
Delaware Register of Regulations

Issue Date: July 1, 2016

Volume 20 - Issue 1, Pages 1 - 74

IN THIS ISSUE:

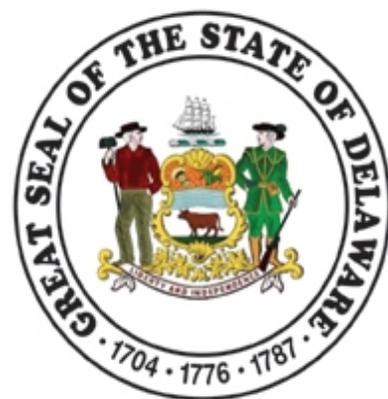
Regulations:

Emergency

Proposed

Final

Calendar of Events &
Hearing Notices



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



INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF RESEARCH STAFF

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

TABLE OF CONTENTS

EMERGENCY

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Fish and Wildlife

3504 Striped Bass Possession Size Limit; Exceptions..... 6

PROPOSED

DEPARTMENT OF EDUCATION

Office of the Secretary

255 Definitions of Public School, Private School and Nonpublic School..... 9

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan: Medical Care and Other Types of Remedial Care - Behavioral Interventions to Treat Autism Spectrum Disorder..... 11

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products..... 21

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

5500 Bail Enforcement Agents, Sections 6.0, 7.0, and 8.0..... 22

DEPARTMENT OF STATE

Division of Professional Regulation

1100 Board of Dentistry and Dental Hygiene..... 23
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals 25
Uniform Controlled Substances Act Regulations..... 31

DEPARTMENT OF TRANSPORTATION

Division of Transportation Solutions

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual..... 41

FINAL

DEPARTMENT OF EDUCATION

Professional Standards Board

1522 Elementary School Counselor..... 42
1545 Secondary School Counselor..... 45
1582 School Nurse..... 49

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Long-Term Care Eligibility; Spousal Impoverishment Undue Hardship..... 52

DEPARTMENT OF JUSTICE

Fraud and Consumer Protection Division

104 Privacy Policies For Commercial Online Sites, Services, and Applications..... 55

TABLE OF CONTENTS

5

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Fish and Wildlife

3774 Oyster Minimum Size Limits..... 58

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

5500 Bail Enforcement Agents, Section 2.0..... 61

DEPARTMENT OF STATE

Division of Professional Regulation

1795 Midwifery Advisory Council..... 62

2930 Council on Real Estate Appraisers..... 65

DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

2289 Transportation Network Companies..... 66

EXECUTIVE DEPARTMENT

Office of Management and Budget

2007 Disability Insurance Program Rules and Regulations..... 70

CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Education, Notice of Monthly Meeting..... 71

Dept. of Health and Social Services, Div. of Medicaid and Medical Assistance, Notice of Public Comment Period 71

Dept. of Natural Resources and Environmental Control, Div. of Air Quality; Division of Water, Notices of Public Hearings 71 - 72

Dept. of Safety and Homeland Security; Div. of State Police, Bail Enforcement Agents, Notice of Public Comment Period..... 72

Dept. of State, Div. of Prof. Reg., Board of Dentistry and Dental Hygiene; Board of Professional Counselors of Mental Health and Chemical Dependency Professionals; Controlled Substance Advisory Committee, Notices of Public Hearings and Comment Periods..... 72 - 73

Dept. of Transportation, Div. of Transportation Solutions, Notice of Public Comment Period..... 74

Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

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

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

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

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

Statutory Authority: 7 Delaware Code, Section 903(h)

(7 **Del.C.** §903(h))

7 DE Admin. Code 3500

SECRETARY'S ORDER

Pursuant to 29 Del.C. §10119 and 7 Del.C. §903(h)

Order No. 2016-F-0027

3504 Striped Bass Possession Size Limit; Exceptions**AUTHORITY:**

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is adopting amendments to Tidal Finfish Regulation 3504 without prior notice or public hearing to assure that Delaware's commercial Striped Bass harvesters are not burdened with an unnecessary harvest constraint that also results in unintended wanton waste of fish, which collectively pose an actual and imminent danger to this fishing resource and its associated businesses. 7 **Del.C.** §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish.

REASON FOR THE EMERGENCY ORDER:

The Atlantic States Marine Fisheries Commission approved in 2014 Addendum IV to Amendment 6 to the Interstate Fisheries Management Plan for Atlantic Striped Bass (the Addendum) that imposed a 25% commercial quota poundage reduction on all states with commercial Striped Bass fisheries, resulting in Delaware reducing in

2015 its commercial quota poundage by 25%. The Addendum also required all states to reduce their recreational Striped Bass harvest by 25%, resulting in Delaware changing in 2015 its recreational Striped Bass size limit from a 28" minimum length to a slot size limit of 28" to 37" and 44" or greater. The regulation change implementing the new slot size limits for the recreational fishery inadvertently required the Striped Bass commercial hook and line fishery and commercial fall gill fishery to abide by these new recreational slot size limits. This presents a hardship for these two commercial fisheries as an additional and unnecessary constraint to their harvest within the already required 25% commercial poundage quota reduction.

If Delaware does not use an emergency order to change the size limits for its Striped Bass current commercial hook and line fishery and upcoming fall commercial gill net fishery, these two fisheries, which already had their harvest reduced by 25% due to the 2015 commercial quota reductions, face a continued unintended and unnecessary harvest constraint of restrictive recreational fishery slot size limits that require greater effort to fill or prevent filling their reduced harvest quotas. This harvest constraint also threatens the Striped Bass population by increasing the number of Striped Bass that these two fisheries catch to reach or attempt to reach their harvest quota, with catches not meeting the slot size limits released (discarded) as a substantial portion of dead or dying fish (wanton waste).

The change is needed immediately since there is insufficient time to promulgate and adopt the regulation change through the Administrative Procedures Act during the ongoing commercial hook and line fishery or before the upcoming commercial fall gill net fishery. Therefore, this action is being taken 'to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish' by returning the Striped Bass size limit for the commercial hook and line fishery and fall gill net fishery to the 28" minimum length.

EFFECTIVE DATE OF ORDER:

This Emergency Order shall take effect at 12:01 a.m. on June 15, 2016, and shall remain in effect for 90 days.

PETITION FOR RECOMMENDATIONS:

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware, 19901.

ORDER

It is hereby ordered, the 13th day of June, 2016, that the above referenced amendment to Tidal Finfish Regulation 3504, a copy of which is hereby attached, are adopted pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h) and supported by the evidence contained herein.

David S. Small, Secretary
Department of Natural Resources and Environmental Control
June 13, 2016

3504 Striped Bass Possession Size Limit; Exceptions.

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it is unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than twenty-eight (28) inches in total length or any striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) inches in total length, except that recreational hook and line fisherman may take two (2) striped bass measuring not less than twenty (20) inches and not greater than twenty-five (25) inches from the Delaware River, Delaware Bay, or their tributaries during the months of July and August.
- 2.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it is unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the

EMERGENCY REGULATIONS

Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.

- 3.0 It is unlawful for any person to possess a striped bass that measures less than 28 inches in total length or a striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) inches, total length, unless said striped bass is in one or more of the following categories:
- 3.1 It has affixed, a valid strap tag issued by the Department to a commercial ~~gill-net~~ food fisherman and was legally taken and tagged by said commercial ~~gill-net~~ food fisherman ~~from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March;~~ or
- 3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
- 3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
- 3.4 It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or
- 3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.
- 4.0 It is unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.
- 5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.
- 6.0 ~~It is unlawful for any person to land any striped bass that measures less than twenty eight (28) inches in total length or a striped bass that measures greater than thirty seven (37) inches but less than forty four (44) inches, total length at any time, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the period from February 15 through May 31 or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.~~
- 7.0 It is unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.
-

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 EDUCATION

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

255 Definitions of Public School, Private School and Nonpublic School

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education intends to amend 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School. The purpose of amending this regulation is to expand and clarify definitions of various types of schools as well as change the title of the regulation to more accurately reflect its content.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 5, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not directly address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not directly help to ensure that all students receiving an equitable education.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not address student's legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated do not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/july2016/proposed/20 DE Reg 9RFA 07-01-16.pdf>

255 Definitions of ~~Public School, Private School and Nonpublic School~~ Types of Schools

1.0 ~~Public School~~ Purpose

~~A public school shall mean a school or Charter School having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators. It also shall include the agencies of states and cities which administer the public funds. The purpose of this regulation is to define various types of schools and educational entities operating in the State of Delaware identified in Title 14 of the Delaware Code.~~

2.0 ~~Private School~~ Definitions

~~A private school shall mean a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised and shall be interpreted further to include an accredited or approved college or university.~~

~~"Charter School" means a non-homebased public school including two or more of grade kindergarten through twelve, which is managed by a board of directors. It operates independent of any school board, under a charter granted for an initial period of four school years of operation and renewable every five school years thereafter by a public school district or the State Department of Education with the approval of the State Board of Education, pursuant to 14 Del.C. Ch. 5.~~

~~"Homeschool" means a nonpublic school as defined in 14 Del.C. §2703A.~~

~~"Local Education Agency (LEA)" means a reorganized traditional school district, vocational/technical school district or Charter School legally constituted and established, under Delaware law for either administrative control or direction of public elementary or secondary school(s).~~

~~"Nonpublic School" means a private school or any home school as defined in this regulation or 14 Del.C. §2703A.~~

~~"Private School" means a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised.~~

"Public School" means a Local Education Agency having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators. A Charter School, as defined herein, is also a public school.

"Reorganized School District or School District" means a clearly defined geographic subdivision of the state organized for the purposes of administering public education in that area. This definition may also include vocational/technical school districts.

3.0 Nonpublic School

~~A nonpublic school shall mean a private school as that term is defined in paragraph 2.0 of this regulation or any homeschool defined in 14 Del.C. §2703A.~~

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Medical Care and Other Types of Remedial Care - Behavioral Interventions to Treat Autism Spectrum Disorder

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Kimberly Xavier, by email: Kimberly.xavier@state.de.us, by mail: Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, or by fax: 302-255-4425 by August 1, 2016. Please identify in the subject line: Behavioral Interventions to Treat Autism Spectrum Disorder.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

- §1905 of the Social Security Act (a)(4)(B), *Early and Periodic Screening, Diagnostic, and Treatment Services*
- §1905 of the Social Security Act (a)(6), *Remedial Care and any other type of remedial care (services of other licensed practitioners)*
- §1905 of the Social Security Act (a)(13)(c), *Preventive services*
- §1905 of the Social Security Act (r)(5), *Other necessary health care, diagnostic service, and other measures as described in section 1905(a)*

- 42 CFR §440.60(a), *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.130(c), *Diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

Background

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

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

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

State Plan Authorities

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

1) Other Licensed Practitioner Services

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

2) Preventive Services

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

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

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

3) Therapy Services

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

Summary of Proposal*Purpose*

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

DMMA published a proposed regulation in the April 2016 Delaware *Register*. Due to the extensive comments received, and subsequent changes to the proposed regulation, DMMA has chosen to re-publish this rule as proposed.

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

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the agency's decision to establish coverage and reimbursement for treatment services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder. Comments must be received by 4:30 p.m. on August 1, 2016.

CMS Review and Approval

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

Provider Manual Update

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

Fiscal Impact

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

The following fiscal impact is projected:

	Federal Fiscal Year 2016 (1)	Federal Fiscal Year 2017
General (State) funds	\$ 301,710	\$ 1,223,105

PROPOSED REGULATIONS

Federal funds	\$ 450,120	\$ 1,784,218
---------------	------------	--------------

(1) Represents July – September 2016 only

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

<http://regulations.delaware.gov/register/july2016/proposed/20 DE Reg 11RFA 07-01-16.pdf>

**DMMA RE-PROPOSED REGULATION #16-015a
REVISION:**

ATTACHMENT 3.1-A
Page 6 Addendum 1

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

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

13.c. Preventive Services

In accordance with section 4106 of the Affordable Care Act, Delaware Medicaid Covers and reimburses all preventative services assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF), ~~and~~ all approved vaccines and their administration, recommended by the Advisory Committee on Immunization Practices (ACIP), and behavioral interventions to treat Autism Spectrum Disorder (ASD) without cost-sharing.

Preventative services are any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts acting within the scope of their practice under State law and include all preventative services not otherwise covered under the State Plan pursuant to Section §1905(r)(5) of the Social Security Act, *Early and Periodic Screening, Diagnostic, and Treatment Services*, for other necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan. Preventive Services are reimbursed according to the methodologies for services described in Attachment 4.19-B. *Methods and Standards for Establishing Payment Rates – Other Types of Care*, of the State Plan.

The State assures the availability of documentation to support the claiming of federal reimbursement for these preventative services.

The State assures that the benefit package will be updated as changes are made to the USPSTF and ACIP recommendation, and that the State will update the coverage and billing codes to comply with these revisions.

**DMMA RE-PROPOSED REGULATION #16-015b
NEW:**

ATTACHMENT 3.1-A
Page 6 Addendum 1a

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

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

13.c. Preventive Services Continued

Behavioral Interventions to Treat Autism Spectrum Disorder (ASD) Pursuant to Act, Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Services

Covered services are provided in accordance with §1905(a)(4)(B), 1905 (A)(13), and 1905(r) of the Social Security Act. Behavioral interventions to treat Autism Spectrum Disorder (ASD) pursuant to EPSDT are provided only to Medicaid beneficiaries under age twenty-one. Pursuant to 42 C.F.R. § 440.130(c), these services are provided as preventive services and are recommended by a physician or other licensed practitioner of the healing arts within his or her scope of practice under state law to prevent the progression of ASD, prolong life, and promote the physical and mental health and efficiency of the child.

Pursuant to section 4385 of the State Medicaid Manual, preventive services must be direct patient care provided to the child for the primary purpose of diagnosing or treating ASD, which is a set of conditions that directly affects the child's mental and physical health.

Required Evaluation:

Prior to receiving an ASD Assessment or ASD Treatment Services, the child must receive a medical / physical evaluation. This evaluation is a review of the child's overall medical health, hearing, speech, and vision, including relevant information and should include a validated ASD screening tool. The evaluation is designed to rule out medical or behavioral conditions other than ASD so that they can be properly treated, including those that may have behavioral implications and/or may co-occur with ASD. The medical/physical evaluation must be provided by licensed practitioners operating within their scope of practice under state law or regulation, including medical doctors (MD and DO), advanced practice registered nurses (APRN), nurse practitioners, and physician assistants. The medical evaluation may be done at any point prior to a request for ASD services and does not need to immediately precede the request for service.

ATTACHMENT 3.1-A
Page 6 Addendum 1b

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

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

13.c. Preventive Services Continued

Behavioral Interventions to treat (ASD) Pursuant to Act, (EPSDT) Services Continued

Autism Spectrum Disorder (ASD) Covered Services

(1.) ASD Assessments and Support/Treatment Plans

(a.) Functional Behavior Assessment (FBA)

PROPOSED REGULATIONS

- (1.) Service Description: The FBA attempts to determine the function of maladaptive behaviors subsequent to the diagnosis and to determine appropriate treatment options and recommendations. The FBA is a clinical compilation of observational data, behavior rating scales, and reports from various sources (e.g., the child, schools, family, pediatricians, and other sources) designed to identify the child's current strengths and needs across developmental and behavioral domains. It takes into account all available information, including the medical/physical evaluation and any comprehensive diagnostic evaluations that are available. The FBA should be reviewed no less frequently than every six months or as behaviors or the circumstances of the child change.
- (2.) Assessment Tool: FBA practitioners must use a validated assessment tool or instrument and can include direct observational assessment, observation, record review, data collection and analysis. The FBA must include the current level of functioning of the child using a validated data collection instrument or tool.

(b.) Behavior Support Plan (pursuant to a FBA)

Service Description: Based on the Functional Behavior Assessment, the Behavioral Support Plan is a detailed plan of ASD treatment services specifically tailored to address each child's adaptive and/or behavioral needs. The plan includes at least the following: measurable goals and expected outcomes to determine if ASD treatment services are effective; specific description of the recommended amount, type, frequency, setting and duration of ASD treatment services; and amount and type of recommended caregiver ongoing participation in the ASD treatment services necessary to maximize the success of the services. The service includes skill modeling, feedback, and reinforcement to family members or caregivers based on the Behavior Support Plan to ensure that treatment strategies outlined in the Plan are being transferred and implemented by the family or caregiver. The service is for the direct benefit of the Medicaid recipient.

ATTACHMENT 3.1-A
Page 6 Addendum 1c

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

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

13.c. Preventive Services Continued

Behavioral Interventions to treat (ASD) Pursuant to Act, (EPSDT) Services Continued

ASD Covered Services - ASD Assessments and Support/Treatment Plans continued:

(c.) Applied Behavior Analysis (ABA) Assessment

- (1.) Service Description: A developmentally appropriate Applied Behavior Analysis (ABA) Assessment may be performed in lieu of, or in conjunction with, the FBA. An ABA Assessment typically utilizes information obtained from multiple methods and multiple informants, including the following:

- (a.) A file review that includes information about medical status, prior assessment results, response to prior treatment and other relevant information which will be incorporated into the development of treatment goals and intervention.
 - (b.) Rating scales and interviews with the child, caregivers, and other stakeholders, as appropriate, are included when selecting treatment goals, developing protocols, and evaluating progress.
 - (c.) Direct observation and data collection and analysis serves as the primary basis for identifying pretreatment levels of functioning, developing and adapting treatment protocols on an ongoing basis, and evaluating response to treatment and progress toward goals. Behavior should be directly observed in a variety of relevant naturally occurring settings and structured interactions.
 - (d.) Periodic assessments from other professionals.
- (d.) ABA Treatment Plan (pursuant to an ABA Assessment)
- (1.) Service Description: Based on the ABA Assessment, the ABA Treatment Plan is a detailed plan that identifies pretreatment levels of functioning, and develops and adapts treatment protocols on an ongoing basis by evaluating response to treatment and progress toward goals. ABA treatment goals are identified based on the previously described ABA Assessment process. Each goal should be defined in a specific, measurable way to allow frequent evaluation of progress toward a specific mastery criterion. The number and complexity of goals should be consistent with the intensity and setting of service provision. The appropriateness of existing and new goals should be considered on a periodic basis. Goals are prioritized based on their implications for the client's health and well-being, the impact on client, family and community safety, and contribution to functional independence.

ATTACHMENT 3.1-A
Page 6 Addendum 1d

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

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

13.c. Preventive Services Continued

Behavioral interventions to treat (ASD) Pursuant to Act, (EPSDT) Services Continued

ASD Covered Services Continued

(2.) ASD Treatment Services

- (a.) Service Description: ASD treatment services are interventions designed to treat children with ASD, including a variety of behavioral interventions, which have been identified as evidence-based by nationally recognized research reviews and/or other nationally recognized substantial scientific and clinical evidence. These services are designed to be delivered primarily in the home or in other community settings and include any intervention supported by credible scientific and/or evidence, as appropriate to each child, such as Applied Behavior Analysis (ABA). ABA is the design, implementation, and evaluation of environmental modifications, including the use of direct observation, measurement, and

PROPOSED REGULATIONS

functional analysis of the relationship between the environment and behavior and the use of behavioral stimuli and consequences, to produce socially significant improvement in human behavior.

(b.) Prohibited practices in the treatment of ASD include:

- (1.) Aversive interventions;
- (2.) Seclusion;
- (3.) Denial of nutritionally adequate diet;
- (4.) Chemical Restraints;
- (5.) Mechanical Restraints; and
- (6.) The use of Behavior Modifying Medications without a formal assessment and diagnosis of a corresponding mental health disorder by physician or advance practice nurse.

(c.) ASD Service Delivery: ASD treatment services shall be rendered in accordance with the beneficiary's treatment plan. The treatment plan shall:

- (1.) Be person-centered and based upon individualized goals over a specific timeline;
- (2.) Be developed by a qualified autism service provider for the specific beneficiary being treated;

ATTACHMENT 3.1-A
Page 6 Addendum 1e

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

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

13.c. Preventive Services Continued

Behavioral Interventions to treat (ASD) Pursuant to Act, (EPSDT) Services Continued

ASD Covered Services – ASD Treatment Services Continued

(c.) ASD Service Delivery Continued:

- (3.) Delineate both the frequency of baseline behaviors and the treatment planned to address the behaviors;
- (4.) Identify long, intermediate, and short-term goals and objectives that are specific, behaviorally defined, measurable, and based upon clinical observation;
- (5.) Include outcome measurement assessment criteria that will be used to measure achievement of behavior objectives;
- (6.) Utilize evidence-based practices with demonstrated clinical efficacy in treating ASD, that are tailored to the beneficiary;
- (7.) Ensure that interventions are consistent with evidenced-based ASD treatment techniques;

- (8.) Clearly identify the service type, number of hours of direct service and supervision, and parent or guardian participation, if applicable, needed to achieve the plan's goals and objectives;
- (9.) Clearly identify the frequency at which the child's progress is reported;
- (10.) Clearly identify the individual providers responsible for delivering the services;
- (11.) Include case management to be provided by the ASD service provider involving individuals that are significant in the person's life, school, state disability programs, and others as applicable; and
- (12.) Include recommendations for training, support, and participation of the parent/guardian, and other persons chosen by the child as appropriate, to benefit the Medicaid eligible child, as described in the treatment plan. The practitioner must specify the expected level of participation of all caregivers, based on the practitioner's clinical judgment and the child's unique circumstances, as specified in the Behavior Support Plan or ABA Treatment Plan. This participation also acts as training of the caregiver for the benefit of the child and enables the caregiver to be able to reinforce the services for the child in a clinically effective manner.

ATTACHMENT 3.1-A
Page 6 Addendum 1f

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

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

13.c. **Preventive Services Continued**

Behavioral Interventions to treat (ASD) Pursuant to Act, (EPSDT) Services Continued

ASD Covered Services – ASD Treatment Services Continued

- (e.) Limitations on ASD Treatment Services: Total ASD treatment services covered under this section and recommended as part of the Behavior Support Plan or ABA Treatment Plan may only be the amount medically necessary for each child. Plans that recommend more than 40 hours per week require prior authorization.
- (3.) Qualified Providers:

Autism Spectrum Disorder services must be provided by qualified practitioners, as specified in the section below. Unlicensed practitioners may operate under the supervision of a licensed practitioner that is responsible for the work and work methods, regularly reviews the work performed, and is accountable for the results. Supervision must adhere to the requirements of the practitioner's licensing board and the supervisory relationship must be documented in writing. Qualified practitioners may also be certified by the Behavior Analyst Certification Board (BACB) under one of the categories listed below, and must act within the scope of their certification, as determined by the BACB.

(a.) Licensed Practitioners –

- (1.) The following qualified licensed practitioners under Delaware or other State regulation are licensed by a state and may provide ASD services without any

PROPOSED REGULATIONS

other certification: Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), advanced practice nurses (APNs), medical doctors (MD and DO), psychiatrists, and psychologists or their assistants. Psychological assistants may only practice under the supervision of a licensed practitioner.

ATTACHMENT 3.1-A
Page 6 Addendum 1g

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

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

13.c. **Preventive Services Continued**

Behavioral Interventions to treat (ASD) Pursuant to Act, (EPSDT) Services Continued

ASD Covered Services – Qualified Providers Continued

(b.) Unlicensed Professionals –

(1.) Unlicensed Professionals must be certified by the Behavior Analyst Certification Board (BACB) under one of the following categories:

(a.) Board Certified Behavior Analyst ® (BCBA®)

(b.) Board Certified Assistant Behavior Analyst ® (BCaBA®) working under the supervision of a BCBA®

(c.) Registered Behavior Technician working under the supervision of a BCaBA® or BCBA®

(c.) The practitioner who develops the Behavioral Support Plan or Applied Behavior Analysis Treatment Plan should be the same practitioner who performed the Functional Behavior Assessment or Applied Behavior Analysis, except in extenuating circumstances, such as if the practitioner changed employers, moved to another geographic area, or needed to collaborate with another practitioner with different expertise.

Medicaid shall not cover for program services or components of services that are of an unproven, experimental, of a research nature, or that do not relate to the child's diagnosis, symptoms, functional limitations or medical history.

DMMA RE-PROPOSED REGULATION #16-015c

NEW:

ATTACHMENT 4.19-B
Page 19j

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE

5. Other EPSDT Services Continued

(f) Services to Treat Autism Spectrum Disorder (ASD) Pursuant to EPSDT:

As available, rates are developed using the Resource Based Relative Value Scale (RBRVS) methodology. Rates are established and updated based on the RBRVS methodology as adopted by the Medicare Fee Schedule Data Base.

If no RVU exists, the agency examines the CMS-approved Medicaid fee-for-service rate schedules of other states for similar services that are comparable in program design, program structure and relative costs to Delaware's services. For those services that are substantially similar, another state's fee for the procedure may be adopted.

Except as otherwise noted in the plan, fee schedule rates are the same for both governmental and private providers of these services. Rates are published on the agencies website at the following link:

The fee schedule and any annual periodic adjustments to these rates are published on the Delaware Medical Assistance Program (DMAP) website at: <http://www.dmap.state.de.us/downloads/feeschedules.html>

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)
7 DE Admin. Code 1141

REGISTER NOTICE SAN #2016-08

1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products

1. TITLE OF THE REGULATION:

Regulation 1141 "Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products", Section 1.0 "Architectural and Industrial Maintenance Coatings".

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

To bring Delaware's rule up-to-date with the most current Ozone Transport Commission (OTC) model rule for regulation of the volatile organic compound (VOC) content of architectural and industrial maintenance (AIM) coatings to aid in meeting ground-level ozone national ambient air quality standards. The OTC model rule was developed by a team composed of environmental personnel from a number of OTC states and is based upon the 2007 Suggested Control Measure (SCM) which amended the California Air Resources Board (CARB) 2000 AIM SCM, the ultimate basis of the first Delaware AIM rule in 2002. CARB has a long history of regulating architectural coatings starting in 1977 and amended their rule four times over the years. The EPA developed a national rule in 1998, but the CARB SCM remains the most stringent architectural coating rule and is used by the OTC states, and other states with ground-level ozone attainment problems. CARB has performed significant scientific studies and held many stakeholder meetings to ensure product categories were correctly identified and that VOC content targets specified were attainable. Based upon CARB experience, this rule revision will yield approximately one ton per day of VOC reductions in Delaware.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60.

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

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a public hearing on this proposed amendment on Tuesday July 26, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, State Street Commons, 100 West Water Street Suite 6A Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. PREPARED BY:

David Fees david.fees@state.de.us 302-739-9402

***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/july2016/proposed/20 DE Reg 21RFA 07-01-16.pdf>

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

[1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products](#)

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

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

24 DE Admin. Code 5500

PUBLIC NOTICE**5500 Bail Enforcement Agents**

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 Del.C. Ch. 55 proposes to amend the following adopted rules: Rule 6.0 - Training Requirements for Issuance of a License, allows the Board to approve a training/testing facility for the initial classroom training; Rule 7.0 - Continuing Education and Training, allows the Board to approve a training/testing facility for the continuing education; Rule 8.0 - Apprehension Procedures, mandates the BEA to call the 911 dispatch center when clearing an address. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by August 1, 2016, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, August 25, 2016, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

***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/july2016/proposed/20 DE Reg 22RFA 07-01-16.pdf>

5500 Bail Enforcement Agents
*(Break in Continuity of Sections)***6.0 Training Requirements For Issuance of a License**

- 6.1 All individuals applying for licensure under 24 **Del.C.** Ch. 55 must complete a minimum of eight hours of training in 6.1.1 prior to the issuance of an identification card, license and badge. This initial eight hours will fulfill the first year of the required continuing education. Must pass the test with a minimum score of 75%. Any failed test may be taken again within two weeks of the class. A second failed test will require the individual to take the classroom training again at the next scheduled class.
- 6.1.1 Courses in Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bail Enforcement Agents; and any other training as deemed pertinent by the Board.
- 6.1.2 All classroom training and testing must be given by a Board approved facility.

7.0 Continuing Education and Training

- 7.1 Continuing education/training shall be every year. Odd years will be done by completing an on-line modular and test through Delaware Technical Community College (DTCC). ~~Even years will be eight hours of classroom training through DTCC and even years will be eight hours of classroom training.~~ All training and testing must be given by a Board approved facility.

(Break in Continuity Within Section)

8.0 Apprehension Procedures

- 8.1 All BEA's licensed under 24 **Del.C.** Ch. 55 are required to notify the ~~police emergency~~ 911 dispatch center for the appropriate jurisdiction prior to making any attempt at an apprehension. This notification must occur prior to responding to the address of the attempt.

(Break in Continuity Within Section)

- 8.1.2 Notification to the 911 dispatch center must be made when clearing the address of the attempt.

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

5500 Bail Enforcement Agents

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
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

PUBLIC NOTICE**1100 Board of Dentistry and Dental Hygiene**

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** 1106(a)(1), proposes to re-propose revisions to its regulations. The proposed amendments to Section 4.0 and subsection 4.1 seek to clarify that the statutory requirement set forth at 24 **Del.C.** §1122(a)(1) requiring dental candidates to have "received a degree in dentistry from an accredited dental college or university accredited by the Commission on Dental Accreditation of the American Dental Association" may obtain such a degree through either a pre-doctoral dental education program or a post-doctoral dental program of at least 24 months in any specialty that includes a clinical component. The proposed changes at regulation 12.2.28 seeks to clarify that fee-splitting is a basis for discipline of

a Delaware dentist or dental hygienist.

The Board originally held public hearing on the proposed rule change on March 17, 2016. As a result of the submission of public comments, the Board will hold a second hearing in regard to this re-proposal on August 17, 2016 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 1, 2016.

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

<http://regulations.delaware.gov/register/july2016/proposed/20 DE Reg 23RFA 07-01-16.pdf>

1100 Board of Dentistry and Dental Hygiene (Break in Continuity of Sections)

4.0 **Qualifications of Applicant; Education and Residency Requirements [24 Del.C. §1122(a)(3)]**

- 4.1 An applicant for licensure as a dentist shall have received one of the following: a doctoral degree from a US dental college accredited by the Commission on Dental Accreditation; or a doctoral degree from a dental college or university, plus a post-doctoral degree or certificate from a US CODA approved specialty program in Oral and Maxillofacial Surgery, Periodontics, Pediatric Dentistry, Endodontics, Orthodontics, or Prosthodontics.
- 4.42 An applicant for licensure as a dentist must have completed 1 year as a dental intern within a general practice residency accredited by the Commission on Dental Accreditation (CODA).
- 4.23 An applicant who has completed a CODA approved specialty residency of 4 years or more will be deemed to have satisfied the general practice residency requirement.
- 4.34 An applicant who has completed a CODA approved specialty residency of less than 4 years must demonstrate that the specialty residency program meets the following criteria:
- 4.34.1 The program must meet the goals, objectives, proficiencies and competencies set forth in Standard 2.4 of the CODA Accreditation Standards for Advanced Education Programs in General Practice Residency, ©2007.
- 4.34.2 The program must include a rotation of at least 70 hours in anesthesia and a rotation of at least 70 hours in medicine.
- 4.45 An applicant for licensure as a dentist by reciprocity who has had at least 3 years of active dental practice in another state or territory of the United States is not required to provide evidence of a general practice or specialty residency.
- 4.45.1 Active practice shall be defined as an average of at least 1000 hours of direct patient care per year. Satisfactory evidence of active practice may include, but is not limited to, W-2 forms, 1099 forms, tax returns, and/or written verification of hours from the dental practice administrator. The Board reserves the right to request supplemental verification and to reject incomplete documentation.
- 4.56 An applicant for licensure as a dental hygienist by reciprocity must demonstrate active practice during 3 of the 5 years immediately preceding the application in the state in which the applicant currently is or has been licensed.
- 4.56.1 Active practice shall be defined as an average of at least 350 hours of direct patient care per year. Satisfactory evidence of active practice may include, but is not limited to, W-2 forms, 1099 forms, tax returns, and/or written verification of hours from the dental practice administrator. The Board reserves the right to request supplemental verification and to reject incomplete documentation.

(Break in Continuity of Sections)

12.0 **Unprofessional Conduct Defined**

(Break in Continuity Within Section)

12.2 Unprofessional conduct shall include but is not limited to the following:

12.2.28 Knowingly making or receiving any payment to another dentist, dental hygienist, or employee of a dental office or to divide or split any fee received for professional services for directly bringing or referring a patient. Furthermore, a corporation cannot be established to evade the above regulation.

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

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION
3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))
24 **DE Admin. Code** 3000

PUBLIC NOTICE

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to eliminate confusing provisions related to acceptable continuing education credits and amend the list of crimes substantially related to the practice of counseling.

The Board will hold a public hearing on the proposed rule change on August 24, 2016 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Urainer Marrow, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until September 8, 2016.

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

<http://regulations.delaware.gov/register/july2016/proposed/20 DE Reg 25RFA 07-01-16.pdf>

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals
(Break in Continuity of Sections)

2.0 Licensure for Professional Counselors of Mental Health (LPCMH)
(Break in Continuity Within Section)

2.3 License Renewal

(Break in Continuity Within Section)

2.3.2 Requirements for Renewal are as follows:

(Break in Continuity Within Section)

2.3.2.2 Continuing Education (CE) Requirements

(Break in Continuity Within Section)

2.3.2.2.4 ~~Make-Up of Disallowed Hours -- In the event that the board disallows certain continuing education clock hours, the licensee shall have three (3) months after the date of the Board's notice that the hours have been disallowed to complete the balance of acceptable CE hours required.~~

PROPOSED REGULATIONS

(Break in Continuity of Sections)

4.0 Licensure for Chemical Dependency Professionals (LCDP)

(Break in Continuity Within Section)

4.3 License Renewal

(Break in Continuity Within Section)

4.3.3 Post-Renewal Audit. The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the renewal requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period and for at least one (1) year after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license suspended or revoked. Licensees renewing during the late renewal period shall be audited.

~~4.3.3.1 Make-Up of Disallowed Hours—In the event that the Board disallows certain continuing education clock hours, the licensee shall have three months after the date of the Board's notice that the hours have been disallowed to complete the balance of acceptable continuing education hours required.~~

(Break in Continuity of Sections)

5.0 License for Marriage and Family Therapists (LMFT)

(Break in Continuity Within Section)

5.3 License Renewal

(Break in Continuity Within Section)

~~5.3.6 Make-Up of Disallowed Hours—In the event that the Board disallows certain continuing education clock hours, the licensee shall have three months after the date of the Board's notice that the hours have been disallowed to complete the balance of acceptable continuing education hours required.~~

(Break in Continuity of Sections)

10.0 Crimes substantially related to the provision of mental health counseling and chemical dependency counseling:

10.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the provision of mental health counseling and chemical dependency counseling in the State of Delaware without regard to the place of conviction:

(Break in Continuity Within Section)

~~10.1.21 Abortion. 11 Del.C. §651.~~

~~10.1.22 Self-abortion. 11 Del.C. §652.~~

~~10.1.23 Issuing abortifacient articles. 11 Del.C. §653.~~

10.1.24~~1~~ Sexual harassment. 11 Del.C. §763.

10.1.25~~2~~ Indecent exposure in the second degree. 11 Del.C. §764.

10.1.26~~3~~ Indecent exposure in the first degree. 11 Del.C. §765.

10.1.27~~4~~ Incest. 11 Del.C. §766.

10.1.28~~5~~ Unlawful sexual contact in the third degree. 11 Del.C. §767.

10.1.29~~6~~ Unlawful sexual contact in the second degree. 11 Del.C. §768.

10.1.30~~7~~ Unlawful sexual contact in the first degree. 11 Del.C. §769.

10.1.31~~8~~ Rape in the fourth degree. 11 Del.C. §770.

10.1.32~~9~~ Rape in the third degree. 11 Del.C. §771.

- 10.1.330 Rape in the second degree. 11 **Del.C.** §772.
- 10.1.341 Rape in the first degree. 11 **Del.C.** §773.
- 10.1.352 Sexual extortion. 11 **Del.C.** §776.
- ~~10.1.36 Bestiality. 11 **Del.C.** §777.~~
- 10.1.373 Continuous sexual abuse of a child. 11 **Del.C.** §778.
- 10.1.384 Dangerous crime against a child. 11 **Del.C.** §779.
- 10.1.395 Female genital mutilation. 11 **Del.C.** §780.
- 10.1.4036 Unlawful imprisonment in the second degree. 11 **Del.C.** §781.
- 10.1.4137 Unlawful imprisonment in the first degree. 11 **Del.C.** §782.
- 10.1.4238 Kidnapping in the second degree. 11 **Del.C.** §783.
- 10.1.439 Kidnapping in the first degree. 11 **Del.C.** §783A.
- ~~10.1.44 Acts constituting coercion. 11 **Del.C.** §791.~~
- 10.1.450 Arson in the third degree. 11 **Del.C.** §801.
- 10.1.461 Arson in the second degree. 11 **Del.C.** §802.
- 10.1.472 Arson in the first degree. 11 **Del.C.** §803.
- 10.1.483 Cross or religious symbol burning. 11 **Del.C.** §805.
- 10.1.494 Trespassing with intent to peer or peep into a window of another. 11 **Del.C.** §820.
- 10.1.5045 Burglary in the third degree. 11 **Del.C.** §824.
- 10.1.5146 Burglary in the second degree. 11 **Del.C.** §825.
- 10.1.5247 Burglary in the first degree. 11 **Del.C.** §826.
- 10.1.5348 Robbery in the second degree. 11 **Del.C.** §831.
- 10.1.549 Robbery in the first degree. 11 **Del.C.** §832.
- 10.1.550 Carjacking in the second degree. 11 **Del.C.** §835.
- 10.1.561 Carjacking in the first degree. 11 **Del.C.** §836.
- 10.1.572 Theft; felony. 11 **Del.C.** §841.
- 10.1.583 Theft; false pretense. 11 **Del.C.** §843.
- 10.1.594 Theft; false promise. 11 **Del.C.** §844.
- 10.1.6055 Extortion. 11 **Del.C.** §846.
- ~~10.1.61 Misapplication of property. 11 **Del.C.** §848.~~
- 10.1.6256 Theft of rented property; felony. 11 **Del.C.** §849.
- 10.1.6357 Receiving stolen property. 11 **Del.C.** §851.
- 10.1.6458 Identity theft. 11 **Del.C.** §854.
- 10.1.659 Forgery. 11 **Del.C.** §861.
- 10.1.660 Possession of forgery devices. 11 **Del.C.** §862.
- 10.1.671 Falsifying business records. 11 **Del.C.** §871.
- ~~10.1.68 Tampering with public records in the second degree. 11 **Del.C.** §873.~~
- 10.1.692 Tampering with public records in the first degree. 11 **Del.C.** §876.
- 10.1.7063 Offering a false instrument for filing. 11 **Del.C.** §877.
- 10.1.7164 Issuing a false certificate. 11 **Del.C.** §878.
- 10.1.7265 Bribery. 11 **Del.C.** §881.
- 10.1.7366 Bribe receiving. 11 **Del.C.** §882.
- 10.1.7467 Defrauding secured creditors. 11 **Del.C.** §891.
- 10.1.7568 Fraud in insolvency. 11 **Del.C.** §892.
- ~~10.1.76 Interference with levied upon property. 11 **Del.C.** §893.~~
- 10.1.7769 Issuing a bad check; felony. 11 **Del.C.** §900.
- 10.1.780 Unlawful use of credit card; felony. 11 **Del.C.** §903.

- 10.1.791 Reencoder and scanning devices. 11 **Del.C.** §903A.
- 10.1.8972 Criminal impersonation. 11 **Del.C.** §907.
- 10.1.8473 Criminal impersonation, accident related. 11 **Del.C.** §907A.
- 10.1.8274 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
- 10.1.8375 Unlawfully concealing a will. 11 **Del.C.** §908.
- 10.1.8476 Securing execution of documents by deception. 11 **Del.C.** §909.
- 10.1.8577 Fraudulent conveyance of public lands. 11 **Del.C.** §911.
- 10.1.8678 Fraudulent receipt of public lands. 11 **Del.C.** §912.
- 10.1.879 Insurance fraud. 11 **Del.C.** §913.
- 10.1.880 Health care fraud. 11 **Del.C.** §913A.
- ~~10.1.89 Home improvement fraud. 11 **Del.C.** §916.~~
- ~~10.1.90 New home construction fraud. 11 **Del.C.** §917.~~
- 10.1.9481 Misuse of computer system information. 11 **Del.C.** §935.
- ~~10.1.92 Bigamy. 11 **Del.C.** §1001.~~
- ~~10.1.93 Bigamous marriage contracted outside of the State. 11 **Del.C.** §1002.~~
- 10.1.9482 Dealing in children. 11 **Del.C.** §1100.
- 10.1.9583 Abandonment of child. 11 **Del.C.** §1101.
- 10.1.9684 Endangering the welfare of a child. 11 **Del.C.** §1102.
- 10.1.9785 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105.
- 10.1.986 Unlawfully dealing with a child. 11 **Del.C.** §1106.
- 10.1.9987 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 10.1.40088 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 10.1.40489 Possession of child pornography. 11 **Del.C.** §1111.
- 10.1.40290 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
- 10.1.40391 Sexual solicitation of a child. 11 **Del.C.** §1112A.
- 10.1.40492 Criminal non-support and aggravated criminal non-support. 11 **Del.C.** §1113.
- 10.1.40593 Bribery. 11 **Del.C.** §1201
- 10.1.40694 Receiving a bribe; felony. 11 **Del.C.** §1203.
- 10.1.40795 Improper influence. 11 **Del.C.** §1207.
- ~~10.1.108 Perjury in the third degree. 11 **Del.C.** §1221.~~
- 10.1.4096 Perjury in the second degree. 11 **Del.C.** §1353.
- 10.1.44097 Perjury in the first degree. 11 **Del.C.** §1223.
- 10.1.44498 Making a false written statement. 11 **Del.C.** §1233.
- 10.1.44299 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240.
- 10.1.14300 Hindering prosecution. 11 **Del.C.** §1244.
- 10.1.14401 Compounding a crime. 11 **Del.C.** §1246.
- 10.1.14502 Abetting the violation of driver's license restrictions; felony. 11 **Del.C.** §1249.
- 10.1.14603 Escape after conviction. 11 **Del.C.** §1253.
- 10.1.14704 Assault in a detention facility. 11 **Del.C.** §1254.
- 10.1.14805 Promoting prison contraband; felony. 11 **Del.C.** §1256.
- ~~10.1.119 Use of an animal to avoid capture felony. 11 **Del.C.** §1257A.~~
- 10.1.1206 Sexual relations in a detention facility. 11 **Del.C.** §1259.
- 10.1.12407 Bribing a witness. 11 **Del.C.** §1261.
- 10.1.12208 Bribe receiving by a witness. 11 **Del.C.** §1262.
- 10.1.12309 Tampering with a witness. 11 **Del.C.** §1263.
- 10.1.12410 Interfering with child witness. 11 **Del.C.** §1263A.

-
- 10.1.12511 Bribing a juror. 11 **Del.C.** §1264.
- 10.1.12612 Bribe receiving by a juror. 11 **Del.C.** §1265.
- 10.1.12713 Tampering with a juror. 11 **Del.C.** §1266.
- ~~10.1.128 Misconduct by a juror. 11 **Del.C.** §1267.~~
- 10.1.12914 Tampering with physical evidence. 11 **Del.C.** §1269.
- 10.1.13015 Criminal contempt of a domestic violence protective order. 11 **Del.C.** §1271A.
- 10.1.1316 Riot. 11 **Del.C.** §1302.
- 10.1.13217 Hate crimes. 11 **Del.C.** §1304.
- 10.1.13318 Aggravated harassment. 11 **Del.C.** §1312.
- 10.1.13419 Stalking. 11 **Del.C.** §1312A.
- 10.1.13520 Cruelty to animals; felony. 11 **Del.C.** §1325.
- ~~10.1.136 Unlawful trade in dog or cat by-products. 11 **Del.C.** §1325A.~~
- 10.1.13721 Animals; fighting and baiting prohibited; felony. 11 **Del.C.** §1326.
- 10.1.13822 Maintaining a dangerous animal. 11 **Del.C.** §1327.
- ~~10.1.139 Abusing a corpse. 11 **Del.C.** §1332.~~
- 10.1.14023 Trading in human remains and associated funerary objects. 11 **Del.C.** §1333.
- 10.1.14124 Violation of privacy. 11 **Del.C.** §1335.
- 10.1.1425 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- 10.1.14326 Adulteration. 11 **Del.C.** §1339.
- 10.1.14427 Promoting prostitution in the third degree. 11 **Del.C.** §1351.
- 10.1.14528 Promoting prostitution in the second degree. 11 **Del.C.** §1352.
- 10.1.14629 Promoting prostitution in the first degree. 11 **Del.C.** §1353.
- 10.1.14730 Permitting prostitution. 11 **Del.C.** §1355.
- 10.1.14831 Obscenity. 11 **Del.C.** §1361.
- 10.1.14932 Obscene literature harmful to minors. 11 **Del.C.** §1365.
- ~~10.1.150 Outdoor motion picture theatres. 11 **Del.C.** §1366.~~
- 10.1.15133 Possessing a destructive weapon. 11 **Del.C.** §1444.
- 10.1.15234 Unlawfully dealing with a dangerous weapon; felony. 11 **Del.C.** §1445.
- 10.1.1535 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.
- 10.1.15436 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.
- 10.1.15537 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.
- 10.1.15638 Receiving a stolen firearm. 11 **Del.C.** §1450.
- 10.1.15739 Theft of a firearm. 11 **Del.C.** §1451.
- 10.1.15840 Giving a firearm to person prohibited. 11 **Del.C.** §1454.
- 10.1.15941 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.
- 10.1.16042 Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457.
- 10.1.16143 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458.
- 10.1.16244 Organized Crime and Racketeering. 11 **Del.C.** §1504.
- 10.1.16345 Victim or Witness Intimidation. 11 **Del.C.** §§3532 & 3533.
- 10.1.1646 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136(a), (b) and (c).
- 10.1.16547 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).
- 10.1.148 Drug Dealing- Aggravated Possession; class B felony. 16 **Del.C.** §4752.
- ~~10.1.166 Unlawful delivery of non-controlled substance. 16 **Del.C.** §4752A.~~
- 10.1.149 Drug Dealing- Aggravated Possession; class C felony. 16 **Del.C.** §4753.

PROPOSED REGULATIONS

- 10.1.16750 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).
- 10.1.151 Drug Dealing- Aggravated Possession; class D felony. 16 **Del.C.** §4754.
- 10.1.152 Drug Dealing- Aggravated Possession; class E felony. 16 **Del.C.** §4755.
- 10.1.153 Drug Dealing- Aggravated Possession; class F felony. 16 **Del.C.** §4756.
- 10.1.16854 ~~16854~~ Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C.** §4756(a)(1)-(5) and (b).
- 10.1.16955 ~~16955~~ Distribution to persons under 21 years of age. 16 **Del.C.** §4761.
- 10.1.17056 ~~17056~~ Purchase of drugs from minors. 16 **Del.C.** §4761A
- 10.1.17457 ~~17457~~ Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 **Del.C.** §4767
- 10.1.17258 ~~17258~~ Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768
- 10.1.17359 ~~17359~~ Drug paraphernalia-Manufacture and sale; delivery to a minor; felony. 16 **Del.C.** §§4771 and 4774.
- 10.1.17460 ~~17460~~ Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; third and fourth offenses. 23 **Del.C.** §2302(a) and §2305 (3) and (4).
- 10.1.17561 ~~17561~~ Obtaining benefit under false representation. 31 **Del.C.** §1003.
- 10.1.1762 ~~1762~~ Reports, statements and documents. 31 **Del.C.** §1004.
- 10.1.17763 ~~17763~~ Kickback schemes and solicitations. 31 **Del.C.** §1005.
- 10.1.17864 ~~17864~~ Conversion of payment. 31 **Del.C.** §1006.
- 10.1.17965 ~~17965~~ Driving a vehicle while under the influence or with a prohibited alcohol content; third and fourth offenses. 21 **Del.C.** §4177 (3) and (4).
- 10.1.18966 ~~18966~~ Duty of driver involved in accident resulting in injury or death to any person; felony. 21 **Del.C.** §4202.
- 10.1.18467 ~~18467~~ Prohibited trade practices against infirm or elderly. 6 **Del.C.** §2581
- 10.1.18268 ~~18268~~ Prohibition of intimidation [under the Fair Housing Act]; 6 **Del.C.** §4619
- 10.1.18369 ~~18369~~ Auto Repair Fraud victimizing the infirm or elderly. 6 **Del.C.** §4909A
- 10.1.18470 ~~18470~~ Unauthorized Acts against a Service Guide or Seeing Eye Dog 7 **Del.C.** §1717
- 10.1.18571 ~~18571~~ Interception of Communications Generally; Divulging Contents of Communications. 11 **Del.C.** §2402.
- 10.1.18672 ~~18672~~ Breaking and Entering, Etc. to Place or Remove Equipment. 11 **Del.C.** §2410.
- 10.1.1873 ~~1873~~ Divulging Contents of Communications. 11 **Del.C.** §2422.
- 10.1.188 ~~188~~ ~~Installation and Use Generally of pen trace and trap and trace devices.~~ 11 ~~Del.C.~~ ~~§243.~~
- 10.1.18974 ~~18974~~ Attempt to Intimidate. 11 **Del.C.** §3534.
- 10.1.19975 ~~19975~~ Failure of child-care provider to obtain information required under §8561 or for those providing false information; felony. 11 **Del.C.** §8562.
- 10.1.19476 ~~19476~~ Providing false information when seeking employment in a public school. 6 **Del.C.** §8572.
- 10.1.19277 ~~19277~~ Filing False Claim [under Victims' Compensation Fund]. 11 **Del.C.** §9016.
- 10.1.19378 ~~19378~~ Alteration, Theft or Destruction of Will. 12 **Del.C.** §210.
- 10.1.19479 ~~19479~~ Failure of Physician to file report of abuse of neglect pursuant to 16 **Del.C.** §903.
- 10.1.19580 ~~19580~~ Coercion or intimidation involving health-care decisions and falsification, destruction of a document to create a false impression that measures to prolong life have been authorized; felony. 16 **Del.C.** §2513(b).
- 10.1.19681 ~~19681~~ [Failure to make] Reports of Persons who are Subject to Loss Consciousness. 24 **Del.C.** §1763.
- 10.1.19782 ~~19782~~ Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C.** §3913(a), (b) and (c).

- 10.2 Crimes substantially related to provision of mental health counseling and chemical dependency counseling shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

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

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

**DIVISION OF PROFESSIONAL REGULATION
CONTROLLED SUBSTANCE ADVISORY COMMITTEE**

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

PUBLIC NOTICE

Uniform Controlled Substances Act Regulations

Pursuant to 16 Del.C. §4731, the Delaware Secretary of State ("Secretary") proposes revisions to the Uniform Controlled Substance Act ("UCSA") rules and regulations.

On July 1, 2015, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 1. Specifically, Section 9.0 was added to provide requirements for the prescribing of opiates in order to address potential prescription drug overdose, abuse and diversion. A public hearing was held on July 29, 2015 before the Controlled Substance Advisory Committee ("Committee"). The Committee deliberated on the evidence presented at its meeting on September 23, 2015 and recommended certain revisions to the Secretary. The Secretary considered both the evidence presented and the Committee's recommendations.

Based on that review, the Secretary struck the version of Section 9.0 published in the *Register of Regulations* on July 1, 2015 and proposed a revised Section 9.0, which was published in the Delaware *Register of Regulations* on May 1, 2016, Volume 19, Issue 11. The Secretary solicited written comments from the public regarding the proposed rules and regulations allowing the period of time for such submissions to remain open for the 30 days mandated by 29 Del.C. § 10118(a).

Based on those written comments, the Secretary has made further revisions to the rules and regulations, which are attached hereto as Exhibit A.

Any person who wishes to present written suggestions, testimony, briefs or other written materials concerning the proposed rules and regulations should submit such comments no later than Monday, August 1, 2016 to:

Christine Mast, Administrative Specialist III
Office of Controlled Substances
Delaware Division of Professional Regulation
Cannon Building, Suite 203
861 Silver Lake Blvd.
Dover, Delaware 19904
Email: christine.mast@state.de.us
Fax: (302) 739-2711.

Summary of the Evidence

The following written comments were submitted in response to the proposed rules and regulations published on May 1, 2016:

Exhibit 1: May 12, 2016 email from David Allen

Mr. Allen objected to limiting a first prescription to 7 pills. He also objected to twice a year drug screens and argued that these restrictions would place a hardship on people who need pain medication for a better quality of life.

Exhibit 2: May 12, 2016 email from Mary Reppy, PhD, President & CEO Abacalab, Inc.

Ms. Reppy expressed concern regarding the regulations' possible impact on chronic pain patients. Insurance companies may not pay for two drug screen each year. It can be difficult for pain patients to switch to other types of medication due to patient response and tolerance. These drugs, such as NSIADs, also have side effects. With respect to alternative treatments, such as physical therapy, lack of insurance coverage can pose problems.

Exhibit 3: May 12, 2016 email from Kerry McElwee

Ms. McElwee noted that the problem of insurance refusing to pay for long term alternative treatments is not addressed in the regulations.

Exhibit 4: May 12, 2015 email from Lisa Vandercook

Ms. Vandercook expressed her opposition to any more restrictions on what doctors can legally prescribe. Non-addict patients shouldn't have to jump through hoops to get medication.

Exhibit 5: May 12, 2016 email from Kim Allen

Ms. Allen expressed her view that the regulations represent government getting in between doctor and patient. Requiring office visits to get a 7 day prescription would require patients to visit doctors weekly.

Exhibit 6: May 12, 2016 email from Clara Zahradnick

Ms. Zahradnick stated that the 7-day limit is much too short and will present a burden to the patient and the doctor. There are better ways to deal with opioid addiction than one size fits all methods.

Exhibit 7: May 18, 2016 email from Donna Monroe, M.S.

Ms. Monroe stated that she disagrees with the guidelines for opioid prescribing with respect to the 7-day limit, which would require frequent doctor and pharmacy trips.

Exhibit 8: May 24, 2016 email from Timothy Langan, M.D., Medical Director, Vitas Healthcare - Delaware.

As the medical director for a hospice in Delaware who prescribes Schedule II medications for end of life pain management, Dr. Langan asked for an exception to the regulations for patients under hospice care. These patients don't fit into acute or chronic pain syndromes. The PMP query requirements would be arduous and interfere with patient care.

Exhibit 9: May 24, 2016 and May 26, 2016 emails from Sally Matthews

Ms. Matthews questioned whether any research had been done concerning the impact of the regulations on the elderly with chronic pain. She expressed concern that the elderly and their caretakers will encounter great difficulty in obtaining medication to treat chronic pain.

In her second email, Ms. Matthews added her recommendation that the 7-day limit be extended to a six week supply. She expressed concern that Section 9.0 focuses on restricting the prescribing of opioid analgesics but does not address treatment for those addicted.

Exhibit 10: May 25, 2016 email from Laura Wharton, B.S., Administrative Assistant Tova Community Health, Inc.

Ms. Wharton stated that the regulations would have an adverse impact on populations requiring prescriptions longer than 7 days such as sickle cell anemia patients.

Exhibit 11: May 25, 2016 comments from John Goodill, M.D., Director, Palliative Care Education and Outreach, CCHS

Dr. Goodill stated his concern that the regulations will drive providers away from prescribing opiates leaving legitimate pain patients high and dry. Dr. Goodill suggested exempting certain patient populations, such as post-operative and trauma, cancer, and end of life/hospice care patients. He would not exempt veterinarians, pharmacists and institutional providers and asked for clarification as to what an "institutional provider" is. Dr. Goodill stated that Section 9.6 is unclear: what would trigger the 5 listed requirements? He suggested adding to Section 9.6 "document alternative treatments tried or considered" as well as risk assessment. Section 9.8 relates to general documentation, not opioids.

Exhibit 12: May 26, 2016 comments from Jeanne Chiquoine, Delaware Government Relations Director, American Cancer Society Action Network

Ms. Chiquoine commented that the regulations do not specify what analytes should be tested with respect to urine screening. She expressed concern regarding the financial burden that testing will place on patients experiencing pain. The regulations seem to apply differently to institutional v. non-institutional providers and require a patient-provider relationship. In the context of cancer, it is unclear how oncologists are categorized.

Exhibit 13: May 12, 2016 letter from John Becher, D.O. (President, American Osteopathic Association) and Anne Marie Sullivan, D.O. (President, Delaware State Osteopathic Medical Society)

Dr. Becher and Dr. Sullivan requested an amendment to Section 9.7.9 because it doesn't recognize equivalent board certifications in addiction medicine for osteopathic physicians offered by AOA. Section 9.7.9 just notes the American Board of Psychiatry and Neurology. Dr. Becher and Dr. Sullivan requested inclusion of the language: "subspecialty certification in addiction medicine from AOA."

Exhibit 14: May 27, 2016 email from Jayshree Tailor, M.D.

Dr. Tailor stated that he is a practicing primary care physician in Wilmington. The regulations should be guidelines to consider but final decisions should be made in doctors' offices. Dr. Tailor suggested investing energy into education of physicians regarding treating pain.

Exhibit 15: May 27, 2016 email from Taihitia Watson-Wilmer, LPN, Tova Community Health, Inc.

Ms. Watson-Wilmer stated that she is a nurse at a Sickle Cell Specialty Center. The maximum 7 day supply would be difficult for this population to manage. Emergency room visits would increase.

Exhibit 16: May 27, 2016 email from Dr. Nina Anderson, Nova Community Health, Inc. Sickle Cell Specialty Center

As a provider who takes care of adults with Sickle Cell Disease, Dr. Anderson questioned whether limiting acute pain prescriptions to a 7-day supply would unduly impact sickle cell patients who live with chronic pain. This population should continue to get a 30 day supply if needed with monitoring.

Exhibit 17: May 30, 2016 email from M. Northrop

M. Northrop objected to the 7-day supply limit. It is impractical to pick up prescriptions every 7 days. M. Northrop asked whether chronic pain patients need to start over as new users and expressed concern regarding payment for urine screens and physician exams. M. Northrop recommended eliminating the urine screen if the patient is responsible and limiting physical exams to every 3 years. The proposed requirements place extra burdens on providers. Forcing physicians to stop prescribing schedule II pain medication is an overreaction to opioid deaths.

Exhibit 18: May 30, 2016 comments from Janet Kramer, M.D.

Dr. Kramer stated that the regulations should not be approved until open public hearings occur. She is a primary care physician with experience treating patients with substance abuse problems. The regulations will jeopardize patients challenged with acute or chronic pain. Dr. Kramer objected to the requirements for prescribing beyond 7 days. Physicians already provide information and discuss treatment options and the risks of treatment. The proposed regulations won't impact the availability of opioids for abuse on the street. Dr. Kramer also objected to use of the PMP in that it is a breach of health services confidentiality. The regulations threaten to decrease the availability of medications for patients who need them.

Exhibit 19: May 30, 2016 comments from Ron Dozier

With respect to Section 9.0, Mr. Dozier questioned who will pay for drug screens. He stated that trying to solve the opioid problem leads to a heroin problem. If addiction is suspected and confirmed, treatment is needed. He suggested tracking controlled substances and not pullout all of the stops.

Exhibit 20: May 31, 2016 letter from Wayne A. Smith, President and CEO, Delaware Healthcare Association

Mr. Smith stated that there is a fine line between regulating prescription habits while ensuring patient care isn't compromised. Mr. Smith noted that in Section 9.3, "institutional practitioner" isn't defined. If the intent is to exempt

hospitals, that needs to be clarified. Section 9.5.3 allows more than a 7 day supply if the practitioner documents it in the patient record. Mr. Smith recommended including express language that patients with acute pain due to traumatic injuries, major surgical procedures, or advanced cancer are covered by Section 9.5.3. Many of these patients need more than 7 days of opioid pain medication. The urine drug screen requirement in Section 9.6.2 will place a financial burden on patients. Mr. Smith noted that the original proposed regulations included an exemption for hospice and cancer patients and requested that this be returned to the regulations. Addiction is not really a concern for end of life patients.

Exhibit 21: May 31, 2016 comments from Brent R. King, M.D., Enterprise Vice President, Chief Medical Officer, Physician in Chief, Nemours

Dr. King stated that in general he supports the regulations but wants to ensure that they are appropriate for the pediatric population. With respect to the definition of "chronic pain," the distinction between acute and chronic pain can blur in the pediatric population in conditions such as lupus and sickle cell disease. Dr. King recommended: "Chronic pain means continuous or nearly continuous pain more than three months in duration." With respect to the definition of "risk assessment," Dr. King noted that there is no validated tool for the pediatric population. To clarify that new tools may become available, he suggested adding "such as but not limited to." Dr. King suggested amending Section 9.5.2 to a 10 day supply so that families don't have to travel for a new prescription. With respect to Section 9.7.6, because there are no validated tools for pediatrics, Dr. King suggested adding "with the exception of minors, until a validated, pediatric risk assessment tool is available for use." Exceptions might be appropriate for hospice patients.

Exhibit 22: May 31, 2016 comments from Christopher D. Casscells, MD, Casscells Orthopaedics and Sports Medicine

Dr. Casscells stated that pain patients and prescription medications are not the root cause of gun violence, drug gangs and overdoses. The root cause is cocaine and heroin. The regulations are unenforceable except to criminalize physicians and push patients out of doctor's offices and onto the street for illegal drugs. The regulations will lead to increased expenses and inconvenience for patients and practice disruption for physicians. Access to legitimate and legal pain management will become onerous and expensive. Heroin is a gateway drug to Vicodin and Percocet and the regulations will worsen the illegal drug problem.

Exhibit 23: May 30, 2016 fax from Dotti Dunham

Ms. Dunham stated that weekly trips to the doctor and pharmacy will pose a hardship for pain patients. The drug abuse epidemic was created by the American Medical Society and individuals with pain are being penalized.

Exhibit 24: May 31, 2016 letter from Attorney General Matthew Denn

Attorney General Denn stated that the initial concern after the regulations were first published in July 2015 was ensuring a higher level of doctor-patient communication before prescribing opiates for acute pain and ensuring a higher level of both initial communication and ongoing monitoring for doctors prescribing opiates for chronic pain. Both concerns have been addressed in the revised regulations. The regulations still allow doctors to prescribe opiates for acute care patients without PMP review or informed consent outlining the risks. However, the new regulations limit the initial prescription to 7 days absent documentation in the patient file as to a need for more than 7 days. This is a middle ground and the Attorney General supports it. Attorney General Denn suggested a return of the exemption for cancer and hospice care patients.

Exhibit 25: May 31, 2016 letter from Adam Raben, MD, President, Delaware Society for Clinical Oncology, Helen F. Graham Cancer Center, CCHS

Dr. Raben requested the exclusion of cancer patients from the regulations' requirements. Care of cancer patients involves both acute and chronic treatment. Additional requirements will increase the burdens already experienced by cancer patients and will disrupt the work flow of oncology specialists, which will result in reluctance to prescribe opioid analgesics.

Exhibit 26: May 31, 2016 letter from Katie Duensing, J.D., Assistant Director for Legislative and Regulatory Affairs, State Pain Policy Advocacy Network, American Academy of Pain Management

Ms. Duensing noted that Section 9.7.3 states that chronic pain patients must undergo urine drug screens every

six months. The result will be that a patient's ability to receive treatment for pain will be dependent on drug screens insurance won't pay for. Delaware Medicaid limits the coverage of urine screens to situations where there is an acute change in the patient's physical or mental status. Ms. Duensing suggested aligning Section 9.7.3 with Section 9.6.2, allowing for practitioner discretion, or align Section 9.7.3 with the Medicaid rules. With respect to Section 9.5.2, the language pertaining to first time prescriptions for minors needs to be revised; the regulation doesn't say "first time."

Exhibit 27: May 31, 2016 letter from Dorothy Moore, M.D., President, Richard Henderson, M.D., Vice President and Randeep Kahlon, M.D., Treasurer, Medical Society of Delaware

Dr. Moore, Dr. Henderson and Dr. Kahlon, on behalf of the Medical Society of Delaware ("MSD"), commented that the State needs a comprehensive strategy addressing the many facets of the drug abuse and diversion crisis. Behavior change can be better affected by specialty-specific prescribing guidelines as opposed to one size fits all restrictive regulations. The regulations target prescribers and track patients. The 7-day limit has no scientific basis.

MSD offered specific comments, including the following: In Section 4.2.3, a definition of "narcotic dependent person" is needed. Section 9.3.2 provides that acute pain "is less than 3 months in duration." Some disease or post-surgery recoveries use pain medication beyond 3 months. MSD recommended amended language to the effect that acute pain can continue for up to six months. With respect to Section 9.3.9, veterinarians, pharmacists and pharmacies should not be exempted. The term "institutional practitioner" needs clarification. In Section 9.5, the maximum supply for acute pain should be increased from 7 days to 14 days because patients are not always seen in a week post procedure. With respect to Section 9.6, "subsequent prescriptions," it is unrealistic to expect every patient to be seen in person in the office for every single refill request after procedures. MSD suggested that Section 9.6.1 be amended to state that a PMP query be mandated for prescriptions beyond 3 months from procedures, not for every refill during normal, acute recovery. MSD suggested, in Section 9.6.2, a change from "urine" drug screen to "fluid" drug screen to allow for future advances in medical technology. MSD suggested that Section 9.6.5, requiring the practitioner to schedule and undertake periodic follow up visits, may not apply to hospitalists, who care for and discharge patients with outpatient prescriptions but refer the patient back to the primary caregiver. MSD requested a change in Section 9.7.3 from "[a]dminister urine drug screens at least once every six months" to "at the prescriber's discretion but a minimum of twice a year." Section 9.7.5 is duplicative of Section 9.3.13 and should be stricken. In Section 9.7.7, the word "each" should be deleted, with respect to documenting other forms of treatment tried by the patient. Section 9.8, pertaining to "medical records" is unnecessary and should be deleted. The exemption for hospice and cancer patients should be put back into the regulations to avoid increased patient suffering.

Exhibit 28: May 23, 2016 letter from Robert Winter, M.D. and Arlen D. Stone, M.D., Go Care at Abby Medical, Abby Family Practice

Dr. Winter and Dr. Stone expressed support for the comments and concerns presented by MSD and offered additional items for consideration. The term "Medical Aid Unit" should be included in terminology when discussing urgent and emergency care centers. If acute care is 7-14 days and chronic care is after 3 months, what is the plan for intervening weeks? Insurers won't pay for office drug testing and the costs can't be sustained by the practice. Chronic non-cancer pain is not addressed. Consulting with a pain management specialist isn't practical. The treatment of addiction is not addressed in the regulations. There is limited access to substance abuse treatment in Delaware. The regulations will cause many PCPs to be more reluctant to prescribe narcotics appropriately.

Exhibit 29: May 31, 2016 letter from Tabassum Salam, MD, FACP, Governor, Delaware Chapter of the American College of Physicians, Senior Physician Advisor for Population Health, CCHS

Dr. Salam, an internal medicine physician, stated that education needs to be the cornerstone of initiatives. Pain management doesn't solely equate to the prescribing of opiates. The PMP needs improvement. Sections 9.5.3 and 9.6 are unduly burdensome. Forcing re-assessment within 7 days is premature; this should be changed to 14 days or one refill without a face to face visit.

Exhibit 30: May 31, 2016 email from Donna Gregory Burch

Ms. Burch stated that checking the PMP and twice a year urine screenings are reasonable proposals. She objected to a maximum 7 day supply for acute injuries. This should be left to the physician. As an alternative, doctors can be required to undergo yearly opioid training.

Exhibit 31: May 31, 2016 email from Hadassah Futrell
Miss Futrell asked that Sickle Cell patients be exempted from the regulations.

Exhibit 32: May 28, 2016 letter from Richard Bounds, M.D., John Powell, M.D. and Jonathan McGhee, D.O., Delaware ACEP (American College of Emergency Physicians)

Dr. Bounds, Dr. Powell and Dr. McGhee stated that there is a need to balance the opioid diversion and abuse problem with compassionate pain control. Emergency centers are often the only access patients have to care. Checking the PMP interrupts work flow. A more user friendly PMP interface is needed. They support exempting acute conditions from the time consuming regulations in Section 9.6. They support MSD's proposal of specialty-specific prescribing guidelines.

Secretary of State's Findings and Conclusions

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

The proposed Section 9.0 is the result of many discussions by the Controlled Substance Advisory Committee at properly noticed, public meetings. All members of the public were welcome to attend these meetings and offer comments. A public hearing was held on July 29, 2015 and at that time members of the public were afforded the opportunity to present testimony and written comments. With respect to the proposed rules and regulations published on May 1, 2016, the written comment period was held open for 30 days. The 32 comments submitted have been summarized herein and have been thoroughly considered by the Secretary in making further revisions to Section 9.0 attached hereto as Exhibit A.

The purpose of Section 9.0 is to address the state-wide health crisis caused by the abuse and diversion of opioid analgesics. Section 9.0 sets forth minimum requirements for the treatment of both acute and chronic pain. Further, Section 9.0 is designed to enable practitioners to meet the goal of addressing drug overdose, abuse and diversion while ensuring patient access to safe and effective pain care. Comments that the requirements in Section 9.0 are overly burdensome are not persuasive. Given the risks posed by opioid abuse, and the number of deaths resulting from opioid overdose, the required steps are basic practice requirements to ensure the safety of patients and the public.

Many of the written comments submitted are based on the incorrect assumption that the maximum seven-day supply language applies to all forms of pain management. Section 9.5 states clearly that the maximum seven-day supply limit is applicable to a first-time, outpatient prescription for acute pain. In addition, Section 9.5.3 gives the practitioner the discretion to prescribe more than a seven-day supply if, in the practitioner's professional medical judgment, more than a seven-day supply is required to treat the patient's acute medical condition, as long as the rationale is documented in the patient file and the PMP is queried to obtain a prescription history. There are separate requirements for subsequent prescriptions in Section 9.6 and for the treatment of chronic pain in Section 9.7.

There are also objections to the "at least once every six months" drug screen requirement. Those objections address patient cost. Section 9.0 does not specify the method of drug screening and does not require that the screening be done through lab testing. More importantly, none of the commentators challenge the essential information obtained through drug screens. Through drug screening, the practitioner can determine whether the patient is using other narcotics, either prescribed by other practitioners or obtained illegally, or is not taking the prescribed medication. Such information is key to ensuring patient safety and detecting possible diversion. Similarly, objections to utilization of the PMP do not consider the importance of the information obtained.

A number of commentators request that the exemption for hospice and cancer patients be returned to the regulation. The argument that addiction and diversion are not significant issues for these populations is persuasive and the exemption is included in the revised regulation.

Comments regarding the definition of "practitioner" in Section 9.3.9 have been given weight and this section has been revised to clarify that the only practice at issue in these regulations is prescribing. Consequently, references to pharmacists, pharmacies and institutional practitioners have been removed. Veterinarians are excluded from the definition of "practitioner" in that the patient practices specified in the regulation have no applicability to animals.

Due to the lack of clarity identified by a number of commentators, the reference to "institutional practitioner"

has been stricken. The treatment of patients while hospitalized is addressed in Section 9.8.5. Specifically, hospital patients, during the hospital stay, are exempt from the requirements, so long as the discharge prescription is for a quantity of a 7-day supply or less.

Finally, numerous comments of a technical nature have been incorporated into the revised regulation. For example, Section 4.2.3, referencing "narcotic dependent person," has been revised. The term "urine drug screen" has been amended to "fluid drug screen." The section pertaining to records has been stricken. Section 9.7.5, referencing treatment agreements, has been stricken as duplicative of Section 9.3.13. Section 9.7.8 has been broadened to state that the practitioner may seek a case review and consult with an "addiction specialist." Section 9.6 has been revised to clarify the requirements for a subsequent prescription, after the first-time outpatient prescription.

Therefore, based on the extensive public comment addressing both substantive and more technical issues, the proposed Section 9.0 published on May 1, 2016 is stricken and the Secretary proposes the revised Section 9.0 attached hereto as Exhibit A.

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

<http://regulations.delaware.gov/register/july2016/proposed/20 DE Reg 31RFA 07-01-16.pdf>

Uniform Controlled Substances Act Regulations (Break in Continuity of Sections)

4.0 Prescriptions

(Break in Continuity Within Section)

4.2 Purposes of Issue of Prescription

(Break in Continuity Within Section)

- 4.2.3 A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a ~~narcotic drug dependent~~ person engaged in substance abuse or misuse, as defined in subsections 9.3.11 and 9.3.12, for the purpose of continuing his such person's dependence upon such drugs, unless otherwise authorized by law.

(Break in Continuity of Sections)

9.0 Safe Prescribing of Opioid Analgesics

9.1 Preamble: This Section provides requirements for the prescribing of opioid analgesics in order to address potential prescription drug overdose, abuse, and diversion and encourage the proper and ethical treatment of pain. Pursuant to the requirements of this Section, the practitioner can meet the goal of addressing drug overdose, abuse and diversion while ensuring patient access to safe and effective pain care.

9.2 License and DEA registration required: To prescribe opioid analgesics in Delaware, the practitioner must be licensed in this state and registered with the U.S. Drug Enforcement Administration and must comply with all applicable federal and state regulations. Out-of-state practitioners, who are prescribing controlled substances to patients in Delaware, must hold active licensure and registration in their home states. Practitioners are referred to the Practitioner's Manual of the U.S. Drug Enforcement Administration and specific rules governing controlled substances.

9.3 Definitions:

9.3.1 "Acute Care" means the treatment of Acute Pain, as defined in subsection 9.3.2.

9.3.2 "Acute Pain" means the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. It is generally time limited. For the purpose of this Regulation, Acute Pain is less than three months in duration.

9.3.3 "Acute pain episode" means a discrete period of pain that usually follows some sort of injury to the body and generally dissipates when the injury heals.

PROPOSED REGULATIONS

- 9.3.4 **"Addiction"** means a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.
- 9.3.5 **"Chronic Care"** means the treatment of Chronic Pain, as defined in subsection 9.3.6.
- 9.3.6 **"Chronic Pain"** means a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years. For the purpose of this Regulation, Chronic Pain means continuous or nearly continuous pain more than three months in duration.
- 9.3.7 **"Opioid Analgesic"** means a drug that is used to alleviate moderate to severe pain that is either an opiate (derived from the opium poppy) or opiate-like (synthetic drugs). Examples include: morphine, codeine, fentanyl, meperidine, and methadone. For purposes of this regulation, it does not include, unless specifically designated as controlled under 16 Del.C. §4711, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.
- 9.3.8 **"PMP"** means the Delaware Prescription Monitoring Program.
- 9.3.9 **"Practitioner"** means a physician, dentist, podiatrist, nurse practitioner, physician assistant or other individual, licensed, registered, or otherwise permitted, by the United States or the State of Delaware to prescribe a controlled substance in the course of professional practice but does not include veterinarians.
- 9.3.10 **"Risk Assessment"** means utilizing a tool appropriate for the patient, such as but not limited to, the Screener and Opioid Assessment for Patients with Pain ("SOAPP"), Opioid Risk Tool ("ORT"), or Screening, Brief Intervention and Referral to Treatment ("SBIRT"), which are designed for predicting the likelihood that a patient will abuse or misuse a prescribed controlled substance based on past behavior, genetic predispositions, social or environmental factors, or other risks.
- 9.3.11 **"Substance Abuse"** means using a controlled substance without a legitimate medical need, for the purpose of altering one's emotional experience.
- 9.3.12 **"Substance Misuse"** means using a controlled substance in a way that is not prescribed.
- 9.3.13 **"Treatment Agreement"** means a written agreement, signed by the practitioner and the patient (or the patient's proxy), which shall become part of the patient's medical record. The Treatment Agreement may include, at the practitioner's discretion:
- The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills;
 - Reasons for which medication therapy may be re-evaluated, tapered or discontinued, including but not limited to, violation of the Treatment Agreement or lack of effectiveness;
 - The requirement that all chronic pain management prescriptions are provided by a single practitioner or a limited agreed upon group of practitioners;
 - The patient's agreement to not abuse alcohol or use other medically unauthorized substances or medications;
 - Acknowledgment that a violation of the agreement may result in action as deemed appropriate by the prescribing practitioner such as a change in the treatment plan, a referral to a pain specialist, or referral to an addiction treatment program; and
 - The requirement that fluid drug screens be performed at random intervals at the practitioner's discretion, but not less than every six months.
- 9.4 **Practitioner-patient relationship:** A practitioner may not prescribe opioid analgesics unless a practitioner-patient relationship has been established, or the practitioner is seeing the patient in lieu of the patient's prescribing practitioner on a limited basis and on the practitioner's request or behalf.
- 9.5 **First time, outpatient prescription for Acute Pain;** maximum seven-day supply.

- 9.5.1 When issuing a prescription for an opioid analgesic to an adult patient for outpatient use for the first time, for an Acute Pain Episode, a practitioner may not issue a prescription for more than a seven-day supply.
- 9.5.2 A practitioner may not issue a prescription for an opioid analgesic to a minor for more than a seven-day supply at any time and shall discuss with the parent or guardian of the minor the risks associated with opioid use and the reasons why the prescription is necessary.
- 9.5.3 Notwithstanding subsections 9.5.1 and 9.5.2, if, in the professional medical judgment of a practitioner, more than a seven-day supply of an opiate is required to treat the adult or minor patient's acute medical condition, then the practitioner may issue a prescription for the quantity needed to treat such acute medical condition. The condition triggering the prescription of an opiate for more than a seven-day supply shall be documented in the patient's medical record, the practitioner shall query the PMP to obtain a prescription history, and the practitioner shall indicate that a non-opiate alternative was not appropriate to address the medical condition and comply with subsections 9.6.4 and 9.6.5.
- 9.6 Subsequent prescriptions. After the first time outpatient prescription, or after the patient has been issued outpatient prescription(s) totaling up to a seven day supply, prior to issuing a subsequent prescription for an opioid analgesic for Acute Pain, the practitioner must perform an appropriate evaluation of the patient's medical history and condition, including the following:
- 9.6.1 Query the PMP to obtain a prescription history for the first subsequent prescription that goes beyond the initial 7-day period and, for any subsequent prescriptions after that, the PMP shall be queried at the discretion of the practitioner unless otherwise required;
- 9.6.2 Administer a fluid drug screen, at the discretion of the practitioner;
- 9.6.3 Conduct a physical examination which must include a documented discussion between the practitioner and patient to: Elicit relevant history, explain the risks and benefits of opioid analgesics and possible alternatives to the use of opioid analgesics, identify other treatments tried or considered, and determine whether opioid analgesics are contra-indicated;
- 9.6.4 Obtain an Informed Consent form, signed by the patient (or the patient's proxy), that must include information regarding the drug's potential for addiction, abuse, and misuse; and the risks associated with the drug of life-threatening respiratory depression; overdose as a result of accidental exposure potentially fatal, especially in children; neonatal opioid withdrawal symptoms; and potentially fatal overdose when interacting with alcohol; and other potentially fatal drug/drug interactions, such as benzodiazepines; and
- 9.6.5 Schedule and undertake periodic follow-up visits and evaluations of the patient to monitor and assess progress toward goals in the treatment plan and modify the treatment plan, as necessary. The practitioner must determine whether to continue the treatment of pain with an opioid analgesic, whether there is an available alternative, whether to refer the patient for a pain management or substance abuse consultation.
- 9.7 Chronic Pain patients. In addition to the requirements of subsection 9.6, the practitioner must adhere to the following additional requirements for Chronic Pain patients:
- 9.7.1 Query the PMP at least every six months, more frequently if clinically indicated, or whenever the patient is also being prescribed a benzodiazepine;
- 9.7.2 Query the PMP whenever the patient is assessed to potentially be at risk for substance abuse or misuse or demonstrates such things as loss of prescription(s), requests for early refills or similar behavior;
- 9.7.3 Administer fluid drug screens at least once every six months;
- 9.7.4 Obtain a signed Treatment Agreement, pursuant to subsection 9.3.13;
- 9.7.5 Conduct a Risk Assessment as defined in subsection 9.3.10;
- 9.7.6 Document in the patient's medical record alternative treatment options that have been tried by the patient, including non-pharmacological treatments, and their adequacy with respect to providing sufficient management of pain;

PROPOSED REGULATIONS

9.7.7 Make efforts to address psychiatric and medical comorbidities concurrently, rather than sequentially, when concurrent treatment is clinically feasible; and

9.7.8 At the practitioner's discretion, seek a case review and consult with, or otherwise refer the patient to, a state-licensed physician who holds a subspecialty board certification in addiction psychiatry from the American Board of Psychiatry and Neurology or an addiction certification from the American Board of Addiction Medicine or an addiction specialist if any of the following occur:

9.7.8.1 Adulterated drug tests;

9.7.8.2 Diversion of prescribed medications; or

9.7.8.3 The patient has obtained controlled substances elsewhere without disclosure to the physician, as evidenced by PMP data.

9.8 Practitioners treating the following patients are exempted from the requirements of this Regulation:

9.8.1 Hospice care patients;

9.8.2 Active cancer treatment patients;

9.8.3 Patients experiencing cancer-related pain;

9.8.4 Terminally ill/palliative care patients; and

9.8.5 Hospital patients, during the hospital stay, including any prescription issued at the time of discharge, so long as that discharge prescription is for a quantity of a 7-day supply or less.

910.0 Procedures for Adoption of Regulations

910.1 Notice. Prior to the adoption, amendment or repeal of any of these controlled substances regulations, the Secretary of State/Committee will give at least twenty (20) days notice of the intended action.

910.1.1 The notice will include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, or the time when, and the place where to present their views thereon. The notice will be mailed to persons who have made timely request of the Office of Controlled Substances for advance notice of such rule-making proceedings and shall be published in two newspapers of general circulation in this State.

910.2 Hearing. The Secretary of State shall designate the Committee to preside over hearings. The Committee will afford all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing.

910.3 Emergency Regulations. If the Secretary of State, upon the recommendation of the Committee, finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than twenty (20) days notice and states in writing his/her reasons for that finding, the Secretary of State may proceed without prior notice or hearing or upon any abbreviated notice and hearing he/she finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not precluded.

910.4 Finding and Availability. The Secretary of State will maintain on file any adoption, amendment or repeal of these regulations. In addition, copies of these regulations will be available for public inspection at the Office of Controlled Substances.

101.0 Severability

101.1 If any provision of these regulations is held invalid the invalidity does not affect other provisions of the regulations which can be given effect without the invalid provisions or application, and to this end the provisions of the regulation are severable.

101.2 Pursuant to 16 **Del.C.** §4718(f) and 16 **Del.C.** §4720(c) the Secretary of State finds that the compounds, mixtures or preparations listed in 21 **CFR** 1301.21, 21 **CFR** 1308.24 contain one or more active medical ingredients not having a stimulant or depressant effect on the central nervous system and that the admixtures included therein are in combinations, quantities, proportions, or concentrations that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system, and therefore:

101.2.1 The Secretary of State, as authorized by 16 Del.C. §4718(f) and 16 Del.C. §4720(c), does hereby except by rule the substances listed in 21 CFR 130.21, CFR 1308.24 and 21 CFR 1308.32 from Schedules III and IV of the Uniform Controlled Substances Act, 16 Del.C. Ch. 47.

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

Uniform Controlled Substances Act Regulations

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4504 (21 Del.C. §4504)
2 DE Admin. Code 2405

PUBLIC NOTICE

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual

Pursuant to the authority provided by 21 Del.C. §4504, the Delaware Department of Transportation (DelDOT), adopted the Oversize/Overweight Hauling Permit Policy and Procedures Manual.

The Department, through its Division of Transportation Solutions, seeks to adopt general revisions to its existing regulation, the Oversize/Overweight Hauling Permit Policy and Procedures Manual, to address procedural changes. These collective changes are administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

Public Comment Period

DelDOT will take written comments on these proposed general revisions to Section 2405 of Title 2, Delaware Administrative Code, from July 1, 2016 through August 1, 2016. The public may submit their comments to:

Adam Weiser, P.E., PTOE, Safety Programs Manager, Traffic Section
(Adam.Weiser@state.de.us) or in writing to his attention,
Division of Transportation Solutions
Traffic Safety Section
Delaware Department of Transportation
169 Brick Store Landing Road
Smyrna, DE 19977

***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/july2016/proposed/20 DE Reg 41RFA 07-01-16.pdf>

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

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1522

REGULATORY IMPLEMENTING ORDER**1522 Elementary School Counselor****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1522 Elementary School Counselor. The proposed regulation adds a non-regulatory note concerning a content knowledge examination and a definition of an accreditation program. In addition, the proposed regulation amends the additional education requirement, including the recognized accreditation programs and the required coursework and professional development areas, and the clinical experience requirement.

Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2016 in the form attached hereto as Exhibit "A". Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by May 31, 2016. The Professional Standards Board received twelve written comments, including comments from parents, current and retired school counselors, a former student in a school counseling program, a university administrator, a university professor, a teacher, and the American School Counselor Association. The majority of the comments received supported the proposed regulation. Two of the comments did not support the required number of hours of clinical experience. The Professional Standards Board considered the written comments and decided not to make any changes to the proposed regulation at this time. The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

On June 2, 2016, the Professional Standards Board signed an order, in the form attached hereto as Exhibit "B", proposing to amend 14 **DE Admin. Code** 1522 Elementary School Counselor subject to the approval of the State Board of Education.

II. FINDINGS OF FACT

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1522 Elementary School Counselor to add a non-regulatory note concerning a content knowledge examination and a definition of an accreditation program and to amend the additional education requirement, including the recognized accreditation programs and the required coursework and professional development areas, and the clinical experience requirement and to seek State Board of Education approval for the amended regulation.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1522 Elementary School Counselor.

Pursuant to 14 **Del.C.** §1203, the amended regulation attached hereto as Exhibit "A" is hereby approved.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1522 Elementary School Counselor amended hereby shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1522 Elementary School Counselor in the *Administrative Code*.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Professional Standards Board pursuant to 14 **Del.C.** §1203 on June 2, 2016 and by the State Board of Education on June 16, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in its final form in the *Register of Regulations*.

IT IS SO ORDERED the 2nd day of June, 2016 by the Professional Standards Board.

Bryon Murphy, Chairman
Diane Albanese
Amber Augustus
Jennifer Burton
Nelia Dolan
Darren Guido
Darlene O'Neill
Stephanie Smith

David Kohan, Vice Chairman
Gerald Allen (absent)
Linda Brown (absent)
Stephanie DeWitt
Laura Glass
Rosaria Macera
Mary Pinkston
Sue Smith

IT IS SO ORDERED the 16th day of June, 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 16th day of June, 2016 by the State Board of Education.

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

Gregory B. Coverdale, Jr. (not present)
Terry M. Whittaker, Ed.D.
Nina L. Bunting

1522 Elementary School Counselor

Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 Del.C. §1220 and 14 DE Admin. Code 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Elementary School Counselor. This certification is required for grades K to five (5), and is valid in grades six (6) to eight (8) in a Middle Level school. A Middle Level School Counselor must hold either an Elementary School Counselor Standard Certificate or a Secondary School Counselor Standard Certificate.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following word and term, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“CAEP (Council for the Accreditation of Educator Preparation)” – A nonprofit and nongovernmental agency that accredits educator preparation providers (EPPs), which was created when the National Council for Accreditation of Teacher Education (NCATE) and the Teacher Education Accreditation Council (TEAC) merged in 2013.

3.0 Standard Certificate

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

4.0 Additional Requirements

~~An educator must also have met the following.~~

- 4.1 Has satisfied at least one of the following additional education requirements:
 - 4.1.1 Graduated from an NCATE ~~or specialty organization recognized~~ CAEP educator preparation program ~~unit~~ or from a state approved educator preparation program, where the state approval body employed the appropriate ~~NASDTEC or NCATE~~ national specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Elementary School Counseling; or
 - 4.1.2 Graduated from a regionally accredited college or university with a Master's degree in any content area and satisfactorily completed ~~thirty-nine (3039)~~ credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:
 - 4.1.2.1 ~~Principles and Practices of the School Counseling Program~~ Introduction to School Counseling & Theories (3 credits);

- 4.1.2.2 ~~Individual Counseling Skills~~ Human Behavior and Child Development (3 credits);
 - 4.1.2.3 ~~Group Counseling Skills~~ Ethical Issues in School Counseling (3 credits);
 - 4.1.2.4 ~~Human Development~~ College & Career Readiness K-12 (3 credits);
 - 4.1.2.5 ~~Developmental Group Guidance~~ Testing, Measurements, and Research in School Counseling (3 credits);
 - 4.1.2.6 ~~Individual and Group Testing for Counselors~~ The Counselor as Consultant (3 credits);
 - 4.1.2.7 ~~Supervised Practicum in Elementary Counseling~~ Special Education Law & the School Counselor's Role (3 credits);
 - 4.1.2.8 ~~Counseling Theory~~ Group Counseling (3 credits); and
 - 4.1.2.9 ~~Consultation; and~~ Individual Counseling Skills & Strategies (36 credits).
 - 4.1.2.10 ~~Ethical Issues in School Counseling~~ Family Counseling (3 credits).
 - 4.1.2.11 Principles and Practices of a School Counseling Program (6 Credits); and
- 4.2 Has met at least one of the following experience requirements completed one of the following:
- 4.2.1 A minimum of three years professional experience in an elementary school setting; or,
 - 4.2.2 A minimum of three years of equivalent experience as approved by the Department of Education; or,
 - 4.2.31 Educators not holding a Standard Certificate Secondary School Counselor must complete A a supervised school counseling internship clinical experience under the direct supervision of a State Department of Education certified Elementary School Counselor of one (1) full year 700 hours in an elementary school setting which is part of a graduate degree program in Elementary School Counseling or arranged by the Department of Education. The internship may be completed over a two (2) year period on a half time basis.
 - 4.2.2 Educators holding Standard Certificate Secondary School Counselor, who are seeking Elementary School Counselor certification, must complete 350 hours of additional clinical experience in an elementary school setting, under the direct supervision of a State Department of Education certified Elementary School Counselor; or
 - 4.2.3 Educators seeking initial certification of both a Standard Certificate Elementary School Counselor and a Standard Certificate Secondary School Counselor simultaneously, must complete 350 hours of clinical experience in an elementary school setting under the direct supervision of a State Department of Education certified Elementary School Counselor and 350 hours of clinical experience in a secondary school setting under the direct supervision of a State Department of Education certified Secondary School Counselor.

5.0 Effective Date of Section 4.0

Section 4.0 of this regulation shall be effective on January 1, 2017.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1545

REGULATORY IMPLEMENTING ORDER

1545 Secondary School Counselor

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1545 Secondary School Counselor. The proposed regulation adds a non-regulatory note concerning a content knowledge examination and

a definition of an accreditation program. In addition, the proposed regulation amends the additional education requirement, including the recognized accreditation programs and the required coursework and professional development areas, and the clinical experience requirement.

Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2016 in the form attached hereto as Exhibit "A". Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by May 31, 2016. The Professional Standards Board received twelve written comments, including comments from parents, current and retired school counselors, a former student in a school counseling program, a university administrator, a university professor, a teacher, and the American School Counselor Association. The majority of the comments received supported the proposed regulation. Two of the comments did not support the required number of hours of clinical experience. The Professional Standards Board considered the written comments and decided not to make any changes to the proposed regulation at this time. The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

On June 2, 2016, the Professional Standards Board signed an order, in the form attached hereto as Exhibit "B", proposing to amend 14 **DE Admin. Code** 1545 Secondary School Counselor subject to the approval of the State Board of Education.

II. FINDINGS OF FACT

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1545 Secondary School Counselor to add a non-regulatory note concerning a content knowledge examination and a definition of an accreditation program and to amend the additional education requirement, including the recognized accreditation programs and the required coursework and professional development areas, and the clinical experience requirement and to seek State Board of Education approval for the amended regulation.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board concludes that it is appropriate to amend 14 **DE Admin. Code** 1545 Secondary School Counselor.

Pursuant to 14 **Del.C.** §1203, the regulation attached hereto as Exhibit "A" is hereby proposed subject to the approval of the State Board of Education. If approved by the State Board of Education, the proposed regulation will have the force and effect of law.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1545 Secondary School Counselor amended hereby shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1545 Secondary School Counselor in the *Administrative Code*.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Professional Standards Board pursuant to 14 **Del.C.** §1203 on June 2, 2016 and by the State Board of Education on June 16, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in its final form in the *Register of Regulations*.

IT IS SO ORDERED the 2nd day of June, 2016 by the Professional Standards Board.

Bryon Murphy, Chairman
 Diane Albanese
 Amber Augustus
 Jennifer Burton
 Nelia Dolan

David Kohan, Vice Chairman
 Gerald Allen (absent)
 Linda Brown (absent)
 Stephanie DeWitt
 Laura Glass

Darren Guido
Darlene O'Neill
Stephanie Smith

Rosaria Macera
Mary Pinkston
Sue Smith

IT IS SO ORDERED the 16th day of June, 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 16th day of June, 2016 by the State Board of Education.

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

Gregory B. Coverdale, Jr. (not present)
Terry M. Whittaker, Ed.D.
Nina L. Bunting

1545 Secondary School Counselor

Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 **Del.C.** §1220 and 14 **DE Admin. Code** 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Secondary School Counselor. This certification is required for grades nine (9) to twelve (12) and is valid in grades six (6) to eight (8) in a Middle Level school. A Middle Level School Counselor must hold either an Elementary School Counselor Standard Certificate or a Secondary School Counselor Standard Certificate.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505, Standard Certificate including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following word and term, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“**CAEP (Council for the Accreditation of Educator Preparation)**” – A nonprofit and nongovernmental agency that accredits educator preparation providers (EPPs), which was created when the National Council for Accreditation of Teacher Education (NCATE) and the Teacher Education Accreditation Council (TEAC) merged in 2013.

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Secondary School Counselor to an educator who has met the following:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

4.1 ~~An educator must also have met the following.~~

4.2 Has satisfied at least one of the following additional education requirements:

4.21.1 ~~Graduated from an NCATE specialty organization recognized or CAEP educator preparation program unit~~ or from a state approved educator preparation program, where the state approval body employed the appropriate ~~NASDTEC or NCATE national~~ specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Secondary School Counseling; or

4.21.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and satisfactorily completed ~~30~~39 credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:

4.21.2.1 ~~Principles and Practices of the School Counseling Program~~ Introduction to School Counseling & Theories (3 credits);

4.21.2.2 ~~Individual Counseling Skills~~ Human Behavior and Child Development (3 credits);

4.21.2.3 ~~Group Counseling Skills~~ Ethical Issues in School Counseling (3 credits);

4.21.2.4 ~~Human Development~~ College & Career Readiness K-12 (3 credits);

4.21.2.5 ~~Career Development~~ Testing, Measurements, and Research in School Counseling (3 credits);

4.21.2.6 ~~Individual and Group Testing for Counselors~~ The Counselor as Consultant (3 credits);

4.21.2.7 ~~Supervised Practicum in Secondary Counseling~~ Special Education Law & the School Counselor's Role (3 credits);

4.21.2.8 ~~Counseling Theory~~ Group Counseling (3 credits);

4.21.2.9 ~~Consultation~~ Individual Counseling Skills & Strategies (36 credits); and

4.21.2.10 ~~Ethical Issues in School Counseling~~ Family Counseling (3 credits).

4.1.2.11 Principles and Practices of a School Counseling Program (6 Credits); and

4.3 Has met at least one of the following experience requirements:

4.3.1 ~~A minimum of three years professional experience in a secondary school setting; or,~~

4.3.2 ~~A minimum of three years of equivalent experience as approved by the Department of Education; or,~~

4.2 Has completed one of the following:

4.3.3.1 ~~Educators not holding a Standard Certificate Elementary School Counselor must complete A a supervised school counseling internship clinical experience under the direct supervision of a State Department of Education certified Secondary School Counselor of one (1) full year 700 hours in a secondary school setting which is part of a graduate degree program in Secondary School Counseling or arranged by the Department of Education. The internship may be completed over a two (2) year period on a half time basis.~~

4.2.2 Educators holding Standard Certificate Elementary School Counselor, who are seeking Secondary School Counselor certification, must complete 350 hours of additional clinical experience in a secondary school setting, under the direct supervision of a State Department of Education certified Secondary School Counselor; or

4.2.3 Educators seeking initial certification of both a Standard Certificate Elementary School Counselor and a Standard Certificate Secondary School Counselor simultaneously, must complete 350 hours of clinical experience in an elementary school setting under the direct supervision of a State Department of Education certified Elementary School Counselor and 350 hours of clinical experience in a secondary school setting under the direct supervision of a State Department of Education certified Secondary School Counselor.

5.0 Effective Date of Section 4.0

Section 4.0 of this regulation shall be effective on January 1, 2017.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1582

REGULATORY IMPLEMENTING ORDER

1582 School Nurse

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1582 School Nurse. The proposed regulation amends the additional training requirement under subsection 4.1.4.

Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2016 in the form attached hereto as Exhibit "A". Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by May 31, 2016. The Professional Standards Board received written comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities, asking the Professional Standards Board to reconsider subsection 6.2, which requires a district or charter school to verify that a School Nurse continues to meet the requirements of subsections 4.1.1 through 4.1.3. The Professional Standards Board considered the written comments and decided not to make any changes to the proposed regulation at this time. The Professional Standards Board believes that the proposed amendments are designed to improve the quality of the Delaware educator workforce and benefit the student population of the state.

II. FINDINGS OF FACTS

The Professional Standards Board finds that it is appropriate to amend 14 **DE Admin. Code** 1582 School Nurse to amend the additional training requirement under subsection 4.1.4.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board concludes that it is appropriate to amend 14 **DE Admin. Code** 1582 School Nurse.

Therefore, pursuant to 14 **Del.C.** §1203, the regulation attached hereto as Exhibit "A" is hereby proposed subject to the approval of the State Board of Education. If approved by the State Board of Education, the proposed regulation will have the force and effect of law.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1582 School Nurse amended hereby shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1582 School Nurse in the *Administrative Code*.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Professional Standards Board pursuant to 14 **Del.C.** §1203 on June 2, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in its final form in the *Register of Regulations*.

IT IS SO ORDERED the 2nd day of June, 2016 by the Professional Standards Board.

Bryon Murphy, Chairman
 Diane Albanese
 Amber Augustus
 Jennifer Burton
 Nelia Dolan
 Darren Guido
 Darlene O'Neill
 Stephanie Smith

David Kohan, Vice Chairman
 Gerald Allen (absent)
 Linda Brown (absent)
 Stephanie DeWitt
 Laura Glass
 Rosaria Macera
 Mary Pinkston
 Sue Smith

IT IS SO ORDERED the 16th day of June, 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 16th day of June, 2016 by the State Board of Education.

Teri Quinn Gray, Ph.D., President

Gregory B. Coverdale, Jr. (not present)

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

Nina L. Bunting

Barbara B. Rutt

1582 School Nurse

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for School Nurse. This certification is required for all School Nurses providing services to children within the Delaware public school system.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

3.0 Standard Certificate

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

4.0 Additional Requirements

- 4.1 An educator must also have met the following additional education and licensure requirements:
 - 4.1.1 Holds a Bachelor's degree in Nursing (BSN) from a regionally accredited college or university; and,

- 4.1.2 Holds and maintains a current Registered Nurse license, recognized by the Delaware Board of Nursing; and,
 - 4.1.3 Holds and maintains a valid and current certification in cardiopulmonary resuscitation (CPR) and in the use of an automatic external defibrillator (AED); and,
 - 4.1.4 Completes ~~within eighteen (18) months by the end of the second school year after date~~ of hire, ninety (90) clock hours of training approved by the Department consisting of ~~school nursing, health education, testing and screening, counseling and guidance, and introduction to exceptional children~~ standards of practice, care coordination, leadership, quality improvement, and community/public health based off of the Framework for 21st Century School Nursing Practice.
- 4.2 An educator must also have met the following experience requirement:
- 4.2.1 Has completed a minimum of three (3) years of supervised clinical nursing experience.

5.0 Expiration

- 5.1 A Standard Certificate shall expire if the educator:
 - 5.1.1 Fails to maintain a current Registered Nurse license, recognized by the Delaware Board of Nursing; or
 - 5.1.2 Fails to maintain valid and current certification in cardiopulmonary resuscitation (CPR) and in the use of an automatic external defibrillator (AED), or
 - 5.1.3 Fails to complete ~~within eighteen (18) months by the end of the second school year after date~~ of hire, ninety (90) clock hours of training consisting of ~~school nursing, health education, testing and screening, counseling and guidance, and introduction to exceptional children~~ standards of practice, care coordination, leadership, quality improvement, and community/public health based off of the Framework for 21st Century School Nursing Practice.

6.0 Verification of Eligibility and Reporting

- 6.1 Educators holding a School Nurse certificate shall do the following:
 - 6.1.1 Notify the Department immediately if they fail to meet the qualifications as a School Nurse.
 - 6.1.2 Annually notify the Department and affirm their continued eligibility for certification and if requested, provide documentation verifying their continued eligibility.
 - 6.1.3 If employed in the public school system, provide documentation to their employer of their current credentials including a valid nursing license, and CPR and AED certification.
 - 6.1.4 If not employed in the public school system, provide documentation to the Department of their current credentials including a valid nursing license, and CPR and AED certification.
 - 6.2 Upon employment of a School Nurse, a district or charter school is responsible for verifying that the School Nurse continues to meet the requirements in subsections 4.1.1 through 4.1.3.
 - 6.2.1 The district or charter school must maintain documentation of the verification of initial credentials and maintain documentation of current credentials including a valid nursing license, and CPR and AED certification.
 - 6.3 Districts and charter schools shall report information to the Department when they receive information that would result in the expiration of a School Nurse Standard Certificate.
-

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCEStatutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**ORDER****Long-Term Care Eligibility; Spousal Impoverishment Undue Hardship****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Delaware Social Services Manual (DSSM) by adding a provision regarding long-term care eligibility, specifically, *to add language that allows the spousal impoverishment regulation to be waived in instances of undue hardship*. 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 May 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2016 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) by adding a provision regarding long-term care eligibility, specifically, *to add language that allows the spousal impoverishment regulation to be waived in instances of undue hardship*.

Statutory Authority

- §1924(a)(3)(b) of the Social Security Act, *Methodology and standards for determining and evaluating income and resources for institutionalized spouses*
- §1924(c)(3)(c) of the Social Security Act, *Assignment of support rights*
- 42 CFR 435.602(c), *Financial responsibility of relatives and other individuals*

Background

Section 303 of the Medicare Catastrophic Act contains provisions that significantly change the way in which income and resources of a couple are calculated when one spouse is institutionalized or likely to be institutionalized for continuous periods in a nursing facility, and who has a spouse residing in the community. The revisions are intended to prevent the spouse who remains in the community from becoming impoverished either before or after the institutionalized spouse becomes eligible for Medicaid.

Effective July 1, 1993, Delaware elected the option to apply the Spousal Impoverishment rules to persons who are likely to receive services under Section 1915(c) the Home and Community Based Waivers. All references to institutionalized spouses and continuous periods of institutionalization include spouses receiving Home and Community Based Waiver services in lieu of institutional services. Individuals receiving a combination of institutional and waiver services are subject to these rules.

Generally, the Bill counts income as Medicaid policy has always counted income (i.e., income owned by only one spouse is considered available solely to that spouse). One change is that income in both their names is divided evenly between the two spouses. The most drastic change occurs in the calculation of resources. Medicaid has always viewed the resources held solely by the non-institutionalized spouse as not available to the institutionalized spouse.

Under the Spousal Impoverishment provisions, all assets/resources held by either or both spouses are considered available equally to both spouses as of the beginning of the first continuous period of institutionalization (beginning on or after 9/30/89). The couple's house, car, and personal goods are excluded from countable resources.

Resource rules described in this section apply only to persons first institutionalized for continuous periods on or after September 30, 1989. Persons first institutionalized before that date are subject to prior Medicaid plan policies as long as they remain in an institution.

The spousal impoverishment regulations must be applied to any couple who is legally married unless the couple is separated and maintains two separate residences for at least 12 months prior to admission to a medical institution (hospital, nursing facility, etc.) AND the community spouse is uncooperative or his/her whereabouts are unknown. These rules apply regardless of State laws relating to community property or to the division of marital property. For example, resources listed in a prenuptial agreement are not excluded.

Summary of Proposal

Rationale and Justification

There are extreme circumstances in which the application of the spousal impoverishment regulations would deprive an individual of medical care such that his/her life would be endangered causing an undue hardship. An undue hardship also exists when application of the spousal impoverishment regulations would deprive the individual of food, clothing, shelter, or other necessities of life and there are no state facilities to care for the individual in the absence of Medicaid eligibility. Allowing for the spousal impoverishment provisions to be waived, when such undue hardships occur, will ensure that long-term care applicants are protected and may receive the services they require.

Purpose

To add language to the Delaware Social Services Manual (DSSM) that allows the spousal impoverishment regulations to be waived in instances of undue hardship, so as to provide additional protection for vulnerable long-term care applicants in extreme circumstances.

Summary of Proposed Regulation

If implemented as proposed, this regulation will accomplish the following, effective July 11, 2016:

Provide a provision that allows for the spousal impoverishment regulations to be waived in the event that implementing the regulations would cause an undue hardship on a long-term care applicant.

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 undue hardship provision. Comments were to be received by 4:30 p.m. on May 31, 2016.

Provider Manuals Update

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

Fiscal Impact Statement

There are currently undue hardship provisions in place for several sections of Long-Term Care (LTC) eligibility policy, such as DSSM 20350.11, DSSM 20400.12.1, DSSM 20400.12.2, and DSSM 20500.7. Undue hardship provisions are only used in very rare and exceptional circumstances when application of the related LTC eligibility policy would deprive the individual of food, clothing, shelter or other necessities of life AND there are no state facilities available to care for the individual in the absence of Medicaid eligibility. Therefore, no fiscal impact is anticipated as the result of adding undue hardship protection to an additional section of LTC eligibility policy.

Summary of Comments Received with Agency Response and Explanation of Changes

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

There is a federal minimum resource standard which is updated annually. In 2016, it is \$23,844. States can exceed the federal minimum. Delaware adopted a standard of \$25,000 in 1993.

Federal law, 42 U.S.C. 1396r-5(c)(3) directs states to disregard otherwise countable spousal resources if "the State determines that denial of eligibility would work an undue hardship." DMMA's current regulations implement this law.

First, DMMA should consider an increase in the \$25,000 resource cap adopted in 1993. Consistent with the attachment, \$25,000 in 1993 is equivalent to \$41,199 in 2016. If raised, there would be less need to consider a waiver.

Agency Response: DMMA thanks the Council for its comment. However DMMA has an Undue Hardship provision in place to protect against a finding of ineligibility for long-term care (LTC) as a result of the calculation of a couple's countable resources at DSSM 20950, which states the following:

An institutionalized spouse who (or whose spouse) has excess resources shall not be found ineligible per Section 1924 (c)(3)(C) of the Social Security Act where the state determines that denial of eligibility on the basis of having excess resources would work an undue hardship.

In addition, the Community Spouse Resource Allowance (CSRA) is the amount of resources equal to whichever is greater: \$25,000 OR ½ the value of the couple's combined countable resources as of the beginning of the first continuous period of institutionalization on or after 09/30/89, but no more than the current maximum resource allowance determined by Federal law. The current maximum resource allowance for 2016 is \$119,220.00. Therefore, \$25,000 is not the maximum amount of resources allowable for a couple applying for LTC.

This proposed change in LTC eligibility policy would exempt an applicant who is legally married from having spousal impoverishment regulations applied in his or her request for LTC services. Current policy requires that spousal impoverishment regulations be applied to all legally married couples unless the couple is separated and maintains two separate residences for at least 12 months prior to admission to a medical institution AND the community spouse is uncooperative or his/her whereabouts are unknown. This proposed change in eligibility policy provides additional protection for married individuals in unique situations, who do not meet the current exemptions to the application of spousal impoverishment regulations, and who would be unfairly penalized for the non-cooperation of a spouse.

There was no change made to the regulation as a result of this comment.

Second, the proposed standard is unduly limiting. Medical expenses can qualify for consideration in the "undue hardship" determination only if the individual would die without the medical care. CMS is more expansive, authorizing an "undue hardship" waiver if the person's health would be endangered. See, e.g, the attached CMS Deficit Reduction Act (DRA) summary and conforming Pennsylvania policy. Thus, if the loss of medical care would result in excessive pain; loss of a limb; partial paralysis; exacerbation of a diagnosed mental health condition (e.g. depression; schizophrenia); or other deterioration in health, the DMMA workers should be able to consider such effects. Moreover, it would be preferable to modify the third sentence as follows: "Without limitation, undue hardship also exists when application....life." There should be some recognition that genuine hardship may be presented by factors beyond a short list. For example, a blind individual with an aging seeing-eye dog may need funds for dog food and expensive veterinary care.

Agency Response: DMMA thanks the Council for its comment. However, DMMA respectfully disagrees with the statement that the undue hardship eligibility policy provisions are unduly limiting. DMMA believes that this proposed eligibility policy provides additional protections for married individuals in difficult situations. This policy provides additional protections to this population that did not previously exist under prior spousal impoverishment regulations. DMMA believes that this proposed change in eligibility policy will prevent this group of individuals from being determined ineligible for LTC services due to circumstances beyond their control.

There was no change made to the regulation as a result of this comment.

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 May 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) by adding a provision regarding long-term care eligibility, specifically, *to add language that allows the spousal impoverishment regulation to be waived in instances of undue hardship*, is adopted and shall be final effective July 11, 2016.

Rita M. Landgraf, Secretary, DHSS
June 16, 2016

**DMMA FINAL ORDER #16-017
NEW****20900.1 Undue Hardship**

Spousal Impoverishment rules may be waived if the application of the rules would cause an undue hardship. Undue hardship exists when application of the spousal impoverishment provisions would deprive the individual of medical care such that his/her life would be endangered. Undue hardship also exists when application of the spousal impoverishment provisions would deprive the individual of food, clothing, shelter or other necessities of life.

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

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

REGULATORY IMPLEMENTING ORDER

104 Privacy Policies For Commercial Online Sites, Services, and Applications

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Director of the Consumer Protection Unit of the Department of Justice intends to adopt 6 **DE Admin. Code** 104 Privacy Policies for Commercial Online Sites, Services, and Applications. This regulation is being adopted to set forth optional "safe harbor" language that operators may, but are not required to, use in their privacy policies that the Consumer Protection Unit has determined will comply with the disclosure requirements of 6 **Del.C.** §1205C(b), to declare that the Consumer Protection Unit will treat privacy policies which comply with the disclosure requirements of the California Online Privacy Protection Act (CalOPPA), Cal. Bus. & Prof. Code §§ 22575-22579, as also complying with the requirements of 6 **Del.C.** §1205C, and to declare that operators are not foreclosed from using other language and formats of their own choosing to comply with 6 **Del.C.** §1205C(b).

Notice of the proposed regulation was published in the January 2016 *Register of Regulations*. The notice stated that the Consumer Protection Unit would not hold a public hearing on the proposed regulation, and directed that any person who wished to submit suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulation must do so no later than 4:30 p.m. EST, Monday, February 2, 2016.

Timely written comments were received from two industry associations representing large companies operating in the internet and technology/communications/media/retail fields. Both commenters expressed their belief that the safe harbor language was too detailed, would be too burdensome, was inconsistent with California law, and urged that the proposed regulations be revised to make clear that generalized disclosures meet the requirements of 6 **Del.C.** §1205C(b). One of the commenters also criticized the proposed regulation creating a safe harbor only for privacy policies that comply with the disclosure requirements of the California Online Privacy Protection Act (CalOPPA), Cal. Bus. & Prof. Code §§ 22575-22579, and suggested that the proposed regulation should instead preemptively grant safe harbor status to other similar laws that might be enacted by other

jurisdictions at some point in the future.

II. FINDINGS OF FACT

The Director of the Consumer Protection Unit finds that it is appropriate to adopt 6 **DE Admin. Code** 104 Privacy Policies for Commercial Online Sites, Services, and Applications, in order to (1) provide operators of commercial sites, services, and applications with optional "safe harbor" language that they may, but are not required to, use in their privacy policies in order to be deemed by the Consumer Protection Unit to be in compliance with the disclosure requirements of 6 **Del.C.** §1205C(b); (2) declare that the Consumer Protection Unit will treat privacy policies which comply with the disclosure requirements of the California Online Privacy Protection Act (CalOPPA), Cal. Bus. & Prof. Code §§ 22575-22579, as also complying with the requirements of 6 **Del.C.** §1205C; and (3) declare that operators are not foreclosed from using other language and formats of their own choosing to comply with 6 **Del.C.** §1205C(b). The Director of the Consumer Protection Unit finds that the optional "safe harbor" language is consistent with the requirements of 6 **Del.C.** §1205C(b). The Director of the Consumer Protection Unit also finds that the "general disclosures" of the type urged by the commenters as being current good practice do not appear to be consistent with the requirements of 6 **Del.C.** §1205C(b) and also appear to be contrary to the best practices recommendations of the California Attorney General's Office, which, among other things, urges that privacy policies be "reasonably specific in describing the kind of personal information" collected by operators. The Director of the Consumer Protection Unit also finds that it is unnecessary and inappropriate to grant preemptive safe harbor status to the privacy policy laws of other states before such laws have actually been enacted and their specific language is known and can be compared to the requirements of 6 **Del.C.** §1205C(b). Finally, the Director of the Consumer Protection Unit finds that it is appropriate to make minor, non-substantive changes to the text of the proposed regulation to promote greater consistency of terminology in the optional "safe harbor" language.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Director of the Consumer Protection Unit concludes that it is appropriate to adopt 6 **DE Admin. Code** 104 Privacy Policies for Commercial Online Sites, Services, and Applications. Therefore, pursuant to 29 **Del.C.** §2521, 6 **DE Admin. Code** 104 Privacy Policies for Commercial Online Sites, Services, and Applications, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 6 **DE Admin. Code** 104 Privacy Policies for Commercial Online Sites, Services, and Applications adopted hereby shall be in the form attached hereto as Exhibit A, and said regulation shall be cited as 6 **DE Admin. Code** 104 Privacy Policies for Commercial Online Sites, Services, and Applications in the Administrative Code of Regulations for the Consumer Protection Unit of the Department of Justice.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Director of the Consumer Protection Unit pursuant to 29 **Del.C.** §2521 on May 27, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED, this 27th day of May, 2016.

Christian Douglas Wright, Director
Consumer Protection Unit, Department of Justice

Approved this 27th day of May, 2016.

104 Privacy Policies For Commercial Online Sites, Services, and Applications (Break in Continuity of Sections)

2.0 Effective Date

The effective date of this regulation is ~~Monday, March 14, 2016~~ Friday, July 15, 2016].
(Break in Continuity of Sections)

4.0 Optional Safe Harbor Language for Privacy Policies

(Break in Continuity Within Section)

4.2 Identification of the Categories of Personally Identifiable Information Collected and the Third-Party Persons to Whom Such Information May Be Disclosed

(Break in Continuity Within Section)

4.2.2 An operator shall be deemed to have identified “the categories of personally identifiable information” required by 6 Del.C. §1205C(b)(1), when the operator provides the following disclosures in its privacy policy, if the operator collects, stores, or uses the specified kind of personal information:

Collecting Personally Identifiable Information

We may collect, store, and use the following kinds of personal information:

- Information you provide to us when you register with our [site/service/application], including your ~~[[specify describe] the personal information provided by the user upon registration that you collect, store, and use—examples might include first and last names, e-mail address, physical address, telephone number, social security number]~~.
- Information you provide when completing a profile on our [site/service/application], including your ~~[[specify describe] the personal information provided by the user upon registration that you collect, store, and use—examples might include first and last names, gender, age, date of birth, education status, employment status, relationship status, hobbies and other interests]~~.
- Information you provide when you subscribe to a newsletter or other periodic report or notification that we provide, including ~~[[specify describe] the personal information provided by the user when they subscribe that you collect, store, and use—such as first and last names and an email address]~~.
- Information about your device or computer, including [your IP address, geolocation, browser type, browser version, device type, operating system, referring [site/service/application]].
- Information about your visits to and use of the [site/service/application], including how you use the [site/service/application], such as ~~[[specify describe] the type of information—examples might include the timing, length, frequency, and pattern of use, and the pages, screens, or other displays of information looked at by the user]~~.
- Information relating to any purchases you make of our [goods/services] or any other transactions that you enter into through our [site/service/application], including ~~[[specify describe] the information—examples might include first and last names, e-mail address, physical address, telephone number, and payment card information]~~.
- Information that you post to our [site/service/application] for publication on the Internet, including ~~[[specify describe] the information—examples might include first and last names, user names, profile pictures, and the actual content of what a user posts]~~.
- Information contained in or relating to any communication that you send to us or send through our [site/service/application], including ~~[[specify describe] the information—examples might include the content of the communication and metadata associated with it]~~.
- [Identify and describe any other any other personal information that [is] collected by the site, service, or application, including when or how the operator collects it.]

4.2.3 An operator shall be deemed to have identified “the categories of third-party persons” required by 6 Del.C. §1205C(b)(1), when the operator provides the following disclosures in its privacy policy, if

FINAL REGULATIONS

the operator shares a user's personally identifiable information with the specified third-party persons:

Disclosing Personally Identifiable Information With Third Parties

We may disclose personally identifiable information we collect from you to the following third parties, for the purposes specified:

- **Agents.** *[Describe **[any the types of]** agents to whom the operator may disclose the information, why the operator may disclose it to them, and whether **[the those]** agents can retain, store, or use the information for any other purposes—examples might include an outside shipping company used to fulfill and deliver orders, or a credit card company that processes sales transactions].*
- **Service Providers.** We use third parties to provide *[[**specify describe**] the services provided] on our [site/service/application]. If [or When] you sign up for [specified services], we will share [[**specify describe**] the information that will be shared] to the extent necessary in order for the third party to provide that service. [[**Specify State**] whether the service providers can retain, store, or use the information for any other purposes].*
- **Affiliates.** We may disclose your personal information to our affiliates, including *[[**describe the types of affiliates, such as**] the operator's employees, officers, and directors, the operator's subsidiaries, the operator's ultimate parent company, and any other subsidiary of the operator's ultimate parent company, as appropriate], in order to [[**specify describe**] why the operator might disclose the information to affiliates, and whether the affiliates can retain, store, or use the information for any other purposes].*
- **Other Third Parties.** We may disclose to *[[**identify describe**] any other [types of] third parties to whom the operator may disclose a user's personal information] your [[**identify describe**] what information is disclosed], in order to [[**specify describe**] why the operator may disclose the information to these other [types of] third parties, and whether these other third parties can retain, store, or use the information for any other purposes].*

*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 578 (19 DE Reg. 578). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

104 Privacy Policies For Commercial Online Sites, Services, and Applications

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

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

7 DE Admin. Code 3774

Secretary's Order No.: 2016-F-0026

Date of Issuance: June 10, 2016

Effective Date of the Amendment: July 11, 2016

3774 Oyster Minimum Size Limits

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

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 **DE Admin. Code** 3774: Oyster Minimum Size Limit, promulgated pursuant to authority granted in 7 **Del.C.** §§1902(a) and 2106(d). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2016-01 dated March 8, 2016. The Department published its initial proposed regulation Amendments in the April 1, 2016 *Delaware Register of Regulations*. The Department then held a public hearing on April 21, 2016. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through May 6, 2016.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to 7 **DE Admin. Code** 3774: Oyster Minimum Size Limit ("Amendments"). Delaware's Advisory Council on Shellfisheries requested the Department's Division of Fish and Wildlife ("Division") to consider this proposed regulatory action to allow Delaware's oyster harvesters to possess *de minimis* quantities of undersized oysters (less than 2.75 inches between the two most distant points on the edges of said oyster's shell, "undersized") that are inherent to the harvesting process.

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

The Department's proposed regulatory action at this time would allow up to five percent (by number) undersized oysters per landed bushel. Attached spat or attached small oysters that cannot be removed from a market oyster without destroying either oyster could be retained, and would not count toward the five percent allowance. It should be noted that the proposed regulatory amendment is unlikely to increase costs or place additional burdens on the affected public. The proposed amendment provides a reasonable accommodation to harvesters, and establishes objective and enforceable criteria. Similar allowances are in place for conch (whelk), blue crab, and hard clam. It should also be noted that the proposed amendment is not expected to have detectable impacts to Delaware's oyster resource.

The above-referenced proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on April 21, 2016. Members of the public attended the aforementioned public hearing, and comment was received by the Department regarding these proposed Amendments. Of note is the fact that all comment received by the Department regarding this matter was positive, and voiced strong support of these proposed Amendments while thanking the Department for undertaking this regulatory action at this time. All proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated June 2, 2016 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 3774: Oyster Minimum Size Limit, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will enable the Department to allow Delaware oyster harvesters to possess up to five percent (by number) undersized oysters (i.e., less than 2.75 inches between the two most distant points on the edges of said oyster's shell) per landed bushel. Additionally, attached spat or attached small oysters (i.e., less than one inch) that cannot be removed from a market oyster (i.e., greater than 2.75 inches) without destroying either oyster may be retained, without counting

the same toward the five percent allowance. As noted previously, this proposed promulgation provides a reasonable accommodation to harvesters, and establishes objective and enforceable criteria. Additionally, the proposed regulatory amendments are unlikely to increase costs or place additional burdens on the affected public, and are not expected to have detectable impacts to Delaware's oyster resource.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** 3774, Oyster Minimum Size Limits, pursuant to 7 **Del.C.** §§1902(a) and 2106(d);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on April 21, 2016, and held the record open through close of business on May 6, 2016, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record, and the recommended proposed regulatory Amendments, as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. The adoption of these proposed regulatory Amendments will enable the Department to (1) allow Delaware oyster harvesters to possess up to five percent (by number) undersized oysters (i.e., less than 2.75 inches between the two most distant points on the edges of said oyster's shell) per landed bushel; (2) allow attached spat or attached small oysters (i.e., less than one inch) that cannot be removed from a market oyster (i.e., greater than 2.75 inches) without destroying either oyster to be retained, without counting the same toward the five percent allowance; and (3) provide a reasonable accommodation to oyster harvesters, and establish objective and enforceable criteria, with no expectation of detectable impacts to Delaware's oyster resource;
6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "B1" regarding same, as this proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Moreover, the Department believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
7. The Department's proposed regulatory Amendments to 7 **DE Admin. Code** 3774, Oyster Minimum Size Limits, as published in the April 1, 2016 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 3774, Oyster Minimum Size Limits, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

3765 Oysters
(Break in Continuity of Sections)

3774 Oyster Minimum Size Limit
(Penalty Section 7 **Del.C.** §1912)

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

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

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

ORDER

5500 Bail Enforcement Agents

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Bail Enforcement Agents ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to Rule 2.0 - Badges, Patches and Advertisements, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to require all BEA's to wear a ballistic vest and identification on the outermost garment.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will all BEA's to wear a ballistic vest and identification on the outermost garment.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to all BEA's to wear a ballistic vest and identification on the outermost garment.

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §5503 et seq. and, in particular, 24 **Del.C.** §5503(d)(2).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §5503 et. seq.

FINAL REGULATIONS

9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §5503(d)(2) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, *Strauss v. Silverman*, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be July 11, 2016.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 26th day of May, 2016.

Major Melissa A. Zebley, Chairman
 John Yeomans, Director
 Rebecca L. Byrd, Esquire
 Ms. Robin David

Mr. Michael J. Dellose
 Mr. R. Dale Hamilton
 Mr. Harry O. Jennings
 Mr. Jack McGhee, II

***Please note that no changes were made to the regulation as originally proposed and published in the April 2016 issue of the *Register* at page 912 (19 DE Reg. 912). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5500 Bail Enforcement Agents

**DEPARTMENT OF STATE
 DIVISION OF PROFESSIONAL REGULATION
 1795 MIDWIFERY ADVISORY COUNCIL**

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

ORDER

1795 Midwifery Advisory Council

The Midwifery Advisory Council, pursuant to 24 **Del.C.** §1799HH(c), proposed to adopt regulations governing the practice of midwifery in the State of Delaware. As a newly created Council, regulating a profession that first required licensure by virtue of legislation enacted June 9, 2015, these regulations are comprehensive, and all newly created.

Summary of the Evidence and Information Submitted

Following publication in the Delaware *Register of Regulations* on May 1, 2016 a public hearing was held on May 25, 2016. Written comment periods were held open for thirty days following the initial publication on May 1, 2016, and an additional fifteen days following the May 25, 2016 public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibit 1 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*.

During the public hearing, the Council received public comment from Ms. Katherine Kline, home birth mom and advocate. Ms. Kline stated that she recognizes that the regulations aren't perfect and a lot of work needs to be done, but she believes that the structure of the MAC is such that this can be adjusted going forward. Now, the most important thing is getting the mothers who have been patiently waiting getting the care they desperately want. When Ms. Kline was first involved in the midwifery bill, her son Joey was a year old and he is now three. During the time since the bill was first being worked on, she became pregnant again and had to travel to Pennsylvania to birth at home with a midwife. She is begging for these regulations to go through as fast as possible.

The Council also received public comment from Ms. Allie Heiger, a registered nurse and home birth advocate

in the state of Delaware. After reviewing the regulations, Ms. Heiger believes that after all of this time, we really need to move forward. She likes how the rules and regulations have ended up. She is happy with the formulary that she reviewed and likes the access that it provides midwives to safely address mothers in the field. Several states do not have a formulary and the states that do have formularies consistent with what Delaware is proposing. Ms. Heiger would really like to move forward with having a baby in the state, and she is holding off until she can do so without having to ask a midwife to commit a felony. Ms. Heiger thanked the Committee for all of its hard work on these regulations.

During the written public comment period, a letter dated June 3, 2016 was received from Cara A. Kinzelman, PhD, Director, State Government Affairs for the American College of Nurse-Midwives. This comment was labeled Board Exhibit 2. Ms. Kinzelman indicated that the CM credential is equivalent to the CNM credential, and that the CM credential has a scope of practice that includes a full range of primary health care services for women from adolescence beyond menopause, including prescribing controlled substances and other medications. CNMs and CMs provide care in diverse settings such as ambulatory care clinics, private offices, community and public health systems, homes, hospitals and birth centers. CPMs, by contrast, provide care to normal, low-risk populations in the out-of-hospital setting, and have a more limited scope of practice than CNMs and CMs. Ms. Kinzelman expressed that the American College of Nurse-Midwives is concerned that the current regulations conflate the CM credential with the CPM credential, and requests that the MAC amend the rules to replace each occurrence of “midwife” with the more specific term “Certified Professional Midwife” and defer consideration of the CM role at this time, promulgating separate rules governing the CM credential to avoid conflation of the two distinct midwifery roles. If deferment is not possible, Ms. Kinzelman requests that the MAC conform its regulations to the ACNM national standards, including granting CMs full prescriptive authority, up to and including, the ability to prescribe all Schedule II controlled substances and incorporating the ACNM standard-setting document, *Standards for the Practice of Midwifery*, into the regulations.

The MAC received a letter from Ms. Karen Jefferson, chair of the Committee for the Advancement of Midwifery Practice of the American College of Nurse-Midwives. Ms. Jefferson’s letter was marked Board Exhibit 3. Ms. Jefferson indicates that she is a practicing CM from New York and she has had admitting privileges at five different hospitals in that state. Ms. Jefferson’s letter then mirrored Ms. Kinzelman’s, Board Exhibit 2.

The MAC received a letter from Trinisha C. Williams, Membership Chair of the New York State Association of Licensed Midwives, an association of the American College of Nurse-Midwives. Ms. Williams’ letter was marked Board Exhibit 4. Ms. Williams indicates that she has been a practicing CM in New York for 13 years, and that she has admitting privileges in three hospitals in that state. Ms. Williams indicates she is interested in practicing midwifery in Delaware to be closer to her extended family. Ms. Williams’ letter then mirrored Ms. Kinzelman’s, Board Exhibit 2.

The MAC received a letter dated June 4, 2016 from Ms. Dana Perlman, Program Director of the Midwifery Institute at Philadelphia University. Ms. Perlman’s letter was marked Board Exhibit 5. Ms. Perlman indicated that CMs attend the same accredited graduate programs, earn the same degree, and take the identical national certification exam by the AMCB as CNMs. The program prerequisites are followed by courses in basic health skills, orientation to varied environments of health care and health care ethics, and course work relevant to midwifery including medical, surgical, community, pediatric, geriatric, and mental health issues. All students complete clinical training under the supervision of a CNM or CM in the full scope of midwifery care as defined by the ACNM. The remainder of Ms. Perlman’s letter mirror’s Ms. Kinzelman’s, Board Exhibit 2.

The MAC received a letter dated June 7, 2016 from Jill Panunto, a Delaware resident, mother of two, small business owner, doula, and birth advocate. Ms. Panunto’s letter was marked Board Exhibit 6. Ms. Panunto indicated her support for the regulations and asked for their swift adoption.

The MAC received a letter from Ms. Marian Seliquini, a Certified Midwife practicing in New York state. Ms. Seliquini’s letter was marked Board Exhibit 7. Ms. Seliquini indicated her support for full recognition of the established scope of practice of the Certified Midwife. Ms. Seliquini stated she provides full-scope ObGyn care to patients from early adolescence through menopause, consulting and collaborating with physicians where appropriate. She will soon be attending training to perform colposcopies, expanding her scope of practice. Ms. Seliquini has privileges at St. Luke’s Cornwall hospital and prescribing privileges, including controlled substances. Ms. Seliquini concluded by saying she would love to be able to include Delaware in her future employment searches.

The final letter the MAC received was from Ms. Jennifer Barraclough, a RN who works in the state of New Jersey. Ms. Barraclough’s letter was marked as Board Exhibit 8. Ms. Barraclough indicated that she loved being a

doula and decided to continue on this path to become a midwife. However, she did not have a desire to pursue a nursing degree. She excelled in her CM program, but was saddened to learn that CMs could not obtain hospital privileges in the state of New Jersey. She was then forced to obtain her RN, spending thousands of dollars on a degree she did not want. Ms. Barraclough closed her letter by imploring the MAC to reconsider regulating CMs differently than CNMs.

In addition to the correspondence, the MAC received specific comments to its proposed regulations, sent on behalf of the ACNM, that appear to have been drafted by Ms. Kinzelman and Ms. Perlman. These regulation-specific comments were marked Board Exhibit 9. The changes came with a cover letter, urging the MAC to not limit the prescriptive authority of CMs equivalent to CPMs and instead providing CMs prescriptive authority equal to that of CNMs.

Summary of the Findings of Fact

As a newly created council, the Midwifery Advisory Council is charged with the responsibility of creating regulations: 24 **Del.C.** §1799HH(c). Beginning in September 2015, the MAC met on a monthly basis, formulating regulations governing the practice of midwifery in the state of Delaware. In so doing, the MAC conducted an in-depth review of its statutory mandates, reviewed the governance of midwifery in other states to determine what has and has not worked, reviewed national association guidelines, sought and received input from the Board of Medical Licensure and Discipline, and drew upon its collective expertise in the practice to create the regulations published as proposed on May 1, 2016.

The MAC recognizes that changes to the regulations may need to be made once they are put into operation. However, the MAC is cognizant of the public comments received that urge the swift adoption of these regulation. See comments of Ms. Panunto, Ms. Kline, and Ms. Heiger. Moreover, the MAC recognizes that the practice of midwifery is completely unregulated until such time as these regulations are adopted and applications for licensure can be accepted.

With regard to the comments of Ms. Kinzelman, Ms. Jefferson, Ms. Williams, Ms. Perlman, Ms. Seliquini, and Ms. Barraclough, the MAC understands the concern expressed that, in the opinion of the commenters, the regulations limit what should be the scope of practice of CMs. For example, public comments posited that CMs should be permitted to practice in hospital or birthing center settings. The MAC regulations, however, do not set forth the standards for hospitals to determine whether or not to grant privileges. Further, the regulations do not preclude a CM from practicing in a hospital or birthing center setting. Indeed, aside from specific regulations governing the practice of midwifery in a home birth setting, the regulations are completely silent as to practice loci. A CM practicing in a hospital or birthing center will need privileges from that location, and it is completely within the discretion of those providers to grant or deny those privileges.

Board Exhibit 9, the specific language suggested by the ACNM for inclusion in the MAC regulations overwhelmingly suggests non-substantive changes to the regulations, suggesting new language covering topics already covered. The suggested additions to the ethical mandates (2.0) and record keeping provisions (3.0) provide only new language for regulations already provided. The addition of these regulations would be the undesirable insertion of mere surplusage and are therefore rejected. The MAC further rejects the suggestion of adding "3.9 Certified midwifery practice may be expanded beyond the ACNM core competencies to incorporate new procedures that improve care for women and their families" *et seq.* as a regulation may not, as this proposed regulation does, exceed the scope of the enabling statute.

These commenters also maintain that blanket prescriptive authority for CMs should be included in the regulations, and the prescriptive formulary set forth in the regulations unduly limits CMs, whose prescriptive authority should mirror that of Certified Nurse Midwives. Likewise, proposed regulation addition 3.6.2 contemplates CM prescribing for "controlled substances categories II – V." Delaware's limited prescriptive authority for CMs, however, is consistent with the overwhelming majority of other states that regulate the practice of midwifery. There is no legislative history to support affording a new license type, such as CM, full and total prescriptive authority, to include controlled substances. In fact, the MAC recognizes that during the past legislative session, the General Assembly amended Title 24, Chapter 19 with regard to the practice of Advance Practice Nurses. Previously, Advance Practice Nurses were required to apply for full prescriptive authority. As amended, Delaware law now affords full prescriptive authority to Advance Practice Nurses upon the granting of licensure; however, all newly licensed APRNs must first work under a collaborative agreement with a physician or podiatrist for at least two years and 4,000 hours. The full, independent prescriptive authority sought by the CMs would be unprecedented in the

state and would be greater than that currently afforded CNMs.

Additionally, the MAC is charged with the licensure and regulation of non-nurse midwifery. Practice limitations have been imposed on both CMs and CPMs as a result of the MAC's enabling statute as well as the Board of Medical Licensure and Discipline. It is the hope of the Council that, over time and with the successful integration of regulated midwifery practitioners into the healthcare system as a whole, the general assembly may be convinced to loosen some of these restrictions and broaden the scope of practice for all midwives.

Finally, the MAC recognizes the commenters' suggestion that regulations specifically relating to CMs may still be necessary. In order to effectuate such a scheme without unduly delaying the implementation of regulations *in toto* the MAC plans to meet with representatives of the ACNM in the upcoming months to address the specific concerns of that organization and its membership and develop additional regulations specifically pertaining to CMs for submission for approval from the Board of Medical Licensure and Discipline.

Decision of the Board

Having found that the proposed regulations are necessary as outlined herein, the Council finds that the regulations shall be adopted as final in the form as proposed. These regulations will become effective ten days following publication of this order in the Delaware *Register of Regulations* on July 1, 2016.

IT IS SO ORDERED this 15th day of June, 2016 by the Midwifery Advisory Council.

Philip Shlossman, M.D.

Susan DiNatale

Shannon Burdeshaw

Pat Gallagher

***Please note that no changes were made to the regulation as originally proposed and published in the May 2016 issue of the *Register* at page 1001 (19 DE Reg. 1001). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1795 Midwifery Advisory Council

DIVISION OF PROFESSIONAL REGULATION 2930 COUNCIL ON REAL ESTATE APPRAISERS

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))
24 **DE Admin. Code** 2930

ORDER

2930 Council on Real Estate Appraisers

On January 1, 2016 and again on March 1, 2016 the Delaware Council on Real Estate Appraisers published proposed changes to its regulations in the Delaware Register of Regulations, Volume 19, Issues 7 and 9. The notices indicated that written comments would be accepted by the Council, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 19, 2016 at a regularly scheduled meeting of the Council on Real Estate Appraisers to receive verbal comments regarding the Council's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

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

FINAL REGULATIONS

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Council with comments on the proposed amendments to the Council's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Council during the written public comment periods.
3. Pursuant to 24 **Del.C.** §4006(a)(1) the Council has the statutory authority to promulgate rules and regulations to implement or clarify specific statutory sections of its statute.
4. Having reviewed no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §4006(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on January 1, 2016. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 17th day of May, 2016.

Lynn Baker, CRRPA, Chairperson

Douglas Nickel, CGRPA, Vice-Chairperson

Patricia Ennis, Public Member

Kevin Gillis, Banking Member

Mark Rainford, Public Member

Christopher Schneider, CRRPA

Denise Stokes, Public Member

Georgina Trietley, CGRPA (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 592 (19 DE Reg. 592). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2930 Council on Real Estate Appraisers

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

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

REGULATORY IMPLEMENTING ORDER

2289 Transportation Network Companies

1. Summary of the Evidence and Information Submitted

The Department of Transportation, Division of Motor Vehicles, sought to establish regulations regarding Transportation Network Companies.

Notice for public comment was properly noticed in 19 DE Reg. 731, February 1, 2016.

The Department received comments from the public regarding the proposed regulations. Raiser, Inc. (Raiser) submitted multiple requests for revisions. Raiser's first request was to stay rulemaking until the Delaware General Assembly had an opportunity to consider laws governing the Transportation Network Companies (TNC). Adoption of formal regulations will have no impact the General Assembly's actions. In the alternative, Raiser proposed changes to the proposed regulations.

Regulation 4.1.7 of the regulations requires the TNC to advise TNC Drivers of the requirement to obtain a Delaware Business License and that there may be a requirement for the TNC Driver to obtain a local business license. Raiser feels that notifying potential TNC Drivers that a license may be required could discourage them from participating as a TNC Driver. The Department does not believe that this requirement places an undue burden on the TNC or the TNC Driver and will not change the proposed regulation.

Raiser suggests that the requirement in Regulation 5.5.2.1 to carrier proof of a vehicle safety inspection was creating an unnecessary barrier for drivers to become a TNC Driver. Any vehicle registered in the State of Delaware would automatically have this proof via their vehicle registration. Regulation 5.5.2.1 requires that vehicles not registered in Delaware have "A copy of a TNC Driver's personal vehicle safety inspection shall be kept in the vehicle at all times." Therefore, this requirement is not considered to be an unnecessary barrier. The proposed regulation will not be changed.

Regulation 6.5 states "Each TNC must file its insurance policies under seal with the Department as part of applying for a permit. The permit for the TNC will automatically expire upon expiration of the insurance policy, unless and until the TNC provides an updated insurance policy and applies to renew the permit." Raiser requested that the permit date be tied to a specific date each year and not linked to the expiration date of insurance. Regulation 6.5 does not link the two dates, but states that the permit can be revoked if the Transportation Network does not supply proof of the required insurance. Therefore, the proposed regulation will not be changed.

Raiser requested an amendment of the Insurance section regarding a TNC Driver's ability to obtain "TNC" specific insurance should be amended to clarify that the TNC Driver could purchase already-existing commercial automobile insurance products would be sufficient. As this is not a clarification, but a change to the requirements without a rationale that shows the benefit to adding such a change, the proposed regulation will not be changed.

Raiser questions the need in Regulation 6.7.3 to provide uninsured and underinsured motorist coverage since it would run counter to existing requirements under Delaware law. Instead they suggest providing personal injury protection benefits during the provision of TNC Services. At this time, the Division does not believe this does conflict with existing requirements; therefore, the proposed regulation will not be changed.

Regulation 6.5 provides that the "TNC must file its insurance policies under seal with the Department". Raiser requested that the TNC be allowed to redact the premium information from the document as it is proprietary and highly confidential. As the documents are being submitted under seal, pursuant to Regulation 8.3 release of that information is protected and only released with the TNC's written permission. Therefore, the proposed regulation will not be changed.

Regulation 6.8.2 requires TNC Drivers to report all accidents to both the TNC and the Division. Raiser is requesting that TNC Drivers report their accidents to the TNC and only report accidents involving fatalities to the Division. In order for the Division to properly monitor the safety of TNC Vehicles, no changes will be made to this requirement.

Raiser requested a revision to the definition of "Digital Network" in Regulation 3.0 be changed from "any online-enabled application, software, website or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers" to "online-enabled technology application service, website, or system", removing the word "software". "Software" is just one means of Digital Network. It will remain in the definition; therefore, the proposed regulation will not be changed.

Raiser requested a revision to the definition of "Permit" in Regulation 3.0 to clarify that the permit authorizes TNC Services as opposed to operation of the Digital Network. Per the definition of "Digital Network" in these regulations, it is the key to providing TNC services; therefore, it is the most appropriate tool item to regulate. As such, the request is rejected. Raiser additionally requested a modification of Regulation 9.0 to reflect the proposed changes in the definition of permit. The proposed regulation will not be changed.

Raiser requested the term "for-hire" be removed from the definition of "Transportation Network Company (TNC) Driver" in Regulation 3.0 along with the reference to displaying an emblem or logo of the TNC. TNC Drivers are being hired to provide services and the display of the logo helps customers and regulators identify the vehicle as a TNC Vehicle. In addition, Raiser requested that the reference to "employees or independent contractors" be stricken. The regulations are to cover any arrangement between TNC Drivers and TNC as to the TNC Driver's status. Therefore, the proposed regulation will not be changed.

Raiser requested that Regulation 4.1.3 be revised to specify that any TNC operating in Delaware pursuant to an MOU with the Department be able to continue operating until the Department creates a permit process and sets deadlines. This is not necessary as this is the purpose of the MOU with TNC. Therefore, the proposed regulation will not be changed.

Raiser asked that Regulation 4.1.11 be revised to be either the fare collection method or fare prior to a rider entering a TNC Vehicle. A flat fare is a method of calculating a fare; therefore, the proposed regulation will not be changed.

Raiser asked that Regulation 5.1 be amended to allow for the driving history report be obtained and reviewed by a third party on the TNC's behalf. The regulations don't state how or who gathers this information, but it is

ultimately the responsibility of the TNC to ensure that the TNC Drivers pass the background check. The proposed regulation will not be changed.

Raiser requested that Regulation 5.2.2 and 5.3.1 be revised to refer to the U.S. Department of Justice National Sex Offender Public Website instead of the National Sex Offender Registry. This requested change is accepted as the "U.S. Department of Justice National Sex Offender Public Website" is the updated name for the "National Sex Offender Registry". This change will be made in the final form of the regulation.

Raiser requested that Regulation 5.3.2.4 that the three year check of TNC Driver's license be adjusted from 20 mph over the posted speed limit to 100 mph. Changing the requirement to a violation over 100 mph would not sufficiently identify potential aggressive drivers and would put customers at a greater risk. The proposed regulation will not be changed.

Raiser requested that Regulation 5.3.4.2 be amended to specify that a crime against a child be changed to a felony crime against a child. Often time felony charges are reduced to misdemeanor charges in order for a plea bargain. Changing this language would put customers at greater risk; therefore, the proposed regulation will not be changed.

Raiser requested Regulation 5.10 the transportation of hazardous items should be revised to clarify that it applies to a vehicle during the performance of TNC Services. As the performance of TNC Services is what is being regulated, there is no need for this change. As Regulation 8.3 requires the TNC's express written permission to release to any requester including another governmental entity, the TNC has the opportunity to conditions its permission. Therefore, the proposed regulation will not be changed.

Raiser requested that Regulation 7.1 use the defined term of "Personal Vehicle" as opposed the less precise reference of "personal vehicle". The rule is addressing areas where personal automobiles are not permitted and is the appropriate term. The proposed regulation will not be changed.

Raiser requested that a new regulation be added to specify TNC confidential information share with other governmental agencies must be subject to the same confidential treatment by those other governmental agencies. As Regulation 8.3 requires the TNC's express written permission to release to any requester including another governmental entity, the TNC has the opportunity to add conditions its permission. A new regulation will not be added.

Raiser requested that record retention under Regulation 8.6 be changed from four years to two years. As a four-year retention schedule would provide better assurances that records are available to investigate claims that are not made in a timely basis, including auto claims that have a two-year window to be filed, the proposed regulation will not be changed.

Raiser requested that Regulation 9.0 be amended to specify that revocation of the TNC Permit only occur if the TNC engages in a pattern of violations that demonstrates an intentional disregard to public safety. As the regulations grant an opportunity for a hearing prior to issuing of fines to revoking the permit, there will be an analysis of violations are of such an egregious nature that the permit may need to be revoked, the proposed regulation will not be changed.

In its own review, the agency staff did identify five non-substantive changes in the proposed regulation. In Regulation 5.9, "driver provide" was changed to "driver may provide". In Regulation 5.10, "In any personal vehicle used for providing TNC services" was changed to "in any personal vehicle used during the provision of TNC services". In Regulation 6.7, "Digital Network or" is added before "Software Application". In Regulation 8.3 the words "and proprietary" are added following the word "confidential" to read "Any records or information that the TNC discloses to the Division pursuant to this regulation are deemed to be confidential and proprietary". In Regulation 8.6, the word "division" was changed to "Division".

2. Findings of Fact

The Secretary finds that it is appropriate to adopt the Transportation Network Companies regulations as proposed and slightly amended as discussed above, to incorporate appropriate changes to the Transportation Network Companies regulations.

3. Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the Transportation Network Companies regulations as described herein.

4. Text and Citation

The text of 2 DE Admin. Code 2289 shall be in the form attached as Exhibit "A".

5. Effective Date of Order

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

IT IS SO ORDERED THIS 15th DAY OF JUNE 2016.

Jennifer L. Cohan
Secretary
Department of Transportation

2289 Transportation Network Companies *(Break in Continuity of Sections)*

5.0 Rider and TNC Vehicle Safety

(Break in Continuity Within Section)

5.2 Prior to approving a TNC driver to provide TNC services, a TNC must conduct, or have a third party conduct, a local, state and national criminal background check for each prospective TNC driver that includes:

5.2.1 Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation (primary source search); and

5.2.2 ~~[National Sex Offender Registry database U.S. Department of Justice National Sex Offender Public Website].~~

5.3 A TNC must disqualify any prospective TNC driver whose background check or driving history reveals that:

5.3.1 The individual is a match in the ~~[National Sex Offender Registry database U.S. Department of Justice National Sex Offender Public Website].~~

(Break in Continuity Within Section)

5.9 No TNC driver [may] provide TNC services while under the influence of intoxicating liquor or narcotic or habit producing drugs, use drugs or drink while on duty any alcoholic liquor or beverage, nor shall he/she knowingly be permitted to do so.

5.10 No TNC or TNC driver shall knowingly permit the transportation of high explosives, acids, inflammable liquids, loaded guns or any other article which will endanger life or limb, in any personal vehicle used ~~[for providing during the provision of]~~ TNC services. This provision shall not apply to firearms carried by police officers or by members of the armed forces while on duty or while en route to or from duty.

5.11 No TNC or TNC driver shall permit the transportation of express or parcel freight to such an extent as will interfere with the safety or reasonable comfort of riders.

6.0 Insurance Requirements

(Break in Continuity Within Section)

6.7 TNC insurance requirements are defined by three service periods:

Period 1: [Digital network or] Software Application open - waiting for a match.

Period 2: Match accepted - but passenger not yet picked up (i.e. driver is on his/her way to pick up the passenger).

Period 3: Passenger in the vehicle and until the passenger exits the vehicle.

(Break in Continuity of Sections)

8.0 Audit and Compliance*(Break in Continuity Within Section)*

- 8.3 Any records or information that the TNC discloses to the Division pursuant to this regulation are deemed to be confidential [and proprietary], regardless of whether the records or information are marked as such, and shall not be disclosed by the Division to a third party or another governmental entity without the TNC's express written permission, unless required to be disclosed by applicable law or court order.

(Break in Continuity Within Section)

- 8.6 A TNC shall keep and make available to the ~~division~~ Division], when required, records in accordance with this regulation for a period of at least four years.

***Please note that no additional changes were made to the regulation as originally proposed and published in the February 2016 issue of the *Register* at page 731 (19 DE Reg. 731). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

2289 Transportation Network Companies

**EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
STATEWIDE BENEFITS OFFICE**

Statutory Authority: 29 Delaware Code, Section 5256 (29 Del.C. §5256)
19 DE Admin. Code 2007

ORDER

**2007 Disability Insurance Program Rules and Regulations
Effective July 1, 2016**

The Statewide Benefits Office is requesting to have the amendments, revisions and/or changes to the Disability Insurance Program (DIP) Rules & Regulations approved by the State Employee Benefits Committee (SEBC) during their public meeting on Friday, June 10, 2016 at the Tatnall Building in Dover, Delaware published in the July 2016 edition of the *Register of Regulations*. Epilogue language referenced below from Section 23 of House Substitute No. 1 for House Bill No. 225 (148th General Assembly) allows the SEBC to amend the Disability Insurance Program (DIP) Rules & Regulations.

"Section 23. Notwithstanding the provisions of the Administrative Procedures Act, 29 Del.C. c. 101 or any other laws to the contrary, the State Employee Benefits Committee is authorized to amend the rules for Employees Eligible to Participate in the State Group Health Insurance Program and the State Disability Insurance Program by approving such amendments and causing the amendments to be published in the *Register of Regulations* with such amendments to be effective as of the date of such publication unless otherwise specified by the State Employee Benefits Committee."

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

2007 Disability Insurance Program Rules and Regulations

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE****Medical Care and Other Types of Remedial Care - Behavioral Interventions to Treat Autism Spectrum Disorder**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Kimberly Xavier, by email: Kimberly.xavier@state.de.us, by mail: Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, or by fax: 302-255-4425 by August 1, 2016. Please identify in the subject line: Behavioral Interventions to Treat Autism Spectrum Disorder.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR QUALITY**PUBLIC NOTICE****1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**

To bring Delaware's rule up-to-date with the most current Ozone Transport Commission (OTC) model rule for regulation of the volatile organic compound (VOC) content of architectural and industrial maintenance (AIM) coatings to aid in meeting ground-level ozone national ambient air quality standards. The OTC model rule was developed by a team composed of environmental personnel from a number of OTC states and is based upon the 2007 Suggested Control Measure (SCM) which amended the California Air Resources Board (CARB) 2000 AIM SCM, the ultimate basis of the first Delaware AIM rule in 2002. CARB has a long history of regulating architectural coatings starting in 1977 and amended their rule four times over the years. The EPA developed a national rule in 1998, but the CARB SCM remains the most stringent architectural coating rule and is used by the OTC states, and other states with ground-level ozone attainment problems. CARB has performed significant scientific studies and held many stakeholder meetings to ensure product categories were correctly identified and that VOC content targets specified were attainable. Based upon CARB experience, this rule revision will yield approximately one ton per day of VOC reductions in Delaware.

There will be a public hearing on this proposed amendment on Tuesday July 26, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, State Street Commons, 100 West Water Street Suite 6A Dover, DE 19904 and/or statements and testimony may be presented either orally or in

writing at the public hearing.

DIVISION OF WATER
PUBLIC NOTICE
7102 Regulations Governing Underground Injection Control

The DNREC Division of Water had scheduled a Public Hearing for the State of Delaware Regulations Governing Underground Injection Control for Thursday, July 14, 2016, at 6:00 pm. This Public Hearing has been postponed to ~~Thursday, July 28, 2016, at 6:00 pm~~ and will be held in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. *****NOTE: Postponed until later date*****

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

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to amend the following adopted rules: Rule 6.0 - Training Requirements for Issuance of a License, allows the Board to approve a training/testing facility for the initial classroom training; Rule 7.0 - Continuing Education and Training, allows the Board to approve a training/testing facility for the continuing education; Rule 8.0 - Apprehension Procedures, mandates the BEA to call the 911 dispatch center when clearing an address. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by August 1, 2016, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, August 25, 2016, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1100 BOARD OF DENTISTRY AND DENTAL HYGIENE
PUBLIC NOTICE

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** 1106(a)(1), proposes to re-propose revisions to its regulations. The proposed amendments to Sections 4.0 and subsection 4.1 seek to clarify that the statutory requirement set forth at 24 **Del.C.** §1122(a)(1) requiring dental candidates to have "received a degree in dentistry from an accredited dental college or university accredited by the Commission on Dental Accreditation of the American Dental Association" may obtain such a degree through either a pre-doctoral dental education program or a post-doctoral dental program of at least 24 months in any specialty that includes a clinical component. The proposed changes at regulation 12.2.28 seeks to clarify that fee-splitting is a basis for discipline of a Delaware dentist or dental hygienist.

The Board originally held public hearing on the proposed rule change on March 17, 2016. As a result of the submission of public comments, the Board will hold a second hearing in regard to this re-proposal on August 17, 2016 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 1, 2016.

DIVISION OF PROFESSIONAL REGULATION
3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY
PROFESSIONALS
PUBLIC NOTICE

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to eliminate confusing provisions related to acceptable continuing education credits and amend the list of crimes substantially related to the practice of counseling.

The Board will hold a public hearing on the proposed rule change on August 24, 2016 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Urainer Marrow, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until September 8, 2016.

DIVISION OF PROFESSIONAL REGULATION
CONTROLLED SUBSTANCE ADVISORY COMMITTEE
PUBLIC NOTICE
Uniform Controlled Substances Act Regulations

Pursuant to 16 **Del.C.** §4731, the Delaware Secretary of State ("Secretary") proposes revisions to the Uniform Controlled Substance Act ("UCSA") rules and regulations.

On July 1, 2015, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 1. Specifically, Section 9.0 was added to provide requirements for the prescribing of opiates in order to address potential prescription drug overdose, abuse and diversion. A public hearing was held on July 29, 2015 before the Controlled Substance Advisory Committee ("Committee"). The Committee deliberated on the evidence presented at its meeting on September 23, 2015 and recommended certain revisions to the Secretary. The Secretary considered both the evidence presented and the Committee's recommendations.

Based on that review, the Secretary struck the version of Section 9.0 published in the *Register of Regulations* on July 1, 2015 and proposed a revised Section 9.0, which was published in the Delaware *Register of Regulations* on May 1, 2016, Volume 19, Issue 11. The Secretary solicited written comments from the public regarding the proposed rules and regulations allowing the period of time for such submissions to remain open for the 30 days mandated by 29 **Del.C.** § 10118(a).

Based on those written comments, the Secretary has made further revisions to the rules and regulations, which are attached hereto as Exhibit A.

Any person who wishes to present written suggestions, testimony, briefs or other written materials concerning the proposed rules and regulations should submit such comments no later than Monday, August 1, 2016 to:

Christine Mast, Administrative Specialist III
Office of Controlled Substances
Delaware Division of Professional Regulation
Cannon Building, Suite 203
861 Silver Lake Blvd.
Dover, Delaware 19904
Email: christine.mast@state.de.us
Fax: (302) 739-2711.

DEPARTMENT OF TRANSPORTATION**DIVISION OF TRANSPORTATION SOLUTIONS****PUBLIC NOTICE****2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual**

Pursuant to the authority provided by 21 **Del.C.** §4504, the Delaware Department of Transportation (DelDOT), adopted the Oversize/Overweight Hauling Permit Policy and Procedures Manual.

The Department, through its Division of Transportation Solutions, seeks to adopt general revisions to its existing regulation, the Oversize/Overweight Hauling Permit Policy and Procedures Manual, to address procedural changes. These collective changes are administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

DelDOT will take written comments on these proposed general revisions to Section 2405 of Title 2, Delaware Administrative Code, from July 1, 2016 through August 1, 2016. The public may submit their comments to:

Adam Weiser, P.E., PTOE, Safety Programs Manager, Traffic Section

(Adam.Weiser@state.de.us) or in writing to his attention,

Division of Transportation Solutions

Traffic Safety Section

Delaware Department of Transportation

169 Brick Store Landing Road

Smyrna, DE 19977
