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# Delaware Register of Regulations

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Issue Date: February 1, 2013

Volume 16 - Issue 8, Pages 804 - 890

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## IN THIS ISSUE:

### Regulations:

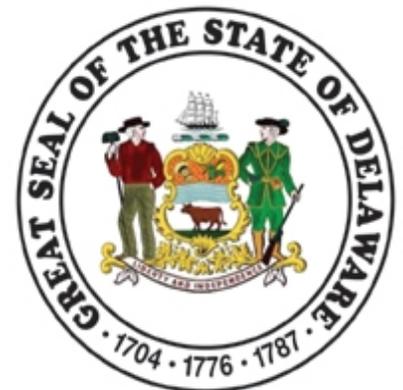
- Errata
- Proposed
- Final

### Governor:

- Appointments

### General Notice

- 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 January 15, 2013.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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805

## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

15 **DE Reg.** 1728 - 1759 (06/01/12)

Refers to Volume 15, pages 1728 - 1759 of the *Delaware Register* issued on June 1, 2012.

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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
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 17	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

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# TABLE OF CONTENTS

---

807

Cumulative Tables..... 809

---

## ERRATA

### DEPARTMENT OF STATE

#### Office of the State Banking Commissioner

905 Loan Limitations: Credit Exposure to Derivative Transactions..... 815

---

## PROPOSED

### DEPARTMENT OF AGRICULTURE

#### Harness Racing Commission

501 Harness Racing Rules and Regulations, Sections 5.0, 7.0 and 8.0..... 822

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Medicaid and Medical Assistance

DSSM: 20310.18 Tax Refunds and Advance Payments..... 825

#### Division of Public Health

4107 Testing Of Newborn Infants For Metabolic, Hematologic And Endocrinologic Disorders..... 827

### EXECUTIVE DEPARTMENT

#### Delaware Economic Development Authority

401 Procedures Regarding Non-State Guaranteed Bonds..... 831

403 Administration and Operation of Council on Development Finance..... 831

---

## FINAL

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

601 Schools and Law Enforcement Agencies..... 838

#### Professional Standards Board

1531 Middle Level English Language Arts Teacher..... 839

1532 Middle Level Mathematics Teacher..... 841

1533 Middle Level Science Teacher..... 842

1534 Middle Level Social Studies Teacher..... 843

1540 Secondary English Language Arts Teacher..... 845

1542 Secondary Mathematics Teacher..... 846

1544 Secondary Social Studies Teacher..... 847

1549 Dance Teacher..... 848

1558 Theater Teacher..... 849

1574 Teacher of Students Who Are Deaf or Hard of Hearing..... 851

1575 Teacher of Students with Visual Impairments..... 856

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Long Term Care Residents Protection

3201 Skilled and Intermediate Care Nursing Facilities..... 861

3210 Nursing Homes Admitting Pediatric Residents..... 863

3225 Assisted Living Facilities..... 865

#### Division of Medicaid and Medical Assistance

Title XIX, Medicaid State Plan, Reimbursement Methodologies for Inpatient Psychiatric Hospital Services and Outpatient Hospital Services..... 867

---

# TABLE OF CONTENTS

## Division of Social Services

<b>DSSM:</b> 1009 Arranging Interpreter and Translation Services for Limited English Proficient Individuals, and 1010 Arranging Services for Individuals with Hearing Impairments.....	869
General Information and Identification Cards .....	874
Child Care Subsidy Program, Provider Reimbursement.....	876

## DEPARTMENT OF STATE

### Division of Professional Regulation

#### Board of Charitable Gaming

101 Regulations Governing Bingo.....	879
1100 Board of Dentistry and Dental Hygiene, Section 7.0 Anesthesia Regulations.....	880
1100 Board of Dentistry and Dental Hygiene, Section 6.0 Continuing Education.....	881

---

## GOVERNOR'S OFFICE

Appointments.....	883
-------------------	-----

---

## GENERAL NOTICE

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### Division of Social Services

Food Supplement Program Expanded Issuance of Food Benefits.....	886
---	-----

---

## CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Agriculture, Harness Racing Commission, Notice of Public Comment Period.....	889
Dept. of Education, Notice of Monthly Meeting.....	889
Dept. of Health and Social Svcs., Div. of Medicaid and Medical Assistance; Div. of Public Health, Notices of Public Comment Periods.....	889
Executive Dept., Delaware Economic Development Authority, Notice of Public Hearing.....	890

---

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

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

**DELAWARE RIVER BASIN COMMISSION**

Amendments to the Water Code and Comprehensive Plan to Implement a Revised  
Water Audit Approach to Identify and Control Water Loss..... 16 DE Reg. 750 (Final)

**DELAWARE STATE FIRE PREVENTION COMMISSION**

701 Administration and Enforcement..... 16 DE Reg. 16 (Prop.)  
 702 Fire Protection in Building Construction..... 16 DE Reg. 620 (Final)  
 703 Installation, Operation, Maintenance, Testing and Sales of Signaling  
 Systems, Fire Protection Systems and Fire Extinguishers..... 16 DE Reg. 620 (Final)  
 704 Hazardous Processes and Operations..... 16 DE Reg. 16 (Prop.)  
 705 General Fire Safety..... 16 DE Reg. 620 (Final)  
 706 Specific Occupancy Requirements..... 16 DE Reg. 16 (Prop.)  
 16 DE Reg. 620 (Final)

**DEPARTMENT OF AGRICULTURE**

**Food Products Inspection Section**

301 Food Products Inspection..... 16 DE Reg. 196 (Final)

**Harness Racing Commission**

501 Harness Racing Rules and Regulations, Rule 3.5.1..... 16 DE Reg. 65 (Final)  
 501 Harness Racing Rules and Regulations, Section 6.0..... 16 DE Reg. 475(Prop.)  
 16 DE Reg. 754 (Final)  
 501 Harness Racing Rules and Regulations, Rules 6.2.2.1.10, 6.2.2.2 & 8.2.2.4  
 16 DE Reg. 17 (Prop.)  
 16 DE Reg. 282 (Final)

**Plant Industries**

801 Regulations for Noxious Weed Control..... 16 DE Reg. 66 (Final)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

275 Charter Schools..... 16 DE Reg. 197 (Final)  
 294 Data Governance..... 16 DE Reg. 67 (Final)  
 540 Driver Education..... 16 DE Reg. 691 (Prop.)  
 601 Schools and Law Enforcement Agencies..... 16 DE Reg. 564 (Prop.)  
 624 School District/Charter School Policy Prohibiting Cyberbullying..... 16 DE Reg. 351 (Prop.)  
 16 DE Reg. 694 (Prop.)  
 804 Immunizations..... 16 DE Reg. 157 (Prop.)  
 16 DE Reg. 411 (Final)  
 815 Health Examinations and Screening..... 16 DE Reg. 20 (Prop.)  
 16 DE Reg. 283 (Final)  
 817 Administrator of Medications and Treatments..... 16 DE Reg. 696 (Prop.)  
 930 Supportive Instruction (Homebound)..... 16 DE Reg. 160 (Prop.)  
 16 DE Reg. 412 (Final)  
 1101 Standards for School Bus Chassis and Bodies Placed in Production  
 After March 1, 1998..... 16 DE Reg. 162 (Prop.)  
 1101 Standards for School Bus Chassis and Bodies Placed in Production  
 After March 1, 1998..... 16 DE Reg. 415 (Final)

1102 Standards for School Bus Chassis and Bodies Placed in Production on or After March 1, 2002 and on or After March 1, 2003 with Specific Changes for Buses Placed in Production After January 1, 2004.....	16 DE Reg. 164 (Prop.) 16 DE Reg. 416 (Final)
1103 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or After January 1, 2007.....	16 DE Reg. 65 (Prop.)
1103 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or After January 1, 2007.....	16 DE Reg. 418 (Final)
<b>Professional Standards Board</b>	
1501 Knowledge, Skills and Responsibility Based Supplements for Educators	16 DE Reg. 353 (Prop.) 16 DE Reg. 623 (Final)
1508 Special Institute for Teacher Licensure and Certification.....	16 DE Reg. 354 (Prop.) 16 DE Reg. 624 (Final)
1509 Meritorious New Teacher Candidate Designation.....	16 DE Reg. 355 (Prop.) 16 DE Reg. 625 (Final)
1520 Early Childhood Teacher.....	16 DE Reg. 478 (Prop.) 16 DE Reg. 755 (Final)
1521 Elementary Teacher.....	16 DE Reg. 480 (Prop.) 16 DE Reg. 757 (Final)
1522 Elementary School Counselor.....	16 DE Reg. 481 (Prop.) 16 DE Reg. 759 (Final)
1531 Middle Level English Language Arts Teacher.....	16 DE Reg. 567 (Prop.)
1532 Middle Level Mathematics Teacher.....	16 DE Reg. 568 (Prop.)
1533 Middle Level Science Teacher.....	16 DE Reg. 570 (Prop.)
1534 Middle Level Social Studies Teacher.....	16 DE Reg. 571 (Prop.)
1539 Middle Level / Secondary Health Education Teacher.....	16 DE Reg. 484 (Prop.) 16 DE Reg. 761 (Final)
1540 Secondary English Language Arts Teacher.....	16 DE Reg. 573 (Prop.)
1542 Secondary Mathematics Teacher.....	16 DE Reg. 575 (Prop.)
1543 Secondary Science Teacher.....	16 DE Reg. 356 (Prop.) 16 DE Reg. 627 (Final)
1544 Secondary Social Studies Teacher.....	16 DE Reg. 576 (Prop.)
1545 Secondary School Counselor.....	16 DE Reg. 485 (Prop.) 16 DE Reg. 763 (Final)
1549 Dance Teacher.....	16 DE Reg. 578 (Prop.)
1550 AgriScience Teacher.....	16 DE Reg. 701 (Prop.)
1551 Business Education Teacher.....	16 DE Reg. 703 (Prop.)
1553 Driver Education and Traffic Safety Education Teacher.....	16 DE Reg. 359 (Prop.) 16 DE Reg. 628 (Final)
1554 Family and Consumer Sciences Teacher.....	16 DE Reg. 704 (Prop.)
1555 Marketing Education Teacher.....	16 DE Reg. 706 (Prop.)
1557 Technology Education Teacher.....	16 DE Reg. 708 (Prop.)
1558 Theater Teacher.....	16 DE Reg. 580 (Prop.)
1570 Early Childhood Special Education Teacher.....	16 DE Reg. 286 (Final)
1571 Exceptional Children Special Education Teacher.....	16 DE Reg. 488 (Prop.) 16 DE Reg. 766 (Final)
1573 Teacher of Students With Autism or Severe Disabilities.....	16 DE Reg. 489 (Prop.) 16 DE Reg. 767 (Final)
1574 Teacher of Students Who Are Deaf or Hard of Hearing.....	16 DE Reg. 582 (Prop.)
1575 Teacher of Students with Visual Impairments.....	16 DE Reg. 587 (Prop.)
1581 School Reading Specialist.....	16 DE Reg. 493 (Prop.) 16 DE Reg. 770 (Final)
1591 School Principal and Assistant Principal.....	16 DE Reg. 362 (Prop.)
1592 School Leader I.....	16 DE Reg. 499 (Prop.)
1593 School Leader II.....	16 DE Reg. 502 (Prop.)
1594 Special Education Director.....	16 DE Reg. 506 (Prop.)

1595 Certification Programs For Leaders in Education.....	16 DE Reg. 365 (Prop.)
1597 Delaware Professional Teaching Standards.....	16 DE Reg. 70 (Final)

**DEPARTMENT OF ELECTIONS**

**Office of the Commissioner of Elections for the State of Delaware**

Campaign Finance Regulations.....	16 DE Reg. 510 (Prop.)
	16 DE Reg. 771 (Final)

**DEPARTMENT OF FINANCE**

**Division of Unclaimed Property**

Abandoned or Unclaimed Property Examination Guidelines.....	16 DE Reg. 630 (Final)
102 Regulation on Practices and Procedures for Records Examinations by the State Escheator.....	16 DE Reg. 22 (Prop.)
	16 DE Reg. 530 (Final)

**Office of the State Lottery**

204 Sports Lottery Rules and Regulations.....	16 DE Reg. 24 (Prop.)
	16 DE Reg. 155 (Emer)
	16 DE Reg. 291 (Final)

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**Division of Long Term Care Residents Protection**

3102 Long Term Care Transfer, Discharge and Readmission Procedures.....	16 DE Reg. 24 (Prop.)
	16 DE Reg. 296 (Final)
	16 DE Reg. 710 (Prop.)
3105 Criminal History Record Checks and Drug Testing.....	16 DE Reg. 716 (Prop.)
3110 Criminal History Checks and Drug Testing for Home Health Agencies....	16 DE Reg. 717 (Prop.)
3201 Skilled and Intermediate Care Nursing Facilities.....	16 DE Reg. 592 (Prop.)
3210 Nursing Homes Admitting Pediatric Residents.....	16 DE Reg. 593 (Prop.)
3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants.....	16 DE Reg. 371 (Prop.)
	16 DE Reg. 632 (Final)
	16 DE Reg. 595 (Prop.)
3225 Assisted Living Facilities.....	16 DE Reg. 595 (Prop.)
3230 Rest (Residential) Home Regulations.....	16 DE Reg. 34 (Prop.)
	16 DE Reg. 637 (Final)

**Division of Medicaid and Medical Assistance**

<b>DSSM:</b> 20320.7B & 20320.7E Medicaid Long-Term Care Services-Home	
.....Equity.....	16 DE Reg. 377 (Prop.)
	16 DE Reg. 639 (Final)
20500 Estate Recovery and Civil Unions and Medicare Cost Sharing	16 DE Reg. 166 (Prop.)
	16 DE Reg. 423 (Final)
20775 Program of All-Inclusive Care for the Elderly (PACE).....	16 DE Reg. 170 (Prop.)
	16 DE Reg. 532 (Final)
Fair Hearing Practice and Procedures - Expedited Fair Hearings.....	16 DE Reg. 6 (Emer.)
	16 DE Reg. 30 (Prop.)
	16 DE Reg. 419 (Final)

**Title XIX Medicaid State Plan:**

Medicaid Eligibility Conditions and Requirements.....	16 DE Reg. 72 (Final)
Nursing Facility Quality Assessment.....	16 DE Reg. 38 (Prop.)
	16 DE Reg. 309 (Final)
General Program Administration, Survey & Certification Process, Long-Term Care Ombudsman.....	16 DE Reg. 42 (Prop.)
	16 DE Reg. 312 (Final)
Reimbursement Methodology for ICF/MR Facilities.....	16 DE Reg. 517 (Prop.)
	16 DE Reg. 781 (Final)
Reimbursement Methodologies for Inpatient Psychiatric Hospital Services and Outpatient Hospital Services.....	16 DE Reg. 597 (Prop.)
Telemedicine Services.....	16 DE Reg. 44 (Prop.)
	16 DE Reg. 314 (Final)

<b>Division of Public Health</b>	
4102 School-Based Health Centers.....	16 DE Reg. 600 (Prop.)
4459 Lead Based Paints Hazards.....	16 DE Reg. 238 (Prop.)
4462 Public Drinking Water Systems.....	16 DE Reg. 537 (Final)
	16 DE Reg. 73 (Final)
<b>Division of Social Services</b>	
Child Care Subsidy Program Proposed Phase-Out of Purchase of Care Plus	16 DE Reg. 603 (Prop.)
<b>DSSM:</b> 1009 - 1010; Case Administration Provisions.....	16 DE Reg. 605 (Prop.)
2022 General Information.....	16 DE Reg. 607 (Prop.)
3034 General Assistance Time Limits.....	16 DE Reg. 378 (Prop.)
	16 DE Reg. 641 (Final)
6001 Legal Base; 6002 Eligibility; 6003 Vendor Payments; 6004	
Payment Limitation: Time Restriction; 6005 Scope of Coverage; 6006	
Classification of Emergency Assistance Services-Content of Services;	
6007 Accountability Reports.....	16 DE Reg. 173 (Prop.)
	16 DE Reg. 426 (Final)
6100 through 6111- Transitional Resources to Relative Caregivers.....	16 DE Reg. 211 (Final)
9072 Identification Cards.....	16 DE Reg. 607 (Prop.)
11002.9 Definitions and Explanation of Terms.....	16 DE Reg. 78 (Final)
11003 Eligibility Requirements.....	16 DE Reg. 47 (Prop.)
	16 DE Reg. 213 (Final)
	16 DE Reg. 314 (Final)
	16 DE Reg. 717 (Prop.)
11003.2.1 TANF and Transitional Work Program Sanctions.....	16 DE Reg. 379 (Prop.)
	16 DE Reg. 643 (Final)
11006.4 Child Care Subsidy Program, Provider Reimbursement.....	16 DE Reg. 609 (Prop.)
<b>Division of Substance Abuse and Mental Health</b>	
6002 Credentialing Mental Health Screeners & Pmt. for Voluntary Admissions	16 DE Reg. 611 (Prop.)
<b>DEPARTMENT OF INSURANCE</b>	
700 Policies and Procedures Regarding FOIA Requests.....	16 DE Reg. 87 (Final)
<b>DEPARTMENT OF JUSTICE</b>	
<b>Victims' Compensation Assistance Program Advisory Council</b>	
301 Victims' Compensation Assistance Program Rules and Regulations.....	16 DE Reg. 719 (Prop.)
<b>DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL</b>	
<b>Office of the Secretary</b>	
104 Regulations for the Green Energy Program.....	16 DE Reg. 381 (Prop.)
<b>Division of Air Quality</b>	
1120 New Source Platform Standards.....	16 DE Reg. 181 (Prop.)
	16 DE Reg. 644 (Final)
1125 Requirements for Preconstruction Review.....	16 DE Reg. 214 (Final)
Sections 1.9 and 2.0.....	16 DE Reg. 239 (Prop.)
1138 Emission Standards for Hazardous Air Pollutants for Source Categories.	16 DE Reg. 182 (Prop.)
	16 DE Reg. 646 (Final)
1147 CO <sub>2</sub> Budget Trading Program.....	16 DE Reg. 720 (Prop.)
<b>Division of Fish and Wildlife</b>	
3214 Horseshoe Crab Annual Harvest Limit.....	16 DE Reg. 722 (Prop.)
Non-Tidal Finfish Regulations 3301, 3303, 3304, 3305, 3306, 3307, 3308,	
3309 and 3310.....	16 DE Reg. 245 (Prop.)
	16 DE Reg. 788 (Final)
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.....	16 DE Reg. 184 (Prop.)
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.....	16 DE Reg. 431 (Final)
3521 Weakfish Size Limits; Possession Limits, Seasons.....	16 DE Reg. 382 (Prop.)

3531 Tautog; Size Limits, Creel Limits and Seasons.....	16 DE Reg. 216 (Final)
3552 Spanish Mackerel Size Limit and Creel Limit.....	16 DE Reg. 94 (Final)
3900 Wildlife, Sections 2.0 Method of Take; 5.0 Wild Turkeys; 10.0 Nuisance Game Animals; 14.0 Falconry and 16.0 Endangered Species.....	16 DE Reg. 723 (Prop.)
<b>Division of Waste and Hazardous Substances</b>	
1302 Regs. Governing Hazardous Waste, Parts 261, 262, 265, 266 & 268.....	16 DE Reg. 383 (Prop.)
1353 Boiler Safety.....	16 DE Reg. 784 (Final) 16 DE Reg. 251 (Prop.)
1375 Delaware Regulations Governing Hazardous Substance Cleanup.....	16 DE Reg. 786 (Final) 16 DE Reg. 218 (Final)
<b>Division of Water</b>	
7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.....	16 DE Reg. 395 (Prop.)
7201 Regulations Governing the Control of Water Pollution.....	16 DE Reg. 14 (Emer.) 16 DE Reg. 50 (Prop.) 16 DE Reg. 322 (Final)
<b>Division of Watershed Stewardship</b>	
7431 Total Maximum Daily Load (TMDL) for the Lums Pond Sub-Watershed	16 DE Reg. 186 (Prop.) 16 DE Reg. 538 (Final)
 <b>DEPARTMENT OF SAFETY AND HOMELAND SECURITY</b>	
<b>Alcoholic Beverage Control Commission</b>	
Regulations Governing Wholesale and Supply Operation, The "At Rest" Requirement.....	16 DE Reg. 252 (Prop.)
<b>Division of State Police</b>	
2300 Pawn Brokers, Secondhand Dealers and Scrap Metal Processors.....	16 DE Reg. 255 (Prop.) 16 DE Reg. 540 (Final)
2400 Board of Examiners of Constables.....	16 DE Reg. 728 (Prop.)
 <b>DEPARTMENT OF STATE</b>	
<b>Division of Professional Regulation</b>	
<b>Gaming Control Board</b>	
101 Regulations Governing Bingo;.....	16 DE Reg. 219 (Final) 16 DE Reg. 520 (Prop.) 16 DE Reg. 730 (Prop.)
102 Regulations Governing Raffles;.....	16 DE Reg. 219 (Final)
103 Regulations Governing Charitable Gambling Other Than Raffles;.....	16 DE Reg. 219 (Final)
104 Regulations Governing Texas Hold'em Poker.....	16 DE Reg. 219 (Final)
200 Board of Landscape Architecture.....	16 DE Reg. 324 (Final)
500 Board of Podiatry.....	16 DE Reg. 733 (Prop.)
700 Board of Chiropractic.....	16 DE Reg. 96 (Final)
1100 Board of Dentistry & Dental Hygiene, Section 7.0 Anesthesia Regulations	16 DE Reg. 257 (Prop.) 16 DE Reg. 328 (Final)
1400 Board of Electrical Examiners.....	16 DE Reg. 188 (Prop.) 16 DE Reg. 648 (Final)
1700 Board of Medical Licensure and Discipline.....	16 DE Reg. 617 (Prop.) 16 DE Reg. 651 (Final)
Section 31.0, Use of Controlled Substances for the Treatment of Pain	16 DE Reg. 260 (Prop.) 16 DE Reg. 330 (Final)
1770 Respiratory Care Practice Advisory Council.....	16 DE Reg. 97 (Final)
1790 Acupuncture Advisory Council.....	16 DE Reg. 434 (Final)
1799 Genetic Counselor Advisory Council.....	16 DE Reg. 652 (Final)
1900 Board of Nursing.....	16 DE Reg. 736 (Prop.)
2500 Board of Pharmacy.....	16 DE Reg. 654 (Final)
2500 Board of Pharmacy.....	16 DE Reg. 739 (Prop.)
2700 Board of Registration for Professional Land Surveyors.....	16 DE Reg. 436 (Final)

2900 Real Estate Commission.....	16 DE Reg. 543 (Final)
2925 Real Estate Commission Education Committee.....	16 DE Reg. 99 (Final)
2930 Board of Real Estate Appraisers.....	16 DE Reg. 104 (Final)
2930 Board of Real Estate Appraisers.....	16 DE Reg. 221 (Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	16 DE Reg. 105 (Final)
3100 Board of Funeral Services.....	16 DE Reg. 106 (Final)
	16 DE Reg. 264 (Prop.)
	16 DE Reg. 655 (Final)
3600 Board of Registration of Geologists.....	16 DE Reg. 51 (Prop.)
	16 DE Reg. 437 (Final)
3900 Board of Clinical Social Work Examiners.....	16 DE Reg. 108 (Final)
5200 Board of Examiners of Nursing Home Administrators.....	16 DE Reg. 397 (Prop.)
5300 Board of Massage and Bodywork.....	16 DE Reg. 222 (Final)
Uniform Controlled Substances Act Regulations.....	16 DE Reg. 267 (Prop.)
<b>Office of the State Banking Commissioner</b>	
905 Loan Limitations: Credit Exposure to Derivative Transactions.....	16 DE Reg. 523 (Prop.)
1109 Instructions for Calculation of Employment Tax Credits (5 Del.C. §1105)	16 DE Reg. 656 (Final)
2210 Short-Term Consumer Loans.....	16 DE Reg. 398 (Prop.)
	16 DE Reg. 658 (Final)
<b>Public Service Commission</b>	
3007 Electric Service Reliability and Quality Standards.....	16 DE Reg. 741 (Prop.)
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard.....	16 DE Reg. 402 (Prop.)
	16 DE Reg. 790 (Final)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Motor Vehicles</b>	
2222 School Bus Driver Qualifications and Endorsements.....	16 DE Reg. 405 (Prop.)
<b>Division of Planning and Policy</b>	
2309 Standards and Regulations for Subdivision Streets and State Highway Access .....	16 DE Reg. 192 (Prop.)
	16 DE Reg. 618 (Prop.)
<b>Division of Technology and Support Services</b>	
2501 External Equal Employment Opportunity Complaint Procedure.....	16 DE Reg. 270 (Prop.)
<b>Division of Transportation Solutions</b>	
2402 Delaware Manual on Uniform Traffic Control Devices.....	16 DE Reg. 274 (Prop.)
	16 DE Reg. 660 (Final)
2404 Traffic Calming Manual.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 544 (Final)
<b>EXECUTIVE DEPARTMENT</b>	
<b>Delaware Economic Development Office</b>	
402 Procedures Governing The Delaware Strategic Fund.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
451 Matching Grants Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
452 Direct Grants Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
453 Co-Op Advertising Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
454 Procedures Governing Delaware Tourism Grant Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
<b>Office of Management and Budget</b>	
Environmentally Preferred Purchasing Policy.....	16 DE Reg. 743 (Prop.)

**DEPARTMENT OF STATE  
OFFICE OF THE STATE BANKING COMMISSIONER**Statutory Authority: 5 Delaware Code, Sections 121(b) and 977 (5 **Del.C.** §121(b) & 977)**ORDER****905 Loan Limitations: Credit Exposure to Derivative Transactions**

\* **Please Note:** This Final regulation was inadvertently not included in the Final Regulations that were published on January 1, 2013. It is being published here as an Errata. The effective date remains the same.

**IT IS HEREBY ORDERED**, this 3<sup>rd</sup> day of December, 2012 that new Regulation 905 "Loan Limitations: Credit Exposure to Derivative Transactions" is adopted as a regulation of the State Bank Commissioner. A copy of Regulation 905 is attached hereto and incorporated herein by reference. The effective date of the Regulation is January 11, 2013. This Regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapter 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed new Regulation and its text was published in the November 1, 2012 issue of the Delaware *Register of Regulations*. The notice also was published in *The News Journal* on November 6, 2012; published in the *Delaware State News* on November 3, 2012; posted on the State of Delaware's electronic Public Meeting Calendar, and mailed to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The notice included, among other things, a summary of the proposed new Regulation and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before December 3, 2012. The notice further stated that the proposed new Regulation was available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on December 3, 2012 at 10:00 a.m. at the Office of the State Bank Commissioner; 555 E. Loockerman Street, Suite 210; Dover, Delaware 19901.

2. No written comments concerning the proposed new regulation were received on or before December 3, 2012.

3. A public hearing was held on December 3, 2012 at 10:00 a.m. in the Office of the State Bank Commissioner regarding the proposed new Regulation. Robert A. Glen, State Bank Commissioner; Francis S. Babiarz, Deputy Bank Commissioner for Supervisory Affairs, and a court reporter attended the hearing. No other persons were present.

4. Deputy Commissioner Babiarz summarized the proposed new Regulation. No other comments were made or received at the hearing.

5. After review and consideration, the State Bank Commissioner hereby adopts new Regulation 905 as proposed.

Robert A. Glen  
State Bank Commissioner

**905 Loan Limitations: Credit Exposure to Derivative Transactions****1.0 Purpose**

This regulation sets forth the rules for calculating the credit exposure arising from a derivative transaction entered into by a bank for purposes of determining the bank's loan limitations pursuant to Section 909 of Title 5 of the **Delaware Code**.

**2.0 Definitions**

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

**“Borrower”** means a person who is named as a borrower or debtor in a loan or extension of credit, including a person to whom a bank has credit exposure arising from a derivative transaction.

**“Contractual commitment to advance funds”**:

- a. Includes a bank’s obligation to:
  1. Make payment (directly or indirectly) to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer’s contract with the third person, or to make payments upon some other stated condition;
  2. Guarantee or act as surety for the benefit of a person;
  3. Advance funds under a qualifying commitment to lend, as defined for a national bank in 12 C.F.R. 32.2(t); and
  4. Advance funds under a standby letter of credit as defined in 12 C.F.R. 32.2(dd), a put, or other similar arrangement.
- b. The term does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw on the issuer, that do not guarantee payment, and that do not provide for payment in the event of a default by a third party.

**“Credit derivative”** means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

**“Derivative transaction”** includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

**“Effective margining arrangement”** means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank’s net credit exposure to the counterparty that exceeds \$1 million created by the derivative transactions covered by the agreement.

**“Eligible credit derivative”** means a single-name credit derivative or a standard, non-tranched index credit derivative provided that:

- a. The derivative contract meets the requirements of an eligible guarantee, as defined in this regulation, and has been confirmed by the protection purchaser and the protection provider;
- b. Any assignment of the derivative contract has been confirmed by all relevant parties;
- c. If the credit derivative is a credit default swap, the derivative contract includes the following credit events:
  1. Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and
  2. Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;
- d. The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;
- e. If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;
- f. If the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

- g. If the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

**“Eligible guarantee”** means a guarantee that:

- a. Is written and unconditional
- b. Covers all or a pro rata portion of all contractual payments of the obligor on the reference exposure;
- c. Gives the beneficiary a direct claim against the protection provider;
- d. Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;
- e. Is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;
- f. Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;
- g. Does not increase the beneficiary’s cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure; and
- h. Is not provided by an affiliate of the bank, unless the affiliate is an insured depository institution, bank, securities broker or dealer, or insurance company that:
1. Does not control the bank; and
  2. Is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies (as the case may be).

**“Eligible protection provider”** means:

- a. A sovereign entity (a central government, including the U.S. government; an agency; department; ministry; or central bank);
- b. The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;
- c. A Federal Home Loan Bank;
- d. The Federal Agricultural Mortgage Corporation;
- e. A depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);
- f. A bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 U.S.C. 1841;
- g. A savings and loan holding company, as defined in section 10 of the Home Owners’ Loan Act, 12 U.S.C. 1467a;
- h. A securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934, 15 U.S.C. 78o et seq.;
- i. An insurance company that is subject to the supervision of a State insurance regulator;
- j. A foreign banking organization;
- k. A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and
- l. A qualifying central counterparty.

**“Loans and extensions of credit”**

- a. Loans or extensions of credit, for purposes of Section 909 of Title 5 of the **Delaware Code** include any credit exposure, as determined pursuant to Section 3.0 of this regulation, arising from a derivative transaction, and also include a contractual commitment to advance funds.

- b. The following items do not constitute loans or extensions of credit for purposes of Section 909 of Title 5 of the Delaware Code and this regulation:
1. Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;
  2. Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;
  3. Financed sales of a bank's own assets, including Other Real Estate Owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;
  4. A renewal or restructuring of a loan as a new "loan or extension of credit," following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except as permitted for national banks by 12 C.F.R. § 32.3(b)(5)), or a new borrower replaces the original borrower, or unless the Commissioner or the appropriate Federal banking agency determine that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;
  5. Amounts paid against uncollected funds in the normal process of collection; and
  6. A. That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

B. When an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming subject to Section 5.0 of this regulation, rather than a violation, if:

    - i. The originating bank had a valid and unconditional participation agreement with a participant or participants that was sufficient to reduce the loan to within the originating bank's lending limit;
    - ii. The participant reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation; and
    - iii. The participation was to be funded by close of business of the originating bank's next business day.

"Qualifying master netting agreement" means any written, legally enforceable bilateral agreement, provided that:

- a. The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including bankruptcy, insolvency, or similar proceeding, of the counterparty;
- b. The agreement provides the bank the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of

default, including upon an event of bankruptcy, insolvency, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions;

- c. The bank has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that:
  - 1. The agreement meets the requirements of paragraph (b) of this definition; and
  - 2. In the event of a legal challenge (including one resulting from default or from bankruptcy, insolvency, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions;
- d. The bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition; and
- e. The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it would make otherwise under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement).

**3.0 Credit Exposure to Derivative Transactions.**

3.1 Derivative transactions. For purposes of Section 909 of Title 5 of the Delaware Code, derivative transactions entered into by a bank shall be included for purposes of determining the bank’s loan limitations.

3.2 Non-credit derivatives. Subject to Subsections 3.3 and 3.4 of this section, a bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by one of the following methods. Subject to Subsection 3.4 of this section, a bank shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.

3.2.1 Internal Model Method.

3.2.1.1 Credit exposure. The credit exposure of a derivative transaction under the Internal Model Method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

3.2.1.2 Calculation of current credit exposure. A bank shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark to market value is zero or negative, then the current credit exposure is zero.

3.2.1.3 Calculation of potential future credit exposure. A bank shall calculate its potential future credit exposure by using an internal model that has been approved by the Commissioner and the appropriate Federal banking agency for purposes of Section 909 of Title 5 of the Delaware Code, or any other appropriate model approved by the Commissioner and the appropriate Federal banking agency.

3.2.1.4 Net credit exposure. A bank that calculates its credit exposure by using the Internal Model Method pursuant to this paragraph may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

3.2.2 Conversion Factor Matrix Method. The credit exposure arising from a derivative transaction under the Conversion Factor Matrix Method shall equal and remain fixed at the potential future credit exposure of the derivative transaction as determined at the execution of the transaction by reference to Table 1 below.

Table 1—Conversion Factor Matrix for Calculating Potential Future Credit Exposure.<sup>1</sup>

<u>Original maturity<sup>2</sup></u>	<u>Interest Rate</u>	<u>Foreign exchange rate and gold</u>	<u>Equity</u>	<u>Other<sup>3</sup>(includes commodities and precious metals except gold)</u>
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1 year or less	0.015	0.015	0.20	0.06
Over 1 to 3 years	0.03	0.03	0.20	0.18
Over 3 to 5 years	0.06	0.06	0.20	0.30
Over 5 to 10 years	0.12	0.12	0.20	0.60
Over 10 years	0.30	0.30	0.20	1.00

- <sup>1</sup> For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.
- <sup>2</sup> For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.
- <sup>3</sup> Transactions not explicitly covered by any other column in the Table are to be treated as “Other.”

**3.2.3 Remaining Maturity Method.** The credit exposure arising from a derivative transaction under the Remaining Maturity Method shall equal the greater of zero or the sum of the current mark-to-market value of the derivative transaction added to the product of the notional amount of the transaction, the remaining maturity in years of the transaction, and a fixed multiplicative factor determined by reference to Table 2, below.

Table 2—Remaining Maturity Factor for Calculating Credit Exposure

	<b>Interest Rate</b>	<b>Foreign exchange rate and gold</b>	<b>Equity</b>	<b>Other<sup>4</sup> (includes commodities and precious metals except gold)</b>
<b>Multiplicative Factor</b>	1.5%	1.5%	6%	6%

- <sup>4</sup> Transactions not explicitly covered by any other column in the Table are to be treated as “Other.”

**3.3 Credit Derivatives.**

**3.3.1** Notwithstanding Subsection 3.2 of this section, a bank that uses the Conversion Factor Matrix Method or Remaining Maturity Method, or that uses the Internal Model Method without entering an effective margining arrangement, as defined in Section 2.0 of this regulation, shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

**3.3.2** A bank shall calculate the credit exposure to a reference entity arising from credit derivatives entered by the bank by adding the notional value of all protection sold on the reference entity. However, the bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

- 3.4 Mandatory use of a certain method.** The Commissioner or the appropriate Federal banking agency may require a bank to use the Internal Model Method set forth in Subsection 3.2.1, the Conversion Factor Matrix Method set forth in Subsection 3.2.2, or the Remaining Maturity Method set forth in Subsection 3.2.3 to calculate the credit exposure of derivative transactions, upon finding that such method is necessary to promote the safety and soundness of the bank.

**4.0 Intraday credit exposures**

Intraday credit exposures arising from a derivative transaction are not subject to the lending limits of Section 909 of Title 5 of the Delaware Code or this regulation.

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## **5.0 Nonconforming Loans and Extensions of Credit**

A loan or extension of credit, within the bank's legal lending limit when made, will not be deemed a violation, but will be treated as nonconforming, if the loan or extension of credit is no longer in conformity with the bank's lending limit because, in the case of a credit exposure arising from a derivative transaction identified in Section 3.0 of this regulation and measured by the Internal Model Method specified in Section 3.2.1 of this regulation, the credit exposure, subject to the lending limits of Section 909 of Title 5 of the **Delaware Code** or this regulation, increases after execution of the transaction. A bank must use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of this section into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

## Symbol Key

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

## Proposed Regulations

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

## DEPARTMENT OF AGRICULTURE

### HARNESS RACING COMMISSION

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

### PUBLIC NOTICE

#### 501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 5.3.3.19, 7.1.7, 7.1.7.1, 7.1.7.1.1, 7.1.7.2 & 7.1.7.2.1, 8.5.5.11. The Commission will hold a public hearing on the proposed rule changes on March 7, 2013. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on February 1, 2013.

The proposed changes are for the purpose of updating Rules and reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml)

A copy is also available for inspection at the Harness Racing Commission office.

#### 501 Harness Racing Rules and Regulations

*(Break in Continuity of Sections)*

#### 5.0 Licensees

*(Break in Continuity Within Section)*

#### 5.3 Trainers

*(Break in Continuity Within Section)*

#### 5.3.3 Other Responsibilities. A trainer is responsible for:

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- 5.3.3.1 the condition and contents of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association;
  - 5.3.3.2 maintaining the assigned stable area in a clean, neat and sanitary condition at all times;
  - 5.3.3.3 ensuring that fire prevention rules are strictly observed in the assigned stable area;
  - 5.3.3.4 providing a list to the Commission of the trainer's employees on association grounds and any other area under the jurisdiction of the Commission. The list shall include each employee's name, occupation, social security number and occupational license number. The Commission shall be notified by the trainer, in writing, within 24 hours of any change;
  - 5.3.3.5 the proper identity, custody, care, health, condition and safety of horses in his charge;
  - 5.3.3.6 disclosure of the true and entire ownership of each horse in his care, custody or control;
  - 5.3.3.7 registering with the racing secretary each horse in his charge within 24 hours of the horse's arrival on association grounds;
  - 5.3.3.8 ensuring that, at the time of arrival at a licensed racetrack, each horse in his care is accompanied by a valid health certificate which shall be filed with the racing secretary;
  - 5.3.3.9 having each horse in his care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state/provincial law and for filing evidence of such negative test results with the racing secretary;
  - 5.3.3.10 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;
  - 5.3.3.11 immediately reporting the alteration of the sex of a horse in his care to the horse identifier and the racing secretary, whose office shall note such alteration on the certificate of registration;
  - 5.3.3.12 promptly reporting to the Presiding Judge, racing secretary and the State veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;
  - 5.3.3.13 promptly notifying the State veterinarian of any reportable disease and any unusual incidence of a communicable illness of any horse in his charge;
  - 5.3.3.14 promptly reporting the death of any horse in his care on association grounds to the judges and the State veterinarian and compliance with the rules in Chapter 8 governing post-mortem examinations;
  - 5.3.3.15 maintaining a knowledge of the medication record and status of all horses in his care;
  - 5.3.3.16 immediately reporting to the Presiding Judge and the State veterinarian if he knows, or has cause to believe, that a horse in his custody, care or control has received any prohibited drugs or medication;
  - 5.3.3.17 representing an owner in making entries and scratches and in all other matters pertaining to racing;
  - 5.3.3.18 horses entered as to eligibility and allowances claimed;
  - 5.3.3.19 ensuring the fitness of a horse to perform creditably at the distance entered and promptly requesting a scratch from Board of Judges if an entered horse becomes unfit to race (sick, lame, injured or deceased);
  - 5.3.3.20 ensuring that his horses are properly prepared and equipped;
  - 5.3.3.21 presenting his horse in the paddock at a time prescribed by the Presiding Judge before the race in which the horse is entered;
  - 5.3.3.22 personally attending to his horses in the paddock and supervising the preparation thereof, unless excused by the Paddock Judge;
  - 5.3.3.23 attending the collection of a urine or blood sample from the horse in his charge or delegating a licensed employee or the owner of the horse to do so; and
  - 5.3.3.24 notifying horse owners upon the revocation or suspension of his trainer's license. Upon application by the owner, the Presiding Judge may approve the transfer of such horses to

# PROPOSED REGULATIONS

the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

- 5.3.4 Restrictions on Wagering. A trainer shall only be allowed to wager on his horse or entries to win or finish first in combination with other horses.
- 5.3.5 Substitute Trainers. If any licensed trainer is to be absent from the association grounds where his horse is programmed to race the Presiding Judge shall be immediately notified and at that time a licensed substitute trainer, acceptable to the Presiding Judge, shall be appointed to assume responsibility for the horse(s) racing during the absence of the regular trainer. The name of the substitute trainer shall appear on the program if possible.

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

## 7.0 Rules of the Race

### 7.1 Declarations and Drawing

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

#### 7.1.7 Scratches

7.1.7.1 Once a horse is entered, it is the responsibility of the trainer to immediately notify the Board of Judges if that horse becomes unfit to race. A written notification must accompany the scratch request identifying: Horse name, tattoo, trainer name, date of event, reason for scratch (sick, lame, injured or deceased) and must be signed and dated by the trainer of record.

7.1.7.1.1 If a trainer requests a scratch of an entered horse on the day of the competition, the DHRC reserves the right to have the horse presented for inspection by the Commission veterinarian and/or a certificate of veterinary inspection from a licensed veterinarian must be delivered to the Board of Judges within 24 hours delineating the condition of the horse.

7.1.7.2 All horses scratched sick, lame or injured after entry will be placed on the Veterinarians List for a minimum of 7 days.

7.1.7.2.1 The number of days a scratched horse must be on the Veterinarians list can be altered by the Board of Judges and/or the Commission Veterinarian based on individual circumstance.

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

## 8.0 Veterinary Practices, Equine Health Medication

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

### 8.5 Trainer Responsibility

The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well-being of horses in his care.

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

8.5.5 Additionally, with respect to horses in his care or custody, the trainer is responsible for:

- 8.5.5.1 the proper identity, custody, care, health, condition and safety of horses;
- 8.5.5.2 ensuring that at the time of arrival at locations under the jurisdiction of the Commission a valid health certificate and a valid negative Equine Infectious Anemia (EIA) test certificate accompany each horse and which, where applicable, shall be filed with the Racing Secretary;
- 8.5.5.3 having each horse in his care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the Racing Secretary;
- 8.5.5.4 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

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- 8.5.5.5 immediately reporting the alteration of the sex of a horse to the clerk of the course, the United States Trotting Association and the Racing Secretary;
  - 8.5.5.6 promptly reporting to the Racing Secretary and the Commission Veterinarian when a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration;
  - 8.5.5.7 promptly notifying the Commission Veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his charge;
  - 8.5.5.8 promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the Commission to the Board of Judges, the Chief DHRC Veterinarian, and the United States Trotting Association;
  - 8.5.5.9 maintaining a knowledge of the medication record and status;
  - 8.5.5.10 immediately reporting to the Board of Judges and the Chief DHRC Veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;
  - 8.5.5.11 ensuring the fitness to perform creditably at the distance entered and promptly requesting a scratch from Board of Judges if an entered horse becomes unfit to race (sick, lame, injured or deceased);
  - 8.5.5.12 ensuring that every horse he has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this chapter;
  - 8.5.5.13 ensuring proper bandages, equipment and shoes;
  - 8.5.5.14 presence in the paddock at least one hour before post time or at a time otherwise appointed before the race in which the horse is entered;
  - 8.5.5.15 personally attending in the paddock and supervising the harnessing thereof, unless excused by the Paddock Judge;
  - 8.5.5.16 attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and
  - 8.5.5.17 immediately reporting to the Presiding Judge other Commission designee, or to the State Veterinarian or Chief DHRC Veterinarian if the Presiding Judge or other Commission designee is unavailable, the death of any horse drawn in to start in a race in this jurisdiction provided that the death occurred within 60 days of the date of the draw.

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

**501 Harness Racing Rules and Regulations**

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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**

**Long-Term Care Program DSSM 20310.18 Tax Refunds and Advance Payments**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, Tax Refunds or Advance Payments.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy

Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 4, 2013.

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

### **SUMMARY OF PROPOSAL**

The proposal amends the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, Tax Refunds or Advance Payments.

#### **Statutory Authority**

Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312)

#### **Background**

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) was signed into law on December 17, 2010. Section 728 of this Act disregards federal tax refunds or advance payments with respect to a refundable tax credit, received after December 31, 2009, as income and as resources (for a period of 12 months after receipt) for purposes of determining eligibility for all federal or federally-assisted programs, including Medicaid and the Children's Health Insurance program (CHIP). Section 728 also provides that these tax refunds and advance payments are not to be taken into account in determining the amount or extent of benefits provided under any program subject to this provision, including Medicaid and CHIP. This provision became effective December 17, 2010, and applies to tax refunds or advance payments received after December 31, 2009, but before January 1, 2013.

#### **Summary of Proposal**

DSSM 20310.18, Tax Refunds and Advance Payments: The purpose of the proposed change is to clarify that the 12 month disregard of tax refunds and advance payments only applies to the funds that are received through December 31, 2012. Any refunds/advance payments received on or after January 1, 2013 will be considered a resource if retained the month following receipt.

#### **Fiscal Impact Statement**

This revision imposes no increase in cost on the General Fund.

### **DMMA PROPOSED REGULATION #13-02 REVISION**

#### **20310.18 Tax Refunds and Advance Payments**

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P. L. 111-312), which was signed into law on December 17, 2010, includes a provision that requires all programs funded in whole or in part with Federal funds, to disregard Federal tax refunds for a period of twelve months from the month of receipt.

Tax refunds and advance payments with respect to a refundable tax credit received after December 31, 2009 through December 31, 2012 are excluded from resources for the twelve calendar months following the month of receipt.

Any portion of the refund or payment that is still retained after that twelve- month period will be a countable resource.

Any retained portion of a tax refund and/or advance payment that was received on or after January 1, 2013 will be a countable resource the month following receipt.

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(1), 16 Delaware Code, §122(3)h, and 16 Delaware Code, §7904  
(16 Del.C., §122(1), §122(3)h and §7904)  
16 DE Admin. Code 4107

### PUBLIC NOTICE

#### 4107 Testing Of Newborn Infants For Metabolic, Hematologic And Endocrinologic Disorders

On February 1, 2013, the Family Health Systems section, under the Division of Public Health, Department of Health and Social Services, plans to publish proposed regulations governing the State of Delaware Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders and hold them out for public comment per Delaware law.

In September 2011, the U.S. Department of Health and Human Services adopted the Advisory Committee on Heritable Disorders in Newborns and Children's recommendation to add screening for critical congenital heart disease (CCHD) to the Uniform Screening Panel. The proposed revisions to this regulation outline the process for collecting screening results for CCHD through pulse oximetry testing for newborns. Additionally, the revisions clarify the program's retention of blood spot results for a period of three years as well as update language to currently acceptable terms.

Copies of the proposed regulations are available for review in the February 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Family Health Systems Section at (302) 744-4821.

Any person who wishes to submit suggestions, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by March 4, 2013 at:

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

#### 4107 Testing Screening Of Newborn Infants For Metabolic, Hematologic, And Endocrinologic, and Certain Structural Disorders

##### 1.0 Authority and Purpose

Under the authority granted to the Department of Health and Social Services, Division of Public Health under 16 Del.C. §122(1), 16 Del.C. §122(3)(h), and 29 Del.C. §7904 the Department of Health and Social Services, Division of Public Health, State of Delaware adopts the following regulations pertaining to the testing screening of newborns for various disorders.

~~These regulations describe~~ To regulate the procedures for the Newborn Screening Program administered by the Delaware Division of Public Health. ~~Under the authorization of the statues listed above, where~~ each newborn delivered in the state must be provided a panel of screening tests to identify certain metabolic, hematologic, and endocrinologic, and certain structural disorders that may result in developmental delay, mental retardation, cognitive disabilities, serious medical conditions, or death.

~~These regulations clarify responsibilities among the parties involved.~~

~~These regulations apply to each newborn infant born in the State.~~ The responsibility for implementation of the regulations rests with the institution in which the infant is born, ~~or if an infant is born outside an institution, with the person required to prepare and file the certificate of birth and with the newborn's primary care provider.~~ If an infant is born outside an institution or facility, the responsibility for implementation of the regulations rests with the attending physician or midwife, the newborn's primary care provider and the parent or legal guardian.

## 2.0 Definitions

“**Blood Specimen for Metabolic, Hematologic and Endocrinologic Disorders**” means a dried blood spot on a special filter paper utilized for screening (not diagnostic) tests to establish the likely presence of certain metabolic, hematologic or endocrinologic disorders.

“**Certain Structural Disorders**” includes critical cardiac heart defects and other structural disorders.

“**Designated Laboratory**” is the laboratory or laboratories, which have been selected by the Division of Public Health to perform these services.

“**Endocrinologic Disorder**” means the absence or deficiency of a hormone resulting in interference with normal health, growth or development. These disorders include Congenital Hypothyroidism (CH) and Congenital Adrenal Hyperplasia (CAH).

“**Hematologic Disorder**” means, in these regulations, a condition in which a variation in one or more of the hemoglobin structural genes or in one or more of the genes involved in hemoglobin synthesis produces a variation in hemoglobin structure or synthesis, which result in variation in hemoglobin function. The term “hemoglobinopathies” includes sickle cell anemia, sickle cell hemoglobin C disease (SC disease), sickle beta thalassemia, beta thalassemia, alpha thalassemia, hemoglobin C disease and other clinically important variations in hemoglobin structure or synthesis.

~~“**IMF**” stands for Insufficient Milk Feeding, which is an inadequate time frame for milk feedings (<24 hours) prior to obtaining the blood spot specimen.~~

“**Kit**” means any or all parts of the combined materials, laboratory filter paper specimen forms, ~~lanets, envelopes,~~ Newborn Screening Program brochure, and/or other components provided by the State Newborn Screening Program for the purposes of collection of the blood spot specimen and for submission of the blood spot specimen for laboratory testing screening.

“**Metabolic Disorder**” means a disorder caused by a genetic alteration, which results in a defect in the structure or function of a specific enzyme or other protein. These disorders include, but are not limited to, Phenylketonuria (PKU), Galactosemia, Maple Syrup Urine Disease (MSUD), and Medium Chain Acyl-CoA Dehydrogenase (MCAD) Deficiency.

“**Newborn Infant**” means any infant born in the state who is under 4 weeks of age.

“**Satisfactory Specimen**” means a blood spot specimen on which an accurate laboratory analysis for the various disorders can be performed.

“**The Newborn Screening Advisory Committee**” means a committee, established through the Division of Public Health Newborn Screening Program, convened to provide advice and guidance to the ~~Newborn Screening~~ Program. Members include, but are not limited to: individuals or parents of individuals with one of the disorders for which screening is performed; physicians not employed by the Division of Public Health who have expertise in the disorders for which screening is performed; an attorney not employed by the Division of Public Health; an ethicist not employed by the Division of Public Health; representatives of relevant agencies within the Department of Health and Social Services. The Committee will ~~meets~~ at least semi-annually. The Director of the Division of Public Health will appoint members after recommendation by the Newborn Screening Program.

“**Unsatisfactory Specimen**” means a blood spot specimen which is of insufficient quantity; or a blood spot specimen on which an accurate analysis for the various disorders cannot be performed.

## 3.0 Determination of Required Screens

The Director of the Division of Public Health or designee shall determine the disorders subject to screening tests.

## 4.0 Persons Responsible for Submitting Blood Spot Specimens and Pulse Oximetry Results for Screening for Metabolic, Hematologic, ~~and~~ Endocrinologic, and Certain Structural Disorders

4.1 The person or institution responsible for assuring that a satisfactory blood spot specimen and pulse oximetry results ~~is~~ are submitted for testing screening newborns for metabolic, hematologic, ~~and~~ endocrinologic and certain structural disorders shall be, in order of responsibility:

4.1.1 the hospital, birthing facility or other licensed health care facility in which the newborn is born,

4.1.2 the newborn's primary care provider; or, if no provider is identified;

4.1.3 the parent or legal guardian.

4.2 In cases of newborns entering a health care facility before 48 hours of age as result of transfer from another facility or of an infant not born in a hospital or other licensed health care facility, the receiving facility shall be responsible for the timely collection of the blood spot specimen and pulse oximetry screening results.

4.3 In cases of newborns not born in a hospital or other licensed health care facility, and not transferred to a health care facility, the timely collection of the blood spot specimen and pulse oximetry screening results shall be the responsibility of the following, in order of responsibility:

4.3.1 the attending physician, or midwife, or in the absence of such a person;

4.3.2 the newborn's primary care provider; or, if no provider is identified;

4.3.3 the parent or legal guardian.

## **5.0 Manner of Submitting Blood Spot Specimens and Pulse Oximetry Results**

5.1 All dried blood spot specimens submitted to the designated laboratory for testing shall be collected using kits available from the Newborn Screening Program office and/or designated laboratory.

5.2 Blood spot specimens collected for testing screening shall be forwarded from the institution ~~at which the specimen is collected~~ to the designated laboratory within 24 hours of collection, either by the designated Division of Public Health courier or by mail.

5.3 Pulse oximetry screening results shall be forwarded to the Division of Public Health electronically by the 15<sup>th</sup> of each month for births occurring in the previous calendar month.

## **6.0 Timing of Collecting the Blood Spot Specimen and Pulse Oximetry Screening for Screening Infants**

6.1 A blood spot specimen for screening for metabolic, hematologic, and endocrinologic disorders shall be collected prior to hospital discharge, but ~~in no event later than 3~~ three days after birth ~~from every newborn infant~~ as follows:

6.1.1 ~~For infants born inside or outside of a hospital or other health care facility, or infants born outside of a hospital or other health care facility and transferred to the hospital where they will remain for the next 24 hours, a specimen shall be collected not sooner than 24 hours after the onset of milk feeding, but no later than 3 days after birth, preferably between 36 and 72 hours of birth. A second specimen is to be collected between 7~~ seven and 28 days of age.

5.1.2 ~~For infants who are born in a hospital or health care facility or who are born outside and transferred into the hospital and who will remain in the hospital for 24 hours of milk feedings or more a blood spot specimen shall be collected not sooner than 24 hours after the onset of milk feeding, but no later than 3 days after birth, preferably between 36 and 72 hours after birth. A second blood spot specimen is to be collected between 7 and 28 days of age.~~

6.1.3~~2~~ For pre term or sick newborns, the initial blood spot specimen may be collected as late as ~~3~~ three days of age ~~and must be collected but~~ no later than 3 days regardless of birth weight, illness or nutritional status. The second dried blood spot specimen on preterm or sick newborns ~~is to be done~~ must be completed at hospital discharge or 28 days of life which ever comes first.

6.1.4~~3~~ When an infant is discharged from a hospital or other health care facility before 24 hours of milk feedings a blood spot specimen shall be obtained immediately prior to discharge from the facility and a second dried blood spot specimen shall be obtained after 3 days of age and before 14 days of age.

6.2 Birth facilities or care providers responsible for screening newborns shall adopt protocols consistent with the scientific statement regarding the role of pulse oximetry from the American Heart Association and American Academy of Pediatrics (Pediatrics, Vol. 124, No. 2, August 1, 2009, pp. 823-836).

6.3 The data elements to be reported for pulse oximetry screening of newborns to the Division of Public Health are:

6.3.1 The number of births in a birthing facility each month

# PROPOSED REGULATIONS

- 6.3.2 The number of pulse oximetry screenings on newborn infants performed each month
- 6.3.3 The number of positive and negative screens recorded
- 6.3.4 For those infants who do not receive a screen, a reason for not being screened
- 6.3.5 The identity of the infants who fail the screen including their diagnostic evaluation and disposition

## 7.0 **Procedures for Follow Up of Dried Blood Spot Specimens ~~that were obtained prior to 24 Hours Of Milk Feeding (IMF) and for those whose Results are Designated as Abnormal or Suspicious~~**

- 7.1 ~~The hospital or institution of birth or the hospital to which a newborn is transferred~~ The hospital/institution of birth/hospital to which a newborn is transferred shall develop adequate procedures to insure ~~that~~ a satisfactory blood spot specimen is collected by the time each newborn is ~~2 weeks old~~ three days of age. The sample must be taken from each every newborn who is ~~described by one or more of the following categories:~~
  - 7.1.1 ~~a newborn that is discharged from the institution prior to~~ within 24 hours of milk feedings (IMF).
  - 7.1.2 ~~a newborn on which the blood-spot specimen is reported by the laboratory as “~~designated unsatisfactory” by the laboratory.
- 7.2 ~~The hospital/institution of birth/hospital or institution of birth, the hospital to which a newborn is transferred and the primary care provider of the newborn shall cooperate with the Newborn Screening Program in completing follow up of newborns whose blood spot specimen result is designated as “abnormal” or “suspicious.” This cooperation shall include:~~
  - 7.2.1 ~~providing appropriate demographic information to the Newborn Screening Program as requested on each baby whose blood spot specimen result is designated as “abnormal” or “suspicious,”~~
  - 7.2.2 providing the Newborn Screening Program with clinical information on each newborn as necessary for interpretation of the results of the ~~testing~~ screening of the blood spot specimen.

## 8.0 **Reporting of Results of Newborn Screening Tests**

- 8.1 The designated laboratory shall report the results to the Newborn Screening Program as designated in the contract.
- 8.2 The Newborn Screening Program shall contact with abnormal results the parent or legal guardian and primary health care provider in writing and/or by telephone.
- 8.3 A copy of the Newborn Screening laboratory report shall be available to the parent or legal guardian upon request made to the birth hospital medical record department or their primary health care provider.

## 9.0 **Confidentiality of Records**

- 9.1 The Newborn Screening Program shall maintain and treat as confidential all newborn screening communications with institutions, families and health care providers. The Newborn Screening Program shall maintain and treat as confidential a record of every newborn in whom a diagnosis of one or more of the various metabolic, hematologic, or endocrinologic disorders is confirmed.
- 9.2 Information may be disclosed by the Newborn Screening Program in summary forms, which do not identify individuals. Individuals or institutions requesting summary data must submit a proposal to the Newborn Screening Program and to the Institutional Review Board of the Division of Public Health.
- 9.3 Dried blood-spots will be retained for a period of three years under appropriate conditions. The stored specimens will only be used for activities to improve the screening program and/or develop new screening tests.

## 10.0 **Fees for Newborn Screening Tests Performed in the Designated Laboratory**

- 10.1 The Division of Public Health Newborn Screening Program shall bill the institution or individual for services provided ~~to the institution or individual~~ for each newborn screened under these regulations including but not limited to, the cost of the kits for collection of specimens, the laboratory fee for

analysis, and administrative costs. The fee will be determined annually (in July) based on cost of the program.

- 10.2 No Delaware newborn shall be denied testing for hereditary disorders because of inability of the newborn's parent or legal guardian to pay the fee. A "Statement of Fee Exemption" form will be provided to the practitioner or parent requesting exemption from fees. This form must be completed and submitted to the Newborn Screening Program Office within 30 days of birth.

## 11.0 Religious Exemption from ~~Testing~~ Screening

- 11.1 A newborn may be excused from screening if the parent or legal guardian objects to the tests because the screening tests conflict with the religious tenets or practices of the parent or legal guardian.
- 11.2 In the event a religious exemption is claimed from the requirements for testing for Hereditary Disorders, the person otherwise responsible for submitting the specimen for ~~testing~~ screening shall be responsible for submitting a completed affidavit to the Delaware Newborn Screening Program Office, signed by the infant's parent or legal guardian, using the following language:
1. (I) (We) (am) (are) the (parent(s)) (legal guardian(s)) of (name of child)
  2. (I) (We) hereby (swear) (affirm) that (I) (we) subscribe to a belief in a relation to a Supreme Being involving duties superior to those arising from any human relation.
  3. (I) (We) further (swear) (affirm) that our belief is sincere and meaningful and occupies a place in (my) (our) life parallel to that filled by the orthodox belief in God.
  4. This belief is not a political, sociological or philosophical view of a merely personal moral code.
  5. This belief causes (me) (us) to request an exemption from the requirements for testing for Hereditary Disorders by the Delaware Newborn Screening Program for \_\_\_\_\_ (name of child).

\_\_\_\_\_  
Signature of Parent (s) or  
Legal Guardian(s)

SWORN TO AND SUBSCRIBED before me, a registered Notary Public, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.  
\_\_\_\_\_  
(Seal)

Notary Public  
My Commission Expires:

- 11.3 The Newborn Screening Refusal Form will be provided through the Newborn Screening Program Office.

## 12.0 Penalty for Non-compliance

Under the Authority granted to the Department of Health and Social Services, Division of Public Health under 16 **Del.C** §107, "whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Division shall be fined not less than \$100 and not more than \$1,000, together with costs, unless otherwise provided by law."

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## EXECUTIVE DEPARTMENT

### DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

Statutory Authority: 29 Delaware Code, Section 5029(a), (29 **Del.C.** §5029(a))

### PUBLIC NOTICE

The State of Delaware, Delaware Economic Development Office ("DEDO") and The Delaware Economic Development Authority (the "Authority") hereby give notice of their intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §§5029(a)

and 5054(e)(1) and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. The proposed regulations constitute a revision of procedures for the Council of Development Finance.

DEDO and the Authority solicit, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*.

Any such submissions should be mailed or delivered to Lee Porter, 99 Kings Highway, Dover, DE 19901 by March 3, 2013.

#### **401 Procedures Regarding Non-State Guaranteed Bonds**

Effective: February 1, 1982

Amended: January 1, 1987

##### **1.0 Enabling Legislation**

Pursuant to 29 **Del.C.** §5053(k), The Delaware Economic Development Authority (the "Authority") is directed to prescribe such regulations as may be necessary to carry out the purposes of the act creating the Authority, 29 **Del.C.** Subch. IV (the "Act"). The following regulations have been adopted by the Authority pursuant to the foregoing provision of the Act.

##### **2.0 Purpose**

The purpose of this Regulation ~~No. 2~~ is to regulate the administration of the Act, including, but not limited to, regulation of the process for applying to the Authority for the issuance of Bonds and the Authority's approval of such applications.

##### **3.0 Definitions**

Unless otherwise indicated, all capitalized terms used herein shall have the meaning ascribed to such terms in the Act.

##### **4.0 Application Procedures**

An application to the Authority for the approval of the issuance of a Bond shall be made on the application form provided by the Authority and must be completed according to the requirements stated therein. One (1) original and nine (9) copies of the completed application should be submitted to the Authority on or before the first (1st) day of the month preceding the month during which the council on Development Finance ("Council") will be asked to review an application. For example, for an application to be eligible for review by the Council at a May meeting, it should be submitted to the Authority on or before April 1.

##### **5.0 Project Approval and Standards**

5.1 Findings. In connection with the approval of the issuance of a Bond for a Project, the Act requires the Authority to make certain findings and determinations with respect to the Project. The Authority shall apply the following standards where applicable in making such findings and determinations:

5.1.1 Employment Standard. For a proposed Project, the Authority will review the information submitted by an Assisted Person to determine whether the Project will tend to maintain or provide gainful employment within the State. The standards to be considered will include, but not be limited to, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State, the effect of the Project on the tax base of the State and of the county or municipality in which the Project is to be located, and the expected effect that the Project will have on the development of new economic activity within the State.

5.1.2 Abandonment Standard. When applying the "employment standard," the Authority will take into consideration whether the proposed Project will cause or result in abandonment of an existing

facility elsewhere in the State by an Assisted Person or by the proposed operator or principal user of the Project. If a facility in the state is to be abandoned, a statement by the Assisted Person, operator or principal user that the existing facility in the State is to be abandoned because of obsolescence, lack of available labor or site limitations shall be prima facie proof that the Assisted Person has not violated the abandonment standard.

- 5.1.3 **Capability Standard.** In determining whether a proposed Project "will serve a public purpose by contributing to the prosperity, health or general welfare of the citizens of the State," the Assisted Person shall demonstrate to the Authority that the Assisted Person, operator, or principal user has the capability to, operate and maintain the Project efficiently and effectively. Financial strength and prior related experience by the Assisted Person, operator or principal user may be considered as well as the qualifications of management.
- 5.1.4 **Operator and User Standard.** An Assisted Person shall, if requested by the Authority or required in the application for financing, submit such information as is requested or required for each proposed operator or principal user of the Project. The Authority shall apply the same standards with respect to the operators and principal users of the Project as if they were the Assisted Person, unless there is good reason, established by the Assisted Person, to make the findings and determinations with respect to the Assisted Person alone. The financial strength of the Assisted Person and his capacity to manage or operate the Project, among other considerations, may be the basis for omitting such findings and determinations with respect to the operators or principal users.
- 5.1.5 **Commercial and Agricultural Business Standards.** In making findings and determinations with respect to the capital investment in a Project for an Agricultural Business or for a Commercial Business, the Authority will consider capital investment made and to be made in the proposed Project during a period of time commencing one (1) year prior to the date on which an application for financing is submitted to the Authority and terminating one year following the issuance of a Bond with respect thereto. The term "capital investment" shall be applied in accordance with generally accepted accounting principles.
- 5.2 **Adherence to Law.** In making a finding and determination that the Assisted Person has not been cited for a major labor law violation or illegal conduct involving moral turpitude, the Authority may, in its discretion, rely on a sworn affidavit of the Assisted Person or an officer of the Assisted Person in lieu of an opinion of counsel to the Assisted Person. If requested by the Authority, similar proof shall be obtained from any operator or principal user of a Project.
- 5.3 **Speculative Buildings.** The Authority may, after applying the foregoing standards, approve Projects to be financed with Bonds prior to a determination of the feasibility of the Project, provided that at the time the Bonds are issued, satisfactory evidence demonstrates to the Authority, in its sole discretion, the feasibility of the Project.

## **6.0 Initial Approval**

- 6.1 **Binding Obligation.** The initial approval of a Project for financing by the Authority will constitute official action on the part of the Authority demonstrating its intention to adopt a resolution authorizing the issuance of a Bond, provided that circumstances have not substantially changed, in the Authority's sole discretion, between the time of initial approval and the adoption of the resolution authorizing the issuance of a Bond.
- 6.2 **Approval Period and Extensions.** The initial approval will be effective for a period of one (1) year. If the applicant demonstrates that the Project has not been changed significantly and that the method of financing continues as originally intended, the Authority may grant no more than two (2) six (6)-month extensions, making the maximum approval period two (2) years, beginning on the date of the initial approval. If it is necessary that the approval continue beyond two (2) years, then a revised application reflecting any subsequent changes, along with updated financial information, must be submitted for review by the Authority and the Council.

## **7.0 Closing Documents**

# PROPOSED REGULATIONS

- 7.1 Deadlines re: Closing Documents. To the maximum extent feasible, closing documents should be processed according to the following schedule:
- 7.1.1 Draft closing documents should be forwarded to the Authority's ~~special counsel~~ Deputy Attorney General for review by bond counsel ~~not less~~ fewer than thirty (30) days prior to the anticipated closing date.
  - 7.1.2 Documents should be returned to bond counsel with suggested changes by all parties to the financing no ~~less~~ fewer than twenty (20) days prior to the anticipated closing date.
  - 7.1.3 Final closing documents should be forwarded by bond counsel to the Authority's special counsel not less than ten (10) days prior to the scheduled closing.
- 7.2 Mandatory Provisions in Closing Documents. All closing documents with respect to the issuance of a Bond by the Authority shall contain, at a minimum, provisions acceptable to the Authority with respect to its own responsibilities and protection, including, without limitation, provisions with respect to limited liability of the Authority, continued operation of the Project at all times in accordance with the requirements of the Act (including the employment requirements of the Act), insurance, payment of fees and expenses, indemnity, inspection of the Project premises and records with respect to the Project, transfer or assignment of the Project property, and substitution of Assisted Persons (including, if applicable, transfer or assignment of interests in the Assisted Person).
- 7.3 Authority Not to Hold Title. All transactions should be structured so as to eliminate title to the Project property being at any time in the name of the Authority.
- 7.4 Financial Statements. Unless waived by the Authority in its sole discretion, the Assisted Person shall, during the time any Bond is outstanding, submit to the Authority, on an annual basis, financial statements prepared by an independent certified public accountant. Except in the case of Assisted Persons who are individuals, the Authority expects such statements to be audited, but may in its sole discretion accept a review. Such statements should include, at a minimum:
- 7.4.1 A balance sheet, income statement, statement of retained earnings, statement of changes in financial position, all accompanying notes to the financial statements, and the accountant's report.
  - 7.4.2 If the Assisted Person is a publicly-held company, SEC Form IOK must accompany the financial statements.
  - 7.4.3 If the Assisted Person is not a publicly-held company, annual financial statements of each principal of the Assisted Person may be required, in the sole discretion of the Authority.
- 7.5 Liability Insurance and Indemnity. Prior to the issuance of a Bond by the Authority, the Assisted Person shall establish to the satisfaction of the Authority that ~~(1) adequate liability insurance has been obtained to protect the Authority with respect to the Project during the period of time the Bond will be outstanding, and (2) adequate indemnity of the Authority has been provided against claims or losses resulting from the authorization and issuance of the Bond, or the refinancing of a Bond with respect to the Project.~~
- 7.6 Post Issuance Compliance and Record Retention. The Assisted Person shall certify, in a form acceptable to the Authority, that it shall comply with the DEDA Post Issuance Compliance and Record Retention Policy.

## 8.0 Fees

- 8.1 Application Fee. Each applicant shall deliver to the Authority with its application a check made payable to the Authority in the amount of Two Hundred Fifty Dollars (\$250) before an application will be considered by the Authority. Such application fee ~~is~~ shall not be refundable.
- 8.2 Approval Fee. ~~After initial approval of a Project, the applicant shall forthwith deposit Five Thousand Dollars (\$5,000) with the Authority. If a Bond is issued for the Project, the Assisted Person shall pay to the Authority on the day the Bond is issued any additional amount which, together with the Five Thousand Dollars (\$5,000) previously deposited with the Authority, will equal An amount equal to one-half percent (.50%) of the face amount of Bonds to be issued up to the first eOne Hundred Fifty Million Dollars (\$150,000,000) face amount of Bonds shall be payable to the Authority on the day the Bond is issued. If the face amount of Bonds to be issued exceeds One Hundred Fifty Million Dollars~~

~~(\$150,000,000), the Assisted Person shall pay to the Authority on the day the Bonds are issued any additional amount which, together with the Five Thousand Dollars (\$5,000) previously deposited with the Authority, will equal the sum of one-half percent (.50%) of the first One Hundred Fifty Million Dollars (\$150,000,000) face amount of Bonds to be issued and An amount equal to one-quarter percent (.25%) of the face, amount of Bonds to be issued in excess of One Hundred Fifty Million Dollars (\$150,000,000) shall be payable on the day the Bond is issued. If a Bond is not issued for a proposed Project, the applicant can request a return of the deposit, the balance of which will be refunded after the Authority has deducted its reasonable expenses, determined in the Authority's sole discretion.~~

- 8.3 Administration Fees. ~~During the period of time a Bond is outstanding, administration fees of Thirty Five Dollars (\$35) per hour for any work performed in connection with a Project will be charged by the Authority to each Assisted Person. The Authority expects that such fFees will shall be at least Four Hundred Dollars (\$400) per year, and may charge an annual administration fee based on this assumption or such other annual fee as the Authority, in its sole discretion, expects to approximate increase, at the Authority's sole discretion, to reflect the Authority's annual administration expenses in connection with a Project.~~
- 8.4 Fees Payable Unless Waived. The foregoing fees shall, unless otherwise waived by the Authority in its sole discretion, be paid with respect to all Bonds issued by the Authority, including, without limitation, refunding Bonds previously issued by the Authority.

**403 Administration and Operation of Council on Development Finance**

**1.0 Definitions**

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

**"Chairperson"** means the Chairperson of the Council.

**"Clawback"** means an obligation by a grantee to repay a part or all of a grant for a failure to meet benchmark employment, cessation of operations in the State, or other terms contained in the grant agreement.

~~**"Competitiveness Fund"** shall have the meaning given pursuant to 75 Del. Laws, c. 308, §36(d) (July 1, 2004), 75 Del. Laws, c. 98, §39(d) (July 1, 2005), and 75 Del. Laws, c. 353, §40(d) (July 1, 2006).~~

**"Council"** means the Council on Development Finance.

**"DEDA"** means The Delaware Economic Development Authority.

**"DEDO"** means the Delaware Economic Development Office.

**"Director"** means the Director of DEDO in his or her capacity as Director, or as the Chairperson of DEDA.

**"Member or Members"** means the Members appointed to serve on the Council in accordance with 29 Del.C. §5007.

**"Project or Projects"** shall have the meaning given pursuant to 29 Del.C. §5052(12).

**"Strategic Fund"** shall have the meaning given pursuant to 29 Del.C. §§50247 – 5029.

**"Substantive Changes"** means

- a. ~~a 4% or lower decrease of more than 1 percentage point in the interest rate for any fixed or variable rate loan made by DEDO or DEDA;~~
- b. any changes in the collateral of a loan which would cause result in a decrease in the security position of ~~DEDO or DEDA;~~ and
- c. a 10% or greater increase in the amount of any loan or grant;
- d. an extension of loan payment schedule; and v) a change employment benchmark date or clawback in a grant agreement.

**2.0 Enabling Legislation**

# PROPOSED REGULATIONS

Pursuant to ~~29 Del.C. §5003~~, DEDO was established pursuant to 29 Del.C. §5003. Pursuant to ~~29 Del.C. §5007~~ The Council was established pursuant to 29 Del.C. §5007. Pursuant to ~~29 Del.C. §5053~~ DEDA was established pursuant to 29 Del.C. §5053. DEDO and DEDA have authority to make regulations pursuant to 29 Del.C. §§5005(11) and 5053(k).

### 3.0 Purpose

The purpose of this Regulation is to enhance the coordination between the Council and DEDO and set forth certain procedures to be used in the administration and operation of the Council.

### 4.0 Procedures

- 4.1 In the event of any Council vacancy, Members will encourage the Governor to fill such a vacancy promptly.
- 4.2 ~~The Council will request staff to develop an economic matrix that includes certain information on companies recommended for funding, including but not limited to, information on employee benefits such as health care and the potential for any unintended consequence stemming from the company's operations.~~
- 4.32 The Council will, consistent with the provisions of 29 Del.C. §§10001—10005 Ch. 100 and 8 DE Admin. C. 1500, make certain information contained in a company's application available to the public upon written request.
- 4.43 The Council will, when practicable, schedule and locate meetings of the Council in a way that achieves geographic balance and centrality.
- 4.54 Any ~~Substantive~~ Changes made to any agreement or contract excluding any agreement contract or associated document related to any conduit bond issued by DEDA, after initial review by the Council shall be resubmitted to the Council for additional review and recommendation.
- 4.65 DEDO will organize and provide orientation for all new Council Members ~~and will organize and provide an annual retreat for all Council Members~~. The orientation will include:
- 4.5.1 the responsibilities of Council Members and DEDO staff;
- 4.5.2 discussion of applicable state law/regulations; and
- 4.5.3 a briefing by the staff of the Delaware Public Integrity Commission on matters, including but not limited to, rules of conduct, conflict of interest, and public disclosure. ~~The retreat will include reports on industry trends, emerging issues and emerging financing programs.~~
- 4.7 ~~The Council requires staff to provide Members with periodic update reports on each recipient of all funding.~~
- 4.86 The Council will, consistent with the State Employees', Officers' and Officials Code of Conduct, 29 Del.C. §§5804, 5805 and 5806, Ch. 58, encourage Members to identify prospective companies and ~~turn any information directly over to the Council staff for follow up~~ business development opportunities to DEDO.
- 4.97 DEDO shall present an annual operating budget report to the Council will, once a year, cooperate with the staff of DEDO in matters relating to DEDO's strategic marketing plan, including the annual review of the plan for comment and review.
- 4.10 ~~The Council will cooperate with the staff of DEDO in matters relating to the utilization of the DEDO website for news and information about Council meeting dates, times, locations, agendas, meeting minutes and Member contact information.~~
- 4.148 Any public disclosure of funding by DEDO, prior to approval by the Council requires that: i) DEDO make no announcement regarding the awarding of any funding prior to review by the Council and approval by the Director; or ii) that any announcement regarding the awarding of any funding, when the matter is under DEDO control, include that the by DEDO shall include a disclaimer which indicates that such funding is subject to review and recommendation of the Council.
- 4.129 Twice a year, DEDO staff will bring shall provide an annual Portfolio Report to the Council for review, which shall include, but not be limited to, compliance with benchmark employment levels percents

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~~above sustainable wages, company investments and the repayment status for outstanding loans made by DEDO and repayment status for outstanding loans made by DEDA.~~

- 4.1310 ~~Projects with approvals that are more than two years old without an executed agreement will be brought to the Council's attention. Council shall review any Strategic Fund loan or grant in which the applicant has not entered into a contract with DEDA within one year of approval.~~
- 4.14 ~~The Director will brief the Chairperson on Projects under consideration as soon as DEDO completes its internal review and before DEDO makes an offer.~~
- 4.1511 ~~DEDO staff will provide reports~~ information to the Council on return on investment, gross State product and personal income tax data related to each Project where such information is used to determine the value of the Project in the Application Evaluation Report.
- 4.1612 ~~DEDO will continue to inform~~ shall present biannual Strategic Fund cash management reports to the Council biannually on the fiscal status of all Projects including the which shall include, but not be limited to total Strategic Funds available, balances, amounts encumbered (and corresponding dates of encumbrances), Strategic funds committed to future Projects and available Strategic Fund balances.
- 4.17 ~~DEDO will make sure that original offer letters for each Project are presented to the Council when the original offer letter resulted in an application being submitted to the Council for review and recommendation.~~
- 4.18 ~~DEDO will present the Council with recommendations regarding how the Strategic Fund and Competitiveness Fund balances should be used on an allocation basis to help various economic development sectors.~~
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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(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 601

**REGULATORY IMPLEMENTING ORDER****601 Schools and Law Enforcement Agencies****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education intends to amend 14 **DE Admin. Code** 601 Schools and Law Enforcement. The regulation was reviewed pursuant to the five year review cycle and also reflects changes because of legislation passed during the 146th General Assembly, specifically Senate Bill No. 193; House Bill No. 268 with House Amendment No. 1; and House Bill No. 243 with House Amendments No. 1 & 2 and Senate Amendment No. 1. The legislation that has been enacted relates to work from the School Discipline Task Force and work in the area of bullying and cyberbullying.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on December 8, 2012, in the form hereto attached as Exhibit "A". The Department did not receive comments on the amendments to this regulation.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 601 Schools and Law Enforcement. The regulation was reviewed pursuant to the five year review cycle and also reflects changes because of legislation passed during the 146th General Assembly, specifically Senate Bill No. 193; House Bill No. 268 with House Amendment No. 1; and House Bill No. 243 with House Amendments No. 1 & 2 and Senate Amendment No. 1.

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**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 601 Schools and Law Enforcement. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 601 Schools and Law Enforcement attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 601 Schools and Law Enforcement 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** 601 Schools & Law Enforcement amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 601 Schools and Law Enforcement 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 January 17, 2013. 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 17th day of January 2013.

**Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 17th day of January 2013

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 564 (16 DE Reg. 564). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**601 Schools and Law Enforcement Agencies**

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1531

**REGULATORY IMPLEMENTING ORDER**

**1531 Middle Level English Language Arts Teacher**

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Middle Level English Language Arts Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on December 1, 2012. The notice invited written comments. No comments were received.

## II. FINDINGS OF FACTS

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

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1531 of the Administrative Code of Regulations of the Professional Standards Board.

## V. EFFECTIVE DATE OF ORDER

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

### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF JANUARY, 2013

Kathleen Thomas, Chair	Chris Kenton
Michael Casson	David Kohan
Joanne Christian	Jill Lewandowski
Samtra Devard	Wendy Murray
Stephanie DeWitt	Mary Pinkston
Marilyn Dollard	Whitney Price
Karen Gordon	Jacque Wisnauskas
Cristy Greaves	

**IT IS SO ORDERED** the 17<sup>th</sup> day of January, 2013.

#### Department of Education

Mark Murphy, Secretary of Education

**Approved this 17<sup>th</sup> day of January, 2013**

#### State Board of Education

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

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 567 (16 DE Reg. 567). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1531 Middle Level English Language Arts Teacher**

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1532

### REGULATORY IMPLEMENTING ORDER

#### 1532 Middle Level Mathematics Teacher

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Middle Level Mathematics Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on December 1, 2012. The notice invited written comments. No comments were received.

#### II. FINDINGS OF FACTS

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

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1532 of the Administrative Code of Regulations of the Professional Standards Board.

#### V. EFFECTIVE DATE OF ORDER

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

#### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3rd DAY OF JANUARY, 2013

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

Joanne Christian

Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Jacque Wisnauskas

Cristy Greaves

IT IS SO ORDERED the 17<sup>th</sup> day of January, 2013.

**Department of Education**

Mark Murphy, Secretary of Education

**Approved this 17<sup>th</sup> day of January, 2013**

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

Randall L. Hughes

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 568 (16 DE Reg. 568). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1532 Middle Level Mathematics Teacher**

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1533

**REGULATORY IMPLEMENTING ORDER**

**1533 Middle Level Science Teacher**

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1533 Middle Level Science Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Middle Level Science Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on December 1, 2012. The notice invited written comments. No comments were received.

**II. FINDINGS OF FACTS**

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

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

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## IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1533 of the Administrative Code of Regulations of the Professional Standards Board.

## V. EFFECTIVE DATE OF ORDER

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

### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF JANUARY, 2013

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

Joanne Christian

Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Jacque Wisnauskas

Cristy Greaves

### IT IS SO ORDERED the 17<sup>th</sup> day of January, 2013.

#### Department of Education

Mark Murphy, Secretary of Education

### Approved this 17<sup>th</sup> day of January, 2013

#### State Board of Education

Teri Quinn Gray, Ph.D., President

Gregory Coverdale

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

Randall L. Hughes

Barbara B. Rutt

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 570 (16 DE Reg. 570). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<http://regulations.delaware.gov/register/february2013/final/16 DE Reg 842 02-01-13.htm>

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 **DE Admin. Code** 1534

## REGULATORY IMPLEMENTING ORDER

### 1534 Middle Level Social Studies Teacher

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the

requirements for a Middle Level Social Studies Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on December 1, 2012. The notice invited written comments. No comments were received.

## II. FINDINGS OF FACTS

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

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1534 of the *Administrative Code of Regulations* of the Professional Standards Board.

## V. EFFECTIVE DATE OF ORDER

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

### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF JANUARY, 2013

Kathleen Thomas, Chair	Chris Kenton
Michael Casson	David Kohan
Joanne Christian	Jill Lewandowski
Samtra Devard	Wendy Murray
Stephanie DeWitt	Mary Pinkston
Marilyn Dollard	Whitney Price
Karen Gordon	Jacque Wisnauskas
Cristy Greaves	

**IT IS SO ORDERED** the 17<sup>th</sup> day of January, 2013.

#### Department of Education

Mark Murphy, Secretary of Education

Approved this 17<sup>th</sup> day of January, 2013

#### State Board of Education

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

### 1534 Middle Level Social Studies Teacher

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 570 (16 DE Reg. 570). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1534 Middle Level Social Studies Teacher**

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1540

### REGULATORY IMPLEMENTING ORDER

#### 1540 Secondary English Language Arts Teacher

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1540 Secondary English Language Arts Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Secondary English Language Arts Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on December 1, 2012. The notice invited written comments. No comments were received.

#### II. FINDINGS OF FACTS

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

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 DE Admin. Code 1540 of the Administrative Code of Regulations of the Professional Standards Board.

#### V. EFFECTIVE DATE OF ORDER

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

#### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF JANUARY, 2013

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

Joanne Christian

Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Jacque Wisnauskas

Cristy Greaves

IT IS SO ORDERED the 17<sup>th</sup> day of January, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 17<sup>th</sup> day of January, 2013

**State Board of Education**

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

Gregory Coverdale  
 Terry M. Whittaker, Ed.D.  
 Randall L. Hughes

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 573 (16 DE Reg. 573). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1540 Secondary English Language Arts Teacher**

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
 14 **DE Admin. Code** 1542

**REGULATORY IMPLEMENTING ORDER**

**1542 Secondary Mathematics Teacher**

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Secondary Mathematics Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on December 1, 2012. The notice invited written comments. No comments were received.

**II. FINDINGS OF FACTS**

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

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. TEXT AND CITATION**

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1542 of the Administrative Code of Regulations of the Professional Standards Board.

**V. EFFECTIVE DATE OF ORDER**

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

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF JANUARY, 2013**

Kathleen Thomas, Chair  
 Michael Casson  
 Joanne Christian  
 Samtra Devard  
 Stephanie DeWitt

Chris Kenton  
 David Kohan  
 Jill Lewandowski  
 Wendy Murray  
 Mary Pinkston

Marilyn Dollard  
Karen Gordon  
Cristy Greaves

Whitney Price  
Jacque Wisnauskas

**IT IS SO ORDERED the 17<sup>th</sup> day of January, 2013.**

**Department of Education**  
Mark Murphy, Secretary of Education

**Approved this 17<sup>th</sup> day of January, 2013**

**State Board of Education**  
Teri Quinn Gray, Ph.D., President  
Jorge L. Melendez, Vice President  
G. Patrick Heffernan  
Barbara B. Rutt

Gregory Coverdale  
Terry M. Whittaker, Ed.D.  
Randall L. Hughes

\* **Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 575 (16 DE Reg. 575). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1542 Secondary Mathematics Teacher**

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## **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1544

### **REGULATORY IMPLEMENTING ORDER**

**1544 Secondary Social Studies Teacher**

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Secondary Social Studies Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on December 1, 2012. The notice invited written comments. No comments were received.

## **II. FINDINGS OF FACTS**

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

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

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## **IV. TEXT AND CITATION**

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1544 of the Administrative Code of Regulations of the Professional Standards

Board.

## V. EFFECTIVE DATE OF ORDER

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

### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF JANUARY, 2013

Kathleen Thomas, Chair	Chris Kenton
Michael Casson	David Kohan
Joanne Christian	Jill Lewandowski
Samtra Devard	Wendy Murray
Stephanie DeWitt	Mary Pinkston
Marilyn Dollard	Whitney Price
Karen Gordon	Jacque Wisnauskas
Cristy Greaves	

IT IS SO ORDERED the 17<sup>th</sup> day of January, 2013.

### Department of Education

Mark Murphy, Secretary of Education

Approved this 17<sup>th</sup> day of January, 2013

### State Board of Education

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

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 576 (16 DE Reg. 576). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1544 Secondary Social Studies Teacher**

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1549

## REGULATORY IMPLEMENTING ORDER

**1549 Dance Teacher**

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1549 Dance Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Dance Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware Register of Regulations on December 1, 2012. The notice invited written comments. No comments were received.

### II. FINDINGS OF FACTS

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

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

### IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1549 of the Administrative Code of Regulations of the Professional Standards Board.

### V. EFFECTIVE DATE OF ORDER

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

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF JANUARY, 2013**

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

Joanne Christian

Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Jacque Wisnauskas

Cristy Greaves

**IT IS SO ORDERED the 17<sup>th</sup> day of January, 2013.**

#### Department of Education

Mark Murphy, Secretary of Education

**Approved this 17<sup>th</sup> day of January, 2013**

#### State Board of Education

Teri Quinn Gray, Ph.D., President

Gregory Coverdale

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

Randall L. Hughes

Barbara B. Rutt

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 578 (16 DE Reg. 578). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1549 Dance Teacher**

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### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1558

### REGULATORY IMPLEMENTING ORDER

## 1558 Theater Teacher

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1558 Theater Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Theater Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on December 1, 2012. The notice invited written comments. No comments were received.

## II. FINDINGS OF FACTS

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

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1558 of the Administrative Code of Regulations of the Professional Standards Board.

## V. EFFECTIVE DATE OF ORDER

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

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF JANUARY, 2013**

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

Joanne Christian

Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Jacque Wisnauskas

Cristy Greaves

**IT IS SO ORDERED the 17<sup>th</sup> day of January, 2013.****Department of Education**

Mark Murphy, Secretary of Education

**Approved this 17<sup>th</sup> day of January, 2013****State Board of Education**

Teri Quinn Gray, Ph.D., President

Gregory Coverdale

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

Randall L. Hughes

Barbara B. Rutt

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 580 (16 DE Reg. 580). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1558 Theater Teacher**

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1574

### REGULATORY IMPLEMENTING ORDER

#### 1574 Teacher of Students Who Are Deaf or Hard of Hearing

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1574 Teacher of Students Who Are Deaf or Hard of Hearing. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to clarify when this certification is required, to update current coursework requirements and to accommodate current formatting. This regulation sets forth the requirements for a Teacher of Students Who Are Deaf or Hard of Hearing.

Notice of the proposed adoption of the regulation was published in the Delaware *Register of Regulations* on December 1, 2012. The notice invited written comments. Similar comments were received from the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD). Some of the proposed grammatical edits were incorporated into the final regulation, as well as substituting the word 'students' for 'children' in the last sentence in section 5.0. The comments noted a difference in the dates within the "grandfather" provision in the same section and the date in another recently amended regulation with a grandfather date back to 2005. The January 11, 2007 date within 1574 is based on the initial effective date of this Standard Certificate regulation as adopted by the Professional Standards Board and the State Board of Education. Previously recognized valid certifications were converted to the current Standard Certificate with the 2007 adoption. The written comments also included concerns that the 18 month timeframe was not long enough for teachers to complete the required 21 credits. The PSB considered the information and noted that an educator could extend the time beyond the initial 18 month phase-in for up to two additional years by having the Local Employing Agency (LEA) obtain an Emergency Certificate for the educator. The PSB determined not to extend the 18 month window. Considering the anticipated February 11, 2013 regulation effective date, it would allow educators to gather the required skills and knowledge by the onset of the 2014-2015 school year. Other changes in the regulation are to clarify that this certification is mandatory for educators whose primary assignment is working with this category of students; however, many educators have already attained this certification or some of the requisite coursework prior to employment or subsequently. An additional concern was shared that more American Sign Language (ASL) be required. In consulting with educators and administrators working with this category of students, it is recognized that there are differences of opinion in this area and it is understood that not all students within this category are actually taught content with ASL. It was also confirmed that a LEA may provide for the interpretation services to meet individual students' needs or if the LEA has a need for an educator with deep ASL content and knowledge, it would be incumbent upon the LEA to work through the posting and hiring process with those requirements as a priority. The SCPD's comments recognized that there are different opinions in this area. Based on the information gathered, the PSB noted that the ALS course is one option in the course count and determined to leave the amended course options as originally proposed.

#### II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to clarify when this certification is mandated, update current coursework requirements, and to accommodate current formatting.

#### III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "A" is hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 DE Admin. Code 1574 of the Administrative Code of Regulations of the Professional Standards Board.

#### V. EFFECTIVE DATE OF ORDER

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

#### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF JANUARY, 2013

Kathleen Thomas, Chair	Chris Kenton
Michael Casson	David Kohan
Joanne Christian	Jill Lewandowski
Samtra Devard	Wendy Murray
Stephanie DeWitt	Mary Pinkston
Marilyn Dollard	Whitney Price
Karen Gordon	Jacque Wisnauskas
Cristy Greaves	

IT IS SO ORDERED the 17<sup>th</sup> day of January, 2013.

#### Department of Education

Mark Murphy, Secretary of Education

Approved this 17<sup>th</sup> day of January, 2013

#### State Board of Education

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

#### 1574 Teacher of Students Who Are Deaf or Hard of Hearing

#### 4.0 Content

This regulation shall apply to the requirements for a standard certificate for Teacher of Students Who Are Deaf or Hard of Hearing pursuant to 14 Del.C., §1220.

#### 2.0 Definitions

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

**"Certification"** means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

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

**"Educator"** means a person licensed and certified by the State under 14 Del.C. §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. The term 'educator' does not include substitute teachers.

**"Examination of Content Knowledge"** means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

**"Fifteen (15) Credits or Their Equivalent in Professional Development"** means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours taken either as

part of a degree program or in addition to it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.

**"Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Major or its Equivalent"** means a minimum of thirty (30) semester hours of course work in a particular content area.

**"NASDTEC"** means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

**"NCATE"** means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.

**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

**"Standards Board"** means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

**"State Board"** means the State Board of Education of the State pursuant to 14 **Del.C.** §104.

**"Valid and Current License or Certificate from Another State"** means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.

## 3.0 Standard Certificate

The Department shall issue a Standard Certificate as a Teacher of Students Who Are Deaf or Hard of Hearing to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

- 3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
  - 3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or
  - 3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Deaf Education; or
  - 3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or
  - 3.1.4 Holding a master's degree in deaf education from a program approved by the Council for Education of the Deaf offered through a regionally accredited college or university; or
  - 3.1.5 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first standard certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

- 3.2 ~~For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieved a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or~~
- 3.3 ~~Met the requirements for licensure and holding a valid and current license or certificate from another state as a Teacher of the Deaf and Hard of Hearing;~~
- 3.3.1 ~~The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or~~
- 3.4 ~~Met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.~~
- 3.5 ~~If additional criteria are imposed by a specific regulation in the area for which a Standard Certificate is sought, the additional requirements must also be met.~~

#### **4.0 Multiple Certificates**

~~Educators may hold certificates in more than one area.~~

#### **5.0 Application Requirements**

~~An applicant for a Standard Certificate shall submit:~~

- 5.1 ~~Official transcripts; and~~
- 5.2 ~~Official scores on the Praxis II examination if applicable and available; or~~
- 5.3 ~~Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or~~
- 5.4 ~~An official copy of the out of state license or certification, if applicable.~~
- 5.5 ~~If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.~~

#### **6.0 Application Procedures for License Holders**

~~If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.~~

#### **7.0 Effect of Regulation**

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

#### **8.0 Validity of a Standard Certificate**

~~A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's~~

~~Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

## **9.0 Secretary of Education Review**

~~The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Standard Certificate on an individual basis and grant a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.~~

## **1.0 Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for a Teacher of Students Who Are Deaf or Hard of Hearing. Eighteen (18) months from the effective date of this regulation, this certification shall be required for all educators within the Delaware public school system whose primary assignment is teaching children who are deaf or hard of hearing.
- 1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

## **2.0 Definitions**

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

## **3.0 Standard Certificate**

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher of Students Who Are Deaf or Hard of Hearing to an educator who has met the following:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
  - 3.1.3 Has satisfied the additional requirements in this regulation.

## **4.0 Additional Requirements**

- 4.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:
  - 4.1.1 Holding a master's degree from a regionally accredited college or university in Deaf Education from a program approved by the Council for Education of the Deaf; or
  - 4.1.2 The successful completion of twenty-one (21) credits from a regionally accredited college or university or their equivalent in professional development as approved by the Department in the following areas:
    - 4.1.2.1 Human Growth and Development Characteristics of the Deaf and Hard of Hearing (3 credits);
    - 4.1.2.2 Assessment, Diagnosis and Prescriptive Techniques for the Deaf or Hard of Hearing (3 credits);
    - 4.1.2.3 Curriculum and Instructional Methods for the Deaf or Hard of Hearing (3 credits);
    - 4.1.2.4 Auditory Language Development (3 credits);
    - 4.1.2.5 Audiology (3 credits);

- 4.1.2.6 Deaf and Hard of Hearing Practicum (3 credits); and either  
 4.1.2.7 Visual Language Development (3 credits); or  
 4.1.2.8 American Sign Language (3 credits).

## 5.0 Past Certification Recognized

The Department shall recognize a Standard Certificate Teacher of Students Who **[aA]**re Deaf or Hard of Hearing issued by the Department between January 11, 2007 and the effective date of this regulation. A teacher holding a Standard Certificate Teacher of Students Who **[aA]**re Deaf or Hard of Hearing issued between January 11, 2007 and the effective date of this regulation shall be considered certified to teach **[children students]** who are deaf or hard of hearing.

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
 14 **DE Admin. Code** 1575

### REGULATORY IMPLEMENTING ORDER

#### 1575 Teacher of Students with Visual Impairments

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1575 Teacher of Students with Visual Impairments. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to clarify when this certification is required, update current course requirements and to accommodate current formatting. This regulation sets forth the requirements for a Teacher of Students with Visual Impairments.

Notice of the proposed adoption of the regulation was published in the Delaware *Register of Regulations* on December 1, 2012. The notice invited written comments. Similar comments were received from the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD). The comments noted a difference in the dates within the "grandfather" provision in the same section and the date in another recently amended regulation with a grandfather date back to 2005. The January 11, 2007 date within 1575 is based on the initial effective date of this Standard Certificate regulation as adopted by the Professional Standards Board and the State Board of Education. Previously recognized valid certifications were converted to the current Standard Certificate with the 2007 adoption. The written comments also included concerns that the 18 month timeframe was not long enough for teachers to complete the required credits. The PSB considered the information and noted that an educator could extend the time beyond the initial 18 month phase-in for up to two additional years by having the Local Employing Agency obtain an Emergency Certificate for the educator. The PSB determined not to extend the 18 month window. Considering the anticipated February 11, 2013 effective date, it would allow educators to gather the required skills and knowledge by the onset of the 2014-2015 school year. Other changes in the regulation are to clarify that this certification is mandatory for educators who's primary assignment is working with this category of students; however, many educators have already attained this certification or some of the requisite coursework prior to employment or subsequently. The comment also pointed out requirements mandated for a new teacher of the visually impaired in 14 **Del.C.** §206 that were deleted from the published amendments. The references to 14 **Del.C.** §206 were inadvertently deleted in the published draft and the PSB appreciates the Councils pointing out the error. Prior to Final Approval, this reference was corrected and remains in the requirements in Section 3.0.

#### II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to clarify when this certification is mandated, update current coursework requirements, and to accommodate current formatting.

#### III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1575 of the Administrative Code of Regulations of the Professional Standards Board.

#### V. EFFECTIVE DATE OF ORDER

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

#### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF JANUARY, 2013

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

Joanne Christian

Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Jacque Wisnauskas

Cristy Greaves

**IT IS SO ORDERED** the 17<sup>th</sup> day of January, 2013.

#### Department of Education

Mark Murphy, Secretary of Education

Approved this 17<sup>th</sup> day of January, 2013

#### State Board of Education

Teri Quinn Gray, Ph.D., President

Gregory Coverdale

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

Randall L. Hughes

Barbara B. Rutt

#### 1575 Teacher of Students with Visual Impairments

##### 1.0 Content

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Teacher of Students with Visual Impairments. This regulation does not apply to Orientation and Mobility Specialists who are certified by the Academy of Certification of Vision Rehabilitation and Education Professionals.~~

##### 2.0 Definitions

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

~~“**Certification**” means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.~~

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

~~“Educator” means a person licensed and certified by the State under 14 Del.C. §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board approved by the State Board. The term ‘educator’ does not include substitute teachers.~~

~~“Examination of Content Knowledge” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.~~

~~“Fifteen (15) Credits or Their Equivalent in Professional Development” means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.~~

~~“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness;~~

~~“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

~~“Major or Its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area.~~

~~“NASDTEC” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.~~

~~“NCATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.~~

~~“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill, or education to practice in a particular area, teach a particular subject, or teach a category of students.~~

~~“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1201.~~

~~“State Board” means the State Board of Education of the State pursuant to 14 Del.C. §104.~~

~~“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.~~

### 3.0 Standard Certificate

In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher of Students with Visual Impairments, to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License, or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, who has met the requirements set forth below and in 14 Del.C. §206(d):

- 3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
- 3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or
  - 3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in educating Visually Impaired Students; or

- ~~3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or~~
- ~~3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactorily completing a minimum of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and~~
  - ~~3.1.4.1 A minimum of fifteen (15) graduate or undergraduate credits from a regionally accredited college or university, taken either as part of a degree program or in addition to it, to include:
    - ~~3.1.4.1.1 Anatomy and Physiology of the Eye;~~
    - ~~3.1.4.1.2 Braille and Nemeth Code;~~
    - ~~3.1.4.1.3 Orientation/Mobility for the Teacher of the Visually Impaired;~~
    - ~~3.1.4.1.4 Education for the Visually Impaired;~~
    - ~~3.1.4.1.5 Assistive Technology; or~~
    - ~~3.1.4.1.6 Diagnosis/Assessment/IEP Development.~~~~
- ~~3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieved a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or~~
- ~~3.3 Met the requirements for licensure and holding a valid and current license or certificate from another state as a Teacher of the Visually Impaired;~~
  - ~~3.3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or~~
- ~~3.4 Met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.~~

## **4.0 Multiple Certificates**

Educators may hold certificates in more than one area.

## **5.0 Application Requirements**

An applicant for a Standard Certificate shall submit:

- ~~5.1 Official transcripts; and~~
- ~~5.2 Official scores on the Praxis II examination if applicable and available; or~~
- ~~5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or~~
- ~~5.4 An official copy of the out of state license or certification, if applicable.~~
- ~~5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.~~

## **6.0 Application Procedures for License Holders**

If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional

~~Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.~~

### **7.0 Effect of Regulation**

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

### **8.0 Validity of a Standard Certificate**

~~A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

### **9.0 Secretary of Education Review**

~~The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Standard Certificate on an individual basis and grant a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.~~

### **1.0 Content**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Teacher of Students with Visual Impairments. Eighteen (18) months from the effective date of this regulation, this certification shall be required for all educators within the Delaware public school system whose primary assignment is teaching children with visual impairments. This regulation does not apply to Orientation and Mobility Specialists who are certified by the Academy of Certification of Vision Rehabilitation and Education Professionals.

### **2.0 Definitions**

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

### **3.0 Standard Certificate**

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher of Students with Visual Impairments, to an educator who [has met the requirements in 14 Del.C. §206(d) and] has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

- 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and.
- 3.1.3 Has satisfied the additional requirements in this regulation.

#### **4.0 Additional Requirements**

- 4.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:
  - 4.1.1 Holding a bachelor's or master's degree from a regionally accredited college or university with a major or its equivalent in educating Visually Impaired Students from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or
  - 4.1.2 The successful completion of seventeen (17) credits from a regionally accredited college or university or their equivalent in professional development as approved by the Department in the following areas:
    - 4.1.2.1 Anatomy and Physiology of the Eye (3 credits);
    - 4.1.2.2 Braille and Nemeth Code (3 credits);
    - 4.1.2.3 Assessment of Students with Visual Impairments (3 credits);
    - 4.1.2.4 Methods of Instruction for Students with Visual Impairments (3 credits);
    - 4.1.2.5 Assistive Technology (3 credits); and
    - 4.1.2.6 Orientation/Mobility for the Teacher of Students with Visual Impairments (2 credits).

#### **5.0 Past Certification Recognized**

The Department shall recognize a Standard Certificate Teacher of Students With Visual Impairments issued by the Department between January 11, 2007 and the effective date of this regulation. A teacher holding a Standard Certificate Teacher of Students With Visual Impairments issued between January 11, 2007 and the effective date of this regulation shall be considered certified to teach children with visual impairments.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 Del.C. §7903(10))  
16 DE Admin. Code 3201

### 3201 Skilled and Intermediate Care Nursing Facilities

#### ORDER

#### NATURE OF THE PROCEEDINGS:

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

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

#### SUMMARY OF PROPOSED CHANGE

These revisions concern the information that must be contained in the facility's emergency plans, establishes a uniform format for the plan and requires that each facility submit copies of certificates demonstrating that two staff members have completed FEMA's Incident Command System training.

**Statutory Authority**

16 Del.C. ch. 11, Nursing Facilities and Similar Facilities

**Background**

Partly as result of circumstances encountered by the Division and the facilities it regulates during and after Hurricane Irene in 2011 the Division recognized a need to strengthen the emergency preparedness capabilities of our facilities. The Division joined with the University Of Delaware College Of Nursing and Emergency preparedness in conducting a two day seminar for long term care facility administrators was conducted in the spring of 2012. The Division also contracted with an emergency preparedness consulting firm that is presently working with each facility to develop an all hazards plan. This regulatory amendment delineates what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

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

The Governor's Advisory Council for Exceptional Citizens, the Developmental Disabilities Council, and the State Council for Persons with Disabilities and the Delaware Health Care Facilities Association offered the comments and recommendations summarized below. DLTCRP has considered each comment and responds as follows:

**Comment:** §8.6.3 could be "renumbered" as §8.7. Section 8.6 is a sentence which requires facilities to submit a plan and certificates. Section 8.6.3 is another independent sentence which does not comport with the format and grammar in §8.6.

**Agency Response:** Amended as follow:

~~8.6.3 The Division may grant an extension of time for either requirement in 8.6 upon request and for good cause shown.~~

**8.7 The Division may grant an extension of time for either requirement in 8.6 upon request and for good cause shown]**

**Comment:** §8.6 does not literally require submission of plans in connection with initial license applications. The skilled and intermediate facility "licensing requirements and procedures" regulation (16 DE Admin. Code 3201 §4.0 requires facilities to comply with initial and renewal licensing standards codified at 16 Del.C., ch. 11. Title 16 §1104(e) refers to an "annual renewal application". Therefore we recommend amending §8.6 to read as follows: "Each facility shall submit with an application for a license and annual renewal of license of a license:"

**Agency Response:** Amended as follows:

8.6 Each facility shall submit with ~~[their annual license renewal]~~ an application for a license and annual renewal of a license:]

**Comment:** A one year extension was requested on the requirement at §8.3 that the plans be submitted to the Division and DEMA in digital format-conforming to the template prescribed by the Division.

**Agency Response:** The regulations, at the new §8.7, allow for an extension of the requirement upon request and for good cause shown.

**Comment:** A one year extension was requested on the requirement that copies of FEMA certificates demonstrating that at least two active full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months be submitted to the Division at the time of application for their annual license renewal effective January 1, 2013.

**Agency Response:** The regulations, at the new §8.7, allow for an extension of the requirement upon request and for good cause shown.

**FINDINGS OF FACT:**

The Department finds that the proposed changes set forth in the December 2012 *Register of Regulations* should be adopted, subject to the withdrawal and the modification set forth above which are not substantive.

**THEREFORE, IT IS ORDERED**, that the proposed changes to Regulation 3201 Skilled and Intermediate Care Nursing Facilities, with the withdrawal and the modification indicated herein, is adopted and shall be final effective February 13, 2013.

Rita Landgraf, Secretary, DHSS

## 3201 Skilled and Intermediate Care Nursing Facilities (Break in Continuity of Sections)

### 8.0 Emergency Preparedness

- 8.1 Nursing facilities shall comply with the rules and regulations adopted and enforced by the State Fire Prevention Commission or the municipality with jurisdiction.
- 8.2 Regular fire drills shall be held at least quarterly on each shift. Written records shall be kept of attendance at such drills.
- 8.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The plan must be submitted to the Division and DEMA in a digital format and it must conform to the template prescribed by the Division.
- 8.4 The staff on all shifts shall be trained on emergency and evacuation plans. Evacuation routes shall be posted in a conspicuous place at each nursing station.
- 8.5 In the event of a facility evacuation, the evacuation plan shall, at a minimum, provide for the transfer or availability of resident medications and records.
- 8.6 Each facility shall submit with ~~[their annual license renewal]~~ **an application for a license and annual renewal of a license:]**
  - 8.6.1 A current all hazards emergency plan, and
  - 8.6.2 Copies of the FEMA certificate of achievement which demonstrate that at least two active, full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months.
  - ~~8.6.3 The Division may grant an extension of time for either requirement in 8.6 upon request and for good cause shown.~~
- ~~[8.6.3 8.7]~~ The Division may grant an extension of time for either requirement in 8.6 upon request and for good cause shown.

**\*Please Note: As the rest of the sections were not amended since the proposal in the December 2012 Register, they are not being published here. A complete copy of the final regulation is available at:**

**3201 Skilled and Intermediate Care Nursing Facilities**

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### DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 Del.C. §7903(10))  
16 DE Admin. Code 3210

#### ORDER

### 3210 Nursing Homes Admitting Pediatric Residents

#### NATURE OF THE PROCEEDINGS:

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

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

regulations.

### SUMMARY OF PROPOSED CHANGE

These revisions concern the information that must be contained in the facility's emergency plans, establishes a uniform format for the plan and requires that each facility submit copies of certificates demonstrating that two staff members have completed FEMA's Incident Command System training.

#### Statutory Authority

16 Del.C., ch. 11, Nursing Facilities and Similar Facilities

#### Background

Partly as result of circumstances encountered by the Division and the facilities it regulates during and after Hurricane Irene in 2011 the Division recognized a need to strengthen the emergency preparedness capabilities of our facilities. The Division joined with the University of Delaware College of Nursing and Emergency preparedness in conducting a two day seminar for long term care facility administrators was conducted in the spring of 2012. The Division also contracted with an emergency preparedness consulting firm that is presently working with each facility to develop an all hazards plan. This regulatory amendment delineates what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

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

The Governor's Advisory Council for Exceptional Citizens, the Developmental Disabilities Council, and the State Council for Persons with Disabilities and the Delaware Health Care Facilities Association offered the comments and recommendations summarized below. DLTCRP has considered each comment and responds as follows:

**Comment:** §12.6.3 could be "renumbered" as §12.7. Section 12.6 is a sentence which requires facilities to submit a plan and certificates. Section 12.6.3 is another independent sentence which does not comport with the format and grammar in §12.6.

**Agency Response:** Amended as follow:

~~[12.6.3 The Division may grant an extension of time for either requirement in 12.6 upon request and for good cause shown.~~

**12.7 The Division may grant an extension of time for either requirement in 12.6 upon request and for good cause shown.]**

**Comment:** §12.6 does not literally require submission of plans in connection with initial license applications. The skilled and intermediate facility "licensing requirements and procedures" regulation (16 DE Admin Code 3201 §4.0 requires facilities to comply with initial and renewal licensing standards codified at 16 Del.C., ch. 11. Title 16 §1104(e) refers to an "annual renewal application". Therefore we recommend amending §12.6 to read as follows: "Each facility shall submit with an application for a license and annual renewal of license of a license:"

**Agency Response:** Amended as follows:

12.6 Each facility shall submit with ~~its annual license~~ an application for a license and annual renewal of a license];

**Comment:** A one year extension was requested on the requirement at §12.3 that the plans be submitted to the Division and DEMA in digital format-conforming to the template prescribed by the Division.

**Agency Response:** The regulations, at the new §12.7, allow for an extension of the requirement upon request and for good cause shown.

**Comment:** A one year extension was requested on the requirement that copies of FEMA certificates demonstrating that at least two active full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months be submitted to the Division at the time of application for their annual license renewal effective January 1, 2013.

**Agency Response:** The regulations, at the new §12.7, allow for an extension of the requirement upon request and for good cause shown.

#### FINDINGS OF FACT:

The Department finds that the proposed changes set forth in the December 2012 *Register of Regulations*

should be adopted, subject to the withdrawal and the modification set forth above which are not substantive.

**THEREFORE, IT IS ORDERED**, that the proposed changes to Regulation 3210 Nursing Facilities Admitting Pediatric Residents, with the withdrawal and the modification indicated herein, is adopted and shall be final effective February 13, 2013.

Rita Landgraf, Secretary, DHSS

## 3210 Nursing Homes Admitting Pediatric Residents

*(Break in Continuity of Sections)*

### **12.0 Emergency Preparedness**

- 12.1 Nursing facilities shall comply with the rules and regulations adopted and enforced by the State Fire Prevention Commission or the municipality with jurisdiction.
- 12.2 Regular fire drills shall be held at least quarterly on each shift. Written records shall be kept of attendance at such drills.
- 12.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The plan must be submitted to the Division and DEMA in a digital format and it must conform to the template prescribed by the Division.
- 12.4 The staff on all shifts shall be trained on emergency and evacuation plans. Evacuation routes shall be posted in a conspicuous place at each nursing station.
- 12.5 In the event of a facility evacuation, the evacuation plan shall, at a minimum, provide for the transfer or availability of resident medications and records.
- 12.6 Each facility shall submit with ~~its annual license~~ an application for a license and annual renewal of a license]:
  - 12.6.1 A current all hazards emergency plan, and
  - 12.6.2 Copies of the FEMA certificate of achievement which demonstrates that at least two active, full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months.
- ~~12.6.3~~ 12.7]The Division may grant an extension of time for either requirement in 12.6 upon request and for good cause shown.

**\*Please Note: As the rest of the sections were not amended since the proposal in the December 2012 Register, they are not being published here. A complete copy of the final regulation is available at:**

**3210 Nursing Homes Admitting Pediatric Residents**

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

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 Del.C. §7903(10))  
16 DE Admin. Code 3225

#### **ORDER**

#### **3225 Assisted Living Facilities**

#### **NATURE OF THE PROCEEDINGS:**

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

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

regulations.

### SUMMARY OF PROPOSED CHANGE

These revisions concern the information that must be contained in the facility's emergency plans, establishes a uniform format for the plan and requires that each facility submit copies of certificates demonstrating that two staff members have completed FEMA's Incident Command System training.

#### Statutory Authority

16 Del.C., ch. 11, Nursing Facilities and Similar Facilities

#### Background

Partly as result of circumstances encountered by the Division and the facilities it regulates during and after Hurricane Irene in 2011 the Division recognized a need to strengthen the emergency preparedness capabilities of our facilities. The Division joined with the University of Delaware College of Nursing and Emergency preparedness in conducting a two day seminar for long term care facility administrators was conducted in the spring of 2012. The Division also contracted with an emergency preparedness consulting firm that is presently working with each facility to develop an all hazards plan. This regulatory amendment delineates what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

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

The Governor's Advisory Council for Exceptional Citizens, the Developmental Disabilities Council, and the State Council for Persons with Disabilities and the Delaware Health Care Facilities Association offered the comments and recommendations summarized below. DLTCRP has considered each comment and responds as follows:

**Comment:** §18.6.3 could be "renumbered" as §18.7. Section 18.6 is a sentence which requires facilities to submit a plan and certificates. Section 18.6.3 is another independent sentence which does not comport with the format and grammar in §18.6.

**Agency Response:** Amended as follow:

~~[18.6.3 The Division may grant an extension of time for either requirement in 18.6 upon request and for good cause shown.]~~

**18.7 The Division may grant an extension of time for either requirement in 18.6 upon request and for good cause shown.]**

**Comment:** §18.6 does not literally require submission of plans in connection with initial license applications. The skilled and intermediate facility "licensing requirements and procedures" regulation (16 DE Admin Code 3201 §4.0 requires facilities to comply with initial and renewal licensing standards codified at 16 Del.C., ch. 11. Title 16 §1104(e) refers to an "annual renewal application". Therefore we recommend amending §18.6 to read as follows: "Each facility shall submit with an application for a license and annual renewal of license of a license."

**Agency Response:** Amended as follows:

18.6 Each facility shall submit with ~~[their its annual license]~~ **an application for a license and annual renewal of a license:]**

**Comment:** A one year extension was requested on the requirement at §18.3 that the plans be submitted to the Division and DEMA in digital format-conforming to the template prescribed by the Division.

**Agency Response:** The regulations, at the new §18.7, allow for an extension of the requirement upon request and for good cause shown.

**Comment:** A one year extension was requested on the requirement that copies of FEMA certificates demonstrating that at least two active full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months be submitted to the Division at the time of application for their annual license renewal effective January 1, 2013.

**Agency Response:** The regulations, at the new §18.7, allow for an extension of the requirement upon request and for good cause shown.

**FINDINGS OF FACT:**

The Department finds that the proposed changes set forth in the December 2012 *Register of Regulations* should be adopted, subject to the withdrawal and the modification set forth above which are not substantive.

**THEREFORE, IT IS ORDERED**, that the proposed changes to Regulation 3225 Assisted Living Facilities, with the withdrawal and the modification indicated herein, is adopted and shall be final February 10, 2013.

Rita Landgraf, Secretary, DHSS

## 3225 Assisted Living Facilities

*(Break in Continuity of Sections)*

### 18.0 **Emergency Preparedness**

- 18.1 Nursing facilities shall comply with the rules and regulations adopted and enforced by the State Fire Prevention Commission or the municipality with jurisdiction.
- 18.2 Regular fire drills shall be held at least quarterly on each shift. Written records shall be kept of attendance at such drills.
- 18.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The plan must be submitted to the Division and DEMA in a digital format and it must conform to the template prescribed by the Division.
- 18.4 The staff on all shifts shall be trained on emergency and evacuation plans. Evacuation routes shall be posted in a conspicuous place at each nursing station.
- 18.5 In the event of a facility evacuation, the evacuation plan shall, at a minimum, provide for the transfer or availability of resident medications and records.
- 18.6 Each facility shall submit with ~~their its annual license~~ an application for a license and annual renewal of a license:]
  - 18.6.1 A current all hazards emergency plan, and
  - 18.6.2 Copies of the FEMA certificate of achievement which demonstrate that at least two active, full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months.
- ~~18.6.3~~ 18.7 The Division may grant an extension of time for either requirement in 18.6 upon request and for good cause shown.

**\*Please Note:** As the rest of the sections were not amended since the proposal in the December 2012 *Register*, they are not being published here. A complete copy of the final regulation is available at:

**3225 Assisted Living Facilities**

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### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

### Reimbursement Methodologies for Inpatient Psychiatric Hospital Services and Outpatient Hospital Services

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan regarding Payment Methodologies for Inpatient Psychiatric Hospital Services and Outpatient Hospital Services. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31

**Delaware Code** Section 512.

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

**SUMMARY OF PROPOSAL**

Pursuant to the public notice requirements of Social Security Act §1902(a)(13)(A) and 42 CFR §447.205, the Division of Medicaid and Medical Assistance (DMMA) publishes this notice of significant changes in the reimbursement methodologies for Inpatient Psychiatric Hospital Services and Outpatient Hospital Services.

**Statutory Authority**

- Social Security Act §1902(a)(13)(A), Public process for determination of rates of payment;
- 42 CFR §440.20, Outpatient Hospital Services and Rural Health Clinic Services;
- 42 CFR §440.40, Nursing Facility Services for Individuals Age 21 or Older (other than services in an institution for mental disease), EPSDT, and Family Planning Services and Supplies;
- 42 CFR §440.160, Inpatient Psychiatric Services for Individuals Under Age 21;
- 42 CFR Part 447, Payment for Services;
- 42 CFR §447.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates

**Summary of Proposal***Background*

As part of the Companion Letter process to Delaware SPA #08-004, School-Based Health Services, the Centers for Medicare and Medicaid Services (CMS) required additional information regarding the reimbursement methodology for Prescribed Pediatric Extended Care (PPEC) services; specifically, how the cost reports were used to create rates for the three levels of care (LOC). That information is no longer available. In these circumstances, CMS has directed states to indicate the effective date for the rates and requires that the fee schedule be published on the State's Delaware Medical Assistance Program (DMAP) website.

*Proposal*

Currently, the Division of Medicaid and Medical Assistance (DMMA) pays providers of inpatient psychiatric hospital services and partial hospital psychiatric services based on individually negotiated rates with each provider. CMS has indicated that such negotiated rates are not consistent with efficiency, economy and quality of care as required by Section 1902(a)(30)(A) of the Social Security Act. The proposed methodologies are based on the Medicare rates for the aforementioned services.

DMMA proposes to implement the changes to the methods and standards for setting payment rates effective January 1, 2013. Medicaid State Plan language on Attachment 4.19-A.1 and Attachment 4.19-B, Page 1b is revised to make this change. No change in payment for PPEC services will result from this regulatory action, so there is no change to the PPEC reimbursement language in the State Plan.

The provisions of these state plan amendments are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

**Fiscal Impact Statement**

With a fairly small fiscal impact, this change in rates for private psychiatric hospital services will bring Delaware into compliance with federal reimbursement principles, will pay rates that will be consistent across providers and that will enable Delaware to meet the federal upper payment limit tests for inpatient and outpatient hospital services.

No change is proposed for the PPEC rates, so there is no fiscal impact.

Projected fiscal impacts:

Inpatient Psychiatric Hospital rates:

	Fiscal Year 2013	Fiscal Year 2014
General (State) funds	\$21,272	\$42,805
Federal funds	\$26,714	\$53,169

Partial Hospitalization Psychiatric rates:

	Fiscal Year 2013	Fiscal Year 2014
General (State) funds	\$4,569	\$9,195
Federal funds	\$5,738	\$11,421

## 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 observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

As background, DMMA notes that it has been paying providers of inpatient psychiatric services and partial hospital psychiatric services an "individually negotiated rate with each provider". CMS has disallowed this methodology and the Division is now adopting a more uniform rate for private providers of these services using Medicare rates as a point of reference. The Division recites that the new methodology will have "a fairly small fiscal impact". At 598. The actual rate calculation standards are detailed and "technical". At 599.

Since it appears the initiative is prompted by CMS and there is little fiscal impact, GACEC and SCPD endorse the proposed regulation subject to a minor grammatical edit. In the first sentence on page 599, insert "at" prior to "42 CFR 413".

**Agency Response:** DMMA agrees to insert "at" prior to "42 CFR 413" and thanks the Councils for their endorsement.

### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2012 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to update the Title XIX Medicaid State Plan regarding Payment Methodologies for Inpatient Psychiatric Hospital Services and Outpatient Hospital Services is adopted and shall be final effective February 10, 2013.

Rita M. Landgraf, Secretary, DHSS

\* Please note that no changes were made to the regulation as originally proposed and published in the December 2012 issue of the *Register* at page 597 (16 DE Reg. 597). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Reimbursement Methodologies for Inpatient Psychiatric Hospital Services and Outpatient Hospital Services**

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### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 1009 and 1010

### ORDER

### Case Administration Provisions

### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Case Administration, specifically, Arranging Interpreter and Translation Services for [Non-English Speaking Clients] [Limited English Proficient Individuals] and Arranging Services for [Clients] [Individuals] with Hearing Impairments. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

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

### SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Case Administration, specifically, Arranging Interpreter and Translation Services for ~~[Non-English Speaking Clients]~~ [Limited English Proficient Individuals] and Arranging Services for [Clients] [Individuals] with Hearing Impairments.

#### Statutory Authority

- Title IV-A of the Social Security Act, TANF Program and the Emergency Assistance Program
- Title 31 of the Delaware Code, Chapter 5, General Assistance Program
- Title IV of the Immigration and Nationality Act, Refugee Resettlement Program
- Title 31 of the Delaware Code, Title XX of the Social Security Act, 7 CFR §273.7, and the Child Care Development Block Grant, as amended by the Personal Responsibility and Work Reconciliation Act of 1996, Child Care Subsidy Program
- Title 31 of the Delaware Code, Chapter 9, Food Benefit Employment and Training Services; and,
- 7 U.S.C. Chapter 51 and Title 31 of the Delaware Code, Chapter 6, Food Supplement Program
- House Bill 91, 146th Delaware General Assembly, Use of Respectful Language When Referring to Persons with Disabilities

#### Background

The Department of Health and Social Services is the agency designated by the State as responsible for Delaware's public assistance programs. Within the Department, the Division of Social Services (DSS) administers the following programs: Temporary Assistance for Needy Families (TANF), General Assistance Program, Food Supplement Program, Refugee Resettlement Program, Child Care Subsidy Program, Emergency Assistance Program, and Employment and Training Services.

The purpose of Delaware's public financial assistance programs is to help its needy citizens in providing a standard of living that is compatible with human decency and good health and to provide opportunities for its recipients to gain skills that will enhance their ability to become financially independent.

#### Summary of Proposed Changes

~~DSSM 1009, Procedures for Serving Non-English Speaking Clients~~ Arranging Interpreter and Translation Services for [Non-English Speaking Clients] Limited English Proficient Individuals and ~~DSSM 1010, Procedures for Serving Hearing Impaired Clients~~ Arranging Services for [Clients] Individuals with Hearing Impairments: The language in DSSM §§ 1009 and 1010 is changed to People First and the titles are changed to more accurately reflect the activity performed. In addition, the outdated listing of contracted vendors is removed. Finally, procedure is removed from the manual.

### 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 observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

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GACEC and SCPD have the following observations.

## §1009

First, the title to §1009 refers to "non-English speaking clients". Likewise, the second paragraph of text refers to "non-English speaking clients". This is unduly narrow. The first sentence of text more accurately refers to individuals who have "limited English proficiency". Moreover, the latter reference conforms to the attached HHS guidance excerpted from 68 Fed Reg. 47311 (August 8, 2003):

### IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English may be limited English proficient, or "LEP," and may be eligible to receive language assistance with respect to a particular type of service, benefit, or encounter.

See also attached excerpt from HHS OCR Website describing "LEP" as covering individuals who have "not developed fluency in the English language". Individuals who speak "some English" but lack "fluency" still qualify for "LEP" services.

DSS may wish to use the term "limited English proficiency" and include a definition.

**Agency Response:** The title of the policy is changed as below:

Arranging Interpreter and Translation Services For Limited English Proficient Individuals

The term non English speaking was replaced with limited English proficient as below:

*DSS provides interpreter services to limited English proficient individuals who need an interpreter*

A definition of limited English proficiency will be added to the appropriate Definitions section of the policy manual.

Second, the regulation authorizes interpreter services only to "applicants" and "recipients". This is unduly narrow. There may be individuals who request information on their behalf or on behalf of others. The above HHS standard refers to a "service, benefit, or encounter".

**Agency Response:** DSS offers interpreter services to individuals who have limited English proficiency. The policy is amended accordingly.

Third, the second paragraph of text suggests that staff or vendor translation is the exclusive approach to address the needs of persons who would benefit from interpreter services. Consistent with the attached HHS OCR guidance, individuals should be offered the option of relying on their own interpreter. OCR notes that some individuals may be more comfortable with a family member interpreting. See also attached resolution agreement. Moreover, an individual may prefer to use a "personal" interpreter in lieu of waiting for a State interpreter or rescheduling a visit.

**Agency Response:** Interpreter services are offered to applicants/recipients and their representatives when they have a need for an interpreter. If an individual has his or her own interpreter the services of a DSS interpreter is not needed.

Fourth, it would be preferable to include a standard of "timely" provision of interpreter services. HHS characterizes undue delay in providing interpreter services as a "frequently encountered" Title VI violation. See attached 67 Fed Reg. 4975-76 (February 1, 2002).

**Agency Response:** The standard of timely provision of interpreter services varies according to the needs of the individual in need. If an office interview is scheduled the individual's personal interpreter comes to the office with the individual or DSS arranges for an interpreter to be available at the time of the interview. Some offices have bi-lingual staff available on site who can interpret as needed. Interpreter services are also available via a phone call to a contracted vendor. It is rare that the vendor is not able to accommodate a request for real time interpretation.

Fifth, the exclusive context for determining need for interpreter services is a receptionist assessment upon the physical appearance of the individual:

The receptionist will identify the need for services when the applicant or recipient arrives at the office.

HSS guidance contemplates advertising the availability of interpreter services. It would be preferable to allow individuals to request an interpreter in advance (e.g. via phone).

**Agency Response:** The actual text of the policy states: "The receptionist will identify the need for services when the applicant or recipient arrives at the office." There is no reference to the physical appearance of an individual. The need is identified by verbal or written communication with the individual.

As an aside, we understand people can apply for benefits online at the DSS website. HHS guidance contemplates providing accommodations for high percentage minority languages (e.g. Spanish). Does the DSS website provide an online version of applications in Spanish that may satisfy accommodation requirements?

**Agency Response:** Yes.

#### 1010

First, the title to the section suggests that only existing "clients" are covered by the policy. This is too narrow to meet ADA standards. See attached DOJ ADA guidance:

The effective communication requirement applies to ALL members of the public with disabilities, including job applicants, program participants, and even people who simply contact state or local government agencies seeking information about programs, services, or activities.

**Agency Response:** The title is changed to "Arranging Services for Individuals with Hearing Impairments"

Second, the regulation authorizes interpreter services only to "applicants" and "recipients". This is unduly narrow. There may be individuals who request information on their behalf or on behalf of others.

**Agency Response:** The policy is amended as below.

"This policy applies to individuals who have a hearing impairment and require auxiliary aids or services to provide information to, or receive information from DSS."

Third, the policy recites that it covers "auxiliary aids" for persons with hearing impairments. It then omits any accommodations apart from interpreter services. Consistent with the attached DSAMH policy, "30% to 50% of persons > 65 years of age have significant hearing loss leading to impairment in functioning." If a person presents a "hard of hearing" profile, providing an ASL interpreter will not be useful. Moreover, the attached DOJ ADA guidance provides a long list of "auxiliary aids" apart from interpreters for individuals with hearing impairments.

**Agency Response:** DSS contracts with a vendor to communicate via TTY for those customers who have a TTY machine. Written communication is also used in addition to ASL interpreters. DSS is in the process of reviewing the contracts of current vendors to determine specifically what other auxiliary aids they provide. Negotiations for amendments to the contracts will take place if necessary.

Fourth, we recommend incorporating a reference to "effective communication" in the regulation since this is the operative ADA benchmark.

**Agency Response:** The policy is amended as below to incorporate the suggested language.

"A contracted vendor will provide the individual with effective communication services."

Fifth, covering the arrangement of services for individuals with hearing impairments with the 3-sentence policy is ostensibly inadequate guidance to staff.

**Agency Response:** Guidance for staff is more appropriately issued via internal documents. DSS will review appropriate information and formulate guidance that provides adequate direction for staff. In addition, DSS will make a subsequent change to policy if warranted.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2012 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Case Administration, specifically, Arranging Interpreter and Translation Services for Limited English Proficient Individuals and Arranging Services for Individuals with Hearing Impairments is adopted and shall be final effective February 10, 2013.

Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REGULATIONS #13-06  
REVISIONS:**

## 1009 ~~Procedures for Serving Non-English Speaking Clients~~ Arranging Interpreter and Translation Services for ~~[Non-English Speaking Clients~~ Limited English Proficient Individuals]

~~Non-English speaking clients who need an interpreter will be identified by the receptionist at the time of arrival. The receptionist will notify the unit supervisor who will make arrangements for a bilingual staff person to translate for the client.~~

~~DSS has contracts for translation services with the following:~~

~~EDS (1-800-996-9969 and press Option 8),  
Family and Children Services of Delaware, Inc. (655-6486),  
Cammie Santiago Hall (410-548-4740 or [HARBORRD@aol.com](mailto:HARBORRD@aol.com),  
Latin American Community Center (655-7338), and  
Para Plus Translations, Inc. (1-800-558-3011).~~

~~For complete detailed procedures in accessing these services read the most recent administrative notice on translation services.~~

~~This policy applies to [~~applicants and recipients~~ individuals] who have limited English proficiency and require the services of an interpreter [~~or translator~~] to provide information to, or receive information from DSS.~~

## DSS Workers Arrange for Interpreter Services

~~DSS provides interpreter services to [~~non-English speaking clients~~ limited English proficient individuals] who need an interpreter. The receptionist will identify the need for services when the [~~applicant or recipient individual~~] arrives at the office. Bilingual staff or a contracted vendor will provide the services. A listing of contracted vendors is available in the Interpreter and Translation Services Administrative Notice.~~

## DSS Workers Arrange for Translation Services

~~DSS translates forms and documents into languages common in Delaware. This includes translating an application for our customers. The DSS Worker will send requests for document or form translation to the DSS Policy Unit. See the Interpreter and Translation Services Administrative Notice.~~

## 1010 ~~Procedures for Serving Hearing Impaired Clients~~ Arranging Services for ~~[Clients~~ Individuals] with Hearing Impairments

~~The Division of Social Services will obtain sign language interpreters for the hearing impaired. Clients requiring the aid of an interpreter will be identified by the receptionist at the time of arrival. The receptionist will notify the unit supervisor who will make arrangements for a sign language interpreter to translate for the client.~~

~~As there is a charge for using these services, approval must be obtained from the appropriate Operations Administrator prior to contacting these services.~~

~~They are:~~

~~Communication Connection 610-272-4948  
Deaf Hearing Communication Center 610-534-5025  
Deaf Communication Services 302-266-6877~~

~~To secure an interpreter follow the procedures outlined below:~~

- ~~1. Call one of the services listed above.~~
- ~~2. Inform the person you are making a request for an interpreter.~~
- ~~3. Provide the date, time and place of the interpreting assignment (interview).~~
- ~~4. Leave a call back name and phone number so the interpreter assigned can return your call to~~

~~confirm availability.~~

~~Requests should be made at least 3 days before the interpreter is needed.~~

~~If you need to have telephone contact with a hearing impaired or deaf customer the Delaware Relay Service is available at 800-232-5470~~

~~NOTE: The bill for services will come to the unit requesting the service. Please have the Supervisor sign the bill, "Okay to Pay" and forward it to the DSS fiscal office for payment.~~

~~This policy applies to [~~applicants and recipients~~ individuals] who have a hearing impairment and require auxiliary aids or services to provide information to, or receive information from DSS.~~

## DSS Supervisors Arrange for Sign Language Interpreters

DSS provides sign language interpreters [or other auxiliary aids] for [~~applicants and recipients individuals~~] who have a hearing impairment. The receptionist will identify the need for services [or auxiliary aids] when the [~~applicant or recipient individual~~] arrives at the office. Use of these services [or auxiliary aids] must be approved by the Supervisor.

A contracted vendor will provide the [individual with effective communication] services. A listing of contracted vendors is available in the Interpreter and Translation Services Administrative Notice.

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 2022.1 and 9072

### ORDER

### Food Supplement Program General Information and Identification Cards

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, General Information and Identification Cards. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

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

#### SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, General Information and Identification Cards. The Division of Social Services (DSS) is amending and removing regulations requiring the issuance of identification cards to each certified food benefit household that are no longer applicable. Food and Nutrition Service removed this requirement from the Code of Federal Regulations (CFR).

#### Statutory Authority

7 CFR Part 274, Issuance and Use of Program Benefits

#### Background

Electronic Benefits Transfer (EBT) is an electronic system that allows a recipient to authorize transfer of their government benefits from a Federal account to a retailer account to pay for products received. EBT is used in all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. EBT has been implemented in all States since June of 2004.

Each food benefit unit certified as eligible to participate in the program is issued an EBT card. This card is the required proof of eligibility issued to households to use food benefits.

Food benefits are electronically deposited into a household's EBT account on a monthly basis. Therefore, identification cards are no longer needed as proof of program eligibility to pick up benefits.

## Summary of Proposed Changes

DSSM 2022.1, General Information and DSSM 9072, Identification Cards RESERVED: With the implementation of the Electronic Benefit Transfer (EBT) Card, it is no longer necessary for food benefit clients to be issued a Division of Social Services (DSS) identification card.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

As background, the current regulation requires DSS to "issue a serially numbered photo-ID card to each certified Food Stamp household". With implementation of the Electronic Benefit Transfer (EBT) Card, DSS notes that it is no longer necessary for program participants to be issued a DSS identification card. Moreover, DSS observes that CMS has deleted the requirement from the federal regulations. Therefore, DSS proposes deletion of the requirement of issuance of the identification card.

The percentage of the population that is on food stamps is much higher than other assistance programs. In addition, the DSS issued identification card is the only form of identification for many people. Therefore, GACEC and SCPD have reservations regarding the proposal to no longer issue such identification cards since there is a downside to this approach.

Agency Response: DSS considered your comment and understands your perspective. However, we retain the policy changes as proposed. The state issued ID card was never intended to be used as verification of identity. The purpose of the ID card was only to verify program eligibility when presented to merchants along with food stamp coupons. The Electronic Benefit Transfer (EBT) card and the Personal Identification Number are all that is needed for program recipients to access their benefits.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2012 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP), specifically, General Information and Identification Cards, is adopted and shall be final effective February 10, 2013.

Rita M. Landgraf, Secretary, DHSS

## DSS FINAL ORDER REGULATIONS #13-03 REVISIONS:

### 2022.1 General Information

Issue a serially numbered photo-ID card to each ~~certified Food Stamp household and/or each~~ approved Cash Assistance payee as proof of program eligibility.

Issue the ID card in the name of the household/assistance unit member to whom the ~~food stamps/check~~ is issued. The participant/recipient and any authorized representative will sign the card in ink and it will be laminated in the DSS office.

For Voluntary Protective payees in TANF, GA, or RCA, issue the protective payee an ID card with his/her picture on the front of the ID card. The DCIS number of the case for whom he/she is the protective payee, will also be on the front of the ID card.

Limit issuance of ID cards to the time of initial certification with replacement made only in instances of loss, mutilation, destruction, changes in authorized representative, or when DSS determines that new ID cards are needed. Whenever possible, collect the ID card that is being replaced, and any other old ID cards that are in the client's possession.

Do not issue cards having typographical errors or other defects. Banks will not honor ID cards with characters whited out or strikeovers, and will confiscate these cards.

Use cameras for official purposes only. Destroy any pictures taken to test a camera.

Store cameras in a location which ensures that no unauthorized person can have access to them.

**At no time** may an ID photo be taken when an individual is wearing sunglasses.

Issue temporary (non-photo, unlaminated) ID cards when camera equipment/supplies are unavailable or inoperable. Using the usual ID card, limit use by indicating:

"valid for \_\_\_\_\_ only."  
(current month/year)

Do not use letters of identification as they are not serially numbered and compromise the bank's mandated record keeping processes.

*(Break in Continuity of Sections)*

**9072 Identification Cards RESERVED**

[274.10]

~~Issue a serially numbered photo ID card to each certified Food Stamp household as proof of program eligibility. Do not deny or delay Food Stamp benefits because of a household member's inability or refusal to be photographed.~~

~~Refer to 2022.1 for general information on issuing the ID cards for all programs.~~

**DIVISION OF SOCIAL SERVICES**

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

**ORDER**

**Child Care Subsidy Program, Provider Reimbursement**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, Provider Reimbursement. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

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

**SUMMARY OF PROPOSAL**

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

**Statutory Authority**

45 CFR §98.40, Compliance with applicable State and local regulatory requirements

**Background**

Effective October 1, 1996, Congress enacted the Child Care Development Fund (CCDF) which consolidated funding for child care for low-income working families and families reentering the workforce. The Child Care Subsidy Program provides support for families with young children to enable the caretaker to hold a job, obtain

training or meet special needs of the child. Child care may also be provided in child abuse cases to help protect the child.

## *2011 Delaware Child Care Market Rate Study*

The 2011 Delaware Child Care Market Rate Study by Workplace Solutions was conducted to meet federal requirements of 45 Code of Federal Regulations Parts 98 & 99 to ensure that reimbursement rates allow subsidized low-income children equal access to early education and care. The goal of this Rate Study was to develop statistically credible information on the present market prices charged by licensed providers in Delaware. "Market prices" are prices providers charge parents for the care of their private-paying children. They are non-discounted prices charged to unrelated and unaffiliated parents.

## **Summary of Proposed Changes**

Based on the findings of the 2011 Delaware Child Care Market Rate Study, the Delaware Legislature increased budget monies to give a provider reimbursement rate increase to 65% of Market Rate plus 50 cents effective October 1, 2011. Child care subsidy rates for child care services were updated for those providers participating in the subsidized child care program.

Accordingly, DSSM 11006.4, Provider Reimbursement is amended reflecting minor language changes. Additionally, this regulatory action removes the Delaware Child Care Provider Rate chart and the Child Care Income Limits chart from the Division of Social Services Manual (DSSM). The provider rate chart will be posted on the Division of Social Services' (DSS) website. The income limits chart is already on the DSS website.

## **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

As background, based on findings of the 2011 Delaware Child Care Market Rate Study, the Legislature increased provider rates in this program to 65% of Market Rate plus 50 cents effective October 1, 2011. However, the actual regulation contains outdated family income eligibility and provider reimbursement charts. DSS proposes to eliminate the charts from the regulation and publish them on its Website. This should result in quicker updates.

GACEC and SCPD endorse the proposed regulation subject to one observation. DSS indicates that the income limits chart is already on the Website. This is accurate. DSS also indicates that the provider rate chart "will be posted" on the Website. As of December 21st, we could not locate the provider rate chart. GACEC and SCPD would like to remind DSS to post the latter chart to facilitate easy access to the information.

**Agency Response:** DSS thanks the GACEC and the SCPD for their endorsement. We anticipate that the provider rate chart will be available on the DSS website in the near future.

## **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the December 2012 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, Provider Reimbursement is adopted and shall be final effective February 10, 2013.

Rita M. Landgraf, Secretary, DHSS

## **DSS FINAL ORDER REGULATION #13-05 REVISION:**

### **11006.4 Provider Reimbursement**

Reimbursement is monthly as indicated on the Day Care Contract (Compensation, Method of Payment, and Collection of Fee sections). Complete records must be retained by the provider for a period of three years, listing

# FINAL REGULATIONS

each child's daily attendance, accurately stating the number of authorized days present by type, and the number of absent days. These records will be monitored on a regular basis.

Payment will be made only for the number of days and type of authorization indicated on individual Form 618d the child's authorization notice and in accordance with absent day policy. Reimbursement rates differ for children under the age of two and children two years of age and older each type of child care setting.

## FFY 2006 CHILD CARE PROVIDER RATES

### NEW CASTLE COUNTY

	LICENSED HOMES		CENTERS		IN-HOME/RELATIVES	
	Regular	Special Needs	Regular	Special Needs	Regular	Special Needs
0	<del>\$ 110.00</del>	<del>\$ 115.50</del>	<del>\$ 145.00</del>	<del>\$ 152.25</del>	<del>\$ 105.00</del>	<del>\$ 110.25</del>
1	<del>\$ 105.00</del>	<del>\$ 110.25</del>	<del>\$ 122.00</del>	<del>\$ 128.10</del>	<del>\$ 100.00</del>	<del>\$ 105.00</del>
2 to 5	<del>\$ 82.35</del>	<del>\$ 86.45</del>	<del>\$ 104.60</del>	<del>\$ 109.85</del>	<del>\$ 58.00</del>	<del>\$ 60.90</del>
6 & over	<del>\$ 84.30</del>	<del>\$ 88.50</del>	<del>\$ 104.60</del>	<del>\$ 109.85</del>	<del>\$ 58.00</del>	<del>\$ 60.90</del>

### KENT COUNTY

	LICENSED HOMES		CENTERS		IN-HOME/RELATIVES	
	Regular	Special Needs	Regular	Special Needs	Regular	Special Needs
0	<del>\$ 80.00</del>	<del>\$ 84.00</del>	<del>\$ 97.50</del>	<del>\$ 102.40</del>	<del>\$ 75.00</del>	<del>\$ 78.75</del>
1	<del>\$ 75.00</del>	<del>\$ 78.75</del>	<del>\$ 85.00</del>	<del>\$ 89.25</del>	<del>\$ 75.00</del>	<del>\$ 78.75</del>
2 to 5	<del>\$ 66.20</del>	<del>\$ 69.50</del>	<del>\$ 70.00</del>	<del>\$ 73.50</del>	<del>\$ 45.90</del>	<del>\$ 48.20</del>
6 & over	<del>\$ 68.15</del>	<del>\$ 71.55</del>	<del>\$ 71.95</del>	<del>\$ 75.55</del>	<del>\$ 45.90</del>	<del>\$ 48.20</del>

### SUSSEX COUNTY

	LICENSED HOMES		CENTERS		IN-HOME/RELATIVES	
	Regular	Special Needs	Regular	Special Needs	Regular	Special Needs
0	<del>\$ 75.50</del>	<del>\$ 79.30</del>	<del>\$ 97.50</del>	<del>\$ 102.40</del>	<del>\$ 75.00</del>	<del>\$ 78.75</del>
1	<del>\$ 75.00</del>	<del>\$ 78.75</del>	<del>\$ 85.00</del>	<del>\$ 89.25</del>	<del>\$ 75.00</del>	<del>\$ 78.75</del>
2 to 5	<del>\$ 66.20</del>	<del>\$ 69.30</del>	<del>\$ 70.00</del>	<del>\$ 73.50</del>	<del>\$ 45.90</del>	<del>\$ 48.20</del>
6 & over	<del>\$ 68.15</del>	<del>\$ 71.53</del>	<del>\$ 71.95</del>	<del>\$ 75.55</del>	<del>\$ 45.90</del>	<del>\$ 48.20</del>

CHILD CARE INCOME LIMITS - EFFECTIVE 10/01/2005	
FAMILY SIZE	INCOME
1	\$1,596.00
2	\$2,140.00
3	\$2,682.00
4	\$3,226.00
5	\$3,770.00
6	\$4,312.00
7	\$4,856.00
8	\$5,400.00
Additional person add	\$544.00

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**Board of Charitable Gaming**

Statutory Authority: 28 Delaware Code, Section 1122 (28 Del.C. §1122)  
10 DE Admin. Code 101

**ORDER**

**101 Regulations Governing Bingo**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on Thursday, December 6, 2012, at a scheduled meeting of the Delaware Board of Charitable Gaming, to receive comments and to review written comments submitted by the public, if any, regarding a proposed amendment to the Board's Rules.

The amendment to 10 **Del. Admin. Code** 101, Rule 4.6 would state that events scheduled to be held for a holiday must take place with the period of seven days preceding the holiday or on the holiday itself.

The proposed amendment was published in the *Register of Regulations*, Volume 16, Issue 5, on November 1, 2012.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

No written comments were received by the Board. No member of the public appeared to testify at the hearing.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The public was given notice and an opportunity to provide written comments and testimony on the proposed amendments.
2. The Board finds that the proposed amendments are necessary and in the public interest.
3. Pursuant to 28 **Del.C.** §1122, the Board has statutory authority to promulgate regulations governing charitable gaming, including bingo and raffles.

**DECISION AND EFFECTIVE DATE**

The Board hereby adopts the proposed amendment to its rules in the manner to be published in the Register of Regulations in February, 2013, to be effective ten days after publication of the Order in the Register of Regulations.

**TEXT AND CITATION**

The text of the revised rules shall be as published in the *Register of Regulations* in February, 2013 as attached hereto as Exhibit A.

**SO ORDERED** this 3rd day of January, 2013.

**DELAWARE BOARD OF CHARITABLE GAMING**

Scott Angelucci, Chair

James Greene, Member

Sharon McDowell, Member

Janet Williams-Coger, Member

Tim Winstead, Member

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 520 (16 DE Reg. 520). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**101 Regulations Governing Bingo**

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# FINAL REGULATIONS

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## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1106 (24 Del.C. §1106)  
24 DE Admin. Code 1100

### ORDER

#### 1100 Board of Dentistry and Dental Hygiene

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 18, 2012 at a scheduled meeting of the Delaware Board of Dentistry and Dental Hygiene (the "Board") to receive comments regarding the Board's proposed amendments to the Board's rules and regulations.

In accordance with 24 Del.C. §1106 (a)(1) the Board proposed amendments to Rule 7.0 Anesthesia Regulations. The proposed amendments clarify the holders of Restricted 1 and Unrestricted Permits may induce conscious sedation by administering nitrous oxide in addition to other permitted methods. The amendment also clarifies that the holder of a Restricted Permit II may induce conscious sedation by administering nitrous oxide only. The proposed amendments address an apparent oversight in the Board's current rules and regulations.

In accordance with 29 Del.C. §100118(a) the Board left the record open to receive written comments until November 2, 2012, 15 days following the public hearing. The Board deliberated on all of the public comment at its regularly scheduled meeting on December 20, 2012 and voted to adopt the regulation as proposed.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Board Exhibit 1, the *News Journal* Affidavit of Publication, and Board Exhibit 2, the *Delaware State News* Affidavit of Publication, were made a part of the record. No written comments were received and no member of the public attended the public hearing to offer comment.

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's rules and regulations. The Board received no comments on the proposed amendments.

2. Pursuant to 24 Del.C. §1106 the Board has statutory authority to promulgate rules and regulations clarifying specific sections of its statute. The amendments to Regulation 7.0 Anesthesia Regulations clarify the requirements for anesthesia permits that the Board is authorized to establish under the provisions of 24 Del.C. §1106(a)(15).

3. The Board finds that the proposed amendments are necessary to clarify ambiguities in the existing regulation related administration of conscious sedation by providing that the holders of Restricted 1 and Unrestricted Permits may induce conscious sedation by administering nitrous oxide in addition to other permitted methods and that the holder of a Restricted Permit II may induce conscious sedation by administering nitrous oxide only.

#### DECISION AND EFFECTIVE DATE

The Board hereby adopts the changes to its rules and regulations to be effective 10 days following publication of this order in the *Register of Regulations*.

#### TEXT AND CITATION

The text of the regulations remains as published in *Register of Regulations*, Vol. 16, Issue 3, on September 1, 2012.

SO ORDERED this 20<sup>th</sup> day of December 2012.

**BOARD OF DENTISTRY AND DENTAL HYGIENE**

Blair Jones, DMD, President, Professional Member  
John Lenz, DDE, Secretary, Professional Member  
Cheryl Calicott-Trawick, Public Member  
Robert C. Director, DDS, Professional Member

Nathaniel Gibbs, Public Member  
Joan Madden, RDH, Professional Hygiene Member  
Lucinda Bunting, DMD, Professional Member

**1100 Board of Dentistry and Dental Hygiene**

\* Please note that no changes were made to the regulation as originally proposed and published in the September 2012 issue of the *Register* at page 257 (16 DE Reg. 257). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1100 Board of Dentistry and Dental Hygiene**

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**DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 1106 (24 **Del.C.** §1106)  
24 **DE Admin. Code** 1100

**ORDER****1100 Board of Dentistry and Dental Hygiene**

On September 1, 2012 a final order was published in the *Register of Regulations* amending the Board of Dentistry and Dental Hygiene (Board) regulations including Regulation 6.0 Continuing Professional Education. The regulations as adopted clarified, in part, that the Board would accept courses approved by PACE (Program Approval for Continuing Education) and CERP (Continuing Education Recognition Program) for continuing education. Following the adoption of the regulations and publication of the final order, the Board received correspondence from the Academy of General Dentistry (AGD) that the PACE should have been listed with the AGD in Regulation 6.5.1.4 rather than the CERP, and that the CERP should have been listed in Regulations 6.5.1.1 with the American Dental Association (ADA).

The Board has determined that a technical clarification is needed to Regulation 6.5.1.1 and 6.5.1.4 to place the correct continuing education approval programs with the correct approving dental association and/or academy.

**Summary of the Evidence and Information Submitted**

None.

**Findings of Fact**

The Board finds that the clarification is a technical clarification only and does not substantively change the regulation or requirements of licensees. This regulation is exempted from the procedures for notice and public comment set forth in 29 **Del.C.** ch 100 pursuant to 29 **Del.C.** §10113(a)(b)(4).

**Text and Citation**

The Board is amending the regulation as shown by strike-through and underlining as follows:

6.5 CPE credits may be granted upon proof of successful completion of:

6.5.1 Scientific CPE programs or courses and/or the scientific sessions of meetings sponsored or approved by:

6.5.1.1 American Dental Association (ADA), its constituents and components including ~~PAGE (Program Approval for Continuing Education)~~ CERP (Continuing Education Recognition Program)

- 6.5.1.2 American Dental Hygienists' Association (ADHA), its constituents and components  
 6.5.1.3 American Dental Assisting Association (ADAA), its constituents and components  
 6.5.1.4 Academy of General Dentistry (AGD) its constituents and components including ~~CERP (Continuing Education Recognition Program)~~ PACE (Program Approval for Continuing Education)

### Decision and Effective Date

The Board hereby adopts Regulations 6.5.1.1 and 6.5.1.4 as amended effective 10 days following publication of this Order in the *Register of Regulations*.

**SO ORDERED** this 18th day of October, 2012.

### BOARD OF DENTISTRY AND DENTAL HYGIENE

Blair Jones, DMD, President, Professional Member	Nathaniel Gibbs, Public Member
John Lenz, DDE, Secretary, Professional Member	Joan Madden, RDH, Professional Hygiene Member
Cheryl Calicott-Trawick, Public Member	Lucinda Bunting, DMD, Professional Member
Robert C. Director, DDS, Professional Member	Neil McAneny, DDS, Professional Hygiene Member

### 1100 Board of Dentistry and Dental Hygiene

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

#### 6.0 Continuing Professional Education (CPE) - Dentists [24 Del. C. §1106(a)(1) and (7)]

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

- 6.5 CPE credits may be granted upon proof of successful completion of:
- 6.5.1 Scientific CPE programs or courses and/or the scientific sessions of meetings sponsored or approved by:
- 6.5.1.1 American Dental Association (ADA), its constituents and components including PACE (Program Approval for Continuing Education) ~~CERP (Continuing Education Recognition Program)~~
- 6.5.1.2 American Dental Hygienists' Association (ADHA), its constituents and components
- 6.5.1.3 American Dental Assisting Association (ADAA), its constituents and components
- 6.5.1.4 Academy of General Dentistry (AGD) its constituents and components including CERP (Continuing Education Recognition Program) PACE (Program Approval for Continuing Education)
- 6.5.1.45 Recognized national, regional, state and local dental and dental hygiene specialty organizations
- 6.5.1.56 Recognized dental and dental hygiene study clubs
- 6.5.1.67 Accredited dental and dental hygiene CPE programs offered by dental and dental hygiene schools.
- 6.5.1.78 Approved hospital programs.
- 6.5.1.89 Such other organizations and associations as may be approved by the Board.

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

**1100 Board of Dentistry and Dental Hygiene**

Name	Board Name	Appointment Date	Reappointment Date
Mr. Thomas S. Hall	Advisory Council to the Division of Substance Abuse and Mental Health	12/04/2012	
Ms. K. Frieda Fisher-Tyler	Appalachian State Low-Level Radioactive Waste Commission	10/07/2003	21-Dec-12
Mr. Richard R. Wier, Jr.	Authority on Radiation Protection	10/26/2012	
Mr. Douglas K Drummond	Board of Directors of the Riverfront Development Corporation	10/05/2012	
Mr. Eric W. Wahl	Board of Landscape Architecture	03/03/2011	21-Dec-12
Barry L. Bakst, D.O.	Board of Medical Licensure and Discipline	09/18/2012	
Charles E. Adams, Jr.	Board of Professional Land Surveyors	12/21/2012	
Mr. Franco R. Bellafante		12/21/2012	
Mr. James Bielicki, Jr.		09/03/2009	21-Dec-12
Mr. Mark J. Rosenthal		01/21/2011	21-Dec-12
Mr. Rodney Brittingham	Child Death, Near Death & Stillbirth Review Commission	12/04/2012	
Ms. Cheryl Calicott-Trawick	Child Placement Review Board - New Castle	09/05/2012	
Deborah H Zych, Ed.D	Child Placement Review Board- Kent	11/14/2012	
Susan A. Cycyk, M.Ed.	Civil Mental Health Law Study Group	12/11/2012	
Ms. Rosanne F. Faust		10/02/2012	
Ms. Sarah G. Fishman, Esq.	Civil Mental Health Law Study Group	10/02/2012	
The Honorable Debra J. Heffernan		09/24/2012	
Mr. Bryce C. Hewlett		10/02/2012	
The Honorable Jan R. Jurden		10/02/2012	
Richard S. Kingsley		11/05/2012	
Ilona M. Kirshon, Esq.		10/08/2012	
Mr. James J. Lafferty		10/02/2012	
Mr. John F. McKenna		10/02/2012	
Ms. Brenda K. Pierce		10/02/2012	
Ranga N. Ram, M.D.		10/02/2012	
Harold Rosen, M.D.		10/02/2012	
The Honorable Lynne M. Parker	Commissioner of Superior Court	07/24/2008	18-Dec-12
The Honorable James J. Maxwell	Commissioners of Family Court	12/20/2012	
The Honorable Dawn M. Williams		12/21/2012	
Mr. Francis J. Lon	Council on Real Estate Appraisers	09/03/2009	21-Dec-12
Mr. Ronald Mandato		09/03/2009	02-Dec-12
James G. Law	Council on the Blind	12/21/2012	
Mr. Lloyd F. Schmitz	Council on the Blind	09/06/2006	21-Dec-12
The Honorable John W. Noble	Court of Chancery	11/03/2000	14-Dec-12
Lieutenant Colonel Angela Showell	Delaware Commission of Veterans' Affairs	09/04/2012	
Ms. Jennifer W. Davis	Delaware Compensation Commission	10/22/2012	
Mr. Donald J. Puglisi		10/22/2012	
Mr. Michael Ratchford		10/12/2012	
The Honorable Harold Stafford		10/22/2012	
The Honorable Edward S. Osienski	Delaware Health Fund Advisory Committee	09/21/2012	
The Honorable Michael A. Barbieri	Delaware Health Fund Working Group	09/10/2012	
The Honorable John L. Mitchell, Jr.		09/10/2012	

# GOVERNOR'S APPOINTMENTS

Eric H. Synnestvedt	Delaware Health Information Network	10/12/2012	
Thomas P. Barnett, M.D.	Delaware Health Resources Board (New)	10/18/2012	
Ms. Lynn Fahey		10/18/2012	
Mr. David A. Hollen		10/18/2012	
Mr. William E. Love		10/18/2012	
Ms. Suzanne E. Raab-Long		10/18/2012	
Veronica F. Rempusheski, Ph.D.	Delaware Health Resources Board (New)	10/18/2012	
Ms. Faith L. Rentz		10/18/2012	
Ms. Bettina L. Riveros		10/18/2012	
The Honorable Harold Stafford		10/18/2012	
Mr. Mark B. Thompson		10/18/2012	
Ms. Yrene E. Waldron		10/18/2012	
Mr. John G. Walsh		10/18/2012	
Gina F. Ward		10/18/2012	
Ms. Teri Q. Gray, PhD.	Delaware STEM Education Council	09/07/2012	
Ms. Karen E. McGloughlin	Developmental Disabilities Council	12/21/2012	
Ms. Heidi L. Beck	Early Childhood Council	09/13/2012	
Ms. Paula S. Holloway		09/13/2012	
Ms. Mary K. Mouser		09/13/2012	
Ms. Michelle A. Taylor		09/13/2010	13-Sep-12
Rebecca Taber	Education Commission of the States	09/11/2012	
The Honorable Paula T. Ryan	Family Court	12/14/2012	
Ms. Kathy Bin-Yusif	Gifted and Talented Student Task Force	10/17/2012	
Ms. Debora G. Hansen	Gifted and Talented Student Task Force	09/12/2012	
Ms. Amy P. Honisch		10/17/2012	
Barbara B. Rutt		09/12/2012	
Jason W. Adkins	Governor's Commission on Community and Volunteer Service	11/02/2012	
Mr. John R. Danzeisen		09/24/2008	02-Nov-12
Mr. Anthony L. Horstman		05/01/2009	02-Nov-12
Mr. Frank R. Ingram, Jr.		10/24/2008	02-Nov-12
Rev. Sharon C. Morgan		11/02/2012	
Mrs. Margarita Rodriguez-Duffy		09/24/2008	02-Nov-12
Glen M. Stubbolo		11/02/2012	
Ms. Jessica M. Sullivan		11/02/2012	
Ms. Georgeanna Windley		11/02/2012	
Ms. Sally J. Wojcieszyn		09/24/2008	02-Nov-12
The Honorable Nancy W. Cook	Kent County Vocational-Technical Board of Education	12/17/2012	
Mrs. Yvonne J. Scott		09/05/2012	
Ms. Valarie M Lacey	Manufactured Home Installation Board	12/21/2012	
Ms. Leslie H. Persans		04/29/2009	21-Dec-12
Mr. Kevin B. Reinike		11/10/2009	21-Dec-12
Mr. Keith Rudy		04/29/2009	21-Dec-12
Mr. Richard Snyder		08/27/2009	21-Dec-12
The Honorable Robert F. Gilligan	New Castle County Vocational-Technical Board of Education	11/19/2012	
Ms. Cathleen A. Allen	Provider Advisory Board	09/10/2012	
Ms. Janet B. Chandler		09/10/2012	
Mr. Christopher J. Couch		09/10/2012	

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# GOVERNOR'S APPOINTMENTS

885

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Ms. Pamela E. Harper		09/10/2012	
Ms. Sherry L. Ivory		09/10/2012	
Ms. Constance M. Merlet		09/10/2012	
Ms. Sharon M Williams		09/10/2012	
Mr. Gary W. Pippin	State Board of Accountancy	10/16/2009	21-Dec-12
Rachel A. Brandenburg, Psy.D	State Board of Examiners of Psychologists	12/21/2012	
Dr. Richard Brokaw, Ph.D		09/03/2009	21-Dec-12
Ms. Joli A. Martini	State Board of Pharmacy	09/04/2009	25-Oct-12
Cherryl A. Peterson, Pharm.D.	State Board of Pharmacy	10/25/2012	
Ms. Sandra M. Zaragoza		10/25/2012	
Victoria Jones	State Employee's Charitable Campaign Steering Committee	09/25/2012	
Teresa D. Mischler		09/25/2012	
Ms. Deidre Y. Ottley	State Employee's Charitable Campaign Steering Committee	09/26/2012	
Mr. Charles W. Frampton, Jr.	State Fire Prevention Commission	09/14/2012	
Mr. Ronald H. Marvel		10/18/2012	
Ms. Alice S. Coleman	State Rehabilitation Council	10/01/2008	21-Dec-12
Mr. Clement A. Coulston		12/21/2012	
Ms. Marie-Anne E. Aghazadian	State Transition Task Force for Emerging Adults w/ Disabilities & Special	09/05/2012	
Ms. Marissa L. Band		10/24/2012	
Mr. Blake V. Bossert		10/04/2012	
Ms. Sarah A. Celestin		09/05/2012	
Ms. Margaret E. Comeau		09/05/2012	
Ms. Bobbie J. Dehaven		11/09/2012	
Mr. Brian H. Freedman		09/07/2012	
Mr. Gerard Gallucci	State Transition Task Force for Emerging Adults w/ Disabilities & Special	09/05/2012	
Ms. Andrea Guest		10/12/2012	
The Honorable Bethany Hall-Long, Ph.D.		09/05/2012	
Mr. Larry D. Henderson		10/03/2012	
Mr. Kyle L. Hodges		09/05/2012	
Jennifer M. Lecomte, DO		12/20/2012	
Ms. Patricia L. Maichle		10/03/2012	
Ms. Cory E. Nourie		10/03/2012	
Ms. Haley F. Shiber		11/08/2012	
Mr. Steven R. Tull		09/07/2012	
Ms. Bhavana P. Viswanathan		09/05/2012	
Ms. Sybil J. White		10/03/2012	
Mr. Charles E. Butler	Superior Court	12/07/2012	
The Honorable Eric M. Davis		12/21/2012	
Mr. Michael J. Feldman	Task Force on Labor History	12/04/2012	
Mr. Preston W. Shockley, III		11/16/2012	
Mr. Paul Thornburg		11/26/2012	
Mrs. Jennifer Zerby	Tourism Advisory Board	09/09/2012	

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# GENERAL NOTICES

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Food Supplement Program Expanded Issuance of Food Benefits

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services provides public notice regarding the Food Supplement Program, specifically, Expanded Issuance of Food Benefits.

This is an administrative change rather than a policy change therefore it is not subject to the requirements of the Administrative Procedures Act.

#### SUMMARY OF NOTICE

DSS is providing notice to the public regarding the Food Supplement Program, specifically, Expanded Issuance of Food Benefits.

#### Statutory Authority

Title 7, Part 274, Issuance and Use of Benefits

#### Background

Delaware's Food Supplement Program, formerly known as food stamps, is operated under the provisions of the Food and Nutrition Act of 2008, as amended, and is administered by the Food and Nutrition Service (FNS) under the United States Department of Agriculture (USDA). The Food Supplement Program enables low-income families to buy a variety of food that is the basis for better nutrition. Benefits are issued electronically to the family's Delaware Food First card each month. This is an Electronic Benefits Transfer (EBT) card. The Food Supplement Program recipient uses this card at local retail stores to access his/her food benefit.

The Delaware Division of Social Services (DSS) is responsible for the administration of the Food Supplement Program (FSP), including, but not limited to certification of applicant households and issuance, control, and accountability of FSP benefits.

#### Summary of Action

States have the authority to stagger food benefit issuance over the entire month as long as no participant goes longer than forty days between issuance days.

In the best interest of serving Food Supplement Program (FSP) clients, Delaware Health and Social Services/ Division of Social Services (DHSS/DSS) is changing its current food benefit issuance schedule, effective March 2, 2013. The current issuance cycle begins on the 5th calendar day of each month and goes through the 11th day. Beginning in March 2013, the benefit issuance period will expand from seven (7) calendar days to sixteen (16) calendar days. The revised issuance schedule begins on the 2nd calendar day and goes through the 17th of each month. DHSS/DSS will phase in the expansion over a two week period beginning March 2, 2013.

This change is being made to improve services so that FSP clients will have better access to healthy and nutritious food choices by allowing the participating retailer community to adequately restock their shelves. Food Supplement Program (FSP) households will still receive benefits based on the first letter of the head of household's last name.

In preparation for this change, current food benefit recipients impacted by this change were sent letters explaining the expanded schedule change by a mass mailing from the DSS in January 2013.

DSS PUBLIC NOTICE #13-04

Delaware Health and Social Services (DHSS) and the Division of Social Services (DSS) are committed to keeping our partners, stakeholders and community informed of any changes in the administration of the Food Supplement Program.

Pursuant to 31 Delaware Code, Section 512, DHSS/DSS is required to give public notice of any significant change in its services and operations.

Public Notice is hereby given that DHSS/DSS will be changing its current food benefit issuance schedule.

A modification to the Food Supplement Program (FSP) will begin on March 2, 2013. Currently, FSP customers receive their benefits between the 5<sup>th</sup> calendar day and the 11<sup>th</sup> calendar day of each month. Beginning in March 2013, the benefit issuance period will expand from seven (7) calendar days to sixteen (16) calendar days. The revised issuance schedule begins on the 2<sup>nd</sup> calendar day and goes through the 17<sup>th</sup> of each month.

This change will allow participating retailers more time to adequately restock their shelves so that FSP clients will have better access to healthy and nutritious food choices. DHSS/DSS will implement the new plan over a two week period beginning March 2, 2013. This expanded issuance cycle will result in better service to both FSP recipients and other retail customers. By adding more issuance dates, the participating retail community can adequately stock fresh fruits and vegetables, meats, dairy and shelf stable goods. The change will also help DHSS/DSS better serve customers as it will ease heightened call days and spread them out over a longer period of time.

FSP households will still receive benefits based on the first letter of the head of household's last name. For example, households who previously received benefits on the 5<sup>th</sup> because the primary card holder's last name began with the letter "A" will now receive benefits on the 2<sup>nd</sup>.

In preparation for this change, the following events have occurred:

On January 5, 2013, DHSS/DSS:

1. Mailed all food benefit recipients a letter informing them of the change
2. Posted information on the DHSS and DSS websites
3. Distributed posters to DSS sites and to community partner sites
4. Launched a mass media campaign including public service announcements and social media posting
5. Sent an informational letter to merchants.

J. P. Morgan, the Electronic Benefit Transfer (EBT) vendor, will prepare its customer service staff for the change. They will also schedule extra staff during the transition phase to handle any increase in phone calls from recipients or merchants.

Beginning March 2, 2013, DHSS/DSS will phase in the plan over a two week period using the following schedule:

### Current distribution:

First Letter of the Last Name Begins With:	Day of the Month That Food Benefits are Deposited
A, B, C	5 <sup>th</sup> of the month
D, E, F	6 <sup>th</sup> of the month
G, H, I	7 <sup>th</sup> of the month
J, K, L, M	8 <sup>th</sup> of the month
N, O, P, Q, R	9 <sup>th</sup> of the month
S, T, U, V	10 <sup>th</sup> of the month
W, X, Y, Z	11 <sup>th</sup> of the month

### Distribution Beginning March 2013

First Letter of the Last Name Begins With:	Day of the Month That Food Benefits are Deposited
A	2 <sup>nd</sup> of the month

## GENERAL NOTICES

B	3 <sup>rd</sup> of the month
C	4 <sup>th</sup> of the month
D	5 <sup>th</sup> of the month
E, F	6 <sup>th</sup> of the month
G	7 <sup>th</sup> of the month
H	8 <sup>th</sup> of the month
I, J	9 <sup>th</sup> of the month
K, L	10 <sup>th</sup> of the month
M	11 <sup>th</sup> of the month
N, O, P	12 <sup>th</sup> of the month
Q, R	13 <sup>th</sup> of the month
S	14 <sup>th</sup> of the month
T, U, V	15 <sup>th</sup> of the month
W	16 <sup>th</sup> of the month
X, Y, Z	17 <sup>th</sup> of the month

The Food Bank of Delaware has been contacted to let them know about the potential increased demand for emergency food assistance in March as a result of the expanded issuance schedule. FSP clients may call 2-1-1 for information on the food pantry close to them.

Questions, written comments and additional information pertaining to the proposed changes may be sent to: Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or via fax to 302-255-4425 for a period of thirty (30) days from the date of this notice. Please identify in the subject line: Expanded Issuance of Food Benefits.

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

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 5.3.3.19, 8.5.5.11, 7.1.7.7.1.7.1, 7.1.7.1.1 & 7.1.7.2.1. The Commission will hold a public hearing on the proposed rule changes on March 7, 2013. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on February 1, 2013.

The proposed changes are for the purpose of updating Rules and reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml)

A copy is also available for inspection at the Harness Racing Commission office.

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

The State Board of Education will hold its monthly meeting on Thursday, February 21, 2013 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****Long-Term Care Program****Tax Refunds and Advance Payments****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, Tax Refunds or Advance Payments.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 4, 2013.

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

**DIVISION OF PUBLIC HEALTH****Regulations Governing the State of Delaware Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders****PUBLIC NOTICE**

On February 1, 2013, the Family Health Systems section, under the Division of Public Health, Department of Health and Social Services, plans to publish proposed regulations governing the State of Delaware Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders and hold them out for public comment per Delaware law.

In September 2011, the U.S. Department of Health and Human Services adopted the Advisory Committee on Heritable Disorders in Newborns and Children's recommendation to add screening for critical congenital heart disease (CCHD) to the Uniform Screening Panel. The proposed revisions to this regulation outline the process for

collecting screening results for CCHD through pulse oximetry testing for newborns. Additionally, the revisions clarify the program's retention of blood spot results for a period of three years as well as update language to currently acceptable terms.

Copies of the proposed regulations are available for review in the February 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Family Health Systems Section at (302) 744-4821.

Any person who wishes to submit suggestions, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by March 4, 2013 at:

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

**EXECUTIVE DEPARTMENT**  
**DELAWARE ECONOMIC DEVELOPMENT AUTHORITY**  
**401 Procedures Regarding Non-State Guaranteed Bonds**  
**403 Procedures Regarding the Administration and Operation of the Council on Development**  
**PUBLIC NOTICE**

The State of Delaware, Delaware Economic Development Office ("DEDO") and The Delaware Economic Development Authority (the "Authority") hereby give notice of their intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §§5029(a) and 5054(e)(1) and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. The proposed regulations constitute a revision of procedures for the Council of Development Finance.

DEDO and the Authority solicit, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*.

Any such submissions should be mailed or delivered to Lee Porter, 99 Kings Highway, Dover, DE 19901 by March 3, 2013.