMS"), is charged with promulgating rules and regulations to effectuate the purpose of the *Beach Preservation Act* ("Act"), which is to enhance, preserve and protect the public and private beaches throughout the State of Delaware. The Department's Division of WSS, SWMS, commenced the regulatory development process with Start Action Notice 2014-05, dated May 20, 2014. The Department published its initial proposed regulatory amendments in the October 1, 2015 *Delaware Register of Regulations*.

After six (6) public workshops, eleven (11) Regulatory Advisory Committee meetings (all of which were open to the public), and various other meetings, discussions and reviews, the Department placed legal notices in both the *News Journal* and the *Delaware State News*, advertising that a public hearing would be held on November 7, 2015 to provide an opportunity for the public to comment on these proposed regulatory amendments. Members of the public attended that hearing, and many provided comment to the Department regarding the same, both at the time of the hearing and during the post-hearing phase of this regulatory promulgation. After extending the public comment period an additional fifteen (15) days (in order to provide people a greater opportunity to participate in this process), the formal hearing record closed with regard to public comment on December 7, 2015.

Subsequent to the aforementioned record closing, the Department's Division of WSS, SWMS, then began a thorough review of the formal hearing record generated to date with respect to this proposed promulgation, including, but not limited to, a detailed review of the formal hearing transcript, and all comment received from the public. The Division of WSS, SWMS, then prepared its formal Technical Response Memorandum ("TRM"), dated January 29, 2016, which documents the exhaustive review performed by the Department with regard to this proposed regulatory promulgation, and offers the Department's response to all comments received throughout this long regulatory process.

It should be noted that the largest number of comments received by the Department in this matter was related to the issue of whether the proposed regulations represented any taking of private property. The regulations are not a taking as they allow an existing property owner to rebuild or repair structures, even on lots that are traversed by the building line established by law, as long as they work within the existing footprint and minimize encroachment. The Four Step Process, now included in the regulations, ensures that structures do not protrude excessively seaward in comparison to their adjacent neighbors. The regulation of the use of property for the benefit of the public and the protection of natural resources, such as through zoning, has been routinely upheld by the courts as a legitimate exercise of authority. Since 1972, no Delaware Court has found that the Delaware Regulations for beach preservation constitute an unconstitutional taking.

Of note is the fact that, in response to the numerous meritorious comments and suggestions received, the Department has proposed only one change to the initially proposed regulatory amendments, to wit: the clerical correction of an erroneous definition of "National American Vertical Datum" ("NAVD"), as follows:

**"National Geodetic [North] American Vertical Datum (NGAVD)"**

Due to the fact that this revision does not alter the meaning or function of the proposed regulatory amendments, it is not construed to be substantive in nature. Therefore, according to 29 **Del.C.** §10118(c), no additional re-publication or re-noticing of these proposed Amendments is necessary at this time.

As set forth in the Department's TRM referenced above, the Department has the statutory basis and legal authority, pursuant to 7 **Del.C.** §6803(c), to promulgate rules and regulations to effectuate the purpose of the *Beach Preservation Act*. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to receiving the Division of WSS, SWMS's aforementioned TRM, the Department's presiding hearing officer, Lisa A. Vest, then prepared a Hearing Officer's Report dated May 6, 2016 ("Report"). The Report documents the proper completion of the required regulatory development process, establishes the record, and recommends the adoption of the proposed *revised* regulatory amendments, as attached to the Report as Appendix "B".

### Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed *revised* regulatory amendments, to wit: 7 **DE Admin. Code** 5102: *Regulation Governing Beach Protection and the Use of Beaches*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory *revised* regulatory amendments be promulgated as final.

I find that the Department's experts in the Division of WSS, SWMS, fully developed the record to support adoption of these *revised* regulatory amendments. The adoption of these *revised* regulatory amendments will allow Delaware to (1) incorporate legislative changes to the *Beach Preservation Act* (7 **Del.C.** Ch. 68); (2) incorporate Division policies and construction standards that will result in less damage to structures and more protection of the dune and beach resources; and (3) provide consistency and additional clarity by harmonizing various provisions of the aforementioned existing Regulation.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* amendments to 7 **DE Admin. Code** 5102: *Regulation Governing Beach Protection and the Use of Beaches*, pursuant to 7 **Del.C.** §6803(c);

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

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

4. While the Department made a clerical *revision* to the initial proposed regulatory language correcting a definition, as set forth in the above-referenced TRM of January 29, 2016, such change does not alter the meaning or function of the proposed regulatory amendments, is not substantive, and therefore, according to 29 **Del.C.** §10118(c), no additional re-publication or noticing of the same is necessitated at this time;

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

6. Promulgation of the proposed *revised* regulatory amendments to 7 **DE Admin. Code** 5102: *Regulation Governing Beach Protection and the Use of Beaches*, will allow Delaware to (1) incorporate legislative changes to the *Beach Preservation Act* (7 **Del.C.**, Ch. 68); (2) incorporate Division policies and construction standards that will result in less damages to structures and protections of the dune and beach resources; and (3) provide consistency and additional clarity by harmonizing various provisions of the aforementioned existing Regulation;

7. The Department has reviewed these proposed *revised* regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published on or before December 31, 2015), and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;



8. The Department's proposed *revised* regulatory amendments, as published in the October 1, 2015 *Delaware Register of Regulations*, and as *revised* and set forth in Appendix "B" of the aforementioned Hearing Officer's Report, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final *revised* regulatory amendments, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and

9. The Department shall submit this Order approving as final the proposed *revised* regulatory amendments to 7 DE Admin. Code 5102: *Regulation Governing Beach Protection and the Use of Beaches*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

## 5102 Regulation Governing Beach Protection and the Use of Beaches

### 1.0 Definitions

1.1 As used in these Regulations, ~~the following words and terms, when used in this regulation, shall have the following meanings indicated below, unless the context clearly indicates otherwise:~~

**(Break in Continuity Within Section)**

~~"[National North] Geodetic American Vertical Datum (NGAVD)"~~ means a fixed reference adopted by the U. S. Government as a standard geodetic datum for vertical elevations.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2015 issue of the *Register* at page 274 (19 DE Reg. 274). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**5102 Regulation Governing Beach Protection and the Use of Beaches**

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 100 BOARD OF CHARITABLE GAMING

Statutory Authority: 28 Delaware Code, Section 1507 (28 Del.C. §1507)  
10 DE Admin. Code 103

### ORDER

## 103 Regulations Governing Charitable Gambling Other Than Raffles

On May 1, 2016 the Delaware Board of Charitable Gaming published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 19, Issue 11. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on May 25, 2016 at a regularly scheduled meeting of the Board of Charitable Gaming to receive verbal comments regarding the Board's proposed amendments to its regulations.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony presented at the public hearing. No written comments were received by the Board.

## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 28 **Del.C.** §1507 the Board has the statutory authority to promulgate rules and regulations to implement or clarify specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

## DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 28 **Del.C.** §1507 and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on May 1, 2016. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit B.

**SO ORDERED** this 22<sup>nd</sup> day of June, 2016.

### DELAWARE BOARD OF CHARITABLE GAMING

Janet Williams-Coger, Chairperson (absent)

James Ascione

Francis Gant

Richard MacDonald

S. Jay Mervine

\*Please note that no changes were made to the regulation as originally proposed and published in the May 2016 issue of the *Register* at page 999 (19 DE Reg. 999). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**103 Regulations Governing Charitable Gambling Other Than Raffles**

## DIVISION OF PROFESSIONAL REGULATION

### CONTROLLED SUBSTANCE ADVISORY COMMITTEE

Statutory Authority: 16 Delaware Code, Section 4731 (16 **Del.C.** §4731)

## ORDER

### Uniform Controlled Substances Act Regulations

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 27, 2016 at a scheduled meeting of the Delaware Controlled Substance Advisory Committee ("Committee") to receive comments regarding proposed amendments to the Uniform Controlled Substances Act rules and regulations. The proposed revisions address the photo identification requirement for picking up a controlled substance prescription at a pharmacy. Specifically, Section 4.10.1 is amended to specify that both Federal and military identification are acceptable. A new Section 4.10.1.5 provides an exemption to the photo identification requirements, but only for a patient at an inpatient facility.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 19, Issue 9, on March 1, 2016. Notice of the April 27, 2016 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** § 10118(a), the date to receive final written comments was May 12, 2016, 15 days following the public hearing. The Committee deliberated on the proposed revisions at its regularly scheduled meeting on June 22, 2016.

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## Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Commission Exhibit 1: *News Journal* Affidavit of Publication.

Commission Exhibit 2: *Delaware State News* Affidavit of Publication.

There was no testimony given at the public hearing on April 27, 2016. Further, no written comments were received by the Committee.

## Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Committee with comments in writing and by testimony on the proposed amendments to the rules and regulations. There were no public comments provided to the Committee either in writing or during the public hearing.

Having received no public comment, the Committee recommended that the Secretary adopt the rules and regulations as published in the March 1, 2016 *Register of Regulations*.

## Decision and Order

Pursuant to 16 **Del.C.** §4731(a), the Secretary has the statutory authority to promulgate rules and regulations relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this State.

The changes to Section 4.10.1 regarding acceptable forms of identification corrects a procedural oversight in that Federal and military identification were not referenced. Further, the addition of Section 4.10.1.5 addresses the situation where a patient does not have photographic identification. This type of patient can receive a prescription for controlled substances while inpatient and immediately upon discharge from the facility's outpatient pharmacy.

The Secretary of State finds that these changes are in the best interest of the public and hereby accepts the proposed rules and regulations as set forth in the Delaware *Register of Regulations* on March 1, 2016, to be effective 10 days following publication of this order in the *Register of Regulations*. The revised rules and regulations are attached hereto as Exhibit A.

**IT IS SO ORDERED** this 11<sup>th</sup> day of July, 2016.

### SECRETARY OF STATE

Jeffrey W. Bullock

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2016 issue of the *Register* at page 834 (19 DE Reg. 834). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[Uniform Controlled Substances Act Regulations](#)**

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## DEPARTMENT OF TRANSPORTATION

### DIVISION OF MOTOR VEHICLES

Statutory Authority: 18 Delaware Code, Section 2503; 21 Delaware Code, Section 302  
(18 **Del.C.** §2503; 21 **Del.C.** §302)

### ORDER

### **2224 Defensive Driving Course, Providers, and Instructors**

Pursuant to 29 **Del.C.** §10113(b)(4) the DMV has revised Section 2224 of Title 2 of the Delaware Administrative Code to correct the technical errors found after adoption of the regulation.

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**Findings of Fact**

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

1. The proposed regulation is not in conflict with Delaware law.
2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

**Decision and Order Concerning the Regulations**

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, the Secretary of the Delaware Department of Transportation does hereby ORDER that these revisions to the **Defensive Driving Course, Providers and Instructors Regulation** be adopted and promulgated as set forth below.

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

**IT IS SO ORDERED THIS 15<sup>th</sup> day of July 2016.**

Jennifer Cohan, Secretary of Transportation

**2224 Defensive Driving Course, Providers, and Instructors****1.0 Purpose and Authority**

The purpose of this Regulation is to provide criteria for certification of Motor Vehicle Accident Prevention Courses, commonly referred to as Defensive Driving Courses (hereinafter "DDC") and Instructors. This Regulation is adopted pursuant to 18 **Del.C.** §2503(6). The authority to promulgate is in accordance with 21 **Del.C.** §302 and the procedures specified in the Administrative Procedures Act, 29 **Del.C.** Ch. 101.

**2.0 Definitions**

"**Classroom courses**" for the purpose of this regulation means a defensive driving program conducted with students and instructors in a location common to all. These courses may include the use of audio or visual aids or materials.

"**Division**" means the Delaware Division of Motor Vehicles

"**Instructors**" means those who are authorized to instruct course material for certified DDC courses offered by Providers.

"**On-line courses**" for the purpose of this regulation means instruction provided online or offline through the use of a computer (or digital reader) including the use of CD-ROMS or similar pre-recorded media or websites.

"**Providers**" means corporate sponsor for any course as well as the individual who signs the application for the course.

**3.0 Certification Criteria for Defensive Driving Course**

- 3.1 Each provider of a defensive driving course that seeks certification of that course by the Division shall submit to the Division for approval the following materials:
  - 3.1.1 All written instructor materials, testing materials and curricula utilized for classroom instruction.
  - 3.1.2 All written materials provided to students in connection utilized for classroom instruction.
  - 3.1.3 Identity and qualifications of all Instructors.
  - 3.1.4 All curricula and testing material used in connection with an on-line course.
  - 3.1.5 All materials available to students in connection with an on-line course.
  - 3.1.6 All testing and grading criteria used in an on-line course.
  - 3.1.7 Identity and qualifications of persons available to answer student questions respecting content and technical support for an on-line course.

- 3.2 The course materials for each defensive driving course shall include, at a minimum, the following:
- 3.2.1 State of Delaware traffic laws, defensive driving and collision prevention techniques/theory.
  - 3.2.2 A discussion of vehicle safety devices, including the requirement for and use of seat belts, child restraint devices and their proper use and relationship to a child's age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems with special attention to proper passenger seating and proper use of anti-lock braking systems and how they compare to standard braking systems;
  - 3.2.3 A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs, as well as ~~Delaware~~ Delaware "Zero Tolerance" for drivers under 21;
  - 3.2.4 A discussion of the factors affecting driving and how they pertain to driving defensively, including, but not limited to:
    - 3.2.4.1 The condition of the driver, the vehicle, the road, sun glare, weather, such as rain, fog, sleet, hail and snow, and ~~lightening~~ lighting;
    - 3.2.4.2 Distractions such as use of cellular telephones while driving, adjusting radios, audio and video tapes and compact discs, and DVDs, talking with a passenger, reading, eating, billboards, and other roadside distractions;
  - 3.2.5 A discussion, including specific requirements of Delaware law where applicable, of pertinent driving situations, including stopping distances, proper following distances, proper intersection driving, roundabouts, stopping at railroad crossings, right-of-way and traffic devices, pavement line markings, blind spots, as well as situations involving passing and being passed and head-on collisions; and
  - 3.2.6 Consideration of the hazards and techniques of various driving situations such as, but not limited to, city, highway, expressway and rural ~~driving~~ driving, proper use of exit and entrance ramps, driving in parking lots.
  - 3.2.7 A discussion of aggressive driving including but not limited to identifying an aggressive driver and providing appropriate defensive driving techniques. Discussion shall also include how to identify oneself as an aggressive driver and the appropriate manner to respond.
  - 3.2.8 Speed limits
  - 3.2.9 School buses
  - 3.2.10 Emergency vehicle right of way
  - 3.2.11 Turn signals/Turning maneuvers
  - 3.2.12 Headlight usage
  - 3.2.13 Motorcycle
  - 3.2.14 Pedestrian
  - 3.2.15 A discussion of the 10% and 15% premium discounts as well as the 3 point Division credit.
  - 3.2.16 A discussion of how and when the insured will receive the course completion certificate and how the 3 point credit is provided to the Division.
- 3.3 All Providers shall:
- 3.3.1 Require Instructors in classroom courses to present information in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.
  - 3.3.2 Require on-line courses, as well as other courses available other than in a classroom, to provide toll free telephone lines staffed by knowledgeable customer service personnel who can assist with content based questions during normal business hours which shall appear in bold large lettering on the website prior to the course sign up page. The set hours must be submitted to the Division for prior approval.
  - 3.3.3 Require that each student receives a minimum of six hours of classroom or on-line time for the initial course and three hours of classroom or on-line time for the renewal courses. Each classroom hour shall consist of not less than an average of 50 minutes of instructional time devoted to the presentation of course curriculum. Online courses shall be structured to provide the

- same learning time as required for classroom and shall submit to the Division any materials necessary to demonstrate their ability to comply with the minimum time requirement set forth in this section. A minimum of three hours must be devoted to the requirements in 3.1 through 3.2.16.
- 3.3.4 Require that registration shall be completed prior to the beginning of any type of instruction and shall not be counted as instructional time.
  - 3.3.5 Require its Instructor in classroom courses to be in the classroom with the students during any and all periods of instructional time.
  - 3.3.6 Require Instructors in classroom courses to maintain an atmosphere appropriate for class-work.
  - 3.3.7 Material required to be covered by this Regulation shall be discussed by the Instructor in a classroom situation and be included as on screen information in an on-line course. Changes in such material shall be submitted to the Division for pre-approval utilization in the classroom.
  - 3.3.8 Supply students who complete a defensive driving course and who have presented a valid Delaware driver's license and/or government issued photo identification with a certificate of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course Provider as well as Instructor, with contact information and the Provider's authorized signature.
    - 3.3.8.1 All online courses shall be required to obtain the student's driver's license number as part of the student identification information prior to permitting the student access to the course materials and have each student complete an online affidavit with a verification that they are the person who took the course and who is receiving the completion certificate and credit and that they understand that making a false unsworn falsification is a violation of 11 **Del.C.** §1233 of the Delaware Crimes Code, subjecting a violator to fine, imprisonment, or both.
  - 3.3.9 Provide all students with a copy of a letter provided by the Division informing the student how to provide comment or file a complaint regarding a defensive driving course. This letter shall be in hard copy form for classroom courses. On-line courses shall place the letter with registration on-line and/or shall provide a hard copy with the certificate of completion.
  - 3.3.10 Notify the Division of each student's successful completion of the course in the manner and form required by the Division. Said notification shall be made within fourteen days of the student 's course completion.
  - 3.3.11 Utilize and maintain either its own proprietary teaching or testing materials, or teaching and testing material properly obtained by a third party under a written license agreement. The Provider of an on-line course may not submit an original course application for a course previously approved by the Division and owned or licensed to another Provider. This section shall not limit the ability of a Provider of an approved on-line course to have independent licensing agreements with other entities.
  - 3.3.12 Maintain requisite staffing, facilities, and resources necessary to process student payments, provide competent instruction, administer effective testing, issue timely completion certificates and provide proper notice to the Division of Motor Vehicles regarding credit earned from successful completion of the course.
  - 3.3.13 Provide the Division with free site access to online courses for purposes of verification of compliance. Division Defensive Driving personnel shall have access to audit classroom courses at no cost, but with no credit.

#### 4.0 Course Recertification

Course certifications shall expire three years after approval or of the effective date of this Regulation, whichever date occurs later. Providers shall submit applications for recertification no earlier than 6 months prior to expiration. Providers that submit recertification applications no later than ninety days prior to the expiration date shall be deemed approved until the Division has acted on the application. In all other cases course certification shall expire on the three year anniversary date and those courses shall be decertified until such time as approval is granted.

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## 5.0 Certification Criteria for Defensive Driving Instructors

- 5.1 Basic Requirements. Each Instructor shall:
- 5.1.1 Be a licensed driver for a minimum of thirty-six months;
  - 5.1.2 Be a high school graduate or have a G.E.D.;
  - 5.1.3 Provide a certified copy of his or her driving record showing he or she holds a valid driver's license with no more than four (4) points, no suspensions or revocations in the past two years; and
  - 5.1.4 Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Division may require a criminal history background check of all applicants for an Instructor's certification.
  - 5.1.5 Submit the Application for Certification with documentation showing that the applicant has:
    - 5.1.5.1 a minimum of 9 hours of in-service training classes taught by a certified Instructor;
    - 5.1.5.2 a maximum of 3 of those 9 hours may be satisfied by observing a certified Instructor teaching an actual class;
    - 5.1.5.3 a minimum of 6 hours of trainee Instructor class presentations observed by a Provider-certified Instructor.

## 6.0 Instructor Re-certification

- 6.1 Every three years each certified Instructor shall:
- 6.1.1 Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous calendar year;
  - 6.1.2 Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and
  - 6.1.3 Submit a form as prescribed by the Division certifying that he or she continues to meet the requirements of an Instructor as outlined in this Regulation.
  - 6.1.4 Submit a certified copy of his or her driving record.
- 6.2 The above-described submissions shall be filed not later than three months prior to the expiration date of the then-current certification. Instructors whose certification have expired shall not instruct any courses until they have been recertified.
- 6.3 The Division may provide procedural guidelines and directives through the use of bulletins and/or circular letters through the Division's website from time to time as may be appropriate.

## 7.0 Complaints, Hearings, De-certification, Suspension and Probationary Status

- 7.1 The following procedure shall be followed for the investigation of complaints regarding a DDC course and/or Instructors certified under section 3.0 and section 5.0, respectively, of this Regulation:
- 7.1.1 Any person who desires to file a complaint regarding a course and/or an Instructor of any course must do so in writing.
  - 7.1.2 The complaint shall state the name of the course, its provider and/or Instructor and the facts that allegedly constitute the basis for the complaint. If either of these elements is missing from the complaint, the Division may, in its discretion, dismiss the complaint without further notice or a hearing.
  - 7.1.3 The Division, upon determining that the complaint is complete as provided in section 7.1.2 above shall, within 15 days of the receipt of the complaint, transmit a copy of the complaint by certified mail, receipted email or other receipted delivery service to the Provider and/or Instructor named in the complaint at their address(es) of record in the Division files. The named Provider and/or Instructor may file an answer to the complaint within 20 calendar days with the Division.
  - 7.1.4 The Division shall assign a staff member to investigate the complaint and the Provider's and/or Instructor's response.
  - 7.1.5 The staff member, as part of the investigation, shall provide a report of the staff member's findings and recommendations to the Director or the Director's designee for further action as may be

appropriate under this section. The report shall list the evidence reviewed, the witnesses interviewed and cite the law or regulation alleged to have been violated and the facts to support such finding. The report shall contain a written recommendation either to take such action as may be authorized by this section or to dismiss the complaint.

- 7.1.6 A dismissal of the complaint shall be without prejudice and no further action shall be taken by the Division. The Division shall provide a written notification of the Division action and the basic reason(s) therefore to the complainant and to the Provider and/or Instructor.
- 7.2 Nothing in this section of this Regulation shall preclude the Provider or Instructors from entering into a consent agreement with the Division.
- 7.3 A Provider and/or Instructor who receives a warning or is placed on probation and does not show proof of compliance with the conditions of the warning or probation within the time set forth in the consent agreement or order shall be subject to suspension or decertification.
- 7.4 In addition to the other provisions of this Regulation, a Provider and/or Instructor may be placed on probation, suspended or decertified for any one or more of the following:
- 7.4.1 Falsification of information on, or accompanying, the Application for Certification/Re-certification;
- 7.4.2 Falsification of, or failure to keep and provide, adequate student records and information as required herein; or
- 7.4.3 Falsification of, or failure to keep and provide, adequate financial records and documents as required.
- 7.4.4 Failure to comply with the course content requirements set forth in 3.0 above.
- 7.5 Upon a recommendation for further action under section 7.1 of this Regulation, the Director or the Directors' designee, shall determine whether the Provider and/or Instructor should be warned (with or without conditions), placed on probation (with or without conditions) for not more than 90 days, suspended for a period not to exceed 6 months, or to be permanently decertified for one or more violations of this Regulation. For purposes of the enforcement of this Regulation and the protection of the public, progressive discipline is not required.
- 7.6 Upon making a determination as provided for in section 7.5 of this Regulation, the Division shall provide written notice to the Provider and/or Instructor by certified mail, receipted email or other receipted delivery service. A copy of the notice shall be provided to the complainant. The notice shall include the following:
- 7.6.1 a summary of the complaint;
- 7.6.2 a summary of the information obtained in the investigation;
- 7.6.3 findings of fact and/or law; and
- 7.6.4 the sanction to be imposed by the Division.
- 7.7 Upon receipt of the notice provided for in section 7.6 of this Regulation, the Provider and/or Instructor shall have the right to a hearing and appeal.
- 7.7.1 Such written request must be filed with the Director within 14 days after receipt of a copy of the notice.
- 7.7.2 The hearing shall be before the Director or the Directors' designee.
- 7.7.3 Any such hearing shall be held within thirty (30) days after the date upon which the Director received the timely written request, unless there is a postponement or continuance. The Director, or the Directors' designee, may postpone or continue any hearing on their own motion, or upon written application of the Provider or Instructor for good cause shown.
- 7.7.4 During the pendency of any such hearing, the action taken shall be forthwith returned pending the outcome of such hearing, unless action taken was based upon a conviction of the Provider or any partner, officer, agent or employee of such Provider, and/or Instructor of a felony or of any crime or improper conduct, involving violence, dishonesty, indecency, degeneracy or moral turpitude or where the Provider has been found by the Division to be involved in improper conduct involving violence, dishonest, deceit, indecency, degeneracy, or moral turpitude, while acting as a Provider and/or Instructor.



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- 7.8 A Provider or Instructor who is de-certified pursuant to this regulation must wait six (6) months from the date of de-certification before requesting re-certification.

## **8.0 Effective Date**

This regulation shall become effective on March 11, 2015. Previously approved courses through the Department of Insurance will be honored until the expiration of their existing approval. All courses applying for approval on or after March 11, 2015, shall meet the requirements of this regulation prior to being approved.

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**CALENDAR OF EVENTS/HEARING NOTICES**

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

The Delaware River Basin Commission will hold a public hearing on **Wednesday, August 10, 2016** beginning at **1:30 p.m.** at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania. A business meeting will be held the following month on **Wednesday, September 14, 2016** beginning at **10:30 a.m.** at the Historic Hotel Bethlehem, 437 Main Street, Bethlehem, Pennsylvania. The hearing and meeting are open to the public. For more information, visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203 and [pamela.bush@drbc.nj.gov](mailto:pamela.bush@drbc.nj.gov).

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

The State Board of Education will hold its monthly meeting on Thursday, August 18, 2016 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Covered Outpatient Drugs for the Categorically Needy – Nonprescription Drug Products**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 U.S.C., §1902(a)(13)(A) of the Social Security Act, 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Covered Outpatient Drugs for the Categorically Needy, specifically, *to clarify covered non-prescription drug products*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Kimberly Xavier, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email at [Kimberly.xavier@state.de.us](mailto:Kimberly.xavier@state.de.us), or by fax to 302-255-4425 by August 31, 2016.

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

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF ENERGY AND CLIMATE****PUBLIC NOTICE****2105 Evaluation, Measurement and Verification Procedures and Standards**

These regulations define the standards for evaluation, measurement and verification (EM&V) procedures as they are administered by the Energy Efficiency Advisory Council (EEAC). EM&V is a vital tool in creating consensus around the impact of current and future investments to reduce energy use and peak demand in Delaware. Results from EM&V are critical to the assessment of progress in meeting Delaware's energy efficiency and peak demand targets outlined in the Energy Efficiency Resource Standards Act, the State's "Lead by Example" policy, and the Delaware Sustainable Energy Utility's legislated goals. The results from EM&V provide valuable feedback to improve programs during implementation or suggest their cancellation, inform the development of new programs,

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and guide the allocation of resources.

The purpose of these EM&V regulations is to: develop an overall approach to the evaluation of energy efficiency and demand response programs in Delaware; standardize evaluation approaches for the assessment of energy efficiency and demand response programs; provide specific guidance to Program Administrators, contractors and stakeholders for the evaluation of energy efficiency and demand response programs; and ensure consistency between Program Administrators' energy efficiency evaluations plans, analysis, and reporting efforts.

The hearing record on the proposed regulations 2105 Evaluation, Measurement and Verification Procedures and Standards will be open August 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on August 29, 2016 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

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

**3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID  
DISPENSERS  
PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board") proposes revisions to its rules and regulations.

On October 1, 2015, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 4. Specifically, the Board's proposed amendments struck the current Section 9.2.1.4, which addresses practice by telecommunications, and added a new Section 10.0, pertaining to telepractice. The new Section 10.0 sets forth standards and requirements in order to allow licensees to engage in telepractice while protecting the public.

A public hearing was held on November 17, 2015 before the Board, and the public comment period for written comment was held open for another 15 days. The Board deliberated on the evidence submitted at its meeting on January 19, 2016. Based on those deliberations, the Board made substantive revisions to the proposed rules and regulations. Therefore, the Board strikes the rules and regulations as proposed in the October 1, 2015 *Register of Regulations* and proposes revised rules and regulations attached hereto as Exhibit A.

A public hearing will be held on September 20, 2016 at 2:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be October 5, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.