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# Delaware Register of Regulations

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Issue Date: FEBRUARY 1, 2018

Volume 21 - Issue 8, Pages 593 - 657

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Calendar of Events &  
Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before January 15, 2018.

Cover Photo by  
Dolores Michels



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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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

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## Symbol Key

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

## Proposed Regulations

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

## DEPARTMENT OF AGRICULTURE DELAWARE FOREST SERVICE

Statutory Authority: 3 Delaware Code, Section 1011 and 29 Delaware Code, Section 8103(8)  
(3 **Del.C.** §1011 and 29 **Del.C.** §8103(8))  
3 **DE Admin. Code** 402

### PUBLIC NOTICE

### 402 State Forest Regulations

**1. TITLE OF THE REGULATIONS:**

3 **DE Admin. Code** 402 State Forest Regulations

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

3 **DE Admin. Code** 402 State Forest Regulations are being proposed for amendment to comply with the decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC* (Dec. 7, 2017) that invalidated portions of the existing regulations governing firearms. The emergency regulations promulgated on December 26, 2017 will be superseded by these regulations.

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

None

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

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for the Delaware Department of Agriculture to promulgate necessary regulations to protect forest lands, 3 **Del.C.** §1011, and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;" 29 **Del.C.** §8103(8).

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

None

## 6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 3 DE Admin. Code 402 State Forest Regulations will open February 1, 2018 and public comments will be accepted in accordance with 29 Del.C. §10118. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 12, 2018 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

## 7. PREPARED BY:

Michael A. Valenti  
Delaware Department of Agriculture  
2320 S. DuPont Highway, Dover, DE 19901  
Phone: 302-698-4550 Fax: 302-697-6287  
E-mail: [michael.valenti@state.de.us](mailto:michael.valenti@state.de.us)

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

[http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 604RFA 02-01-18.pdf](http://regulations.delaware.gov/register/february2018/proposed/21%20DE%20Reg%20604RFA%2002-01-18.pdf)

### 402 State Forest Regulations (Break in Continuity of Sections)

## 8.0 Hunting Rules and Regulations

### (Break in Continuity Within Section)

8.8 Target shooting is prohibited. Firearms are allowed for legal hunting ~~only~~ and are otherwise prohibited within designated safe areas on State Forest lands, ~~except as set forth below.~~

8.8.1 Designated areas shall include State Forest Offices, education centers, and lodges, and shall be identified by appropriate signage.

8.8.2 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Department, including designated areas, provided that proper and current credentials shall be produced upon request.

8.8.3 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Department, including designated areas, provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Department.

8.8.4 Firearms may be carried within areas administered by the Department, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.

8.8.5 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Department, in order to protect public safety and preserve the peace.

8.8.6 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

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

**402 State Forest Regulations**

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# PROPOSED 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)  
16 DE Admin. Code 5000

### PUBLIC NOTICE

#### Managed Care Hearings

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual regarding Managed Care Hearings, specifically, *to align DMMA Medicaid Managed Care Policy with the new Federal Requirement, Medicaid Managed Care Final Rule.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on March 5, 2018. Please identify in the subject line: Managed Care Hearings.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual regarding Managed Care Hearings, specifically, *to align DMMA Medicaid Managed Care Policy with the new Federal Requirement, Medicaid Managed Care Final Rule.*

#### Statutory Authority

- 42 CFR 438.400
- 42 CFR 438.402
- 42 CFR 438.410
- 42 CFR 438.208(f)
- 42 CFR 438.3
- 81 FR 27497 - 27901, May 6, 2016; Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability Final Rule

#### Background

The Center for Medicaid Services (CMS) has regulated Medicaid managed care since the 1970s. Recent Medicaid managed care regulatory changes have stemmed from intermittent changes in law, including: the Balanced Budget Act of 1997, the Deficit Reduction Act of 2005, and the Affordable Care Act of 2010. On May 6, 2016, CMS published the Medicaid Managed Care Final Rule to comprehensively modernize Medicaid managed care through delivery system reform, improvements to the quality of care, strengthening beneficiary experiences, improving accountability and transparency, and aligning Medicaid managed care with other health coverage programs.

Over the past year, Delaware has thoroughly analyzed the Final Rule and identified Medicaid managed care contract and state operational changes necessary to come into compliance with the provisions of the Final Rule. DMMA moved forward with implementation of the majority of the provisions of the Final Rule effective as of January 1, 2018, with the exclusion of Managed Care Hearings. DMMA intends to amend the DSSM consistent with all of the applicable requirements including Managed Care Hearings which addresses the time frame for MCO

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internal appeals and to clarify that MCOs are responsible for the initial level of appeal.

## Summary of Proposal

### *Purpose*

The purpose of this proposed regulation is to amend the Managed Care Hearings section to reflect recent changes in the Federal Code of Regulations as a result of the Medicaid Managed Care Final Rule.

### *Summary of Proposed Changes*

Effective for services provided on and after February 11, 2018, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Division of Social Services Manual section 5304.3 regarding Managed Care Hearings, specifically, to align DMMA Medicaid Managed Care Policy with the new Federal Requirement, Medicaid Managed Care Final Rule.

### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on March 5, 2018.

### *Provider Manuals Update*

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>.

## Fiscal Impact

There is no or minimal fiscal impact as the changes in regulation are only clarification of internal policy.

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

[http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 606RFA 02-01-18.pdf](http://regulations.delaware.gov/register/february2018/proposed/21%20DE%20Reg%20606RFA%2002-01-18.pdf)

## 5304.3 Presiding Over DMMA Managed Care Hearings

42 CFR 438.408(f), 42 CFR 438.410

This policy applies to recipients enrolled in a managed care organization.

Recipients of medical services from the Division of Medicaid and Medical Assistance may ~~appeal an adverse decision of a Managed Care Organization (MCO) to the Division~~ request a hearing from the Division after receiving an MCO's notice of appeal resolution upholding an adverse benefit determination or the MCO's failure to adhere to the notice and timing requirements in 42 CFR 438.408. The decision of the DSS Hearing Officer is a final decision of the Department of Health and Social Services and is binding on the MCO.

The MCO is responsible for the preparation of the hearing summary under §5312 of these rules and the presentation of its case. The MCO is subject to the rules, practices, and procedures detailed herein.

These rules do not prevent an MCO from offering conciliation services or ~~a grievance hearing~~ one level of appeal prior to the fair hearing conducted by DSS.

### 1. Recipients Are Entitled to an Expedited Resolution in Cases of Emergency

The MCO is responsible for establishing and maintaining an expedited review process for appeals when the MCO determines or the provider indicates that taking the time for standard resolution could seriously jeopardize the claimant's life, physical or mental health or ability to attain, maintain, or regain maximum function. The expedited review can be requested by the claimant or the provider on the claimant's behalf.

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# PROPOSED REGULATIONS

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The MCO must provide for prompt access to MCO case records as specified in DSSM 5403. The MCO must also issue an expedited resolution within ~~3 working days~~ 72 hours after receiving the appeal. Expedited appeals must otherwise follow all other standard appeal requirements.

If the MCO denies a request for an expedited resolution of an appeal, it must:

- i. resolve the appeal within the standard time frame of ~~45~~ 30 days.
  - ii. make reasonable efforts to provide prompt oral notice of the denial and provide written notice of the denial to the claimant within 2 calendar days and inform the recipient of the right to file a grievance if he or she disagrees with that decision.
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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Title XXI CHIP Compliance with MHPAEA

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XXI CHIP Plan regarding MHPAEA specifically, *to align the Delaware CHIP Plan with new Federal Requirements.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on March 5, 2018. Please identify in the subject line: **Title XXI CHIP Compliance with MHPAEA.**

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XXI CHIP Plan regarding Title XXI CHIP Compliance with MHPAEA, specifically, *to align the Delaware CHIP Plan with new Federal Requirements.*

#### Statutory Authority

- Mental Health Parity and Addiction Equity Act (MHPAEA)
- Patient Protection and Affordable Care Act

#### Background

The Centers for Medicare & Medicaid Services (CMS) issued a final rule that applies requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA) to Medicaid managed care organizations (MCOs), the Children's Health Insurance Program (CHIP), and Medicaid alternative benefit plans (ABPs). Delaware and its contracted Medicaid/CHIP MCOs were required to be in compliance with the final Medicaid/CHIP parity rule on or before October 2, 2017.

The State and its MCOs conducted a review of the State's Medicaid/CHIP delivery system to assess compliance with the final Medicaid/CHIP parity rule.

Additionally, CMS released a CHIP Plan template to document this compliance as it relates specifically to CHIP.



## Summary of Proposal

### *Purpose*

The purpose of this proposed regulation is to ensure that coverage provided to CHIP beneficiaries for mental health and substance use disorders be no more restrictive than coverage for medical/surgical conditions.

### *Summary of Proposed Changes*

Effective for services provided on and after October 2, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XXI CHIP Plan regarding MHPAEA specifically, *to align the Delaware CHIP Plan with new Federal Requirements.*

### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on March 5, 2018.

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

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

### *Provider Manuals and Communications Update*

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

## Fiscal Impact

There will be no or minimal fiscal impact.

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

<http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 608RFA 02-01-18.pdf>

## Proposed Regulation Text

The text for the four proposed regulations may be viewed here:

**DMMA CHIP Reg 6.2** <http://regulations.delaware.gov/register/february2018/proposed/DMMA CHIP Reg 6.2.pdf>

Proposed text for the attachments may be viewed here:

<http://regulations.delaware.gov/register/february2018/proposed/DMMA CHIP Attachment 1.pdf>

<http://regulations.delaware.gov/register/february2018/proposed/DMMA CHIP Attachment 2.pdf>

<http://regulations.delaware.gov/register/february2018/proposed/DMMA CHIP Attachment 3.pdf>

<http://regulations.delaware.gov/register/february2018/proposed/DMMA CHIP Attachment 4.pdf>

**DMMA CHIP Reg 8.2** <http://regulations.delaware.gov/register/february2018/proposed/DMMA CHIP Reg 8.2.pdf>

**DMMA CHIP Reg 8.4** <http://regulations.delaware.gov/register/february2018/proposed/DMMA CHIP Reg 8.4.pdf>

**DMMA CHIP Reg 8.5** <http://regulations.delaware.gov/register/february2018/proposed/DMMA CHIP Reg 8.5.pdf>

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# PROPOSED REGULATIONS

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## DEPARTMENT OF INSURANCE

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 102, 311 and 329, and 24 Delaware Code, Section 716(c) (18 **Del.C.** §§102, 311 & 329; 24 **Del.C.** §716(c))

#### PUBLIC NOTICE

### 1318 Compensation for Chiropractic Services

#### A. Type of Regulatory Action Required

Re-proposal of New Regulation

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

At 21 DE Reg. 19 (July 1, 2017), the Department published a notice of its intent to codify proposed new Regulation 1318, Compensation for Chiropractic Services, and solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

#### Summary of Comments Received and the Department's Response

The Department received several timely submitted comments, copies of which are on file with the Department. In response to the comments received, the Department redrafted the proposed new regulation, and hereby gives notice of its re-proposal. The proposed new regulation as redrafted would prohibit insurance carriers and third party administrators who are regulated by the Department from including in any insurance policy terms and conditions that unreasonably discriminate against access to chiropractic care or services. It would also prohibit compensation of doctors of chiropractic that is unreasonable or discriminatory, as detailed in the proposed new rule. The Delaware Code authority for the proposed new regulation is 24 **Del.C.** §716(c) and 18 **Del.C.** §§102, 311 and 329.

The Department of Insurance does not plan to hold a public hearing on the redrafted version of the proposed new regulation. The proposed new regulation appears below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 5<sup>th</sup> day of March, 2018. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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

[http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 610RFA 02-01-18.pdf](http://regulations.delaware.gov/register/february2018/proposed/21%20DE%20Reg%20610RFA%2002-01-18.pdf)

### 1318 Compensation for Chiropractic Services

#### **1.0 Authority**

This regulation is adopted pursuant to 18 **Del.C.** §§102, 311 and 329 and 24 **Del.C.** §716 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

#### **2.0 Purpose**

The purpose of this regulation is to implement 24 **Del.C.** §716.

## **3.0 Scope**

- 3.1 This regulation shall apply to all carriers and to all third party administrators as defined herein.
- 3.2 This regulation shall not apply to personal injury protection automobile insurance that is required under 21 Del.C. Ch. 21.

## **4.0 Definitions**

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

"Administrator" or "third party administrator" or "TPA" means "Administrator" or "third party administrator" or "TPA" as those terms are defined at 18 DE Admin. Code 1406-2.1.

"Carrier" means any entity that provides health insurance in this State. For the purposes of this regulation, carrier includes a health insurance company, health service corporation, health maintenance organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

"Chiropractic" means "Chiropractic" as defined in 24 Del.C. Ch. 7 and in 24 DE Admin. Code 700.

"Chiropractic care or services" means those practices that a licensed doctor of chiropractic is licensed to provide pursuant to 24 Del.C. Ch. 7 and 24 DE Admin. Code 700.

"Commissioner" means the Commissioner of the Delaware Department of Insurance.

"Doctor of chiropractic" means a person who is licensed to administer chiropractic care or services pursuant to 24 Del.C. Ch. 7 and 24 DE Admin. Code 700.

"Medically necessary" means the providing of health care services or products that a prudent physician would provide to a patient for the purpose of diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

- A. In accordance with generally accepted standards of medical practice;
- B. Consistent with the symptoms or treatment of the condition; and
- C. Not solely for anyone's convenience.

"Physician" means, for purposes of this regulation, anyone who is licensed as a physician pursuant to 24 Del.C. Ch. 17 or as a doctor of chiropractic.

## **5.0 Unreasonable and Discriminatory Access to Chiropractic Care Prohibited**

- 5.1 No carrier shall include in any insurance policy, contract or certificate any provision that unreasonably discriminates against access to chiropractic care or services, including but not limited to:
  - 5.1.1 A cost containment or managed care provision that denies or restricts access to chiropractic care or services in a manner that is more restrictive than a cost containment or managed care provision placed on a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially similar service, for the treatment of a patient with a condition that is within the scope of chiropractic practice;
  - 5.1.2 A provision that classifies chiropractic care as "maintenance care" or "not medically necessary," solely for the purpose of denying access to chiropractic care;
  - 5.1.3 A provision that requires a patient to pay a higher copay or deductible when being treated by a doctor of chiropractic than that patient would otherwise be required to pay for the same or substantially similar services had those services been rendered by a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform that or a substantially similar service;
  - 5.1.4 A provision that requires a patient to pay a copayment or coinsurance that is more than 25 percent of the fee due or to be paid to a doctor of chiropractic for chiropractic care or services;
  - 5.1.5 A provision that contains a utilization or compensation restriction or practice for a doctor of chiropractic that is more restrictive than a utilization or compensation restriction or practice placed on a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to

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## PROPOSED REGULATIONS

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perform the same or substantially similar service for the treatment of patients with conditions within the scope of chiropractic care or services, including but not limited to:

- 5.1.5.1 Unreasonable or discriminatory restrictions on the number of compensated visits per condition, or per episode, year, or other period;
  - 5.1.5.2 Unreasonable or discriminatory precertification requirements and allowances for initial or subsequent visits, or for the determination of medical necessity; or
  - 5.1.5.3 A provision that requires a patient who wishes to seek the care of a doctor of chiropractic to first obtain a referral or other approval from a health-care provider who is not a doctor of chiropractic.
- 5.1.6 Including a provision that would unreasonably deny coverage for a chiropractic technique, method or diagnostic procedure if that chiropractic technique, method or diagnostic procedure is taught by a Chiropractic College or University accredited by the Council on Chiropractic Education (CCE), or has been approved by the Delaware Board of Chiropractic.
- 5.2 Nothing in this section shall prevent a carrier from implementing reasonable and nondiscriminatory cost containment or managed care provisions as permitted by 24 Del.C. §716(b).

### **6.0 Unreasonable and Discriminatory Compensation Prohibited**

- 6.1 No carrier or TPA shall discriminate against or unreasonably deny a doctor of chiropractic compensation for a chiropractic service rendered by that doctor of chiropractic if the carrier would otherwise compensate a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform that same or substantially similar service.
- 6.2 Every carrier or TPA shall utilize the same or similar cost containment and managed care payment strategies to provide payment for chiropractic care or services, regardless of whether the care was delivered by a licensed doctor of chiropractic or by a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially similar service.
- 6.3 No carrier or TPA shall utilize a cost containment or managed care strategy concerning reimbursement for chiropractic care or services, when any one of chiropractic, medical, osteopathic or pharmaceutical care would be a medically suitable treatment for a patient's particular condition and would otherwise be eligible for reimbursement.
- 6.4 Nothing in this section shall prohibit a carrier or a TPA from conducting a utilization review to determine the medical necessity of any services provided.

### **7.0 Waiver not permitted**

The provisions of this regulation may not be waived, voided, or nullified by contract.

### **8.0 Causes of Action**

This regulation shall not create a private cause of action for any person or entity other than the Commissioner against a carrier or its representative based upon a violation of 24 Del.C. §716 or any provision of this regulation.

### **9.0 Effective Date**

Section 5.0 of this regulation shall become effective for any policy newly written or renewed on or after January 1, 2019. All other sections of this regulation shall become effective on or after the effective date of this regulation.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 103(b) (7 **Del.C.** §103(b))  
7 **DE Admin. Code** 3301

**REGISTER NOTICE**  
**SAN #2017-16****3300 Non-Tidal Finfish**  
**3301 Definitions****1. TITLE OF THE REGULATIONS:**

7 **DE Admin. Code** 3300 Non-Tidal Finfish - 7 **DE Admin. Code** 3301 Definitions

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

To expand recreational freshwater trout angling opportunities, this action proposes to amend Delaware's non-tidal finfish regulation (7 **DE Admin Code** 3301 (1.0)) by defining that portion of Red Clay Creek from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania to the bridge at Yorklyn Road as a designated trout stream. Trout stream stocking provides an important recreational fishing opportunity in a densely populated area of the State, which has few other freshwater fishing opportunities. Red Clay Creek was formerly included as a designated trout stream, but fish tissue contamination resulting from industrial discharges precluded stocking since 1986. Research trout stockings conducted in Red Clay Creek by the Department in 2011 and 2016 demonstrated that trout once again can be safely stocked and consumed as a result of improving water quality.

Waters designated as trout streams are closed to all fishing 14 days prior to the first Saturday in April to provide for stocking time and fair access and to deter poaching. Such designation also requires an annual trout stamp (\$2.10 resident youth/ \$4.20 resident adult/ \$6.20 non-resident) to fish from the first Saturday in April through June 30 and the first Saturday in October through November 30. No environmental impact is expected as the result of the proposed amendment. The proposed amendment will increase angling opportunities for Delaware's trout anglers and it is anticipated that the return of trout fishing to Red Clay Creek will better distribute trout angling pressure.

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

None

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

7 **Del.C.** §103(b)

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

None

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to 7 **DE Admin. Code** 3301 Definitions will open February 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on February 22, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, March 9, 2018.

**7. PREPARED BY:**

Stewart Michels  
[Stewart.Michels@state.de.us](mailto:Stewart.Michels@state.de.us)

(302)739-9914

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

[http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 613RFA 02-01-18.pdf](http://regulations.delaware.gov/register/february2018/proposed/21%20DE%20Reg%20613RFA%2002-01-18.pdf)

## 3300 Non-Tidal Finfish

### 3301 Definitions

- 1.0 For purposes of Regulations 3301 through 3311, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

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

**"Red Clay Creek"**, from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania to the bridge at Yorklyn Road;

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

## 3300 Non-Tidal Finfish

### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 103 and 29 Delaware Code, Section 8003(7) (7 Del.C. §103 and 29 Del.C. §8003(7))  
7 DE Admin. Code 3900

#### REGISTER NOTICE SAN # 2018-01

### 3900 Wildlife

1. **TITLE OF THE REGULATIONS:**  
7 DE Admin. Code 3900 Wildlife

2. **BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**  
7 DE Admin. Code 3900 Wildlife is being proposed for amendment to comply with the decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC* (Dec. 7, 2017) that invalidated portions of the existing regulations governing firearms. The emergency regulations promulgated on December 26, 2017 will be superseded by these regulations.

3. **POSSIBLE TERMS OF THE AGENCY ACTION:**  
None

4. **STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**  
These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for DNREC to promulgate necessary regulations to protect wildlife, 7 Del.C. §103, and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State". 29 Del.C. §8003(7).

5. **OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**  
None

## 6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3900 Wildlife will open February 1, 2018 and public comments will be accepted in accordance with 29 Del.C. §10118. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 12, 2018 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

## 7. PREPARED BY:

Dave Saveikis, Director  
DNREC - Division of Fish & Wildlife  
89 Kings Highway, Dover, DE 19901  
Phone: 302-739-9910 Fax: 302-739-6157  
E-mail: [david.saveikis@state.de.us](mailto:david.saveikis@state.de.us)

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

[http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 614RFA 02-01-18.pdf](http://regulations.delaware.gov/register/february2018/proposed/21%20DE%20Reg%20614RFA%2002-01-18.pdf)

### 3900 Wildlife (Break in Continuity of Sections)

## 8.0 General Rules and Regulations Governing Land and Waters Administered by the Division (Break in Continuity Within Section)

### 8.3 Hunting and Firearms.

#### (Break in Continuity Within Section)

#### 8.3.4 Firearms on Division Areas.

8.3.4.1 It shall be unlawful for any person to possess a firearm ~~on lands or waters~~ within areas designated in 8.3.4.6 below administered by the Division ~~from March 1 through August 31,~~ except as authorized by the Director in writing, or as set forth below.

#### (Break in Continuity Within Section)

8.3.4.6 Areas subject to the provisions of 8.3.4.1 above shall include Division offices, visitor centers, nature centers, educational facilities, facilities or locations used for authorized special events or festivals, and maintenance shops, and shall be identified by appropriate signage.

8.3.4.7 The Director may grant written approval on a daily basis for the possession of firearms within areas designated in 8.3.4.6 above, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within areas designated in 8.3.4.6 above.

8.3.4.8 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Division, including areas designated in 8.3.4.6 above, provided that proper and current credentials shall be produced upon request.

8.3.4.9 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including areas designated in 8.3.4.6 above, provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Director.

8.3.4.10 Firearms may be carried within areas administered by the Division, outside of areas designated in 8.3.4.6 above, by any person not prohibited by 11 Del.C. §1448.



# PROPOSED REGULATIONS

- 8.3.4.11 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.
- 8.3.4.12 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

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

**3900 Wildlife**

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## DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code, Section 4701(a)(4) and 29 Delaware Code, Section 8003(7) (7 **Del.C.** §4701(a)(4) and 29 **Del.C.** §8003(7))  
**7 DE Admin. Code 9201**

**REGISTER NOTICE**  
**SAN # 2018-02**

### 9201 Regulations Governing State Parks

**1. TITLE OF THE REGULATIONS:**

7 **DE Admin. Code** 9201 Regulations Governing State Parks

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

7 **DE Admin. Code** 9201 Regulations Governing State Parks are being proposed for amendment to comply with the decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC* (Dec. 7, 2017) that invalidated portions of the existing regulations governing firearms. The emergency regulations promulgated on December 26, 2017 will be superseded by these regulations.

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

None

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

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for DNREC to "[m]ake and enforce regulations relating to the protection, care and use of the areas it administers", 7 **Del.C.** §4701(a)(4), and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State". 29 **Del.C.** §8003(7).

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

None

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed amendments to 7 **DE Admin. Code** 9201 Regulations Governing State Parks will open February 1, 2018 and public comments will be accepted in accordance with 29 **Del.C.** §10118. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 12, 2018 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.



## 7. PREPARED BY:

Ray Bivens, Director  
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E-mail: [raymond.bivens@state.de.us](mailto:raymond.bivens@state.de.us)

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

<http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 616RFA 02-01-18.pdf>

## 9201 Regulations Governing State Parks

*(Break in Continuity of Sections)*

### 21.0 Hunting, Fishing and Wildlife Management - Environmental D Violation

- 21.1 It shall be unlawful to display, possess or discharge firearms of any description, air rifles, B.B. guns, sling shots, or archery equipment ~~upon lands or waters~~ within designated areas administered by the Division, except with prior written approval of the Director, ~~or as set forth below.~~
- 21.1.1 Designated areas shall include park offices, visitor centers, nature centers, bathhouses, restaurants and snack bars, stadiums and facilities while used for sporting events, concerts, and festivals, museums, zoos, stables, educational facilities, dormitories, playgrounds, camping areas, swimming pools, guarded beaches, and water parks, and shall be identified by appropriate signage.
- 21.1.2 The Director may grant written approval on a daily basis for the possession of firearms within designated areas, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within the designated areas.
- 21.1.3 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Division, including designated areas, provided that proper and current credentials shall be produced upon request.
- 21.1.4 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including designated areas, provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Director.
- 21.1.5 Firearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.
- 21.1.6 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.
- 21.1.7 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

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

**9201 Regulations Governing State Parks**

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# PROPOSED REGULATIONS

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## DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 74B (7 Del.C. Ch. 74B)  
7 DE Admin. Code 1353

### REGISTER NOTICE SAN # 2017-13

#### 1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear

#### 1. TITLE OF THE REGULATIONS:

Administrative Code Section 1353, Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear Installations

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

The proposed regulations reflect changes that will reduce the likelihood of an incident involving the loss of life and property from a boiler or pressure vessel due to an explosion, equipment failure, or harmful exposure to carbon monoxide. The proposed regulations require owners of boilers located in places accessible to the public such as commercial businesses, churches, hospitals, and schools, to conduct monthly inspections of their boiler systems and record any maintenance, testing, or service performed on the boiler. The proposed regulations also require owners to hire a licensed heating, ventilation, and air conditioning technician to perform an annual service check on the boiler system.

The proposed regulations also amend the inspection and testing requirements for pressure vessels associated with air cannons. The thickness of the wall of the pressure vessels must now be checked using ultrasonic testing technologies to ensure that the wall is thick enough to sustain the maximum allowable working pressure originally assigned to the pressure vessel when it was manufactured. There are also requirements for owners to conduct penetrant testing and necessary repairs on the pressure vessel when a commissioned inspector detects cracks or surface defects during an inspection.

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

There is not a sunset date related to the proposed regulations.

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

The statutory basis for these regulations is Title 7 Delaware Code Chapter 74B, Section 7403B(i)

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

None.

#### 6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed amendments to 7 DE Admin. Code 1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear Installations was open on January 1, 2018 and remains open. Public comments will be accepted through March 15th 2018, pursuant to Section 10118 of 29 Del. Code Chapter 101, Administrative Procedures. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendments will be held on Wednesday February 28, 2018 beginning at 6:00 PM in the DNREC Richardson and Robbins Building Auditorium, 89 Kings Highway Dover, DE 19901. The hearing originally was scheduled for January 25, 2018 but had to be rescheduled due to severe weather which prevented a legal notice from appearing in two newspapers with statewide circulation 20 days prior to the scheduled public hearing.

#### 7. PREPARED BY:

Name/Phone: Alex Rittberg, 302-395-2500  
Email: [Alex.Rittberg@state.de.us](mailto:Alex.Rittberg@state.de.us)

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**\*Please Note:**

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

[http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 618RFA 02-01-18.pdf](http://regulations.delaware.gov/register/february2018/proposed/21%20DE%20Reg%20618RFA%2002-01-18.pdf)

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

[1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear](#)

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1400 BOARD OF ELECTRICAL EXAMINERS**

Statutory Authority: 24 Delaware Code, Section 1406(a)(1) (24 Del.C. §1406(a)(1))  
24 DE Admin. Code 1400

**PUBLIC NOTICE**

**1400 Board of Electrical Examiners**

Pursuant to 24 Del.C. §1406(a)(1), the Delaware Board of Electrical Examiners has proposed revisions to its rules and regulations. The rules pertaining to late renewal for Electrical Inspection Agencies have been modified.

A public hearing will be held on March 7, 2018 at 8:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be 15 days following the public hearing.

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

[http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 619RFA 02-01-18.pdf](http://regulations.delaware.gov/register/february2018/proposed/21%20DE%20Reg%20619RFA%2002-01-18.pdf)

**1400 Board of Electrical Examiners**  
*(Break in Continuity of Sections)*

**7.0 Expiration and Renewal**

*(Break in Continuity Within Section)*

7.4 A licensed electrical inspection agency may renew an expired license within 45 days after the renewal deadline by meeting all requirements and paying a late fee set by the Division.

7.47.5 A licensee with an active license may request in writing to be placed on inactive status. Inactive status can be renewed electronically on a biennial basis by attestation of completing the required CE for licensure. Inactive licenses may be reactivated by the Board upon written request with proof of insurance (as required in accordance with Section 6.0) and payment of the appropriate fee set by the Division.

7.57.6 A licensee is not authorized to work as a licensed electrician in this State during the period of inactive status.

7.67.7 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience can be used to satisfy the requirements under 24 Del.C. §1408(a). However, the applicant must take the examination required by §1408(5) and achieve a passing score

# PROPOSED REGULATIONS

unless he or she previously passed an approved licensure test that covered the National Electric Code that is the standard in Delaware at the time of the new application.

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

**1400 Board of Electrical Examiners**

## PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 362(b) (26 **Del.C.** §362(b))  
26 **DE Admin. Code** 3008

### PUBLIC NOTICE

### 3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

IN THE MATTER OF THE ADOPTION OF RULES AND PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT, 26 *DEL. C.* §§ 351-363, AS APPLIED TO RETAIL ELECTRICITY SUPPLIERS (OPENED AUGUST 23, 2005; REOPENED SEPTEMBER 4, 2007; AUGUST 5, 2008; SEPTEMBER 22, 2009; AUGUST 17, 2010; SEPTEMBER 6, 2011, SEPTEMBER 18, 2012; FEBRUARY 2, 2017)

PSC REGULATION DOCKET NO. 56

### PUBLIC NOTICE OF PROPOSED REGULATIONS

The Delaware Public Service Commission, in compliance with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML, and pursuant to 26 **Del.C.** §362(b), proposes to revise its regulations for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML; that is, specifically to promulgate regulations to amend 26 *Del. Admin. C.* §3008-3.2.21 and related regulations as needed to specify the procedures for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements under 26 **Del.C.** §354(i) and (j).

You can review the proposed revised Rules in the February 2018 issue of the Delaware *Register of Regulations*. You can also review the Order and the proposed revised Rules in the PSC's electronic filing system DelaFile at <http://delafile.delaware.gov/> and for docket # input "Reg. 56." If you wish to obtain written copies of the Order and proposed revised Rules, please contact the PSC at (302) 736-7500. Copies in excess of the first twenty pages are \$0.10 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Written comments can be filed electronically in DelaFile at <http://delafile.delaware.gov/> by filling out the Public Comment Form located under Public Links. Written comments can also be mailed to Joseph DeLosa, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904 or via email to [joseph.delosa@state.de.us](mailto:joseph.delosa@state.de.us), with the subject line "Regulation Docket No. 56." Written comments will be accepted until Wednesday, March 14, 2018, pursuant to 29 **Del.C.** §10118(a).

### ORDER NO. 9016

**AND NOW**, this 16<sup>th</sup> day of January, 2018, the Delaware Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, on October 2, 2015, in Docket No. 15-1462, the Delaware Division of the Public Advocate ("DPA") filed a Petition requesting that this Commission open a docket to consider whether to amend 26 *Del. Admin. C.* § 3008-3.2.21 to issue regulations governing when a freeze of the minimum percentages of eligible energy resources and solar photovoltaics may be declared pursuant to 26 **Del.C.** §§354(i) and (j); and on October 12, 2015, the Caesar Rodney Institute ("CRI") submitted a Petition supporting the DPA's Petition;

**WHEREAS**, on October 27, 2015, the Commission Staff ("Staff") and the Delaware Department of Natural Resources and Environmental Conservation ("DNREC") filed a Joint Motion opposing the Petitions of the DPA and CRI and requesting that the Commission deny the Petitions (the "Joint Motion"); and on October 29, 2015, the DPA and CRI filed a joint response ("Joint Response") to the Joint Motion;

**WHEREAS**, the Commission also received a letter signed by eight members of the Delaware House of Representatives supporting the Petition, and written comments from Dr. Jeremy Firestone and the Mid-Atlantic Renewable Energy Coalition opposing the Petition;

**WHEREAS**, on November 3, 2015, the Commission met at its regularly-scheduled meeting to consider the Petition, the Joint Motion, the Joint Response, and other written comments, and to hear oral argument from the parties. After deliberations, the Commission denied the Petition and closed the docket. This decision was memorialized in Order No. 8807, which explained the Commission's decision as follows:

The language of the REPSA [Renewable Energy Portfolio Standards Act, 26 **Del.C.** §§351-363] is not a model of clarity. We believe that the language could be improved to make the respective responsibilities of the Commission and DNREC clearer, and we question whether the aims of the statute will be accomplished given the dispute about how to interpret the language. We urge the General Assembly to clarify those responsibilities going forward. In the meantime, we interpret Sections 354(i) and (j) to provide DNREC with the primary responsibility for issuing regulations governing when a freeze of the minimum percentages of eligible energy resources and solar photovoltaics may be declared.<sup>1</sup>

**WHEREAS**, on December 7, 2015, the DPA filed a Notice of Appeal of the Commission's decision in Order No. 8807 with the Superior Court of the State of Delaware (the "Court"); and

**WHEREAS**, after briefing and oral argument by the DPA and the Commission, on December 30, 2016, the Court issued a Memorandum Opinion<sup>2</sup> reversing the Commission's decision in Order No. 8807 and remanding to the Commission for proceedings consistent with the decision; and

**WHEREAS**, in compliance with the Court's Memorandum Opinion, on February 2, 2017, the Commission adopted Order No. 9025 in Docket No. 15-1462, which 1) re-opened Docket No. 15-1462 for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML; 2) reversed Ordering Paragraph No. 21 of Order No. 8807, which denied the Petition of the DPA and CRI; and 3) directed Staff to re-open Regulation Docket 56 for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML; that is, specifically to promulgate regulations to amend 26 *Del. Admin. C.* §3008-3.2.21 and related regulations as needed to specify the procedures for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements under 26 **Del.C.** §§354(i) and (j); and

**WHEREAS**, on February 2, 2017, the Commission adopted Order No. 9024 in this docket, which required the publication of proposed Rules in the March 1, 2017 *Delaware Register of Regulations*, publication of public notice, and a public comment period through April 24, 2017; and

**WHEREAS**, at the public hearing at the April 6, 2017 regularly-scheduled Commission meeting, the Commission heard public comments; and

**WHEREAS**, before April 24, 2017, 104 written public comments were received, including comments from the DPA, CRI, DNREC, and Mr. Gary Myers, among others; and

**WHEREAS**, on July 20, 2017, Staff filed its Review and Recommendation of the public comments and recommended that the Commission republish revised regulations; and

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1. Order No. 8807, ¶ 9 (Dec. 3, 2015).

2. Memorandum Opinion, *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML (Dec. 30, 2016).

# PROPOSED REGULATIONS

**WHEREAS**, after consideration of these public comments and Staff's recommendation, on July 25, 2017, the Commission adopted Order No. 9090 which republished revised regulations in the September 1, 2017 *Delaware Register of Regulations*, and opened a comment period through October 2, 2017; and

**WHEREAS**, before expiration of the October 2, 2017 comment period, 8 written public comments were received, and 24 additional public comments were received after the comment period deadline; and

**WHEREAS**, on November 17, 2017, notice of the hearing was published in the *Delaware State News* and *The News Journal*, which took place on December 7, 2017, to determine whether to finalize the proposed regulations approved in Order No. 9090 or republish the substantively revised regulations in this docket; and

**WHEREAS**, at the December 7, 2017 hearing, the Commission heard arguments on the contested issues from several of the parties that submitted comments, and directed republishing of the proposed regulations in accordance with the Commission's deliberations.

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Commission Secretary shall transmit to the Registrar of Regulations for publication on February 1, 2018 in the *Delaware Register of Regulations* a copy of this Order, along with copies of the proposed and current Rules (**Exhibits "B" and "C"**, respectively).

2. That the Commission Secretary shall publish, in the manner described below, the Notice of Proposed Rulemaking attached as **Exhibit "A"**. Such notice shall be published in the *Delaware State News* and *The News Journal* by February 1, 2018. The notice shall also be sent to the Delaware Registrar of Regulations for publication on February 1, 2018 in the *Delaware Register of Regulations*.

3. That the Commission will enter an Order setting forth the reasoning for our final regulations at a later date.

4. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, the Commission encourages persons or entities to submit written comments on or before Friday, March 2, 2018.

5. That the Commission reserves jurisdiction and authority to enter such further orders as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

Dallas Winslow, Chair (absent)  
 Joann T. Conaway, Commissioner  
 Harold B. Gray, Commissioner  
 Manubhai C. Karia, Commissioner  
 K. F. Drexler, Commissioner

ATTEST: Donna Nickerson, Secretary

**\*Please Note:**

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

[http://regulations.delaware.gov/register/february2018/proposed/21 DE Reg 620RFA 02-01-18.pdf](http://regulations.delaware.gov/register/february2018/proposed/21%20DE%20Reg%20620RFA%2002-01-18.pdf)

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

**3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)**



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## Symbol Key

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

## Final Regulations

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

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

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## DEPARTMENT OF AGRICULTURE OFFICE OF THE SECRETARY

Statutory Authority: 3 Delaware Code, Section 2220(a) (3 **Del.C.** §2220(a))  
3 DE Admin. Code 1201

### ORDER

### 1201 Nutrient Management Certification Regulations

The Delaware Nutrient Management Commission pursuant to 3 **Del.C.** §2220(a), proposed to revise its regulations adding a new regulation incorporating by reference the State Technical Standards developed by an appointed committee to establish appropriate standards for nutrient application, development and implementation of nutrient management and animal waste management plans, compliance with CAFO permits, and siting new CAFO facilities.

### Summary of the Evidence and Information Submitted

Following publication in the Delaware *Register of Regulations* on July 1, 2017 a written public comment period was held open for thirty days. At its meeting on August 1, 2017, the Commission deliberated upon a single written comment submitted by Dr. Amy Shoher of the University of Delaware requesting that the State Technical Standard pertaining to field staging be amended to allow for 120 days instead of 90. After deliberation upon the comment received, the Commission determined that substantive changes were necessary to change the field staging standard to 120 days. The regulations were amended, and republished in the Delaware *Register of Regulations* on September 1, 2017. A written public comment period was opened from September 1, 2017 until October 2, 2017. No comments were received during that time.

## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Commission with comments in writing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Commission during the second written public comment period.
3. Pursuant to 3 **Del.C.** §2220(a), the Commission has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes seek to incorporate by reference the State Technical Standards developed by an appointed committee to establish appropriate standards for nutrient application, development and implementation of nutrient management and animal waste management plans, compliance with CAFO permits, and siting new CAFO facilities.
5. The public was given notice and an opportunity to provide the Commission with comments in writing on the proposed changes to the Commission's rules and regulations.
6. Having received no public comments, the Commission finds no reason to amend the regulations as proposed.

## DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Commission finds that the regulation shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, is attached to this order as Exhibit A. This change will become effective ten days following publication of this order in the Delaware *Register of Regulations*.

William Vanderwende, Chairman  
 Mark Adkins  
 Ken Horeis (absent)  
 Scott Webb (absent)  
 Jessica Inhof  
 Bud O'Neill  
 Richard Sterling

F. Kenneth Blessing, Jr., Vice Chairman (absent)  
 Brenna Goggin (absent)  
 Laura Hill  
 N. Wayne Hudson (absent)  
 Larry Jester (absent)  
 Bob Palmer  
 Jim Elliott

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2017 issue of the *Register* at page 175 (21 DE Reg. 175). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1201 Nutrient Management Certification Regulations**



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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 104(b) and 122(b) (14 **Del.C.** §§104(b) & 122(b))  
14 **DE Admin. Code** 501

### REGULATORY IMPLEMENTING ORDER

#### 501 State Content Standards

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

Pursuant to 14 **Del.C.** Sections 122(b) and 104(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 501 State Content Standards. This regulation is being amended to include Financial Literacy standards and Computer Science standards. The amendment provides that the Financial Literacy standards are adopted for the 2018-19 school year. Any financial literacy curriculum used by the districts and charter schools would need to be aligned to these new standards on a timeline established by the Department. Further, the amendment provides that the Computer Science standards are adopted for the 2018-19 school year. Any computer science curriculum used by the districts and charter schools would need to be aligned to these new standards on a timeline established by the Department. The Department is working with our districts and charter schools to establish this timeline which allows for the appropriate time for curriculum to be aligned and professional learning to occur.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on December 1, 2017, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the regulation. However, both entities expressed concern with the clarity of the timetable for adoption. The Department is cognizant of the importance in providing technical assistance and support when new standards are adopted and plans to work with the school districts and charter schools on the adoption timeline. A similar process was undertaken with the adoption and implementation of the Next Generation Science Standards.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 501 State Content Standards to include Financial Literacy standards and Computer Science standards.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 501 State Content Standards. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 501 State Content Standards attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 501 State Content Standards 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** 501 State Content Standards amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 501 State Content Standards 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 18, 2018. 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 18<sup>th</sup> day of January 2018.

**Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 18<sup>th</sup> day of January 2018

**State Board of Education**

Dennis L. Loftus, Ed.D., President

Nina L. Bunting, Vice President (absent)

G. Patrick Heffernan

Wali W. Rushdan, II

Barbara B. Rutt

Liane M. Sorenson

Terry M. Whittaker, Ed.D.

\*Please note that no changes were made to the regulation as originally proposed and published in the December 2017 issue of the *Register* at page 468 (21 DE Reg. 468). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**501 State Content Standards**

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)

14 DE Admin. Code 925

**REGULATORY IMPLEMENTING ORDER**

**925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs**

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. The amendment to subsection 6.17 bring the regulation into compliance with applicable federal law.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on November 1, 2017, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Comments specifically related to the language of the regulation expressed the belief that clarification could be provided by including additional language from federal guidance. The Department considered the comment and determined that the federal guidance, which is discretionary, may not be applicable to all situations and could be confusing; no changes were made in that area.

The Department determined that there was a technical error in the proposed regulation as published. The technical error was in subsection 6.17.5. This subsection was inadvertently stricken and the language has now been reinserted as subsection 6.17.3 so as to be in compliance with the law.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs in subsection 6.17 to bring the regulation into compliance with applicable federal law.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs in the *Administrative Code of Regulations* for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 18, 2018. 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 18<sup>th</sup> day of January 2018.

**Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 18<sup>th</sup> day of January 2018

**State Board of Education**

Dennis L. Loftus, Ed.D., President

Nina L. Bunting, Vice President (absent)

G. Patrick Heffernan

Wali W. Rushdan, II

Barbara B. Rutt

Liane M. Sorenson

Terry M. Whittaker, Ed.D.

## 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

*(Break in Continuity of Sections)*

### 6.0 Determination of Eligibility

*(Break in Continuity Within Section)*

6.17 Eligibility Criteria for Visual Impairment including Blindness:

~~6.17.1 Blindness shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.~~

~~6.17.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease, condition or impairment of the eye or visual system that seriously affects visual function directly, not perceptually. Partially sighted shall also include a degenerative eye disease, which in the opinion of a licensed ophthalmologist or optometrist, is expected to reduce, in the future, either visual acuity or visual field, resulting in partial sight or blindness. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual perceptual or visual motor dysfunction resulting solely from a learning disability.~~

~~6.17.3 A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees (for blindness), legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, (for partially sighted), or a degenerative eye disease, or has a disease, condition or impairment of the eye or visual system that seriously affects visual function directly, not perceptually.~~

~~6.17.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.~~

- ~~6.17.5 The age of eligibility for children identified under this definition shall be from birth until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first.~~
- 6.17.1 Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.
- 6.17.2 This eligibility determination requires a thorough and rigorous evaluation with a data-based media assessment which is based on a range of learning modalities and includes a functional visual assessment.
- [6.17.3 The age of eligibility for children identified under this section shall be from birth until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first.]**  
(Authority: 34 C.F.R. § 300.8(c)(13))

\*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 372 (21 DE Reg. 372). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs**

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### ORDER

#### Targeted Case Management for Children and Youth with Serious Emotional Disturbance

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Targeted Case Management (TCM) for Children and Youth with Serious Emotional Disturbance, specifically, *to establish coverage for targeted case management services for children and youth with serious emotional disturbance, mental health or substance use disorder or co-occurring mental health and substance use disorders meeting Department of Services to Children Youth and Their Families (DSCYF), Division of Prevention and Behavioral Health Services (DPBHS) eligibility criteria.* 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 November 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Targeted Case Management (TCM) for Children and Youth with Serious Emotional Disturbance, specifically, *to establish coverage for targeted case management services for children and youth with serious emotional disturbance, mental health or substance use disorder or co-occurring mental health and substance use disorders meeting Department of Services to Children Youth and Their Families (DSCYF), Division of Prevention and Behavioral Health Services (DPBHS) eligibility criteria.*

## Statutory Authority

- 42 CFR §447.201, *State plan requirements*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- 42 CFR §441.18, *Case management services, general provisions*
- 42 CFR §447.205, *Case management services, specific requirements*
- §1902(a)(23) of the Social Security Act, *Freedom of choice of qualified providers*
- §1902(a)(25) of the Social Security Act, *Third party liability*
- §1903(c) of the Social Security Act, *FFP for case management included in an individualized education program or individualized family service plan*
- §1915(g)(1) of the Social Security Act, *location and comparability of case management services*

## Background

On July 20, 2017 The Centers for Medicare & Medicaid Services approved the Delaware State Plan Amendment (SPA) 16-011 to establish coverage and reimbursement methodologies for targeted case management services for individuals with intellectual disabilities. Case management is defined under section 1915(g)(2) of the Social Security Act (the Act) as "services which will assist individuals, eligible under the plan, in gaining access to needed medical, social, educational, and other services." Case management services are often used to foster the transitioning of a person from institutional care to a more integrated setting or to help maintain a person in the community. There are several ways that case management services may be furnished under the Medicaid program. Home and Community-Based Services (HCBS) Case Management may be furnished as a service under the authority of section 1915(c) when this service is included in an approved HCBS waiver. Persons served under the waiver may receive case management services while they are still institutionalized, for up to 180 consecutive days prior to discharge. This case management service may be provided under the optional Targeted Case Management (TCM) authority of section 1915(g)(2) of the Social Security Act. TCM, defined in section 1915(g) of the Act, may be furnished as a service to institutionalized persons who are about to leave the institution, to facilitate the process of transition to community services and to enable the person to gain access to needed medical, social, educational and other services in the community. TCM may be furnished during the last 180 consecutive days of a Medicaid eligible person's institutional stay if provided for the purpose of community transition. States may specify a shorter time period or other conditions under which TCM may be provided.

## Summary of Proposal

### *Purpose*

The purpose of this proposed regulation is to add Targeted Case Management (TCM) for Children and Youth with Serious Emotional Disturbance to the Delaware Medicaid State Plan under the authority of §1915(g)(1). Delaware does not currently offer Targeted Case Management to children and youth with serious emotional disturbance under the State Plan.

### *Summary of Proposed Changes*

Effective for services provided on and after January 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan to add Targeted Case Management services for children and youth with serious emotional disturbance.

### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 1, 2017.

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

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS

based upon public comment and/or CMS feedback. The final version may be subject to significant change.

#### *Provider Manuals Update*

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

#### **Fiscal Impact Statement**

No fiscal impact is projected for the Division of Medicaid and Medical Assistance (DMMA). The Division of Prevention and Behavioral Health Services has been providing care coordination services through its division staff, Child and Family Care Coordination, as well as contracting with a provider for high-fidelity wraparound services also called intensive care coordination. Currently, a limited amount of time is reimbursable through the DSCYF Cost Allocation Plan, this will be discontinued and replaced by Targeted Case Management, at which the funds used to employ staff and contract with providers will be redirected to Targeted Case Management.

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

The University of Maryland, School of Social Work and the Governor's Advisory Council for Exceptional Citizens offered the following summarized observations:

**First**, a commenter suggested that the upper qualifying age limit, which is 18 be removed as DSCYF has discretion to extend foster care supports to individuals beyond age 18.

**Agency Response:** DMMA appreciates the comment and agrees. The age limit has been removed.

**Second**, another commenter suggested amending some of the language within the regulation to ensure quality implementation of, and fidelity to the certification standards of Targeted Case Management with Wraparound philosophy.

**Agency Response:** DMMA agrees with the commenter that when implementing evidenced-based and/or promising practices, that adherence to their established philosophy is key to their effectiveness. As a result, several amendments were made to the regulation.

DMMA is appreciative of the comments from University of Maryland, School of Social Work and the Governor's Advisory Council for Exceptional Citizens. DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

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

The Department finds that the proposed changes as set forth in the November 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Targeted Case Management (TCM) for Children and Youth with Serious Emotional Disturbance, specifically, *to establish coverage for targeted case management services for children and youth with serious emotional disturbance, mental health or substance use disorder or co-occurring mental health and substance use disorders meeting Department of Services to Children Youth and Their Families (DSCYF), Division of Prevention and Behavioral Health Services (DPBHS) eligibility criteria*, is adopted and shall be final effective February 11, 2018.

1/18/18

Kara Odom Walker, MD, MPH, MSHS  
Secretary, DHSS

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

## TARGETED CASE MANAGEMENT SERVICES FOR

Children and Youth with Serious Emotional Disturbance, or Co-occurring Mental Health and Substance Use Disorders meeting DPBHS Eligibility CriteriaA. Target Group:

1. Meets the eligibility criteria for services provided by the Division of Prevention and Behavioral Health Services (DPBHS):
2. Is in a federal eligibility category for Delaware Medical Assistance, which governs the determination of eligibility for Delaware Medical Assistance Program. Services shall be provided to children and adolescents ~~under 18 years of age~~ **eligible for DPBHS services** diagnosed with a serious emotional disturbance, mental health or substance use disorder, or co-occurring mental health and substance use disorders, according to the current Diagnostic and Statistical Manual of the American Psychiatric Association **[until they age out of care]**.
3. Meets at least two of the following conditions:
  - a. Is not linked to behavioral health, health insurance, or medical services;
  - b. Lacks basic supports for education, income, shelter, and food;
  - c. Needs care coordination services to obtain and maintain community-based treatment and services; or
  - d. Is receiving services through DPBHS.
4.  Target group includes individuals currently living in the community or individuals transitioning to a community setting. Regarding individuals transitioning, targeted case management services will be made available for up to 60 consecutive days of covered stay in an inpatient medical institution (the Medicaid certified facility in which the recipient is currently residing). The target group does not include individuals between ages 22 and 64 who are serviced in institution for Mental Disease or individuals who are inmates of public institutions (State Medicaid Directors Letter (SMDL), July 25, 2000).

B. Areas of State in which services will be provided: Entire State. Only in the following geographic areas (authority of section 1915(g)(1) of Act is invoked to provide services less than Statewide:C. Comparability of Services: Services are provided in accordance with section 1902(a)(10)(B) of the Act. Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.TN No. SPA 17-006

Approval Date

TN No. SPA NEWEffective Date October 1, 2017

D. Definition of Services:

Targeted case management services are defined as services furnished to assist individuals, eligible under the State Plan, in gaining access to needed medical, social, educational, and other services, which includes responsibility for locating, coordinating and monitoring appropriate services for an individual. Targeted Case Management includes the following:

1. Comprehensive Assessment and Periodic Reassessment of individual needs, to determine the need for any medical, educational, social, or other services. These assessment activities include:
  - Taking client history;
  - Identifying the individual' s needs and strengths and completing related documentation; and
  - Gathering and reviewing documentation/information from other sources such as family members, medical providers, social workers, and educators (if necessary), need to form a complete and comprehensive assessment of the eligible individual.

The Targeted Case Manager will use a child and youth assessment tool designated by the Department or its designee to:

- **[To Complete]** the initial assessment and to reassess at a minimum of every 3 months;
  - Record information that may relate to the individual's mental health, social, familial, educational, cultural, medical, and other areas to evaluate the extent and nature of the individual needs and strengths and assist in the development of the Plan of Care (POC); and
  - Coordinate and facilitate child and family team meetings (e.g., family members, friends, caretakers, providers, educators, and others, as appropriate) that:
    - Identify a team meeting location that is suitable for the child and family's needs; **[and]**
    - Convene at least once every 3 months, or more frequently, as clinically necessary or indicated in the Plan of Care.
    - **[Targeted Case Managers providing certified Wraparound will convene child and family team meetings monthly or more frequently, if needed.]**
2. Development (and periodic revision) of the Plan of Care based on the information obtained through the initial comprehensive assessment that includes the following:
    - **[Developed and updated through the Child and Family Team meeting process;]**
    - Specifies the goals and actions to address the medical, social, educational, and other services needed by the eligible individual;
    - **[Include a crises plan including the proposed strategies and interventions for preventing and responding to crises and the youth and family's definition of what constitutes a crises;]**
    - Includes activities such as ensuring the active participation of the eligible individual, and working with the individual (or the individual's authorized health care decision maker) and others to develop those goals; and
    - Identifies a course of action to respond to the assessed needs of the individual.
  3. Referral and related activities (such as scheduling appointments for the individual) to help the eligible individual obtain needed services, including activities that help link the individual with medical, social, education providers or other programs[, **services**] and **[services supports]** that are capable of providing needed services **[and supports]** to address identified needs and achieve goals in the care plan).

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4. Monitoring and follow-up activities, including activities and contacts as necessary to ensure that the Plan of Care is effectively implemented and adequately addresses the needs of the eligible individual and which may be with the individual, family members, service providers, or other entities or individuals and conducted as frequently as necessary, and including regular (at least one annually) monitoring to:

- Determine whether the following conditions are met:
  - Services are being furnished in accordance with the individual's Plan of Care;
  - Services in the care plan are adequate;
  - There are changes in the needs or status of the eligible individual are reflected in the Plan of Care. Monitoring and follow-up activities include making necessary adjustments in the care plan and service arrangements with providers.
- Complete a periodic review of the progress that the individual has made on the Plan of Care goals and objective and the appropriateness and effectiveness of services being provided;
- Provide ongoing follow up on service referrals and monitoring of service provision to ensure that the agreed upon services are provided, meet the individual's needs and goals, and ensure the quality, quantity, and effectiveness of services are appropriate and in accordance with the Plan of Care; and
- Revise, continue, or terminate of the Plan of Care, if no longer appropriate.

Targeted case management includes contacts with non-eligible individuals who are directly related to identifying the individual's needs and care, for the purposes of helping the eligible individual access services, identify needs and supports to assist the eligible individual in obtaining services, providing case managers with useful feedback, and alerting case managers to changes in the eligible individual's needs (42 CFR §440.169(e)).

E. Qualification of Providers:

A targeted case manager must be employed by DSCYF or a targeted case manager provider agency contracting with DSCYF. A targeted case manager must meet the following criteria:

- Bachelor's degree or higher in Behavioral or Social Science or related field;
- Certification in the State of Delaware to provide the service, which includes criminal and professional background checks, and completion of state-required training in wraparound philosophy and policies within six months of employment;
- Maintain certification through state approved continuing education/professional development annually;
- Six months experience in case management which includes assessing, planning, developing, implementing, monitoring, and evaluating options and services to meet an individual's needs;
- Six months experience in making recommendations as part of a client's service plan, such as, clinical treatment, counseling, or determining eligibility for health or human services/benefits;

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- Six month experience in interpreting laws, rules, regulations, standards, policies and procedures; and
- Six months experience in narrative report writing.

A highly qualified targeted case manager must be employed by DSCYF or a targeted case manager provider agency contracting with DSCYF. A targeted case manager must meet the following criteria:

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- Bachelor's degree, Master's degree preferred, in social work, psychology, counseling, nursing, occupational therapy, vocation rehabilitation, therapeutic recreation, or human resources and two years of experience working with special population groups in a direct care setting or a master's degree in one of the fields listed above;
- Successful completion of the approved wraparound certification training, or be classified as "provisionally certified," which means one must successfully complete the Wraparound Certification training within nine months of beginning to provide case management;
- Maintain wraparound certification status by attending an approved wraparound recertification training at least once every two years;
- Basic knowledge of behavior management techniques;
- Skill in interviewing to gather data and complete needs and strengths assessment in preparation of narratives/reports, in development of service plans, and in individual and group communication;
- Knowledge of state and federal requirements related to behavioral health; and
- Ability to use community resources.

A Targeted Case Management Provider Agency must have:

- A contract with the State of Delaware with requisite expertise in supporting individuals with serious emotional disturbance, substance use disorder or co-occurring disorder and their families;
- Demonstrated ability to coordinate and link community resources required through at least three years of prior experience;
- At least three years of experience with the targeted group;
- Sufficient staff and/or agreements with community organizations to have the administrative capacity to ensure quality of services in accordance with state and federal requirements;
- A financial management system which provides documentation of services and costs;
- Capacity to document and maintain individual case records in accordance with state and federal requirements;
- Demonstrated ability to assure referrals consistent with section 1902(a)(23), freedom of choice of providers;
- Ability to provide linkage with other case managers to avoid duplication of case management services;
- Ability to determine that the client is included in the target group; and
- Ability to access systems to track the provision of services to the client.

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F. Freedom of Choice (42 CFR §441.18(a)(1))

The State assures that the provision of case management services will not restrict an individual's free choice of providers in violation of section 1902(a)(23) of the Act.

1. Eligible individuals will have free choice of any qualified Medicaid provider within the specified geographic area identified in this plan.
2. Eligible individuals will have free choice of any qualified Medicaid providers of other medical care under the plan.

G. Freedom of Choice Exception (§ 1915(q)(1) and 42 CFR 441.18(b)):

Target group consists of eligible individuals with developmental disabilities or with chronic mental illness. Providers are limited to qualified Medicaid providers of case management services capable of ensuring that individuals with developmental disabilities or with chronic mental illness receive needed

services: [Identify any limitations to be imposed on the providers and specify how these limitations enable providers to ensure that individuals within the target groups receive needed services.]

The State will limit providers of targeted case management to the Department of Services for Children, Youth and Their Families (DSCYF). DSCYF may sub-contract for this service. This limitation is in compliance with Section 4302.2, paragraph D. of the State Medicaid Manual.

H. Access to Services (42 CFR 441.18(a)(2), 42 CFR 441.18(a)(3), 42 CFR 441.18(a)(6):

The State assures the following:

- a. Targeted case management services will not be used to restrict an individual's access to other services under the plan;
- b. Individuals will not be compelled to receive case management services, condition receipt of case management services on the receipt of other Medicaid services, or condition of receipt of other Medicaid services on receipt of targeted case management services; and
- c. Providers of case management services do not exercise the agency's authority to authorize or deny the provision of other services under the plan.

I. Payment 42 CFR 441.18(a)(4)

Payment for targeted case management services under the Medicaid State Plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

J. Case Records (42 CRF 441.18(a)(7)

Providers maintain case records that document the following for all individuals receiving case management:

- a. The name of the individual;
- b. The dates of targeted case management services;
- c. The name of the provider agency (if relevant) and the person providing the case management service;
- d. The nature, content, and units of the targeted case management services received and whether goals specified in the Plan of Care have been achieved;
- e. Whether the individual has declined in functioning;

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- f. The need for and occurrences of coordination with other case managers;
- g. A timeline for obtaining needed services; and
- h. A timeline for reevaluation of the plan.

K. Limitations

Case management does not include, and Federal Financial Participation (FFP) is not available in expenditures for services as defined in 440.169 when case management activities are an integral and inseparable component of another covered Medicaid service (State Medicaid Manual (SMM) 4302.F)

Case management does not include, and Federal Financial Participation is not available in expenditures for services as defined in 440.169 when case management activities constitute the direct delivery of underlying medical, education, social, or other services to which an eligible individual has been referred, including for foster care programs, services such as, but not limited to, the following: research gathering and completion of documentation required by the foster care program, assessment of adoption placements, recruitment or interviewing of potential foster care parents, serving of legal papers, home investigations, providing transportation,

administration of foster care subsidies, or arrangements of placements (42 CFR 441.18(c)).

FFP is only available for targeted case management services if there are no other third parties liable to pay for such services, including reimbursement under a medical, social, educational, or other program except for case management that is included in an individualized education program or individualized family service plan consistent with 1903(c) of the Act, 1902(a)(25) and 1905(c)).

Writing or entering case notes for the member's case management file and transportation to and from a member or member-related contacts are allowable, but not billable TCM activities.

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## FINAL

Attachment 4.19-B

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

#### METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES

##### Children and Youth with Serious Emotional Disturbance, or Co-occurring Mental Health and Substance Use Disorders meeting DPBHS Eligibility Criteria

Reimbursements for services are based upon a Medicaid fee schedule established by the Delaware Medical Assistance Program (DMAP).

The fee development methodology built fees considering each component of provider costs as outlined below. These reimbursement methodologies produced rates sufficient to enlist enough providers so that services under the State Plan are available to beneficiaries at least to the extent that these services are available to the general population, as required by 42 CFR 447.204. These rates comply with the requirements of Section 1902(a)(3) of the Social Security Act and 42 CFR 447.200, regarding payments and are consistent with economy, efficiency, and quality of care. Provider enrollment and retention will be reviewed periodically to ensure that access to care and adequacy of payments are maintained. The Medicaid fee schedule is equal to or less than the maximum allowable under the same Medicare rate, where there is a comparable Medicare rate. Room and board costs are not included in the Medicaid fee schedule.

The fee development methodology will primarily be composed of provider cost modeling, through Delaware provider compensation studies, cost data, and fees from similar State Medicaid programs may be considered, as well. The following list outlines the major components of the cost model to be used in fee development:

- Staffing Assumptions and Staff Wages[;]
- Employee-Related Expenses - Benefits, Employer Taxes (e.g., Federal Insurance Contributions Act (FICA), unemployment, and workers compensation)[;]
- Program-Related Expenses (e.g., supplies)[;]
- **Practice model standards[;]**
- Provider Overhead Expenses[; and]
- Program Billable Units.

The fee schedule rates will be developed as the ratio of total annual modeled provider costs to the estimated annual billable units. A unit of service is defined according to Healthcare Common Procedure Coding System (HCPCS) approved code set unless otherwise specified.

Except as otherwise noted in the State Plan, the State-developed fee schedule is the same for both governmental and private individual providers and the fee schedule and any annual/periodic adjustments to the fee schedule are published in the Delaware Register of Regulations.

The Agency's fee schedule rate was set as of July 1, 2016 and is effective for services provided on or after that date. All rates are published on the Delaware Medical Assistance Program (DMAP) website at <http://>

[www.dmap.state.de.us/downloads/feeschedules.html](http://www.dmap.state.de.us/downloads/feeschedules.html).

TN No. SPA <u>17-006</u>	Approval Date
TN No. SPA <u>NEW</u>	Effective Date <u>October 1, 2017</u>

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 20620

### ORDER

#### 20620.2.3.1 Limitation on the Submission of Requests for Protection of Prior Medical Costs

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Delaware Social Services Manual (DSSM) regarding Prior Medical Costs, specifically, *to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs*. 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 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 2, 2018, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Background

Federal regulations permit States to establish and apply reasonable limits to the post-eligibility treatment of the income of individuals who are institutionalized. Delaware currently allows for the protection of medical costs incurred in the three (3) months immediately preceding the beginning date of Medicaid eligibility for institutionalized individuals. There are no current regulations addressing reasonable limits on the timely submission of requests for the protection of prior medical costs.

#### Statutory Authority

- 42 CFR §435.725 - Post-eligibility treatment of income of institutionalized individuals in SSI States: Application of patient income to the cost of care
- Social Security Act §1902(r)(1)(A)(ii)

#### Summary of Proposal

##### *Purpose*

The purpose of this proposed regulation is to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs.

##### *Summary of Proposed Changes*

Effective for services provided on and after February 11, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Delaware Social Services Manual (DSSM) section 20620.2.3.1 to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs.

##### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware

Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 2, 2018.

#### *Provider Manuals and Communications Update*

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

#### **Fiscal Impact Statement**

There is no anticipated fiscal impact to the agency as a result of this proposed clarification of program eligibility policy.

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

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

While a 1 year time frame may appear reasonable on its face, it does not account for delays attributable to some common issues. For example, determination of a "final" medical cost may be delayed by several factors:

##### I. Processing of Insurance Claims

First, if the individual has multiple forms of insurance (e.g. Medicare; Medicaid; private insurance), sequential claims may have to be submitted and processed based on the order of financial responsibility. This process can easily take several months to complete for even "clean" claims. Second, a medical provider may not issue a bill in timely fashion which delays the processing of insurer claims and identification of the individual's final financial responsibility. Third, if the individual has invoked internal and/or external appeals of insurer denials that process could easily take several months to resolve. Consider the following timetables for health insurer determinations covered by the Delaware Department of Insurance: 1) the health insurer can delay issuing a claim decision by requesting more information (18 **DE Admin. Code** 1310.6.0; 2) once a patient eventually receives the "final" insurer decision, the patient can request mediation or, within 4 months of the final insurer decision, request IHCAP review which takes another 45 days (18 **DE Admin. Code** 1301.4.0, 5.1, and 5.7); and 3) in lieu of IHCAP review, the patient can opt for arbitration with the Insurance Department within 60 days of an insurer's final decision and, subject to continuances, expect a decision within 45 days (18 **DE Admin. Code** 1315.3.1 and 13.15.6.1).

##### II. Beneficiary Capacity

Second, the institutionalized Medicaid LTC patient will often have compromised health and cognitive capacity resulting in delayed processing of medical cost determinations and submission of such information to DMMA.

The bottom line is that a "no-exceptions" 1-year time period may result in injustice. DMMA could consider alternative revisions to mitigate the potential for an unjust result:

- A. The following sentence could be added to proposed §20620.2.3.1: "This limitation may be extended for good cause (e.g. significant delay in final cost determination due to insurer processing or appeals)." OR
- B. DMMA could adopt a longer submission period. For example, the Division could substitute "18 months" for "one (1) year" in the regulation.

**Agency Response:** DMMA appreciates the comments on the Processing of Insurance Claims. However, DMMA is proposing to establish a provision that implements a one (1) year limit on the submission of requests for the protection of prior medical costs for institutionalized individuals. This proposal is an entirely separate issue from our existing policy relating to the one (1) year limit on the timely submission of medical claims by providers.

As background, protection requests are generally submitted by the institution on behalf of the institutionalized individual. A request for the protection of prior medical costs for an institutionalized individual, once approved by DMMA, results in the adjustment of the institutionalized individual's cost-sharing obligation to the institution. The adjusted institutional cost-sharing amount allows the institutionalized individual to use the protected funds to pay for necessary medical costs not covered by insurance.

DMMA feels that the one (1) year time limit we have proposed for the submission of protection requests is very reasonable.

DMMA is appreciative of the comments provided and the opportunity to receive public comments and greatly appreciates the thoughtful input given.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding Prior Medical Costs, specifically, *to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs* is adopted and shall be final effective February 11, 2018.

1/18/18

Kara Odom Walker, MD, MPH, MSHS  
Secretary, DHSS

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2017 issue of the *Register* at page 475 (21 DE Reg. 475). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**20620.2.3.1 Limitation on the Submission of Requests for Protection of Prior Medical Costs**

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 11006

### ORDER

#### Relative Child Care

## NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual regarding Relative Child Care, specifically, *to outline participation requirements, documentation and training*. 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 November 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

## SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend Division of Social Services Manual regarding Relative Child Care, specifically, *to outline participation requirements, documentation and training*.

### Statutory Authority

- Child Care Development Fund (CCDF)
- Child Care Development Block Grant CFR 98.2, 98.41

### Background

Relative Child Care is one of several child care options for parents who receive a child care subsidy. The original intent of the program was to provide a child care option for parents who worked during "non-traditional" hours (i.e. shift work, weekends); however, this intent was never formally established through policy. As this type of care is unlicensed, the Division of Social Services (DSS) seeks to revise the current policy to restore the original intent and integrity of the program. In addition, new federal regulations have been established to ensure the health

and safety of all children who receive subsidy. DSS is responsible for ensuring that all Purchase of Care providers comply with these new regulations. The revised Relative Child Care policy will enable the Division to better determine who is eligible to participate as a provider, confirm relationships, and fully comply with the new federal health and safety regulations. There are no budget implications as a result of this policy revision.

### Summary of Proposal

#### *Purpose*

To establish a structured policy regarding Relative Child Care and to ensure sufficient monitoring of this type of care.

#### *Summary of Proposed Changes*

Effective for services provided on and after February 11, 2018 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual to outline participation requirements, documentation and training.

#### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on March 1, 2018.

### Fiscal Impact Statement

The policy revision will have no fiscal impact since the purpose is simply to restore the program to its original intent. The policy revision does not require any additional staff, system changes, or additional costs.

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

The State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

SCPD commented that there is an ostensible error in Section 5 on p. 378. The first bullet literally allows care in a child's home only for 4-5 children. The reference to "minimum of four children in the home" should be "minimum of one child in the home". [Compare](#) Section 6.

**Agency Response:** The Division of Social Services (DSS) appreciates the council's comment regarding the requirement of a minimum number of children to be cared for in the child's home. DSS policy **11003.5 In-Home Child Care** dictates the following:

The Fair Labor Standards Act requires that in-home child care providers be treated as domestic service workers. As a result, DSS must pay these providers the federal minimum wage. Paying the federal minimum wage would make the cost of in-home care disproportionate to other types of care. As a result, DSS has placed a limit on parental use of the in-home care option.

A. As of July 1994, in-home care has been limited to:

1. Families in which four or more children require care, or
2. Families with fewer children only as a matter of last resort.

B. Examples of "last resort" may include:

1. The parent works the late shift in a rural area where other types of care are not available,
2. There is a special needs child for whom it is impossible to find any other child care arrangement.

Therefore the DSS statement regarding the minimum number of children is correct. There must be a minimum of four children in the home in order for children to be cared for in the children's home; but not more than five. When the care is provided in the caregiver's home the minimum requirement is one child.

**Second**, Section 3 requires a relative provider to be "21 years of age or older". In contrast, the applicable federal regulation defines relative child care providers as "18 years of age or older". [See](#) 45 CFR 98.2. Moreover, states are restricted in their discretion to add requirements not included in the federal regulations:



- (b) Lead agencies may not set health and safety standards and requirements other than those required in paragraph (a) of this section that are inconsistent with the parental choice safeguards in §98.3(f).  
45 CFR 98.41(b)

**Agency Response:** DSS appreciates the council's comment regarding restrictions on the lead agency in their discretion to add requirements not included in the federal regulations. As we have been receiving a substantial number of requests for relative care for providers who were not suitable for a myriad of reasons DSS, in its effort to ensure the health and safety of children, proposes this and other revisions to the Relative Care Policy. We understand that the state is restricted in its discretion to add requirements not included in the federal regulations and we have reached out to the Administration for Children and Families, who administers the Child Care and Development Fund, for further guidance regarding this issue.

**Third,** Section 3 includes the following limit: "Relative child care is limited to evening and weekend shift work hours only." This is ill- conceived given the overall shortage of child care providers. Moreover, "special needs" parents and children are eligible for the State child care program. See 16 **DE Admin. Code** 11003.7.8. It may be extremely difficult for a parent of a special needs child ages 13-18 to identify a licensed provider to add a 13-18 year old to their daycare. Moreover, "special needs" parents often rely on relatives for parenting assistance and federal law requires states to accommodate that reliance. See Joint DOJ/HHS LOF to Mass. Dept. Of Children & Families (1/29/15), published at [https://www.ada.gov/ma\\_docf\\_lof.pdf](https://www.ada.gov/ma_docf_lof.pdf). See also U.S. DOJ/HHS Joint Guidance, "Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act (8/15)", published at [https://www.ada.gov/doj\\_hhs\\_ta/child\\_welfare\\_ta.pdf](https://www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf). At a minimum, Section 3 should be revised to allow relative child care for special needs children and adults apart from evening and weekend shifts. It would also be prudent to authorize exceptions for all parents with the approval of DHSS.

**Agency Response:** DSS appreciates the Council's comment regarding the limitations on the Relative Care choice for parents. At this time the Division is not aware of any factual documentation regarding a child care shortage in our state. We are, however, setting the stage to conduct some research to determine if in fact the child care demand is greater than the supply, and where services may be lacking. Moreover, the division has seen a significant increase in the request for relative care by providers who are unsuitable for a myriad of reasons. We have had a rash of parents pulling their children from centers to allow relatives to provide care, parents attempting to get people other than relatives to provide care, people other than the authorized relatives actually caring for the children when site visits are conducted (which means they have not been finger printed), relative providers caring for the children at sites other than the authorized sites, relative providers/children who are unable to be located when attempting to conduct site visits, relative care providers allowing other adults who have not been fingerprinted, in the home, around the children, relatives providing care in environments that were not safe for children, etc. In its efforts to, as best it can, ensure the health and safety of children the division has made the decision to restore the integrity of the relative care program by limiting this choice to parents who need care during non-traditional hours such as weekends, and evening shifts. The agency is fully aware that there may be circumstances where exceptions must be made, particularly, for those families who may have a special need. The agency is amenable to addressing these exceptions as they present themselves.

**Fourth,** DMMA is imposing the following requirements on relative providers: 1) completion of orientation class on relative child care rules and regulations; 2) 28 hours of approved training within 12 months; 3) 3 hours of health and safety training annually; and 4) completion of both CPR and first aid courses resulting in certification followed by recertification every 2 years. See Section 4. DMMA is treating relative child care providers as if they were licensed day care providers even though they are exempt from licensing. See 16 **DE Admin. Code** 11004.4.1. Asking a typical grandparent to spend an estimated 40 hours in training to care for a grandchild is "overkill".

**Agency Response:** DSS appreciates the Council's comment regarding the required training for Relative Care Providers. Although these providers are exempt from licensing standards the division believes that best practices and health and safety standards are the foundation of quality child care. Meeting the basic health and safety needs of all children sets the stage for positive child outcomes. The pre-service, training and annual training modules provide caregivers with an overview of basic health and safety information and ensures that caregivers continue to be knowledgeable about current and best practices regarding child care.

No change to the regulation was made as a result of these comments.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful

input given by the State Council for Persons with Disabilities.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the November 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual regarding Relative Child Care, specifically, *to outline participation requirements, documentation and training*, is adopted and shall be final effective February 11, 2018.

1/18/18

Kara Odom Walker, MD, MPH, MSHS  
Secretary, DHSS

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 376 (21 DE Reg. 376). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Relative Child Care**

**DEPARTMENT OF STATE**

**DIVISION OF PROFESSIONAL REGULATION**

**1100 BOARD OF DENTISTRY AND DENTAL HYGIENE**

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 Del.C. §1106(a)(1))  
24 DE Admin. Code 1100

**ORDER**

**1100 Board of Dentistry and Dental Hygiene**

The Delaware Board of Dentistry and Dental Hygiene pursuant to 24 **Del.C.** §1106(a)(1), proposed to revise its regulations. The proposed amendments to Regulation 6 clarify that live webinars will be accepted as face to face CEs. The proposed amendments to Regulation 8 add regulatory provisions for inactive status pursuant to 24 **Del.C.** §1126(e). The proposed amendment to Regulation 10 seeks to incorporate by reference the Board's clinical examination guidelines into its regulations. The proposed changes to Regulation 11 amend technical errors in the substantially related crimes list and adds the crime of misuse of the Prescription Monitoring Program. The proposed change at Regulation 12 adds a requirement that licensees update the Division of Professional Regulation within 10 days of a change in their contact information.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Following publication in the Delaware *Register of Regulations* on December 1, 2017, a public hearing was held on December 21, 2017, at a regularly scheduled meeting of the Delaware Board of Dentistry and Dental Hygiene to receive verbal comments regarding the Board's proposed amendments to its regulations. No comments were submitted at that time.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

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

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

There was no verbal testimony given at the public hearing on December 21, 2017. No written comments were received by the Board during the initial thirty-day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

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## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §1106(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes to Regulation 6 clarify that live webinars will be accepted as face to face CEs. The proposed amendments to Regulation 8 add regulatory provisions for inactive status pursuant to 24 **Del.C.** §1126(e). The proposed amendment to Regulation 10 seeks to incorporate by reference the Board's clinical examination guidelines into its regulations. The proposed changes to Regulation 11 amend technical errors in the substantially related crimes list and adds the crime of misuse of the Prescription Monitoring Program. The proposed change at Regulation 12 adds a requirement that licensees update the Division of Professional Regulation within 10 days of a change in their contact information.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

## DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §1106(a)(1) and for the reasons set forth above, the Board of Dentistry and Dental Hygiene does hereby ORDER that the regulations be, adopted and promulgated as set forth in the Delaware *Register of Regulations*. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g). The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 18<sup>th</sup> day of January, 2018.

### BOARD OF DENTISTRY AND DENTAL HYGIENE

Thomas A. Mercer, DMD, President	Brian McAllister, DDS, Secretary (absent)
Erin Cox, DDS	Bruce Mathews, DDS
Ryan Barhart, DDS	Buffy Parker, RDH,
Joseph Stormer, Public Member	Rozi Berberian, Public Member (absent)
June Ewing, Public Member	Carla Rawheiser, RDH, Hygiene Advisory
Tammy Beebe, RDH, Hygiene Advisory	Bonnie Thomas, RDH, Hygiene Advisory

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2017 issue of the *Register* at page 484 (21 DE Reg. 484). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1100 Board of Dentistry and Dental Hygiene**

# FINAL REGULATIONS

## DIVISION OF PROFESSIONAL REGULATION 1799 GENETIC COUNSELOR ADVISORY COUNCIL

Statutory Authority: 24 Delaware Code, Section 1799I(c) (24 **Del.C.** §1799I(c))  
24 **DE Admin. Code** 1799

### ORDER

#### 1799 Genetic Counselor Advisory Council

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 1, 2017 at a scheduled meeting of the Genetic Counselor Advisory Council ("the Council") of the Board of Medical Licensure and Discipline ("the Board") to receive comments regarding proposed amendments to the Council's rules and regulations. The Council proposed revisions to its rules and regulations to add a new Section 7.0 setting forth standards for the use of telehealth in the practice of genetic counseling.

The proposed changes to the rules and regulations were initially published in the *Register of Regulations*, Volume 20, Issue 11, on May 1, 2017 for a June 2, 2017 hearing. The hearing was subsequently rescheduled and took place on September 1, 2017 at a scheduled Council meeting. Notice of the September 1, 2017 hearing was published in the *Register of Regulations*, Volume 21, Issue 1 on July 1, 2017. Notice was also published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was September 16, 2017, 15 days following the public hearing. The Council deliberated on the proposed revisions at its regularly scheduled meeting on November 30, 2017.

#### Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

The Council received no written or public comment.

#### Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Council with comments in writing and by testimony on the proposed amendments to the Council's rules and regulations. The Council did not receive any written comments and no members of the public attended the hearing to offer testimony.

Pursuant to 24 **Del.C.** §1799I(c), the Council has the statutory authority to promulgate rules and regulations governing the practice of genetic counseling after a public hearing and subject to the approval of the Board. Given the absence of comments, either by testimony or in writing, the Council recommends to the Board that it approve the rules and regulations as published, attached hereto as Exhibit A.

#### RECOMMENDATION TO THE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

By the unanimous affirmative vote of the undersigned members, the Genetic Counselor Advisory Council hereby adopts the rules and regulations as published in the *Register of Regulations* on May 1, 2017, Volume 20, Issue 11 and recommends approval of such rules and regulations to the Board of Medical Licensure and Discipline.

If approved by the Board, these rules and regulations will be effective ten days after publication of the Board's final order in the *Register of Regulations*.

Respectfully submitted this 30<sup>th</sup> day of November, 2017.

Zohra J. Ali-Khan Catts, Chairperson

Sara Ennis Mora, Vice Chairperson (absent)

Angela Duker

Becky Milewski

Garrett H. Colmorgen, M.D. (absent)

**AND NOW**, this 2<sup>nd</sup> day of January, 2018;

**WHEREAS**, the Board of Medical Licensure and Discipline has considered the attached recommendation of the Genetic Counselor Advisory Council for approval of amended rules and regulations related to the use of telehealth in the practice of genetic counseling; and

**WHEREAS**, the Board has determined to approve the aforesaid rules and regulations as proposed by the Genetic Counselor Advisory Council and attached hereto as Exhibit A.

**NOW THEREFORE IT IS ORDERED by the Board of Medical Licensure and Discipline:**

1. The rules and regulations recommended by the Genetic Counselor Advisory Council governing the use of telehealth in the practice of genetic counseling are hereby approved by the Board of Medical Licensure and Discipline.
2. The rules and regulations shall be effective ten days after publication of this Final Order in the *Register of Regulations*.

**IT IS SO ORDERED this 2nd day of January, 2018:**

Karyl Rattay, M.D., President

Joseph M. Parise, D.O.

Gregory D. Adams, M.D. (absent)

Sharon Williams-Mayo, Public Member

Malvine Richard, Public Member

Bryan D. Villar, M.D.

Stephen Lawless, M.D. (absent)

George A. Dahr, M.D.

Stephen G. Cooper, M.D. (absent)

Garrett H. Colmorgen, M.D.

Janice Truitt, Public Member

Barry L. Bakst, D.O.

Mary Lomax, Public Member

N. C. Vasuki, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2017 issue of the *Register* at page 883 (20 DE Reg. 883). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1799 Genetic Counselor Advisory Council**

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## OFFICE OF MANAGEMENT AND BUDGET DIVISION OF FACILITIES MANAGEMENT

Statutory Authority: 29 Delaware Code, Section 6908(a)(6) (29 **Del.C.** §6908(a)(6))  
19 **DE Admin. Code** 4104

### ORDER

#### **4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects**

The Office of Management and Budget (OMB) initiated proceedings to amend the Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects (19 **DE Admin. Code** 4104). The OMB proceedings to amend regulations were initiated pursuant to 29 **Del.C.** Chapter 101 and authority as prescribed by 29 **Del.C.** Ch. 69, §6908(a)(6). A final order was issued on December 1, 2017 and became effective on January 1, 2018. This is an amendment to that final order.

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

On June 1, 2017, OMB published proposed amendments related to the Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects in the Delaware *Register of Regulations* (Volume 20, Issue 12). After receiving comments that led to substantive changes, OMB re-published the proposed amendments in the October 1, 2017 Delaware *Register of Regulations* (Volume 21, Issue 4). It was requested at that time that written comments from the public concerning the revised proposed regulations be delivered to OMB by November 3, 2017. OMB did not receive any written comments in response to this request.

OMB then published a Final Order in the December, 2017 *Register of Regulations* (Volume 21, Issue 6) adopting and promulgating the amended regulation with an effective date for all large public works projects advertised for bid on or after January 1, 2018.

### FINDINGS OF FACT

OMB finds that the proposed amended regulations as set forth in the October, 2017 *Register of Regulations* (Volume 21, Issue 4) represent a fair balance to protect management, labor and members of the public. OMB finds that by placing an effective date of January 1, 2018, it requires Prime and Subcontractors who have an existing contract having to maintain two procedures for the required testing if they are awarded a new contract. In order to mitigate that potential administrative burden and cost on those Prime and Subcontractors, the amended regulation should be effective for all projects including those already in existence as well as those advertised for bid on or before January 1, 2018.

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Office of Management and Budget does hereby ORDER that the amended Regulation be, and that it hereby is, adopted and promulgated and effective for all large public works projects. The effective date of this Order is for all large public works as of February 10, 2018.

Michael S. Jackson, Director  
Office of Management and Budget

**\*Please note: There were no changes made to the text of the final regulation as published in the December 1, 2017 issue of the *Register of Regulations*. The text of the current regulation is reprinted below and available at <http://regulations.delaware.gov/AdminCode/title19/4000/4100/4104.pdf>.**

## 4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

### 1.0 Purpose

The Office of Management and Budget ("Office"), has developed these regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds pursuant to 29 **Del.C.** §6908(a)(6). The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 **Del.C.** §6962.

### 2.0 Definitions

"**Consortium**"/"**Third Party Administrator**" or "**(C/TPA)**" means a service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the drug and alcohol testing programs of its members.

"**Contractor**" means an entity such as, but not limited to, an individual, firm, partnership or corporation that has a contractual obligation to perform work for contracts awarded pursuant to 29 **Del.C.** §6962.

"**Division of Facilities Management**" and "**DFM**" means the Division of Facilities Management within the Office of Management and Budget.

"**Drug Testing Firm**" is an entity engaged in the business of providing drug testing services for businesses, individuals, governments or any entity that requires drug testing of Employees, applicants, licensees, etc., in compliance with these requirements.

"**Employee**" means an individual employed by a Contractor or Subcontractor who works on the Jobsite of a Large Public Works Contract but does not fulfill a clerical or administrative function. For the purpose of this definition, clerical or administrative functions shall refer to job responsibilities that do



not generally require an employee to work outside of the Contractor's Jobsite office, home office or other employer-provided office. For the purposes of this regulation, the term "Employee" shall also include supervisors and foremen working on the Jobsite. The term "Employee" shall also include employees of a Contractor or Subcontractor working on or delivering materials and equipment to and from a Jobsite.

**"Impairment"** or **"Impaired"** means symptoms that an Employee while working may be under the influence of drugs or alcohol that may decrease or lessen the Employee's performance of the duties or tasks of the Employee's job position, including symptoms of the Employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor, irrational or unusual behavior, negligence or carelessness in operating equipment, machinery or production or manufacturing processes, disregard for the safety of the Employee or others, or other symptoms causing a reasonable suspicion of the use of drugs or alcohol.

**"Jobsite"** means the site or area directly or indirectly owned, operated or controlled by the Owner in which the Contractor or Subcontractor performs work or delivers services to the Owner. For the purpose of this definition, "Jobsite" does not mean a remote work site not under the direct or indirect control of the Owner in which work is performed to fulfill the Contractor's or Subcontractor's obligations.

**"Large Public Works Contract"** means a contract for a public works construction awarded pursuant to 29 Del.C. §6962.

**"Mandatory Drug Testing Program"** and **"Program"** means a defined set of basic procedures, requirements and rules that must be used by a Contractor or Subcontractor to test employees for drugs in compliance with these requirements.

**"Owner"** is the state agency, school district or entity that awards a Large Public Works Contract to a Contractor pursuant to 29 Del.C. §6962.

**"Positive Test Result"** and **"Fail a Drug Test"** means the result reported by a Health and Human Services certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentration. For purposes of these regulations, an Employee shall not be considered to have a Positive Test Result nor shall an Employee be considered to "Fail a Drug Test", unless the employee was impaired by marijuana at the Jobsite if:

- The Employee is a Registered Qualifying Patient and;
- The drug detected was marijuana, a component of marijuana, or marijuana metabolites.

**"Random Drug Testing"** means that an Employee is chosen at random for testing without advance notice, from a pool of Employees or as a member of a Consortium. Specific requirements for random drug testing conducted under these regulations are described in Section 5.0.

**"Registered Qualifying Patient"** means a person (1) validly issued and in possession of an unexpired Registry Identification Card as defined by 16 Del.C. §4902A (14), and (2) subject to confirmation through a "verification system" as set forth at 16 Del.C. §4902A(17).

**"Subcontractor"** means an entity such as, but not limited to, an individual, firm, partnership or corporation that has a contractual obligation to perform work for, or supply services to a Contractor as defined in Section 2.0.

### 3.0 Employee drug testing documentation requirements.

3.1 The following documentation requirements apply:

- 3.1.1 At bid submission - A solicitation for a Large Public Works Contract must require each Contractor that submits a bid for the work to submit with the bid a signed affidavit certifying that the Contractor and Subcontractor(s) has in place or will implement during the entire term of the contract a Mandatory Drug Testing Program that complies with this regulation.
- 3.1.2 At least two business days prior to contract execution – The awarded Contractor shall provide to the Owner copies of the Employee Drug Testing Program for the Contractor and for all listed Subcontractors.

- 3.1.3 During contract execution – Contractors that employ additional Subcontractors on the jobsite may do so only after submitting a copy of the Subcontractor's Employee Drug Testing Program. A Contractor or Subcontractor shall not commence work until the Owner has concluded the Employee Drug Testing Program complies with this Regulation as per subsection 3.2.
- 3.1.4 In the event of an emergency a Contractor may employ additional Subcontractors on the jobsite prior to submitting the Subcontractor's Employee Drug Testing Program provided that said Program is submitted to the Owner as soon as practicable.
- 3.2 A Contractor or Subcontractor shall be treated as having a Mandatory Drug Testing Program that complies with this regulation if the Program includes the following:
  - 3.2.1 The Program meets the minimum standards in Section 4.0 of this regulation.
  - 3.2.2 The Program provides for the frequency of testing of Employees as per Section 5.0 of this regulation:
  - 3.2.3 The Program imposes disciplinary measures on an Employee who fails a drug test as per Section 6.0 of this regulation.
- 3.3 Prequalified Contractors and Subcontractors – A Contractor or Subcontractor may meet the provisions of subsection 3.1 if they are Prequalified through the DFM Prequalification and if the DFM Prequalification includes provisions requiring an Employee Mandatory Drug Testing Program that meet the requirements of Sections 4.0, 5.0 and 6.0 of this Regulation
- 3.4 The State shall not be obligated to pay, and the Contractor or Subcontractor shall expressly agree that, any portion of work performed by a Contractor or Subcontractor commenced before that Contractor or Subcontractor has complied with subsections 3.1 and 3.2, provided however that emergency work as referenced in subsection 3.1.4 may not be subject to this provision.

#### **4.0 Minimum Standards for a Mandatory Drug Testing Program**

- 4.1 Testing for the presence of drugs in an Employee's system and the handling of test specimens shall be conducted in accordance with guidelines for the collection, chain-of-custody procedures, laboratory testing, and Medical Officer Review procedures contained within the Mandatory Guidelines for Federal Workplace Drug Testing Programs published by the Substance Abuse and Mental Health Services Administration (SAMHSA). (49 CFR Part 40).

All tests must be processed by a federal Health and Human Services certified laboratory. Contractors must provide documentation detailing the procedures used in the collection, testing and reporting of drug tests sufficient to show conformance with SAMHSA guidelines.
- 4.2 Contractors and Subcontractors subject to these regulations may procure the services of an appropriate Drug Testing Firm to administer their program. A Contractor or Subcontractor may also participate in a Consortium. A Contractor or Subcontractor may also implement a Mandatory Drug Testing Program using in-house personnel and resources.



- 4.3 Employees subject to drug testing shall be tested using at a minimum a seven-panel protocol testing plus alcohol screening for the following:

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites	50 ng/mL	THCA	15 ng/mL.
Cocaine metabolites	150 ng/mL	Benzoyllecgonine	100 ng/mL.
Opiate metabolites			
Codeine/Morphine	2000 ng/mL	Codeine	2000 ng/mL.
		Morphine	2000 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamines			
AMP/MAMP	500 ng/mL	Amphetamine	250 ng/mL.
		Methamphetamine	250 ng/mL.
MDMA	500 ng/mL	MDMA	250 ng/mL.
		MDA	250 ng/mL.
		MDEA	250 ng/mL.
Alcohol	0.04%		

- 4.4 The frequency of Random Drug Testing and the methodology for selecting Employees to be screened are defined in Section 5.0 and shall be incorporated into Contractor and Subcontractor mandatory testing procedures. A Contractor or Subcontractor may incorporate rules or requirements that exceed the requirements defined herein.

**5.0 Drug Testing Requirements – Frequency for the Testing of Employees**

- 5.1 Initial Drug Testing - Employees commencing work on a Jobsite must be tested with the exception that an Employee who has passed a random or scheduled drug test within the past 180 days from the date of commencing work or an Employee who passed a pre-employment drug test administered pursuant to an Contractor's or Subcontractor's Program and is subject to testing as part of a Contractor's or Subcontractor's ongoing Program or as part of a Consortium shall be permitted to work at the Jobsite without further testing; however, the Employee is still subject to random testing.
- 5.2 Random Drug Testing - During the course of a project, each Contractor and Subcontractor with Employees on the Jobsite shall maintain a Program that meets or exceeds the following requirements.
- 5.2.1 All Employees will be subject to random, unannounced testing.
- 5.2.2 The selection of Employees shall be made by a scientifically valid method of randomly generating an employee identifier from a Contractor or Sub-contractor's entire pool of employees, through those Employees working on a Public Works Jobsite or through the Contractor or Subcontractor's participation in a Consortium.
- 5.2.3 A Contractor or Subcontractor's Program shall provide that no less than 5% of a Contractor's or Subcontractor's employees shall be randomly selected each month for drug testing and no less than 2.5% of a Contractor or Subcontractor's employees be randomly selected for alcohol testing. Contractors or Subcontractors may participate in a Consortium provided that no less than 5% of the Consortium's pool shall be subject to drug testing each month and no less than 2.5% of the Consortium's pool shall be subject to alcohol testing each month. Contractors or Subcontractors with less than 10 employees that do not participate in a Consortium shall test at least one of their employees, selected randomly per month. Each employee shall have an equal chance of selection each time the selection is made. Because the selection process is random, some Employees may not be tested within a year, while others may be tested more than once. Nothing in this regulation shall require an Employee of a Contractor or Subcontractor not working or assigned to a Public Works Jobsite to be subject to random alcohol testing.

- 5.2.4 Employees notified that they have been selected must report within four hours for testing to a site specified. Employees so notified must have been given such notification at least four hours before the scheduled closing time of the testing facility. Any failure to report for random testing, or to cooperate with the testing procedure shall be considered a positive result.
- 5.2.5 Purposely impeding or delaying an Employee's fulfillment of the testing requirements herein by a Contractor or Subcontractor may subject the Contractor or Subcontractor to sanctions listed in Section 8.0.
- 5.3 Reasonable Suspicion Testing – An Employee will be required to take a drug and/or alcohol test at any time his or her employing Contractor, Subcontractor or the Owner reasonably believes that he or she has an Impairment caused by drugs and/or alcohol. Further, an Employee may be required to take a drug and/or alcohol test at any time his or her employing Contractor, Subcontractor or the Owner finds drug paraphernalia and/or open alcohol containers on the Jobsite.
- 5.4 Return to Duty Testing – As required in Section 6.0.
- 5.5 Accident Triggered Testing – An Employee will be required to take a drug test and may be subject to an alcohol breathalyzer test at any time there is a Jobsite accident involving loss or significant property damage, injury or death to an Employee of the Contractor, Subcontractor, or Owner or member of the public.
- 5.5.1 As soon as practicable following an accident, the Contractor will notify the Employee(s) whose performance could have contributed to the accident of the need for the test.
- 5.5.2 The appropriate Contractor shall ensure that an Employee, required to be tested under this section, report to a testing center as soon as practicable, but no longer than 4 hours after the accident. Employees so notified must have been given such notification at least four hours before the scheduled closing time of the testing facility. If the drug test is not conducted within 4 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.
- 5.5.3 An Employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
- 5.5.4 If an Employee fails or refuses to be tested, he/she must be removed from the Jobsite and shall be subject to consequences in Section 6.0.
- 5.5.5 Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an Employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
- 5.6 All testing required by this section shall be administered according to the standards outlined in Section 4.0.

## **6.0 Consequences of a Positive Test Result**

- 6.1 The disciplinary measures contained within a Contractor's or Subcontractor's Program for an employee who tests positive to a mandatory drug test must include at a minimum, all of the following:
- 6.1.1 The Employee is subject to an immediate suspension from any public works Jobsite.
- 6.1.2 The Employee is not eligible for reinstatement by the Contractor or Subcontractor to any public works Jobsite until 30 days after the Employee tests negative on a seven drug panel plus alcohol test certified by a medical review officer.
- 6.1.3 The Employee is subject to unscheduled monthly random testing as per subsection 5.2.
- 6.1.4 An Employee who has tested positive for more than one drug test within a three year period shall be permanently banned from working at public works Jobsites.
- 6.1.5 An Employee who has tested positive for marijuana, a component of marijuana, or marijuana metabolites and is a Registered Qualifying Patient shall be exempted from the disciplinary actions contained in this section unless:
- 6.1.5.1 The Employee was Impaired by marijuana at the Jobsite

- 6.1.5.2 Employment of the Registered Qualifying Patient would cause the Owner to lose monetary or licensing-related benefits under Federal law.
- 6.2 A Contractor or Subcontractor shall report the Positive Test Result to the Employee's professional licensing board, if applicable.

## **7.0 Contractor and Subcontractor Certification of Compliance with Regulations**

- 7.1 During the term of the contract:
- 7.1.1 During the term of the contract, Contractors and Subcontractors on the Jobsite for more than 30 days shall maintain testing data that includes but is not limited to the data elements contained in subsection 7.1.2:
- 7.1.1.1 A Contractor or Subcontractor that is employed on the Jobsite for less than 30 days shall not be subject to the reporting requirements contained in subsection 7.1.2 of this regulation, unless the Owner specifies that such reporting is required in the Invitation to Bid or Specifications relating to the work to be performed.
- 7.1.2 The data shall at a minimum contain the following elements:
- 7.1.2.1 The number of Employees who worked on the Jobsite during the previous month or quarter.
- 7.1.2.2 The number of Employees subjected to random testing during the previous month or quarter.
- 7.1.2.3 The number of negative results and the number of positive results.
- 7.1.2.4 Action taken by the Contractor or Subcontractor on an Employee who failed or tested positive to a random test.
- 7.1.3 Test results must be kept by a Contractor or Subcontractor for a minimum of 1 year subsequent to the date of close out of the Public Works project.
- 7.1.4 Any Positive Test Result of an Employee working on a Public Works Jobsite including the Employee name and action taken in response by a Contractor or Subcontractor must be reported by the Contractor or Subcontractor to the Owner in writing within 24 hours of the Contractor or Subcontractor receiving the test results.
- 7.1.5 The Owner shall have the right to periodically audit all Contractor and Subcontractor test results at the Contractor or Subcontractor's offices or by other means to make the data available for inspection by the Owner.
- 7.1.6 The failure to comply with these reporting requirements may be considered a material breach of any agreement relating to the performance of work by the Contractor or Subcontractor.

## **8.0 Penalties**

- 8.1 A Contractor or Subcontractor on a Large Public Works contract that fails to implement a Mandatory Drug Testing Program in accordance with this regulation or falsifies testing results shall be subject to the following sanctions:
- 8.1.1 Written warning (1<sup>st</sup> offense).
- 8.1.2 Prohibition from bidding on new public works jobs for a period not to exceed three months (2<sup>nd</sup> offense) and one year (3<sup>rd</sup> offense).
- 8.1.3 For subsequent offenses, debarment or bond revocation.
- 8.2 Notwithstanding any other provision of this regulation, if any failure to comply with the requirements of this regulation are particularly flagrant or egregious, the Owner may seek a termination for cause, a temporary suspension, a determination that the Contractor or Subcontractor is not responsible, debarment or bond revocation, and any other statutory, common law, or equitable remedy.

**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE****Notice of Expanded Public Process on Revised Draft Hydraulic Fracturing Regulations**

The Delaware River Basin Commission (DRBC) on January 8 announced that it would extend to March 30, 2018 the period for written comment on proposed regulations concerning hydraulic fracturing activities in the basin. Additional public hearings on the draft regulations also were announced and will take place in Schnecksville, Pennsylvania on February 22 and by telephone on March 6. The revised draft regulations and notice of public hearings were originally published on November 30, 2017. Details regarding the additional comment opportunities are provided below.

Those interested in commenting are encouraged to review the full text of the draft rules along with related materials and information on the public input procedures on the Commission's web site at [http://www.nj.gov/drbc/meetings/proposed/notice\\_hydraulic-fracturing.html](http://www.nj.gov/drbc/meetings/proposed/notice_hydraulic-fracturing.html).

Public Hearings. To supplement the four previously scheduled public hearings – two on January 23 in Waymart, Pennsylvania, and two on January 25 in Philadelphia – the Commission is adding the following two hearings:

1. **February 22, 2018**, 3 p.m. to as late as 7 p.m. at the Lisa Scheller-Wayne Woodman Community Services Center, Lehigh Carbon Community College, 4525 Education Park Drive, in Schnecksville, Pennsylvania. Register in advance to attend at <http://bit.ly/2ql1tBC> or register on-site. Persons who have registered to attend by 5 p.m. January 26, 2018 will be contacted by DRBC prior to the hearing date and provided with an early opportunity to request speaking time. Registrants may also sign up to speak at the hearing and will be heard *if time allows*. Elected government officials and their staff will have the opportunity to identify themselves when registering.
2. **March 6, 2018**, 1:30 p.m. to 3:30 p.m. The Commission will host a moderated public hearing by telephone. Members of the public are encouraged to listen by calling 1-866-831-8713 and asking the operator to connect them to the DRBC call. Those wishing to address the Commission at this hearing can register for an opportunity to speak at <http://bit.ly/2pdqxQ9>.

Addresses for Written Comment. Written comments on the draft regulations will receive the same consideration as oral comments and will be accepted until 5 p.m. on **March 30**. Written comments and attachments should be submitted through the DRBC's online comments webpage at <http://dockets.drbc.commentinput.com/>. Requests for exceptions to use of the online registration and written comment collection systems may be addressed to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the hearings should contact the Commission Secretary directly at 609-883-9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional information relating to the hearings may be provided by contacting Peter Eschbach, 609-883-9500, ext. 208 or Clarke Rupert, ext. 260.

The DRBC is a federal/interstate government agency responsible for managing the water resources within the Delaware River Basin without regard to political boundaries. The five Commission members are the governors of the basin states (Delaware, New Jersey, New York, and Pennsylvania) and the commander of the U.S. Army Corps of Engineers, North Atlantic Division, who represents the federal government.

To learn more about the Commission, please visit [www.drbc.net](http://www.drbc.net) or follow DRBC on Twitter at @DRBC1961.

Pamela M. Bush  
Commission Secretary and Assistant General Counsel  
January 12, 2018

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

The Delaware River Basin Commission will hold a public hearing on **Wednesday, February 14, 2018**

beginning at **1:30 p.m.** A business meeting will be held the following month on **Wednesday, March 14, 2018** beginning at **10:30 a.m.** The hearing and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania. For more information, visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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**DEPARTMENT OF AGRICULTURE**  
**DELAWARE FOREST SERVICE**  
**PUBLIC NOTICE**  
**402 State Forest Regulations**

3 **DE Admin. Code** 402 State Forest Regulations are being proposed for amendment to comply with the decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC* (Dec. 7, 2017) that invalidated portions of the existing regulations governing firearms. The emergency regulations promulgated on December 26, 2017 will be superseded by these regulations.

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for the Delaware Department of Agriculture to promulgate necessary regulations to protect forest lands, 3 **Del.C.** §1011, and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;" 29 **Del.C.** §8103(8).

The hearing record on the proposed changes to 3 **DE Admin. Code** 402 State Forest Regulations will open February 1, 2018 and public comments will be accepted in accordance with 29 **Del.C.** §10118. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 12, 2018 beginning at time 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

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

The State Board of Education will hold its monthly meeting on Thursday, February 15, 2018 at 4:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**  
**Managed Care Hearings**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual regarding Managed Care Hearings, specifically, *to align DMMA Medicaid Managed Care Policy with the new Federal Requirement, Medicaid Managed Care Final Rule.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on March 5, 2018. Please identify in the subject line: Managed Care Hearings.

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

by other interested persons.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Title XXI CHIP Compliance with MHPAEA**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XXI CHIP Plan regarding MHPAEA specifically, *to align the Delaware CHIP Plan with new Federal Requirements*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on March 5, 2018. Please identify in the subject line: **Title XXI CHIP Compliance with MHPAEA**.

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

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**DEPARTMENT OF INSURANCE****OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****1318 Compensation for Chiropractic Services**

At 21 DE Reg. 19 (July 1, 2017), the Department published a notice of its intent to codify proposed new Regulation 1318, Compensation for Chiropractic Services, and solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

The Department received several timely submitted comments, copies of which are on file with the Department. In response to the comments received, the Department redrafted the proposed new regulation, and hereby gives notice of its re-proposal. The proposed new regulation as redrafted would prohibit insurance carriers and third party administrators who are regulated by the Department from including in any insurance policy terms and conditions that unreasonably discriminate against access to chiropractic care or services. It would also prohibit compensation of doctors of chiropractic that is unreasonable or discriminatory, as detailed in the proposed new rule. The Delaware Code authority for the proposed new regulation is 24 **Del.C.** §716(c) and 18 **Del.C.** §§102, 311 and 329.

The Department of Insurance does not plan to hold a public hearing on the redrafted version of the proposed new regulation. The proposed new regulation appears below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 5<sup>th</sup> day of March, 2018. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL****DIVISION OF FISH AND WILDLIFE****PUBLIC NOTICE****3300 Non-Tidal Finfish****3301 Definitions**

To expand recreational freshwater trout angling opportunities, this action proposes to amend Delaware's non-tidal finfish regulation (7 **DE Admin Code** 3301 (1.0)) by defining that portion of Red Clay Creek from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania to the bridge at Yorklyn Road as a designated trout stream. Trout stream stocking provides an important recreational fishing opportunity in a densely populated area of the State, which has few other freshwater fishing opportunities. Red Clay Creek was formerly included as a designated trout stream, but fish tissue contamination resulting from industrial discharges precluded stocking since 1986. Research trout stockings conducted in Red Clay Creek by the Department in 2011 and 2016 demonstrated that trout once again can be safely stocked and consumed as a result of improving water quality.

Waters designated as trout streams are closed to all fishing 14 days prior to the first Saturday in April to provide for stocking time and fair access and to deter poaching. Such designation also requires an annual trout stamp (\$2.10 resident youth/ \$4.20 resident adult/ \$6.20 non-resident) to fish from the first Saturday in April through June 30 and the first Saturday in October through November 30. No environmental impact is expected as the result of the proposed amendment. The proposed amendment will increase angling opportunities for Delaware's trout anglers and it is anticipated that the return of trout fishing to Red Clay Creek will better distribute trout angling pressure.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3301 Definitions will open February 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on February 22, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, March 9, 2018.

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**DIVISION OF FISH AND WILDLIFE****PUBLIC NOTICE****3900 Wildlife**

7 **DE Admin. Code** 3900 Wildlife is being proposed for amendment to comply with the decision of the Delaware Supreme Court in Bridgeville R&P Club v. DNREC (Dec. 7, 2017) that invalidated portions of the existing regulations governing firearms. The emergency regulations promulgated on December 26, 2017 will be superseded by these regulations.

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for DNREC to promulgate necessary regulations to protect wildlife, 7 **Del.C.** §103, and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State". 29 **Del.C.** §8003(7).

The hearing record on the proposed changes to 7 **DE Admin. Code** 3900 Wildlife will open February 1, 2018 and public comments will be accepted in accordance with 29 **Del.C.** §10118. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 12, 2018 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.



**DIVISION OF PARKS AND RECREATION**  
**PUBLIC NOTICE**  
**9201 Regulations Governing State Parks**

7 **DE Admin. Code** 9201 Regulations Governing State Parks are being proposed for amendment to comply with the decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC* (Dec. 7, 2017) that invalidated portions of the existing regulations governing firearms. The emergency regulations promulgated on December 26, 2017 will be superseded by these regulations.

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for DNREC to "[m]ake and enforce regulations relating to the protection, care and use of the areas it administers", 7 **Del.C.** §4701(a)(4), and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State". 29 **Del.C.** §8003(7).

The hearing record on the proposed amendments to 7 **DE Admin. Code** 9201 Regulations Governing State Parks will open February 1, 2018 and public comments will be accepted in accordance with 29 **Del.C.** §10118. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 12, 2018 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

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**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**  
**PUBLIC NOTICE**

**1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear**

The proposed regulations reflect changes that will reduce the likelihood of an incident involving the loss of life and property from a boiler or pressure vessel due to an explosion, equipment failure, or harmful exposure to carbon monoxide. The proposed regulations require owners of boilers located in places accessible to the public such as commercial businesses, churches, hospitals, and schools, to conduct monthly inspections of their boiler systems and record any maintenance, testing, or service performed on the boiler. The proposed regulations also require owners to hire a licensed heating, ventilation, and air conditioning technician to perform an annual service check on the boiler system.

The proposed regulations also amend the inspection and testing requirements for pressure vessels associated with air cannons. The thickness of the wall of the pressure vessels must now be checked using ultrasonic testing technologies to ensure that the wall is thick enough to sustain the maximum allowable working pressure originally assigned to the pressure vessel when it was manufactured. There are also requirements for owners to conduct penetrant testing and necessary repairs on the pressure vessel when a commissioned inspector detects cracks or surface defects during an inspection.

The hearing record on the proposed amendments to 7 **DE Admin. Code** 1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear Installations was open on January 1, 2018 and remains open. Public comments will be accepted through March 15th 2018, pursuant to Section 10118 of 29 Del. Code Chapter 101, Administrative Procedures. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendments will be held on Wednesday February 28, 2018 beginning at 6:00 PM in the DNREC Richardson and Robbins Building Auditorium, 89 Kings Highway Dover, DE 19901. The hearing originally was scheduled for January 25, 2018 but had to be rescheduled due to severe weather which prevented a legal notice from appearing in two newspapers with statewide circulation 20 days prior to the scheduled public hearing.



**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1400 BOARD OF ELECTRICAL EXAMINERS**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §1406(a)(1), the Delaware Board of Electrical Examiners has proposed revisions to its rules and regulations. The rules pertaining to late renewal for Electrical Inspection Agencies have been modified.

A public hearing will be held on March 7, 2018 at 8:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be 15 days following the public hearing.

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**PUBLIC SERVICE COMMISSION**  
**PUBLIC NOTICE**

**3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)**

The Delaware Public Service Commission, in compliance with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML, and pursuant to 26 **Del.C.** §362(b), proposes to revise its regulations for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML; that is, specifically to promulgate regulations to amend 26 *Del. Admin. C.* §3008-3.2.21 and related regulations as needed to specify the procedures for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements under 26 **Del.C.** §354(i) and (j).

You can review the proposed revised Rules in the February 2018 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed revised Rules in the PSC's electronic filing system DelaFile at <http://delafile.delaware.gov/> and for docket # input "Reg. 56." If you wish to obtain written copies of the Order and proposed revised Rules, please contact the PSC at (302) 736-7500. Copies in excess of the first twenty pages are \$0.10 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Written comments can be filed electronically in DelaFile at <http://delafile.delaware.gov/> by filling out the Public Comment Form located under Public Links. Written comments can also be mailed to Joseph DeLosa, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904 or via email to [joseph.delosa@state.de.us](mailto:joseph.delosa@state.de.us), with the subject line "Regulation Docket No. 56." Written comments will be accepted until Wednesday, March 14, 2018, pursuant to 29 **Del.C.** §10118(a).