
Delaware Register of Regulations

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Proposed
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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 February 15, 2013.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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

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

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 17	4:30 p.m.

DIVISION OF RESEARCH STAFF

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Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

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

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

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

DEPARTMENT OF FINANCE**OFFICE OF THE STATE LOTTERY**

Statutory Authority: 29 Delaware Code, Section 4819 (29 **Del.C.** §4819)

PUBLIC NOTICE**205 Charitable Video Lottery Rules and Regulations****AUTHORITY**

Delaware Department of Finance, Office of the State Lottery, pursuant to 29 **Delaware Code**, Section 4819A(h), is adopting amendments to 10 **DE Admin. Code** 205 without prior notice or public hearing in response to the signing of House Bill #1, an Act to Amend Title 29 of the Delaware Code Relating to Lotteries, on January 30, 2013.

REASON FOR THE EMERGENCY ORDER

An Act to Amend Title 29 of the Delaware Code Relating to Lotteries, signed into law January 30, 2013, and scheduled to sunset on June 30, 2013, authorized the introduction of Charitable Video Lottery Machines at Charitable Gaming Organizations, defined as an organization in existence as of January 1, 2013, that is a fraternal or veterans organization with national affiliation or an organization, in existence as of January 1, 2013, whose membership consists primarily of veterans honorably discharged or active duty service members. §4819A(h) of the Act states "The Department of Finance shall enact regulations on an emergency basis to implement the operation of the charitable video lottery machines for the approved charitable gaming organizations." In order to ensure the integrity of this new form of gaming, it is imperative that newly authorized Charitable Video Lottery Agents and Charitable Video Lottery Vendors be held to a standardized set of operational regulations consistent with their business and trade style. As with any expansion of government gaming, it is in the best interests of the program administrator, in this case the State, to establish and ensure compliance with regulations and standards commonly

associated with gaming operations in order to maintain the public confidence and trust currently held by the Lottery.

These regulations effectively allow for the start-up and operation of Charitable Video Lottery Machines within the confines of Charitable Gaming Organizations as newly defined by HB #1, which, in part, states "...community organizations are in need of a source of revenue in order to support their operations and charitable activities..."

Due to the condensed time frame allowed based on the urgency for these organizations to start generating funds as referenced above, it is necessary to implement these newly created emergency regulations.

EFFECTIVE DATE OF THE ORDER

This Emergency Order shall take effect at 12:01 a.m. February 25, 2013 and shall remain in effect for 120 days.

ORDER

It is hereby ordered the 25th day of February that the above referenced amendment to 10 **DE Admin. Code** 205 is adopted pursuant to 29 **Delaware Code**, Section 4819.

Tom Cook, Secretary, Department of Finance

205 Charitable Video Lottery Rules and Regulations

1.0 Introduction: Role of State Lottery Office

These regulations are authorized pursuant to 29 Del.C. §4819A(h) of Title 29 of the Delaware Code. Charitable Video Lottery operations in the State of Delaware are strictly regulated by the Delaware State Lottery Office through the powers delegated to the Director of the Lottery pursuant to Title 29 of the Delaware Code.

2.0 Definitions

For the purposes of these regulations, the following words and phrases have the meaning ascribed to them in this Section unless the context of the regulation clearly indicates otherwise, or unless they are inconsistent with the manifest intention of the Delaware State Lottery Office.

"agency" or "lottery office" - the Delaware State Lottery Office created pursuant to 29 Del.C. Ch. 48.

"agent" or "licensed agent" or "charitable gaming organization" or "charitable video lottery agent" - any person licensed by the Director of the agency to conduct charitable video lottery operations.

"applicant" - any person applying for a license authorized under these regulations.

"background investigation" - the security, fitness and background checks conducted of an applicant.

"charitable video lottery" - any lottery conducted with a charitable video lottery machine or linked charitable video lottery machines with an aggregate progression prize or prizes.

"charitable video lottery facility" - a building containing a gaming room or rooms.

"charitable video lottery machine" - any machine in which coins, credits or tokens are deposited in order to play any game of chance in which the results, including options available to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a charitable video lottery machine notwithstanding (i) the use of an electronic credit system making the deposit of bills, coins, or tokens unnecessary.

"charitable video lottery vendor" - any person who supplies or services charitable video lottery machines or associated equipment.

"certification" - the authorization by the lottery in accordance with its inspection and approval process of charitable video lottery machines and video games, such certification to relate to either hardware or software.

"credit slip" - the receipt issued from a charitable video lottery machine for payment of credits by an agent.

"credit" - the opportunity provided to a player to play a video game or redeem the credit for cash.

"DGE" - the Division of Gaming Enforcement of the Department of Safety and Homeland Security, as authorized by the Delaware Code.

"Director" - the Director of the Delaware State Lottery Office as established by Title 29 of the Delaware Code.

"gaming" - the dealing, operating, carrying on, maintaining or exposing for play any charitable video lottery machine in a licensed charitable gaming organization.

"gaming area" - A location in a charitable gaming organization where gaming activity is conducted at charitable video lottery machines.

"gaming vendor" - any vendor offering goods or services relating to the manufacture, operation, maintenance, security, distribution, service or repair of charitable video lottery machines.

"hearing officer" - a member of the Lottery Commission or other qualified person designated by the Chairperson of the Lottery Commission to conduct a hearing on any matter within the jurisdiction of the Lottery.

"license" - the authorization granted by the agency which permits an applicant to engage in defined charitable video lottery activities as an agent or charitable gaming vendor;

"license application" - the process by which a person requests licensing for participation in the charitable video lottery operations.

"licensee" - any person authorized by the Director to participate in charitable video lottery operations.

"lottery" - the public gaming system or games established and operated by the Delaware State Lottery Office.

"Lottery Commission" – the Lottery Commission of the State of Delaware as established by 29 Del.C. §4837.

"MEAL" - a written Machine Entry Authorization Log stored inside the charitable video lottery machine.

"net charitable video lottery game proceeds" - the total amount of credits or cash played less the total amount of credits or cash won by the players. "Net charitable video lottery game proceeds" does not include sums withheld from player winnings for tax liabilities incurred by the players, nor does it include amounts held in reserve for large or progressive prizes yet to be won by players.

"owner" - a person who owns, directly or indirectly, ten percent or more of an applicant or licensee.

"person" - an individual, general partnership, limited partnership, corporation or other legal entity.

"player" - an individual who plays a charitable video lottery machine.

"premises" - the building and grounds occupied by a licensed agent where the agent's charitable video lottery operations occur or support facilities for such operations exist, such as facilities for the service of food or drink, including those areas not normally open to the public, such as areas where records related to charitable video lottery operations are kept.

"terminal" - a charitable video lottery gaming device.

"video game" - any game played on a charitable video lottery machine, including but not limited to a variation of poker, blackjack, pull tabs, instant or line-up games.

"video game event outcome" - the result of a video game achieved by a player at a charitable video lottery machine.

3.0 Licensing of Agents

3.1 Any applicant desiring to obtain a license to act as an agent shall apply to the agency on forms specified by the Director from time to time. Application forms shall require the applicant to provide the following, without limitation:

3.1.1 The applicant's legal name, address, type of organization (fraternal, veterans), organizational ID# or Federal Employer's Identification Number (FEIN), the names, addresses, social security

- numbers (if applicable) and dates of birth (if applicable) of all officers assuming responsibility for the organization.
- 3.1.2 Certified copies of the applicant's charter, articles of incorporation, and other documents which constitute or explain the legal organization of the applicant.
- 3.1.3 Any and all other information as the Director may require to determine the competence, honesty and integrity of the applicant as required by Title 29 of the Delaware Code.
- 3.2 The application, as well as other documents submitted to the agency by or on behalf of the applicant for purposes of determining the qualifications of the applicant or agent, shall be sworn to or affirmed before a notary public. If any form or document is signed by an attorney for the applicant, the signature shall certify that the attorney has read the forms or documents and that, to the best of his or her knowledge, information and belief, based on diligent inquiry, the contents of the form or documents so supplied are true.
- 3.3 Upon request of the agency, the applicant shall supplement the information provided in the application form as deemed necessary by the agency. The applicant shall furnish all information, including financial data and documents, certifications, consents, waivers, individual history forms, tax returns, cancelled checks or other materials required or requested by the agency for purposes of determining the qualifications of the applicant or agent.
- 3.4 To the extent, if any, that the information supplied in the application or otherwise supplied by the applicant or on the applicant's behalf, becomes inaccurate or incomplete, the applicant shall so notify the agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to correct the inaccuracy or incompleteness of the information.
- 3.5 The applicant shall cooperate fully with the agency and the Division of Gaming Enforcement (DGE) with respect to its background investigation of the applicant. Among other things, the applicant, upon request, shall make available any and all of its books or records for inspection by the agency or the DGE.
- 3.6 As soon as the agency has determined that the application is complete, it shall forward same to the DGE which shall, as soon as practicable, undertake and complete the background investigation of the applicant and the officers assuming responsibility for the organization and report its findings to the agency.
- 3.7 The Director shall weigh the following factors in his or her evaluation of the application:
- 3.7.1 The criminal background, if any, of the applicant or any of its officers. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within ten (10) years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.
- 3.7.2 The degree to which the applicant has supplied accurate and complete information pursuant to the requirements of these regulations.
- 3.7.3 The extent to which the applicant has cooperated with the agency and the DGE in connection with the background investigation.
- 3.7.4 Whether the person, or any of its officers, are known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the lottery.
- 3.7.5 With respect to any past conduct which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license.
- 3.7.6 The extent, if any, to which the applicant has failed to comply with any applicable tax laws of the federal, state or local governments.
- 3.7.7 Any other information before the Director, including substantially similar background investigations performed by other agencies or jurisdictions, which relates to the applicant's competency, financial capability, honesty, integrity, reputation, habits, or associations.

- 3.8 A license shall be issued to the applicant if the Director is satisfied, upon consideration of the factors specified in subsection 3.7, that the applicant would be a fit agent and not pose a threat to the public interest, the reputation of the lottery, or the effective control of the lottery.
- 3.9 The approval of any license or the renewal of a license to an agent is subject to the following conditions:
- 3.9.1 Operation pursuant to a license issued under these regulations shall signify agreement by the agent to abide by all provisions of the regulations, including those contained in this section.
- 3.9.2 The agent shall at all times make its premises available for inspection by authorized representatives of the agency or the DGE personnel, during all operational hours. The Lottery and the DGE shall be authorized entry to the premises and access to any charitable video lottery machines or records of the agent without acquiring a warrant.
- 3.9.3 To the extent permitted by law, an agent accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss which may result from any disclosure or publication of material or information supplied to the agency in connection with the application for the agent's operations.
- 3.9.4 An agent shall immediately notify the agency of any proposed or effective change regarding the makeup of the officers assuming responsibility of the agent.
- 3.9.5 An agent has a continuing duty to maintain suitability for licensure. A license does not create a property right, but is a revocable privilege contingent upon continuing suitability for licensure.
- 3.9.6 Any license granted may not be transferred, assigned or pledged as collateral. Any loss of charter or any action that occurs which causes the agent to no longer qualify as a Charitable Gaming Organization as defined in 29 **Del.C.** §4803 of Title 29, after the Director has issued a license, shall automatically terminate the license ninety (90) days thereafter.
- 3.10 To the extent provided by law, any information obtained pursuant to this Section 3 shall be held in confidence and not subject to the Delaware Freedom of Information Act, 29 **Del.C.** chapter 100.

4.0 Licensing of Gaming Vendors

- 4.1 A person expressing an interest to be selected as a charitable gaming vendor shall file an application for a charitable gaming vendor license in accordance with these regulations.
- 4.2 A charitable gaming vendor shall be licensed in accordance with these regulations prior to conducting any business with the Lottery or charitable video lottery agent, provided however, that upon a finding of good cause by the Director for each business transaction the Director may permit an applicant for said license to conduct business transactions prior to the issuance of the license.
- 4.3 Each person desiring to obtain a license from the agency as a charitable gaming vendor shall submit a license application on a form specified and supplied by the agency. The license application shall, among other things:
- 4.3.1 Give notice that the applicant will be required to submit to a background investigation.
- 4.3.2 Require the applicant to supply specified information and documents related to the applicant's fitness and the background of its owners.
- 4.3.3 Require the applicant to disclose its legal name, form or entity (e.g., general or limited partnership, corporation).
- 4.4 The Director shall weigh the following factors in his or her evaluation of the application:
- 4.4.1 The criminal background, if any, of the applicant or any of its officers. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within ten (10) years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.
- 4.4.2 The degree to which the applicant has supplied accurate and complete information pursuant to the requirements of these regulations.
- 4.4.3 The extent to which the applicant has cooperated with the agency and the DGE in connection with the background investigation.

- 4.4.4 Whether the person, or any of its officers, are known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the lottery.
- 4.4.5 With respect to any past conduct which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license.
- 4.4.6 The extent, if any, to which the applicant has failed to comply with any applicable tax laws of the federal, state or local governments.
- 4.4.7 Current prosecution for any offense listed in 4.4.1 of this section, provided that, at the request of the applicant, the Director shall defer its decision on the application during the pendency of the charge.
- 4.4.8 Any other information before the Director, including substantially similar background investigations performed by other agencies or jurisdictions, which relates to the applicant's competency, financial capability, honesty, integrity, reputation, habits, or associations.
- 4.5 A license shall be issued to the applicant if the Director is satisfied, upon consideration of the factors specified in subsection 3.7, that the applicant would be a fit agent and not pose a threat to the public interest, the reputation of the lottery, or the effective control of the lottery.
- 4.6 Charitable gaming vendors shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.
- 4.7 Each charitable video lottery machine certified by the Director shall bear a unique serial number and shall conform to the machine model certified by the Director.
- 4.8 Charitable gaming vendors shall hold harmless the agency, the State of Delaware, and their respective employees for any claims, loss, cost, damage, liability or expense, including, without limitation, legal expense arising out of any hardware or software malfunction resulting in the wrongful award or denial of credits or cash.
- 4.9 A charitable gaming vendor shall not distribute a charitable video lottery machine for placement in the state unless the charitable video lottery machine has been approved by the agency. Only charitable gaming vendors may apply for approval of a charitable video lottery machine or associated equipment.
- 4.10 The charitable gaming vendor is responsible for the assembly and initial operation, in the manner approved and licensed by the agency, of all its charitable video lottery machines and associated equipment. The charitable gaming vendor may not change the assembly or operational functions of any of its charitable video lottery machines approved for placement in Delaware unless a "request for modification to an existing charitable video lottery machine prototype" is made to the agency, that request to contain all appropriate information relating to the type of change, reason for change, and all documentation required. The agency must approve such request prior to any changes being made, and the agency shall reserve the right to require second testing of charitable video lottery machines after modifications have been made.
- 4.11 The following duties are required of all licensed charitable gaming vendors, without limitation:
- 4.11.1 Promptly report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations adopted pursuant thereto.
- 4.11.2 Conduct charitable video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.
- 4.11.3 Hold the agency and the State of Delaware and its employees harmless from any and all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the charitable gaming vendor's participation in or the operation of a charitable video lottery game.
- 4.11.4 Maintain all required records.

4.11.5 It shall be the ongoing duty of the charitable gaming vendor licensee to notify the Director of any change in ownership. The failure of any new owner to satisfy a background investigation may constitute "cause" for the suspension or revocation of the license.

4.11.6 Supervise its employees and their activities to ensure compliance with these rules.

4.11.7 Comply with such other requirements as shall be specified by the Director.

5.0 Agents: Duties

5.1 The following duties are required of all licensed agents:

5.1.1 Provide a secure location for the placement, operation, and play of all licensed charitable video lottery machines located on the licensed agent's premises.

5.1.2 Permit no person to tamper with or interfere with the approved operation of any licensed charitable video lottery machine or other gaming equipment without prior written approval of the agency, unless otherwise directed by the Lottery.

5.1.3 With respect to charitable video lottery operations, contract only with suppliers of charitable video lottery equipment and paraphernalia authorized by the agency to participate in charitable video lottery operations within the State of Delaware.

5.1.4 Ensure that no gaming equipment or any other related accessory shall be used in a charitable video lottery facility if the equipment, materials and suppliers have not been previously approved by the agency.

5.1.5 Ensure licensed charitable video lottery machines are placed and remain as placed unless the agency authorizes their movement within the sight and control of the agent or a designated employee, through physical presence.

5.1.6 Monitor charitable video lottery machine play and prevent access to or play by persons who are under the age of twenty-one (21) years or who are intoxicated, or whom the agent has reason to believe are intoxicated, and prohibit play by persons who are barred by law or self-banned from playing any charitable video lottery machine.

5.1.7 Commit no violations of the laws of this State concerning the sale, dispensing, and consumption on the premises of alcoholic beverages that result in suspension or revocation of an alcoholic beverage license.

5.1.8 Maintain at all times sufficient cash in denominations accepted by the video machines located in the premises.

5.1.9 Report promptly all charitable video lottery machine malfunctions to the appropriate charitable gaming vendor and agency and notify the agency of any technology provider failure to provide service and repair of such terminals and associated equipment.

5.1.10 Assume responsibility for the proper and timely payment to players of credits awarded.

5.1.11 Prohibit the possession, use or control of gambling paraphernalia on the premises not directly related to the lottery and prohibit illegal gambling on the premises.

5.1.12 Attend all meetings, seminars, and training sessions required by the agency.

5.1.13 Supervise its employees and their activities to ensure compliance with these rules.

5.1.14 Assume responsibility for the proper and immediate redemption of all credits; however, no credits may be redeemed by a person under twenty-one (21) years of age. No credits or prizes may be redeemed by or for any person illegally on the agent's premises or persons who have requested that they be self-banned from the agent's premises.

5.1.15 Provide dedicated power and a proper charitable video lottery machine environment in accordance with the specifications of the agency.

5.1.16 Immediately report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto by the agent, its employees, or anyone acting on behalf of the agent, excluding violations concerning motor vehicle laws.

- 5.1.17 Conduct charitable video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.
- 5.1.18 Hold the Director, the State of Delaware, and employees thereof harmless from and defend and pay for the defense of any and all claims which may be asserted against the Director, the State or the employees thereof, arising from the participation in the charitable video lottery system, except claims arising from the negligence or willful misconduct of the Director, the State or the employees thereof.
- 5.1.19 Maintain all required records.
- 5.1.20 Provide at the request of the Director or the DGE immediate access to the premises and to all records related to any aspect of these regulations, including without limitation the duties imposed by these regulations.
- 5.1.21 Keep current on all payments, tax obligations and other obligations to the agency and other licensees with whom charitable video lottery business is conducted. The agent shall pay the players and transfer the net charitable video lottery game proceeds to the State lottery fund in conformity with the requirements set forth in these regulations and 29 **Del.C.** Ch. 48.
- 5.1.22 Comply with such other requirements as shall be specified by the Director.
- 5.1.23 Notify the Director on a continuing basis of any change in officers assuming responsibility of the organization.
- 5.1.24 Such persons will also be subject to a background investigation. The failure of any of the above-mentioned persons to satisfy a background investigation may constitute "cause" for the suspension or revocation of the charitable video lottery agent's license, provided that an agent is first given a reasonable opportunity to remove or replace such person if the agent was unaware of such "cause" prior to the background investigation.
- 5.1.25 Comply on a continuing basis with the requirements for obtaining or retaining a license under the provisions of these regulations and 29 **Del.C.** Ch. 48.
- 5.1.26 Immediately notify the DGE and agency about, and submit any evidence of, any gaming equipment or other device used in a charitable video lottery facility which has been, or there is reasonable suspicion that it may have been, tampered with or altered in such a way that the integrity or conformity of the gaming equipment or the device may have affected its use.
- 5.1.27 Immediately notify the DGE about any illegal and/or suspicious activities that occur or are occurring in the agent's charitable video lottery facility that relate to the safety, security and/or gaming operations of the facility. An agent shall also immediately notify the DGE of any illegal or suspicious activities that occur outside of the charitable video lottery facility that relate to the safety, security and/or gaming operations of the charitable video lottery facility.
- 5.1.28 Immediately notify the DGE if anyone acting on behalf of the agent physically detain a person suspected of a violation of 11 **Del.C.** 1471.
- 5.2 The agent who has retained any gaming equipment or other devices, under a reasonable suspicion that said gaming equipment or article was tampered with or altered, or who has retained any device of those specified in these regulations under a reasonable suspicion that said device was introduced or used or intended to be used in the charitable video lottery facility in violation of the law or the regulations, shall keep said equipment or article in the state in which it was found when it was retained, and shall deliver said equipment or article to a representative of the DGE as soon as possible.
- 5.3 The agent shall be responsible for ensuring that any gaming equipment or any other device and any evidence related to the same which should be submitted to the DGE is maintained in a secure manner until the arrival of an authorized representative of the DGE.

6.0 Game Requirements

- 6.1 Each video game shall display the amount wagered and the amount awarded for each possible winning occurrence based on the number of credits wagered.

- 6.2 Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim a prize, the charitable video lottery agent should treat the play of the game as void and the underage player shall not be entitled to any prize won or a refund of amounts bet. In the event a person illegally on the premises or a self-barred person attempts to claim a prize, the charitable video lottery agent will also treat the play of the game as void and the person shall not be entitled to any prize won or a refund of amounts bet.
- 6.3 No person may play or attempt to play credits on a charitable video lottery machine that were won by another player on that machine and inadvertently or accidentally left on the machine by the original player. Any such play of another person's credits shall be treated as void and the person who plays another player's credits that were accidentally left on the machine shall not be entitled to any prize won or a refund.
- 6.4 No payment for a credit slip or a prize claim form for a prize awarded on a charitable video lottery machine may be made unless the credit slip or prize claim form meets the following requirements:
- 6.4.1 It is presented on a fully legible, valid, printed credit slip on paper approved by the agency, containing the information as required;
- 6.4.2 It is not mutilated, altered, unreadable, or tampered with in any manner, or previously paid;
- 6.4.3 It is not counterfeit in whole or in part; and
- 6.4.4 It is presented by a person authorized to play.
- 6.5 Method of Payment - The management of each licensed agent shall designate employees authorized to redeem credit slips during the hours of operation. Credits shall be immediately paid in cash or by check when a player presents a credit slip for payment meeting the requirements of this section.
- 6.6 Restrictions on Payment - Agents may only redeem credit slips for credits awarded on charitable video lottery machines located on its premises. The agency and the State of Delaware are not liable for the payment of any credits on any credit slips.
- 6.7 Redeemed Tickets Defaced - All credit slips redeemed by a licensed agent shall be marked or defaced in a manner that prevents any subsequent presentment and payment.
- 6.8 Liability for Malfunction - The agency and the State of Delaware are not responsible for any charitable video lottery machine malfunction or for any error by the agent that causes credit to be wrongfully awarded or denied to players.

7.0 Accounting and Distribution Procedures: Forms, Records and Documents

- 7.1 Each agent and charitable gaming vendor shall submit to the Director such financial and operating information as the Director shall require from time to time at such times and in such format as the Director shall specify.
- 7.2 The agency may periodically prescribe a set of standard reporting forms and instructions to be used by each charitable video lottery agent for filing reports.
- 7.3 The agency or its designated agents shall have the right to audit the books and records including without limitation tax returns and IRS withholding and reporting records of any agent and each charitable gaming vendor. To such end, the agents and service companies shall fully cooperate with whomever undertakes the audit.
- 7.4 The net charitable video lottery game proceeds returned to the state shall be remitted weekly, bi-weekly or monthly to the agency at the discretion of the Lottery Director through the electronic transfer of funds to an EFT account. To the extent, if any, that such weekly, bi-weekly or monthly remission cannot be achieved due to the unavailability of bank services, the remission shall be made on the first day that such services are available. Agents shall furnish to the agency all information and bank authorizations required to facilitate the timely transfer of monies to the State lottery fund. Agents shall provide the agency thirty (30) days advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.
- 7.5 The agency is not responsible for resolving discrepancies which are differences between actual money collected and the amount shown on the accounting meters or billing statement. Further, the agency is not responsible for the loss or theft of money prior to its deposit in the agency's account in the bank.

- 7.6 Agents shall comply with all prescribed Federal requirements for tax withholding, recording and reporting, including, without limitation, those requirements relating to the transfer of funds withheld from player winnings from the agents to the tax authorities.
- 7.7 Any discrepancy regarding settlement of accounts will be resolved by the Director as he or she deems appropriate.
- 7.8 All information required to be placed on any form, record, or document shall be recorded on such form, record, or document in ink or other permanent form.
- 7.9 Each agent shall maintain complete, accurate, and legible records of all transactions pertaining to revenue and gaming activities. Each agent shall maintain detailed, supporting, subsidiary records sufficient to meet financial reporting requirements prescribed by the Lottery Director. Each agent shall also establish an inventory system of retained financial documents that facilitates their preservation and makes them readily available for review or copying by regulatory authorities and other authorized individuals or groups, and provides procedures for destruction.

8.0 Maintenance of Charitable Video Lottery Machines

- 8.1 No charitable video lottery machine may be placed in operation in Delaware until the charitable gaming vendor has provided its personnel with sufficient and appropriate training in the service and repair of each of its approved charitable video lottery machine models.
- 8.2 Each charitable gaming vendor shall service and maintain its charitable video lottery machines, current software, and associated equipment in the manner and condition required by the agency and in accordance with its contractual arrangements.
- 8.3 A MEAL book shall be kept within the main cabinet access area in each charitable video lottery machine. Every person, including agency personnel, who gains entry into any internal space of a charitable video lottery machine shall sign the MEAL book, indicate the time and date of entry, and reason for entry. The MEAL books shall be retained by agents for a period of three years from the date of the last entry. The MEAL books shall be made available upon request for inspection by the agency.
- 8.4 Service companies shall provide the agency or its designee upon request with a master key for access into each locked compartment of each charitable video lottery machine placed in operation (i.e., cash box, main cabinet, logic box).

9.0 Transportation, Registration, and Location of Charitable Video Lottery Machines

- 9.1 No person shall ship or transport a charitable video lottery machine into or out of the State without first obtaining a written authorization for such transport from the Director or designee. Transporting of charitable video lottery machines within the State of Delaware shall be accomplished by the charitable gaming vendor or his designee, with the concurrence of the Director. Charitable video lottery agents are not authorized to transport charitable video lottery machines at any time without agency approval. Any person transporting a charitable video lottery machine from one location to another within the State shall notify the agency in writing prior to the transportation of said charitable video lottery machine. Requests to transport machines shall include the following information:
- 9.1.1 The full name and address of the person transporting the charitable video lottery machine;
- 9.1.2 The reason for transporting the charitable video lottery machine;
- 9.1.3 The full name and address of the person where the charitable video lottery machine is currently located;
- 9.1.4 The full name and address of the person to whom the terminal is being sent and the destination of the charitable video lottery machine, if different from the address;
- 9.1.5 The serial and model numbers (if applicable) of each charitable video lottery machine received;
- 9.1.6 The manufacturer of the charitable video lottery machine; and
- 9.1.7 The expected date and time of charitable video lottery machine installation.
- 9.2 If the charitable video lottery machine will not be placed in operation, the charitable gaming vendor shall notify the agency of the address where said terminal is to be warehoused or otherwise kept. Prior

to use, the storage facility shall be inspected and approved for charitable video lottery machine storage by the agency.

9.3 Project Request Forms

9.3.1 A charitable video lottery agent or charitable gaming vendor must complete a Project Request Form whenever it seeks approval for the movement of charitable video lottery terminals or for other modifications or changes to charitable video lottery terminals and other gaming related equipment.

9.3.2 A Project Request Proposal Form must be submitted whenever an agent or service provider seeks: i) to move or modify a charitable video lottery machine on the premises; ii) to convert a game theme on a charitable video lottery machine; iii) to convert the play denomination on a charitable video lottery machine; iv) to change the percentage payout on a charitable video lottery machine; v) to change any software on a charitable video lottery machine; vi) to change the jackpot lockup amount on a charitable video lottery machine; vii) to change the configuration of a charitable video lottery machine; viii) to perform a wholesale replacement of parts of a charitable video lottery machine; ix) to make any type of adjustment to mechanical or electronic meters.

9.3.3 No project is approved until the Lottery has signed the Project Request Form and distributed copies of the completed form to the appropriate parties. The Lottery will strictly enforce the approved start and end time on the Project Request Form. No charitable video lottery agent or service provider under any circumstances will be permitted to shut down or otherwise modify any charitable video lottery terminal prior to the approved start time or after the approved end time listed on a Project Request Form without written approval from the Lottery Office.

9.3.4 A charitable video lottery agent must notify the Lottery Office if any project is cancelled or not completed as originally submitted based on a decision of the charitable video lottery agent. A charitable gaming vendor must notify the Lottery Office if any project is cancelled or not completed as originally submitted based on a decision of the charitable gaming vendor.

10.0 Enforcement and Hearings

10.1 The Director shall not deny, refuse to renew, or revoke any license unless it has first afforded the applicant or licensee an opportunity for a hearing on an appeal for reconsideration before the Lottery Commission.

10.2 If the Director determines that an applicant or licensee has not satisfied or continued to satisfy the license requirements for the granting or retention of an application or license, a written notice of an intent to deny or revoke the application or license shall be served upon the applicant or licensee. The written notice shall include the reasons for the intended denial or revocation and shall advise the applicant or licensee of the right to request a hearing on an appeal for reconsideration before the Lottery Commission.

10.3 An applicant or licensee who has received a notice of intent to deny or revoke an application or license shall have an opportunity to request a hearing on an appeal for reconsideration before the Lottery Commission within thirty (30) days of receipt of the written notice.

10.4 If an applicant or licensee desires a hearing, it shall provide the Lottery Commission and Director with a written statement within ten (10) days of receipt of the notice which contains the following:

10.4.1 A clear and concise statement indicating the reasons for appealing the decision of the Director;

10.4.2 A verification by the applicant or licensee that the information provided is true and accurate; and

10.4.3 The signature of the applicant or licensee.

10.5 If an applicant or licensee fails to timely file an appeal for reconsideration or withdraws the appeal for reconsideration, the Director shall determine that there is a waiver of the right to a hearing and an admission of all allegations of fact set forth in the Director's notice of intent to deny or revoke a license. The Director shall take final action, including denying or revoking a license.

10.6 The appeal for reconsideration shall be heard by the Lottery Commission, provided however, that the Chairperson of the Lottery Commission may, in his discretion, designate a member of the Lottery Commission, or other qualified person other than an employee of the Lottery Commission, to serve as

- hearing officer in a particular matter. The hearing shall be conducted within thirty (30) days of the receipt of the letter of appeal unless extenuating circumstances require a longer period.
- 10.7 At the hearing, the Director or his designee shall be responsible for presenting the matter in support of his determination to the Lottery Commission, including calling witnesses, introducing any relevant evidence and making any necessary arguments.
- 10.8 Notice of the hearing shall be given to the parties at least twenty (20) days before the date it is to be held.
- 10.9 If the parties agree to a settlement prior to the conclusion of the hearing before the Lottery Commission or the designated hearing officer, a written stipulation signed by all parties shall be submitted to the Lottery Commission. The settlement shall be scheduled for disposition by the Lottery Commission at a public meeting at which the Lottery Commission shall:
- 10.9.1 Approve the settlement;
- 10.9.2 Approve the settlement as modified by the Lottery Commission with the consent of the parties;
- 10.9.3 Reject the settlement and schedule the matter for further proceedings; or
- 10.9.4 Take such action as the Lottery Commission deems appropriate.
- 10.10 No settlement shall be approved by the Lottery Commission unless the settlement agreement is voluntary, consistent with the law and fully dispositive of all issues in controversy.
- 10.11 An executed stipulation of settlement shall, upon approval by the Lottery Commission, be considered a withdrawal of an appeal for reconsideration and evidence of informed consent to such final Lottery Commission action as described therein.
- 10.12 The applicant or licensee may appear individually, by legal counsel, or by any other duly authorized representative. In the absence of the applicant or licensee, written evidence of a representative's authority shall be presented to the Lottery Commission in a form satisfactory to the Lottery Commission.
- 10.13 The applicant or licensee, his legal counsel or duly authorized representative may, with the approval of the Lottery Commission, waive the hearing and agree to submit the case for decision on the record, with or without a written brief. Such a waiver or agreement shall be in writing and placed in the record.
- 10.14 The applicant or licensee shall be given an opportunity for argument within the time limits fixed by the Lottery Commission or designated hearing officer following submission of the evidence. The Lottery Commission or hearing officer, upon request of the applicant or licensee, may accept briefs in lieu of argument. The briefs shall be filed within ten (10) days after the hearing date or within such other time as fixed by the Lottery Commission or hearing officer.
- 10.15 The Lottery Commission or hearing officer may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law. The Lottery Commission or hearing officer may exclude any evidence which is irrelevant, unduly repetitious, or lacking a substantial probative effect.
- 10.16 A record shall be made of all hearings and all witnesses shall be sworn and subject to cross examination.
- 10.17 An applicant or licensee shall have the affirmative obligation to establish by clear and convincing evidence that the Director's determination was in error under the criteria for licensing established by these regulations.
- 10.18 A written decision shall be rendered by the Lottery Commission, or by a designated hearing officer, setting forth findings of fact and conclusions of law within forty-five (45) days of the hearing unless extenuating circumstances require a longer period. An order shall be entered memorializing the decision. All orders and decisions made by the Lottery Commission under this appeal procedure are final.
- 10.19 A copy of the written decision and order of the Lottery Commission or hearing officer shall be submitted to the Director who shall serve the order and written decision upon the applicant or licensee and any attorney of record in person or by registered or certified mail.
- 10.20 In cases where the written decision is rendered by a designated hearing officer, a person aggrieved by the decision of the hearing officer may, within thirty (30) days of the decision, file a notice of an intent to contest the findings of fact and conclusions of law of the hearing officer, which shall set forth the

reasons for contesting the decision. A written response to the notice of intent to contest the findings of fact and conclusions of law may be filed within twenty (20) days by the opposing party. Upon the filing of the notice of intent, the aggrieved person shall be afforded an opportunity to appear before the Lottery Commission within thirty days (30) of said filing. The Lottery Commission may adopt, remand for further proceedings, modify or reverse the decision of the hearing officer, by written decision and order, within forty-five (45) days of the decision of the hearing officer. A copy of the written decision and order of the Lottery Commission shall be submitted to the Director who shall serve the order and written decision upon the applicant or licensee and any attorney of record in person or by registered or certified mail.

- 10.21 If a notice of intent is not filed in accordance with the timelines set forth herein, the matter shall be submitted to the Lottery Commission for final disposition. An order memorializing the decision of the Lottery Commission shall be entered within forty-five (45) days of the decision of the hearing officer. The Lottery Commission may adopt, remand for further proceedings, modify or reverse the decision of the hearing officer by written decision and order. A copy of the order of the Lottery Commission shall be submitted to the Director who shall serve the order upon the applicant or licensee and any attorney of record in person or by registered or certified mail.
- 10.22 A person aggrieved by a final decision or order of the Lottery Commission made after a hearing may obtain judicial review thereof by appeal to the Superior Court pursuant to §10142 of Title 29. The filing of an appeal shall not stay enforcement of the decision or order of the Lottery Commission unless a stay is obtained from the court upon application in accordance with the rules of court or from the Lottery Commission.
- 10.23 An applicant or licensee whose license has been revoked or whose application for a license has been denied shall be prohibited from reapplying for any license for a period of five (5) years from the date of the order denying or revoking the license.
- 10.24 Any party may, within ten (10) days after the service of a final order of the Lottery Commission, file a motion for reconsideration which motion may seek to reopen the record. The motion shall be in writing and shall state the grounds upon which relief is sought. The Lottery Commission may grant such motion, under such terms and conditions as the Commission may deem appropriate, when the Lottery Commission finds just cause for reconsideration of the order based upon legal, policy or factual argument advanced by the movant or raised by the Lottery Commission on its own motion.
- 10.25 Any party may, within one (1) year after the service of a final order of the Lottery Commission, file a motion to reopen the record based upon newly discovered evidence. The motion shall be supported by an affidavit of the moving party or counsel showing with particularity the materiality and necessity of the additional evidence and the reason why such evidence was not presented at the original hearing or on a motion for reconsideration. The Lottery Commission may grant such motion upon a showing that the newly discovered evidence is material and necessary, that sufficient reason existed for failure to present such evidence, and that the evidence is reasonably likely to change the final decision of the Lottery Commission. Upon reconsideration, the Lottery Commission may modify its decision and order as the additional evidence may warrant.
- 10.26 Any party may, within one (1) year of the service of a final order of the Lottery Commission, file a motion for relief from such an order. The motion shall be in writing and shall state the grounds upon which relief is sought. The Lottery Commission may grant such motion and vacate or modify the order, reopen the record, or grant a hearing upon a showing of the following:
- 10.26.1 Mistake, inadvertence, surprise or excusable neglect;
 - 10.26.2 Fraud, misrepresentation or other misconduct of an adverse party; or
 - 10.26.3 Any other reason consistent with public policy and in the interests of justice.
 - 10.26.4 No motion filed pursuant to this section, and no order granting such motion, shall suspend the operation of any order of the Lottery Commission unless otherwise specified by order of the Lottery Commission.
- 10.27 Any money or thing of value which has been obtained by any person prohibited from gaming activity in a charitable video lottery facility shall be subject to an order of forfeiture by the Director, following

- notice to the prohibited person and an opportunity for the prohibited person to file an appeal for reconsideration by the Lottery Commission in accordance with the procedures set forth in 13.1 et.seq.
- 10.28 Whoever violates the Lottery chapter 29 Del.C. Ch. 48, or any Lottery rule or regulation duly promulgated thereunder, or any condition of a license issued pursuant to 29 Del.C. §4805, or any Administrative Order issued pursuant to Lottery statutes or regulations shall be punishable as follows:
- 10.28.1 If the violation has been completed by a civil penalty imposed by Superior Court, which by 29 Del.C. §4823 shall have jurisdiction of civil penalty actions brought pursuant to this section, of not less than \$1,000 nor more than \$10,000 for each completed violation. Each day of a continued violation shall be considered as a separate violation if, on each such day, the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violation shall not be a defense to a continued violation with respect to the first day of its occurrence.
- 10.28.2 If the violation is continuing or if there is a substantial likelihood that it will reoccur, the Director may also seek a temporary restraining order, preliminary injunction, or permanent injunction in the Court of Chancery, which shall have jurisdiction of an action for such relief.
- 10.29 In his discretion, the Director may impose an administrative penalty of not more than \$1,000 for each administrative penalty for each violation. Each day of continued violation shall be considered as a separate violation if the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violations shall not be a defense to a continued violation with respect to the first day of its occurrence. Prior to the assessment of an administrative penalty, written notice of the Director's proposal to impose such penalty shall be given to the violator, and the violator shall have thirty (30) days from receipt of such notice to file an appeal for reconsideration before the Lottery Commission in accordance with the procedures set forth above. A hearing, if requested, shall be held prior to the imposition of the penalty in accordance with the procedures set forth above. If no hearing is timely requested, the proposed penalty shall become final and shall be paid no later than sixty (60) days from receipt of the notice of proposed penalty. Assessment of an administrative penalty shall take into account the circumstances, nature, and gravity of the violation, as well as any prior history of violations, the degree of culpability, the economic benefit to the violator resulting from the violation, any economic loss to the State, and such other matters as justice may require. In the event of nonpayment of an administrative penalty within thirty (30) days after all legal appeal rights have been waived or otherwise exhausted, a civil action may be brought by the Director in Superior Court for the collection of the penalty, and for interest, from the date payment was due, attorneys' fees and other legal costs and expenses. The validity or amount of such administrative penalty shall not be subject to review in an action to collect the penalty. Any penalty imposed after a public hearing is held pursuant to this subsection shall be appealable to Superior Court, and such appeal shall be governed by §10142 of Title 29.
- 10.30 In his discretion, the Director may endeavor to obtain compliance with requirements of the Lottery chapter, 29 Del.C. Ch. 48, by written Administrative Order. Such order shall be provided to the responsible party, shall specify the complaint, and propose a time for correction of the violation. It may also provide an opportunity for a public hearing, at which the Director shall hear and consider any submission relevant to the violation, corrective action, or the deadline for correcting the violation.
- 10.31 The Director shall enforce Ch. 48, 29 Delaware Code and any rules, regulations, or Administrative Orders issued thereunder.
- 10.32 Any interest, costs or expenses collected by the Lottery under actions instituted by 29 Del.C. §4823 or these regulations shall be appropriated to the State Lottery Office to carry out the purposes of 29 Del.C. Ch. 48.

11.0 Severability

The sections and subsections of these rules and regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of Delaware, then such opinion or enactment shall invalidate only that particular

section or subsection of these rules and regulations and all other sections shall remain in full force and effect.

12.0 Key Controls

- 12.1 Any key that is considered sensitive and is required to be controlled and maintained by these regulations and any corresponding locking device shall be approved by the agency. Such keys shall be legally duplicated only by the manufacturer or other approved entity and shall be capable of unlocking the locking device on no more than one (1) type of secure box, compartment or location used or maintained within the charitable video lottery facility. Nothing herein shall preclude the agency from exempting a type of secure box, compartment or location from the requirements of this subsection upon a determination that the security of such box, compartment or location would not otherwise be compromised.
- 12.2 The agent shall establish key control for any sensitive key. Such procedures shall provide for, at a minimum, the following:
- 12.2.1 The requisitioning of keys and locking devices from vendors, blank stock, and destruction; and
- 12.2.2 The security and restrictions which control access to keys, whether manually or through an electronic system, and records and reports generated or prepared.

13.0 Bank Secrecy Act, Title 31, Anti-Money Laundering

Consistent with the requirements of the federal Bank Secrecy Act, (31 U.S.C. 5311, et seq) and regulations promulgated thereunder, each licensed agent shall comply with federal law pertaining to reportable currency transactions and transactions that are believed to be suspicious.

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 HEALTH AND SOCIAL SERVICES**DIVISION OF DEVELOPMENTAL DISABILITY SERVICES**

Statutory Authority: 18 Delaware Code, Section 3361(f) and 3570A (11 **Del.C.** §§3361(f) and 3570A)

2102 Autism Service Providers**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 18 of the **Delaware Code**, Sections 3361(f) and 3570A, Delaware Health and Social Services (DHSS) / Division of Developmental Disabilities Service is proposing regulations to implement SB 22.

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 Kai-Stefan Fountain, Division of Developmental Disabilities, Community Services, 26351 Patriots Way, Suite 101LL, Georgetown, Delaware 19947, Fax: 302-934-6193, E-Mail: kai-stefan.fountain@state.de.us by March 31, 2013.

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

SUMMARY OF PROPOSAL

The proposal creates regulations regarding standards for certifying qualified autism services providers as required by the passage of Senate Bill 22 and Title 18 of the **Delaware Code**, Sections 3361(f) and 3570A.

Statutory Authority

Senate Bill 22: Title 18 of the **Delaware Code**, Sections 3361(f) and 3570A.

Background

SB22 was enacted into law in 2012 and requires DHSS to create regulations that establish standards for certifying qualified autism services providers for purposes of the insurance reimbursement now required by Delaware law.

Summary of Proposal

The purpose of the proposed regulations is to establish standards for certifying qualified autism services providers

Fiscal Impact Statement

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

2102 Autism Service Providers

1.0 Purpose

Title 18, Sections 3361(f) and 3570A of the Delaware Code require that the Department of Health and Social Services promulgate regulations establishing standards for certifying qualified autism services providers. Once the regulations are promulgated, payment for the treatment of autism spectrum disorders covered under Sections 3361(f) and 3570A shall only be required to be made to autism services providers who meet the standards.

2.0 Definitions

“Applied behavior analysis” or “ABA” means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior. Applied behavior analysis interventions are based on scientific research and the direct observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis expressly excludes psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

“Autism services provider” means any person, entity, or group authorized by this section that designs, supervises, and/or provides treatment of autism spectrum disorders. This includes licensed physicians, psychologists or their assistants, psychiatrists, speech therapists or their aides, occupational therapists or their aides, physical therapists or their assistants, practitioners with the national certification of board-certified behavior analyst and behavioral technicians working under their supervision, licensed professional counselors of mental health, licensed clinical social workers, and advanced practice nurses.

“Autism spectrum disorders” means any of the pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), including Autistic Disorder, Asperger’s Disorder and Pervasive Developmental Disorder Not Otherwise Specified, as such may be amended hereafter from time to time.

“Behavioral health treatment” means professional counseling, guidance services or treatment programs, including applied behavior analysis, that are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual. This definition also applies to treatment or counseling to improve social skills and function.

“Behavioral Technician” means a person meeting the requirements set forth in Section 3 of these regulations who implements components of an applied behavior analysis treatment plan designed and supervised by a Board Certified Behavior Analyst® (BCBA) or a Board Certified Behavior Analyst-Doctoral® (BCBA-D).

PROPOSED REGULATIONS

“Medically necessary” means reasonably expected to do the following:

- prevent the onset of an illness, condition, injury, or disability;
- reduce or ameliorate the physical, mental, or developmental effects of an illness, condition, injury, or disability; or
- assist to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the individual and the functional capacities that are appropriate for individuals of the same age.

“Pharmacy care” means medications prescribed by a licensed practitioner and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

“Psychiatric care” means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.

“Psychological care” means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices or by a psychological assistant acting under the supervision of a psychologist.

“Screening and diagnosis of autism spectrum disorders” means medically necessary assessments, evaluations, or tests to diagnose whether an individual has or is at risk for one of the autism spectrum disorders.

“Therapeutic care” means services provided by speech, occupational, or physical therapists or an aide or assistant under their supervision.

“Treatment for autism spectrum disorders” shall include the following care prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders by a licensed physician or licensed psychologist who determines the care to be medically necessary:

- behavioral health treatment;
- pharmacy care;
- psychiatric care;
- psychological care;
- therapeutic care;
- items and equipment necessary to provide, receive, or advance in the above listed services, including those necessary for applied behavioral analysis.

3.0 Qualified Autism Service Providers

- 3.1 If an autism services provider is currently certified as a BCBA or BCBA-D, such autism services provider shall be deemed to have met the standards to be established under this section to provide applied behavior analysis services. The Behavior Analyst Certification Board sets forth a task list of acceptable activities of an individual they certify and maintains disciplinary and ethical standards. Certified individuals must act within the scope of these documents and their certification, as currently set forth and as subsequently amended. These documents and requirements are set forth on the Behavior Analyst Certification Board website, www.bacb.com.
- 3.2 Professionals and their aides and assistants listed in 2.2 may provide treatment for autism spectrum disorders, provided that such services are medically necessary and within the professional’s scope of practice and scope of competence and training. Aides and assistants must work under the direction and supervision of the professional. Only people certified as a BCBA or BCBA-D or behavioral technicians who work under the supervision of a BCBA or BCBA-D are considered qualified, under these regulations, to provide applied behavior analysis.
- 3.3 Behavioral Technicians who work under the supervision of a BCBA or BCBA-D and who meet the criteria listed below may implement components of applied behavior analysis treatment plans. The supervising BCBA or BCBA-D must verify that the criteria set forth have been met.
- 3.3.1 The supervision by BCBA or BCBA-D must be such that the ratio of clinical management and case supervision hours to direct treatment hours should reflect the needs of the client but shall not be less than 1.5:10. If ABA treatment is more than 10 hours a week, 2 hours of supervision is required.

- 3.3.2 Supervision means that for every 10 hours per week or less of ABA treatment delivered by a Behavioral Technician, the supervising professional provides a minimum of 1.5 hours per week of clinical management and case supervision.
- 3.3.3 Other requirements:
- 3.3.3.1 High School Diploma or GED;
 - 3.3.3.2 Proof of passing a federal and state criminal background and child and adult abuse registry check;
 - 3.3.3.3 Annual CPR certification;
 - 3.3.3.4 Annual signed statement that they have read and understand an explanation of Delaware's mandatory child abuse reporting law (including hotline);
 - 3.3.3.5 Signed statement that they have read and understand an explanation of HIPAA;
 - 3.3.3.6 Proof of successful completion of an online or in-person course on Autism Spectrum Disorders that is on the list of continuing education providers authorized by the BACB, provided by any accredited two or four year college (online or in-person), or provided by an ABA or behavioral health agency training its own staff so long as such training is done by a BCBA.
 - 3.3.3.7 Proof of completion of competency-based training in implementing applied behavior analysis procedures delivered and verified by the supervising BCBA, or BCBA-D. A person holding a current certification of board certified assistant behavior analyst (BCaBA) is deemed to have met this requirement.
 - 3.3.3.8 Proof of successful completion of an online or in-person course on ABA principles that has been approved by the Delaware Association of Behavior Analysts or Autism Delaware. This may include coursework offered by an agency which provides ABA therapy and trains its employees in-house. A person holding a current certification of board certified assistant behavior analyst (BCaBA) is deemed to have met this requirement.
 - 3.3.3.9 After completion of the above, a minimum of 10 hours of competency-based training and direct service, observed by the BCBA or BCBA-D, before providing one-on-one service.

4.0 Disqualification of Autism Service Providers

- 4.1 A person who meets a definition of an Autism Service Provider under section 3.0 becomes disqualified if
- 4.1.1 The BCBA or BCBA-D no longer has a credential issued by the Behavior Analyst Certification Board.
 - 4.1.2 The professional license under which a person practices is suspended or revoked;
 - 4.1.3 The person is under investigation and review for or is substantiated for or convicted of abuse, mistreatment, neglect, or exploitation; or
 - 4.1.4 An aide, assistant, or behavioral technician ceases employment or the agreement under which the person is supervised by the Autism Service Provider is terminated.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Increased Primary Care Service Payment

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 *increased Medicaid payments for designated primary care services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2013.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that the Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan, pursuant to section 1202 of the Affordable Care Act, to modify *reimbursement for primary care services*.

Statutory Authority

Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*

Background

Section 1202 adds new requirements in sections 1902(a)(13), 1902(jj), 1932(f), and 1905(dd) of the Social Security Act, as amended by the *Affordable Care Act*.

Specifically, Section 1202 requires state Medicaid agencies to increase payments to certain specialties for certain primary care services provided to Medicaid recipients during calendar years 2013 and 2014. Under this provision, certain physicians that provide eligible primary care services would be paid the Medicare rates in effect in calendar years (CYs) 2013 and 2014 (or if greater, the Medicare rate in effect in 2009) instead of their usual state-established Medicaid rates, which may be lower than federally established Medicare rates. Increased payment applies to primary care services delivered by a physician with a specialty designation of family medicine, general internal medicine, or pediatric medicine or related subspecialists. States will receive 100 percent Federal financial participation (FFP) for the difference between the Medicaid State plan payment amount as of July 1, 2009 and the applicable Medicare rate. The increase applies to a specific set of services and procedures that Centers for Medicare and Medicaid Services (CMS) designates as "primary care services".

In 42 CFR §447.410, States are required to *submit a State Plan Amendment (SPA)* to reflect the fee schedule rate increases for eligible primary care physicians under section 1902(a)(13)(A) of the Social Security Act. The purpose of this requirement is to assure that when States make the increased reimbursement to providers, they have State Plan authority to do so and they have notified providers of the change in reimbursement as required by Federal regulations.

Summary of Proposal

Pursuant to 42 CFR §447.205, the Division of Medicaid and Medical Assistance (DMMA) is required to give public notice of any significant proposed change in its method and standards for setting payment rate for services. On December 22, 2012 in the News Journal and on December 19, 2012 in the Delaware State News, DMMA issued public notice of its intent to submit a Medicaid State Plan amendment to implement the provisions of Section 1202 of the Affordable Care Act.

Effective January 1, 2013, this State Plan Amendment (SPA) will (1) amend the fees for selected services provided by certain primary care physicians to match 100% of Medicare rates for calendar years 2013 and 2014 and (2) amend the fees for vaccine administration under the Vaccines for Children (VFC) Program to match 100% of Medicare rates for calendar years 2013 and 2014, or the VFC Regional Maximum Amount, whichever is less.

Changes to the Medicaid State Plan

Effective January 1, 2013, this State Plan Amendment, Transmittal Number 13-001, will amend the fees for services provided by certain primary care physicians to match 100% of Medicare rates for calendar years 2013 and 2014, calculated pursuant to 42 USC §1396a(a)(13)(C) and 42 CFR §447.405(a). These increased rates will apply

to the primary care procedure codes identified pursuant to 42 USC §1396a(jj) and 42 CFR §447.400(c). Primary care physicians identified pursuant to 42 USC §1396a(13)(C) and 42 CFR §447.400(a) will be eligible to receive 100% of the Medicare rates for those primary care services.

Effective January 1, 2013, this State Plan Amendment will also amend the fees for vaccine administration provided under the Vaccines for Children (VFC) program to match 100% of Medicare rates for calendar years 2013 and 2014, or the VFC Regional Maximum Amount, whichever is less; calculated pursuant to 42 CFR §447.405(b).

Due to the extensive delay in finalizing the federal rule and the requirement that CMS approve the State methodology for increased payments, DMMA and its contractors will initially reimburse qualifying providers according to the current rates beginning January 1, 2013. DMMA and its contractors will then reimburse qualifying providers the amount above the current rate attributable to the increase required by the federal rule, retroactive to January 1, 2013.

The provisions of this state plan amendment relating to methodology and payment of the enhanced rate are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

Due to the availability of 100% FMAP for these primary care services, the DMMA projects no fiscal impact on the General Fund in Calendar Years 2013 and 2014.

DMMA PROPOSED REGULATION #13-10**REVISION:****ATTACHMENT 4.19-B****Introduction - Page 1****STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT****STATE: DELAWARE****METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –****OTHER TYPES OF CARE****Physician Services****Increased Primary Care Service Payment 42 CFR 447.405, 447.410, 447.415****Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment**

The state reimburses for services provided by physicians meeting the requirements of 42 CFR 447.400(a) at the Medicare Part B fee schedule rate using the Medicare physician fee schedule rate in effect in calendar years 2013 and 2014 or, if greater, the payment rates that would be applicable in those years using the calendar year 2009 Medicare physician fee schedule conversion factor. If there is no applicable rate established by Medicare, the state uses the rate specified in a fee schedule established and announced by CMS.

The rates reflect all Medicare site of service and locality adjustments.

The rates do not reflect site of service adjustments, but reimburse at the Medicare rate applicable to the office setting.

The rates reflect all Medicare geographic/locality adjustments.

The rates are statewide and reflect the mean value over all counties for each of the specified evaluation and management and vaccine billing codes.

The following formula was used to determine the mean rate over all counties for each code: _____

ATTACHMENT 4.19-B**Introduction - Page 2****STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT****STATE: DELAWARE****METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –****OTHER TYPES OF CARE****Physician Services****Increased Primary Care Service Payment 42 CFR 447.405, 447.410, 447.415**

PROPOSED REGULATIONS

Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment Continued

Method of Payment

- The state has adjusted its fee schedule to make payment at the higher rate for each E&M and vaccine administration code.
- The state reimburses a supplemental amount equal to the difference between the Medicaid rate in effect on July 1, 2009 and the minimum payment required at 42 CFR 447.405.

Supplemental payment is made: monthly quarterly

Primary Care Services Affected by this Payment Methodology

- This payment applies to all Evaluation and Management (E&M) billing codes 99201 through 99499.
- The State did not make payment as of July 1, 2009 for the following codes and will not make payment for those codes under this SPA (specify codes). ***(To Be Determined)***

**ATTACHMENT 4.19-B
Introduction - Page 3**

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE
Physician Services
Increased Primary Care Service Payment 42 CFR 447.405, 447.410, 447.415**

**Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment Continued
(Primary Care Services Affected by this Payment Methodology – continued)**

- The state will make payment under this SPA for the following codes which have been added to the fee schedule since July 1, 2009 (specify code and date added). ***(To Be Determined)***

Physician Services – Vaccine Administration

For calendar years (CYs) 2013 and 2014, the state reimburses vaccine administration services furnished by physicians meeting the requirements of 42 CFR 447.400(a) at the lesser of the state regional maximum administration fee set by the Vaccines for Children (VFC) program or the Medicare rate in effect in CYs 2013 and 2014 or, if higher, the rate using the CY 2009 conversion factor. ***(To Be Determined Upon Release of the Vaccine Administration Rate by the Centers for Medicare and Medicaid Services)***

- Medicare Physician Fee Schedule rate
- State regional maximum administration fee set by the Vaccines for Children program
- Rate using the CY 2009 conversion factor

**ATTACHMENT 4.19-B
Introduction - Page 4**

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE
Physician Services
Increased Primary Care Service Payment 42 CFR 447.405, 447.410, 447.415

**Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment Continued
Documentation of Vaccine Administration Rates in Effect 7/1/09**

The state uses one of the following methodologies to impute the payment rate in effect at 7/1/09 for code 90460, which was introduced in 2011 as a successor billing code for billing codes 90465 and 90471.

The imputed rate in effect at 7/1/09 for code 90460 equals the rate in effect at 7/1/09 for billing codes 90465 and 90471 times their respective claims volume for a 12 month period which encompasses July 1, 2009. Using this methodology, the imputed rate in effect for code 90460 at 7/1/09 is: _____.

A single rate was in effect on 7/1/09 for all vaccine administration services, regardless of billing code. This 2009 rate is: \$8.00 (eight dollars).

Alternative methodology to calculate the vaccine administration rate in effect 7/1/09:

Note: This section contains a description of the state's methodology and specifies the affected billing codes.

**ATTACHMENT 4.19-B
Introduction - Page 5**

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE
Physician Services
Increased Primary Care Service Payment 42 CFR 447.405, 447.410, 447.415

**Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment Continued
Effective Date of Payment**

E & M Services

This reimbursement methodology applies to services delivered on and after January 1, 2013, ending on December 31, 2014 but not prior to December 31, 2014. All rates are published at (<http://www.dmap.state.de.us/home/index.html>).

Vaccine Administration

This reimbursement methodology applies to services delivered on and after January 1, 2013, ending on December 31, 2014 but not prior to December 31, 2014. All rates are published at (<http://www.dmap.state.de.us/home/index.html>).

Supersedes Page: None

PRA Disclosure Statement

PROPOSED REGULATIONS

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1148. The time required to complete this information collection is estimated to average 20 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

DIVISION OF PUBLIC HEALTH

AUTHORITY ON RADIATION PROTECTION

Statutory Authority: 16 Delaware Code, §7405 (16 Del.C. § 7405)

PUBLIC NOTICE

4465 Delaware Radiation Control Regulations

The Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to five sets of Delaware Radiation Control Regulations. The purpose of the amendments is to update the requirements so that they are in concert with current healthcare standards and to align them more closely with current state administrative code and federal requirements. On March 1, 2013, the ARP plans to publish as proposed the amended regulations specified below, and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

The Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed Delaware Radiation Control Regulations. Due to the extensive number of amendments the ARP has concluded that this set of five current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

Delaware Citation	Title
Part C	Licensing of Radioactive Material
Part F	Use of Diagnostic X-Rays in the Healing Arts
Part G	Use of Radionuclides in the Healing Arts
Part K	Compliance Procedures
Part X	Therapeutic Radiation Machines

The public hearing will be held on March 22, 2013 at 2:30 p.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the March 1, 2013 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Radiation Control at (302) 744-4546.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Monday, April 8, 2013 at:

Deborah Harvey
 Division of Public Health
 417 Federal Street
 Dover, DE 19901
 Email: Deborah.Harvey@state.de.us Phone: (302) 744-4913

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

4465 Delaware Radiation Control Regulations

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Case Administration Provisions: DSSM 1000 - 1008

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding Case Administration, including, *Definitions; Treating Clients with Courtesy; Keeping Client Information Confidential; Safeguarding Case Records; Compiling and Saving Case Record Contents; Guaranteeing Civil Rights and Non-Discrimination; Making Civil Rights Complaints; and, Providing Policy Information.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 31, 2013.

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

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Case Administration, including *Definitions; Treating Clients with Courtesy; Keeping Client Information Confidential; Safeguarding Case Records; Compiling and Saving Case Record Contents; Guaranteeing Civil Rights and Non-Discrimination; and, Providing Policy Information.*

Statutory Authority

- Title 31 of the Delaware Code, Chapter 5, §501, *General Assistance Program, Legislative intent*
- Title 31 of the Delaware Code, Chapter 11, §1101, *Confidential character of public assistance records; penalties for violations*
- Title 31 of the Delaware Code, Chapter 36, §3610, *General Assistance Program, Acquisition of information by court-appointed special advocate*
- 7 CFR §272.1(c), *Use of disclosure of information*
- 7 CFR §272.6, *Nondiscrimination compliance*
- 45 CFR Part 80, *Nondiscrimination under programs receiving federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964*
- 45 CFR §92.42, *Retention and access requirements for records* 45 CFR §205.50, *Safeguarding information for the financial assistance programs*
- 45 CFR §205.70, *Availability of agency program manuals* §504 of the Rehabilitation Act of 1973 Personal Responsibility and Work Reconciliation Act of 1996
- Title VI of the Civil Rights Act of 1964

Background

The Department of Health and Social Services is the agency designated by the State as responsible for Delaware's public assistance programs. Within the Department, the Division of Social Services (DSS) is

responsible for administering the following programs in an accurate and timely fashion while treating clients with respect and dignity: Temporary Assistance for Needy Families (TANF), General Assistance Program, Food Supplement Program, Refugee Resettlement Program, Child Care Subsidy Program, Emergency Assistance Program, and Employment and Training Services.

The administrative requirements presented in the Division of Social Services Manual (DSSM) sections 1000 through 1008 relate to the activities of Division staff engaged in the direct administration of the State's public assistance programs.

Summary of Proposed Changes

The purpose of this rule change is to reformat and to clarify text for ease of readability, as follows:

- *DSSM 1000 Administration* is removed and replaced with *DSSM 1000 Definitions*;
- *DSSM 1001* the purpose of Delaware's financial assistance programs is removed from the policy manual as that information is on the Division of Social Services (DSS) website;
- *DSSM 1003* and *DSSM 1003.1* are combined into *DSSM 1003*;
- *DSSM 1003.2* is expanded into *DSSM 1003.2* and *DSSM 1003.2.1*;
- *DSSM 1006.1* and *DSSM 1006.2* are combined into *DSSM 1006.1*;
- *DSSM 1006.7* is incorporated into *DSSM 1006*; and,
- *DSSM 1007.1* and *DSSM 1007.2* are incorporated into *DSSM 1007*.

Additional changes are proposed throughout the rules to update terms and remove obsolete language, to change the name of each section to more accurately reflect the content of the policy and to add the applicable federal citation to the appropriate policy section.

The proposed changes affect the following policy sections in the Division of Social Services Manual (DSSM):

- DSSM 1000, ~~*Responsibility for the Administration of Delaware's Assistance Programs*~~ *Definitions*
- DSSM 1001, ~~*Purpose of Delaware's Financial Assistance Program*~~ *RESERVED*
- DSSM 1002, ~~*Courteous Treatment of Clients*~~ *Treating Clients With Courtesy*
- DSSM 1003, ~~*Confidentiality*~~ *Keeping Client Information Confidential*
- DSSM 1003.1, ~~*Procedures to Maintain Confidentiality*~~ *RESERVED*
- DSSM 1003.2, ~~*Information to Law Enforcement Agencies*~~ *Releasing Confidential TANF Recipient Information*
- DSSM 1003.2.1, ~~*Releasing Confidential FSP Recipient Information*~~
- DSSM 1003.3, ~~*Child Abuse, Neglect and Exploitation*~~ *Reporting Child Abuse and Neglect*
- DSSM 1003.4, ~~*Court Appointed Special Advocate (CASA or guardian ad litem)*~~ *Releasing Confidential Information to Court Appointed Special Advocates*
- DSSM *1003.5, Disclosure of Information for Other Reasons* ~~*Other Reasons for Releasing Confidential Information*~~
- DSSM 1004, ~~*Records To Be Kept In Locked Files*~~ *Safeguarding Case Records*
- DSSM 1005, ~~*Case Record Maintenance and Retention*~~ *Compiling and Saving Case Record Contents*
- DSSM 1006, ~~*Civil Rights and Non-Discrimination*~~ *Guaranteeing Civil Rights and Non-Discrimination*
- DSSM 1006.1, ~~*Non-Discrimination and Administrative Practices*~~ *Ensuring Non-Discrimination in the Provision of Services*
- DSSM 1006.2, ~~*Administration of the Civil Rights Program*~~ *RESERVED*
- DSSM 1006.3, ~~*Civil Rights Information to Clients and Participants*~~ *Providing Civil Rights Information*
- DSSM 1006.4, ~~*Assurance of Civil Rights Program Compliance in Regional Operations*~~ *Assuring Compliance in Area Operations*
- DSSM 1006.5, ~~*Reports of Civil Rights Program*~~ *Reporting Civil Rights Program Activities*
- DSSM 1006.6, ~~*Civil Rights Program and Public Relations*~~ *Publicizing the Civil Rights Program*
- DSSM 1006.7, ~~*Staff Development and the Civil Rights Program*~~ *RESERVED*
- DSSM 1007, ~~*Complaint Procedures*~~ *Making Civil Rights Complaints*
- DSSM 1007.1, ~~*Right to File Complaint*~~ *RESERVED*
- DSSM 1007.2, ~~*Methods of Filing Complaints*~~ *RESERVED*
- DSSM 1007.3, ~~*Methods of Handling Complaints*~~ *Routing Civil Rights Complaints*
- DSSM 1007.4, ~~*Records of Complaints*~~ *Keeping Records of Civil Rights Complaints*
- DSSM 1007.5, ~~*Confidentiality of Complaints*~~ *Keeping the Identity of Complaints Confidential*
- DSSM 1007.6, ~~*Other Complaint Procedures*~~ *Making Complaints*

- DSSM 1008, ~~Availability of Program Manuals~~ Providing Policy Information

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

Case Administration Provisions: DSSM 1000 - 1008

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(c & d) (7 Del.C. §901(c & d))
7 DE Admin. Code 3511

3511 Summer Flounder Size Limits; Possession Limits

REGISTER NOTICE #2013 - 02

1. TITLE OF THE REGULATION:

3511 Summer Flounder Size Limits; Possession Limits

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

This action is to consider amending the summer flounder (*Paralichthys dentatus*) regulation, with possible changes to the season and minimum size limit.

Summer flounder are managed cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC) and the National Marine Fisheries Service through Amendment 13 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. The ASMFC and MAFMC approved a coastwide recreational summer flounder harvest limit for 2013 resulting in recreational summer flounder allocation of 78,512 fish to Delaware. Although this is a reduction from the 2012 allocation (87,536 fish), the 2013 quota represents a 104% increase relative to Delaware's 2012 recreational harvest (38,470 fish). As such, Delaware may liberalize its management measures for the 2013 summer flounder fishery, provided the management measures are approved by the ASMFC's Summer Flounder, Scup and Black Sea Bass Management Board following established criteria.

Four options were developed and subsequently approved by the ASMFC's Summer Flounder, Black Sea Bass and Scup Technical Committee at their January 22, 2013 meeting (Table). These options will serve as the basis for the proposed regulatory change.

Table. Approved management options for proposed changes to 7 DE Admin. Code §3511
(Summer Flounder Size Limits; Possession Limits).

Option	Minimum Size	Possession Limit	Closed Season	Estimated Increase in Harvest
1	18.0 inches	4	Oct. 24 - Dec 31	0 (<i>status quo</i>)
2	17.5 inches	4	None	10.1%
3	17.0 inches	4	None	40.1%
4	16.5 inches	4	None	81.8%

It should be noted that as the estimated harvest for each option increases, the risk of exceeding the allowable catch increases. Exceeding allowable catch will result in a corresponding reduction in the following year's allowable catch.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Delaware Code**, Section 901(c & d) and Section 903(e)(2)a

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to §3511 Summer Flounder Size Limits; Possession Limits will be open March 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 21, 2013 beginning at 6:30 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914
David E. Saveikis, Director

3511 Summer Flounder Size Limits; Possession Limits; Season

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

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.
- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~eighteen (18)~~ inches between the tip of the snout and the furthest tip of the tail.

Note: Size to be determined in combination with closed season, but is limited to options one through four listed in the below "Table of Management Options"

- 3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than eighteen (18) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

Note: Size to be determined in combination with closed season, but is limited to options one through four listed in the below "Table of Management Options"

- 4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:
 - 4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;
 - 4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or
 - 4.3 A bill of lading while transporting fresh or frozen summer flounder.
 - 4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.
- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is

determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.
- 7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.
- 8.0 ~~Notwithstanding section 4.0 of this regulation, it shall be unlawful for any recreational or commercial hook and line fisherman to take and reduce to possession or to land any summer flounder during the closed season beginning 12:01 a.m. October 24 and ending 12:00 p.m. December 31 next ensuing.~~

Note: Closed season to be determined in combination with minimum size, but it is limited to options one through four listed in the below "Table of Management Options"

Table of Management Options

<u>Option</u>	<u>Minimum Size</u>	<u>Possession Limit</u>	<u>Closed Season</u>
<u>1</u>	<u>18.0 inches</u>	<u>4</u>	<u>Oct. 24 - Dec 31 (69 days)</u>
<u>2</u>	<u>17.5 inches</u>	<u>4</u>	<u>None</u>
<u>3</u>	<u>17.0 inches</u>	<u>4</u>	<u>None</u>
<u>4</u>	<u>16.5 inches</u>	<u>4</u>	<u>None</u>

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 942(b) (7 **Del.C.** §942(b))

3545 Invasive Finfish

REGISTER NOTICE #2012 - 24

1. TITLE OF THE REGULATION:

3545 Invasive Finfish

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

This action proposes the addition of a new section in the Tidal Finfish regulations (7 **Del.C.** §3500) to include definitions and measures to control the proliferation of invasive finfish in Delaware's tidal waters (§3545 Invasive Finfish). Snakehead fish, blue catfish, flathead catfish, walking catfish and grass carp are invasive finfish species likely to cause environmental and economic harm. This action proposes to: formally designate these fish as invasive finfish species; prohibit the stocking, possession, purchase, transport or sale of live invasive finfish; and specify fishing equipment and methods to take invasive finfish species.

Based on the best available biological information, the US Fish & Wildlife Service (USFWS) added the entire Channidae (snakehead) and Clariidae (walking catfish) families to the list of injurious fish, mollusks and crustaceans covered under the Lacy Act. Northern snakehead, native to Asia, are present in Delaware's tidal and non-tidal waters. The USFWS agreed that snakehead fishes threaten ecological harmony, present major risks to ecosystems and aquatic communities and could eliminate some threatened and endangered species that are

restricted in distribution. There are no known records of walking catfish in Delaware. This family of fishes is native to Asia. Walking catfish have the ability to rapidly reproduce and spread, including overland and their potential to outcompete native fishes and their potential to impact aquaculture make them a threat to Delaware's environment and economy.

Blue catfish (*Ictalurus furcatus*) and flathead catfish (*Pylodictis olivaris*) are native to the Mississippi River drainage. Flathead catfish have already been reported in Delaware's tidal waters and blue catfish have been found in adjoining states with shared waters. Both species function as top-level predators with broad diets, attain large sizes and are salinity tolerant. The introduction of these species in nearby states contributed to the extirpation of native ictalurid species such as white catfish and bullheads through competition and predation.

Grass carp (*Ctenopharyngodon idella*), a native to Asia, feed on submerged aquatic vegetation. When adequately controlled, through barriers and sterility, this species can be an effective tool at controlling nuisance aquatic vegetation. Uncontrolled, the species can denude large expanses of beneficial submerged aquatic vegetation. Submerged aquatic vegetation is valuable spawning, nursery and foraging habitat for native centrarchids and other aquatic species. The removal of submerged aquatic vegetation often leads to increased phytoplankton and diminished water quality.

Snakehead fish, blue catfish, flathead catfish, walking catfish and grass carp are invasive finfish species whose introduction or proliferation are likely to cause economic and/or environmental harm to Delaware's tidal waters. The proposed action will assist in preventing the introduction or proliferation of these invasive fishes in Delaware.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Section 942(b) (7 Del.C., §942(b))

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed inclusion of a §3545 Invasive Finfish regulation will be open March 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 21, 2013 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914
David E. Saveikis, Director

3545 Invasive Finfish

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

1.0 Definitions

1.1 For the purpose of Tidal Finfish Regulation 3545, the following words and phrases shall have the following meaning ascribed to them, unless the context clearly indicates otherwise:

“Bow and arrow” means an instrument with one or more pointed barbed or barbless prongs or blades affixed to a straight shaft and propelled by a stringed mechanical device.

“Director” means the Director of the Division of Fish and Wildlife.

“Invasive finfish” means any species of the family Channidae, including but not limited to the northern snakehead (*Channa argus*) and blotched snakehead (*C. maculata*); blue catfish (*Ictalurus furcatus*); flathead catfish (*Pylodictis olivaris*); walking catfish (*Clarias batrachus*); and grass carp (*Ctenopharyngodon idella*).

2.0 Transportation, Possession and Sale

It is unlawful to transport, purchase, possess, or sell a live invasive finfish without the written permission of the Director.

3.0 Stocking

It is unlawful to stock any invasive finfish, including the eggs thereof or other biological material, capable of spread, reproduction or propagation, into the tidal waters of this state without the written permission of the Director.

4.0 Equipment and Methods Used for Invasive Species Fishing

4.1 It is lawful for a person to take invasive finfish with any fishing equipment or method for which they are licensed, permitted or lawfully exempt.

4.2 It is lawful for a licensed, permitted or lawfully exempt recreational angler to take invasive finfish in Delaware's tidal waters with a bow and arrow.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY OFFICE OF THE SECRETARY

Statutory Authority: 11 Delaware Code, Section 4120A (11 Del.C. §4120A)

PUBLIC NOTICE

1100 Delaware Sex Offender Management Board

In compliance with the State's Administrative Procedures Act (APA- Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 41, Section 20A, Delaware Sex Offender Management Board (SOMB) is proposing qualifications for those individuals who treat sex offenders.

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 Laurie Pezick, SOMB provider credentialing committee, 314 Cherry Lane, New Castle DE 19720 or by certified electronic mail to Laurie.Pezick@state.de.us by March 31, 2013.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of the Sex Offender Management Board and credentialing committee analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The proposal described below establishes qualification for those individuals who will be providing sex-offense specific treatment to convicted sex offenders.

Background

Effective July 5, 2007 The Delaware General Assembly passed legislation that created a Sex Offender Management Board. The Board is tasked with developing standards and guidelines for the evaluation, identification, classification, treatment, and continued monitoring of sex offenders at each stage of the criminal justice system. The paramount purpose and goal of the Sex Offender Management Board is to maximize community safety and to ensure that sex offenders are not within the community without comprehensive treatment, constant supervision, and behavioral monitoring.

Summary of Qualifications

The proposed qualifications are included as section four of a larger document located on the Sex Offender

Management Board website <http://www.somb.dshs.delaware.gov/> establishing standards and guidelines for managing and treating sex offenders.

The qualifications establish education and training requirements for individuals who provide sex-offense specific treatment. The qualifications also establish a process to be placed and remain on a provider list. All state agencies must use SOMB approved treatment providers when contracting or providing such services.

1100 Delaware Sex Offender Management Board

1.0 Intent and Purpose

The General Assembly hereby declares that the comprehensive evaluation, identification, classification, treatment, and continued monitoring of sex offenders who are subject to the supervision of the criminal justice system is necessary in order to work toward the reduction of recidivism by such offenders. Therefore, the General Assembly hereby creates a Board which shall develop and standardize the evaluation, identification, classification, treatment, and continued monitoring of sex offenders at each stage of the criminal justice system so that such offenders will curtail recidivistic behavior and the protection of victims and potential victims will be enhanced. The General Assembly hereby recognizes that some sex offenders cannot or will not respond to treatment and that, in creating the Board described in this section, the General Assembly does not intend to imply that all sex offenders can be successful in treatment. Further, the General Assembly mandates that each member agency as outlined below must act in accordance with the standards established by the Board.

2.0 Definitions

“**Accountability**” means accurate attributions of responsibility, without distortion, minimization, or denial.

“**Adult Standards**” means the standards and guidelines established to evaluate, monitor, and treat adult convicted sex offenders. Section 1.0 establishes guidelines for pre-sentence investigations. Section 2.0 establishes standards for sex offense specific evaluations. Section 3.0 establishes standards of practice for treatment providers. Section 4.0 establishes the qualifications for both adult and juvenile treatment providers, evaluators, and polygraph examiners. Section 5.0 establishes standards and guidelines for management of sex offenders on probation, parole, and community corrections. Section 6.0 establishes standards of practice for post-conviction sex offender polygraph testing. Section 7.0 establishes guidelines for institutional treatment of sex offenders.

“**Assessment**” means the collection of facts to draw conclusions which may suggest the proper course of action. Sometimes assessment and evaluation may be used interchangeably but assessment is on-going and includes an analysis of all data including a sex offense specific evaluation.

“**ATSA code of ethics**” means the Association for Treatment of Sexual Abusers has published a code of ethics for those individuals involved in the evaluation and treatment of sexual offenders. Delaware Sex Offender Management Board approved providers must adhere to these ethics.

“**Behavior Monitoring**” means a variety of methods for checking, regulating, and supervising the behavior of sex offenders

“**Case Management**” means coordination and implementation of the activities directed towards supervising, treating, and managing the behavior of individual sex offenders

“**Community Supervision Team**” means those individuals involved in the case management of a particular sex offender. The supervision team determines the best course of action to reduce risk while the sex offender is supervised in the community

“**Clinical Experience**” means activities directly related to providing evaluation and/or treatment to individual sex offenders. For example; face to face therapy, report writing, administration, scoring and interpretation of tests, participation on supervision teams, and clinical supervision of therapists treating sex offenders.

“**Criminal Justice Sanction**” means activities or action used to reduce the liberties of sex offenders under community supervision and the sentence of the Court or Board of Parole. Sanctions range from imposition of a curfew to incarceration for violation of probation/parole.

“Denial” means in psychological terms, denial means a defense mechanism used to protect the ego from anxiety-producing information.

“Developmental Disabilities” means chronic disabilities attributable to mental or physical impairments apparent before the age of 22. These disabilities tend to be life-long and result in substantial functional limitations in major life activities such as self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency.

“Evaluation” means the systematic collection, analysis, and documentation of psychological, behavioral and social information. Sex-offense specific evaluation includes the above information as well as information related to sexual history, arousal patterns, sexual deviance, dysfunction, sexual attitudes and cognition, risk of sexual re-offense, and risk of failure in sex offense specific treatment and supervision.

“Evidence-based practices” means approaches and interventions that have been scientifically tested in controlled studies and proven effective.

“Guardian” means an individual who has legal authority to make decisions on behalf of another.

“Informed Assent” means acquiesce or comply with specific terms or agreement. The use of “assent” in this document recognizes sex offenders are not voluntary clients and their choices are therefore limited.

“Informed Consent” means voluntary agreement or approval to do something in compliance with a request.

“Plethysmograph” means an electronic device used to measure variations in penile tumescence associated with sexual arousal. The tool is used in sex offender treatment to assist in determining deviant sexual arousal. There is a device that measures physiological changes for women as well.

“Polygraph Exam” means an instrument that simultaneously records changes in physiological processes such as heartbeat, blood pressure, and respiration, often used to detect deception. There are three types of post-conviction polygraph tests commonly administered to sex offenders: Specific Issue Examination, Disclosure or Sexual History Examination, and Maintenance Examination.

“Provider List” means a list published by the SOMB of individual treatment providers, evaluators, and polygraph examiners who meet the criteria set forth by the Standards.

“Risk assessment” means the process by which an evaluator, treatment provider, supervision officer, or pre-sentence officer determines risk for sexual re-offense. Appropriate risk assessment includes a review of all pertinent data, behavioral observations, physiological testing, and use of formal risk assessment tools.

“Sex Offender” as used in 11 Del.C. §4120A(b)(2) and §4121(a)(4) means any person who has ever been convicted of an offense as defined in 11 Del.C. §761 and §4121(a)(4), or of any attempt or conspiracy to commit any of the aforementioned offenses. Convictions shall include adjudications of delinquency and persons who enter a plea of guilty, or are found guilty but mentally ill, or not guilty by reason of insanity.

“Sexual Paraphilias/Sexual Deviance” means a subclass of sexual disorders in which the essential features are “recurrent intense sexually arousing fantasies, sexual urges, or behaviors generally involving (1) nonhuman objects, (2) suffering and humiliation of oneself or one’s partner, or (3) children or other non-consenting persons that occur over a period of at least six months and cause clinically significant distress in one or more important areas of functioning.

“SOMB” means the Delaware Sex Offender Management Board

“Supervision Officer” means the Probation or Parole officer assigned to monitor the sex offender while they are serving a sentence in the community.

“Supervision Plan” means a plan developed by the supervision officer in conjunction with the treatment team which outlines specific measurable goals related to success in supervision and reduction in recidivism.

“Sex offense-specific Treatment” means a long term comprehensive set of planned therapeutic experiences and interventions to change sexually abusive thoughts and behaviors. Such treatment

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specifically addresses the occurrence and dynamics of sexually deviant behavior and utilizes specific strategies to promote change. Sex offense-specific programming focuses on the concrete details of the actual sexual behavior, fantasies, arousal, planning, denial, and rationalizations. The primary treatment modality for sex offense specific treatment is group therapy. Other treatment modalities may be used in conjunction with group therapy.

“Treatment Provider” means a person who provides sex offense-specific treatment to sex offenders according to the Standards and Guidelines of this document.

3.0 Qualifications of Treatment Providers and Evaluators

- 3.1 There are distinct clinical functions within the levels of Full Operating and Associate Level Providers. The following sections outline qualifications for Treatment Providers, and Evaluators.
- 3.2 Treatment Provider- Full Operating Level. A Full Operating Level Treatment provider may treat sex offenders without supervision and may supervise Associate Level Treatment Providers. To qualify to provide sex offender treatment at the Full Operating Level an individual must meet all the following criteria:
- 3.2.1 The individual shall have a Masters Degree in a behavioral science related field and shall have completed within the past five (5) years a minimum of two thousand (2000) hours of clinical experience specifically in the areas of evaluation and treatment of sex offenders, at least half of which shall have been face-to-face therapy with adult convicted sex offenders or adjudicated juvenile offenders depending on the population you service (see definition of clinical experience);
or
- 3.2.2 The individual shall have attained the underlying credential of licensure or certification and be in good standing as a physician, psychologist, clinical social worker, professional counselor, marriage and family therapist, or clinical psychiatric nurse specialist; and
- 3.2.3 The individual shall have completed within the past five (5) years a minimum of one thousand (1000) hours of clinical experience specifically in the areas of evaluation and treatment of sex offenders, at least half of which shall have been face-to-face therapy with adult convicted sex offenders, or adjudicated juvenile offenders depending on the population you service (see definition of clinical experience). Such clinical experience may have been obtained while seeking licensure or after obtaining licensure, but if it was obtained in part or in full after licensure, it is subject to the same requirements for supervision as required for Treatment Providers under these Standards.
- 3.2.4 The individual shall have had at least eighty (80) hours of documented training specifically related to evaluation and treatment methods described in Sections 2.10, 3.4, and 3.5 of the Adult Standards within the last five years. The individual must demonstrate a balanced training, with fifty (50) of the hours coming from the subject areas listed as sex offense specific training and thirty (30) hours coming from the general topic areas as described below. Twelve (12) of the required fifty (50) hours shall be specific to developmental disabilities, Fifteen (15) hours of required thirty (30) general topic training hours must be in the area of victimology. Training shall be specific to the population you serve.
- 3.2.4.1 Sex offense specific training (at least 50 hours required from these areas):
- 3.2.4.1.1 Prevalence of sexual offending by adults/juveniles victimization rates
- 3.2.4.1.2 Typologies of adult sex offenders
- 3.2.4.1.3 Sex offender evaluation and assessment
- 3.2.4.1.4 Sex offender treatment planning and assessing treatment outcomes
- 3.2.4.1.5 Community Supervision techniques
- 3.2.4.1.6 Clinical supervision training
- 3.2.4.1.7 Treatment modalities, specific recommended applications, justification for use, contra-indictors.
- 3.2.4.1.8 Sex Offender Treatment Techniques including:
- 3.2.4.1.8.1 Evaluating and reducing denial

- 3.2.4.1.8.2 Behavioral treatment techniques
- 3.2.4.1.8.3 Cognitive behavioral techniques
- 3.2.4.1.8.4 Relapse prevention
- 3.2.4.1.8.5 Offense cycle
- 3.2.4.1.8.6 Empathy training
- 3.2.4.1.8.7 Confrontation techniques
- 3.2.4.1.8.8 Safety and containment planning
- 3.2.4.1.9 Offender/offense characteristics Crossover
- 3.2.4.1.10 Sex offender risk assessment adult and/or juvenile
- 3.2.4.1.11 Objective measures including:
 - 3.2.4.1.11.1 Polygraph (adult only)
 - 3.2.4.1.11.2 Plethysmograph (adult only)
 - 3.2.4.1.11.3 Abel Assessment (adult only)
- 3.2.4.1.12 Special sex offender populations including:
 - 3.2.4.1.12.1 Sadists (adult only)
 - 3.2.4.1.12.2 Psychopaths (adult only)
 - 3.2.4.1.12.3 Developmentally disabled
 - 3.2.4.1.12.4 Compulsive
 - 3.2.4.1.12.5 Juvenile
 - 3.2.4.1.12.6 Female
- 3.2.4.1.13 Family Unification/visitation
- 3.2.4.1.14 4Pharmacotherapy with sex offenders
- 3.2.4.1.15 Impact of sex offenses
- 3.2.4.1.16 Assessing treatment progress
- 3.2.4.1.17 Support system, family stability, parenting skills
- 3.2.4.1.18 Sex offender attachment style
- 3.2.4.1.19 Knowledge of laws, policies and ethical concerns relating to confidentiality, mandatory reporting, risk management and offender participation in treatment.
- 3.2.4.1.20 Ethics
- 3.2.4.1.21 Philosophy and principles of the Sex Offender Management Board
- 3.2.4.1.22 Continuing research in the field of adult and/or juvenile sexual offending
- 3.2.4.2 General topic training areas (at least a total of 30 hours required from these areas, to include 15 hours of victimology:
 - 3.2.4.2.1 Victim issues including impact and treatment
 - 3.2.4.2.2 Knowledge of criminal justice and/or court system, legal parameters and the relationship between the provider and the courts, including expectations related to testifying in court
 - 3.2.4.2.3 Secondary and Vicarious Trauma
 - 3.2.4.2.4 Anger management
 - 3.2.4.2.5 Healthy sexuality and sex education
 - 3.2.4.2.6 Learning Theory
 - 3.2.4.2.7 Multicultural sensitivity
 - 3.2.4.2.8 Understanding transference and counter-transference
 - 3.2.4.2.9 Family dynamics and dysfunction including domestic violence
 - 3.2.4.2.10 Co-morbid conditions, differential diagnosis
 - 3.2.4.2.11 Investigations
 - 3.2.4.2.12 Addictions and substance abuse

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- 3.2.5 To receive credit for training not identified on this list, it is incumbent on the trainee to write a justification demonstrating relevance to sex offender assessment/ treatment/ management as described in these Standards.
- 3.2.6 In concert with the generally accepted standards of practice of the individual's mental health profession, the individual shall adhere to the Professional Code of Ethics published by the Association for the Treatment of Sexual Abusers (ATSA). It is the responsibility of each provider/evaluator to comply with this Professional Code of Ethics. The provider/evaluator shall demonstrate competency according to the individual's respective professional standards and conduct all treatment in a manner that is consistent with the reasonably accepted standard of practice in the sex offense specific treatment community.
- 3.2.7 Provide satisfactory references as requested by the Sex Offender Management Board. The Sex Offender Management Board may also solicit such additional references as necessary to determine compliance with the Standards. The references shall include other members of the community supervision team.
- 3.2.8 The individual shall never have been convicted of, or plead no contest to, or received a deferred judgment for any offense involving criminal sexual or violent behavior, or a felony that would bring into question the competence or integrity of the individual to provide sex offense specific treatment.
- 3.2.9 At their own expense, the individual will complete an entire criminal history check including Federal information pursuant to the Federal Bureau of Investigation appropriation of Title 11 of Public Law 92-544 (28 U.S.C. 534). The individual will submit to fingerprinting as part of this process.
- 3.2.10 Report any practice that is in significant conflict with the standards.
- 3.2.11 Providers who are approved at the Full Operating Level and wish to supervise Associate Level Treatment Providers or individuals who have not applied, but are earning their clinical hours, shall submit to the Board supervision agreements with all individuals that they supervise within 30 days from the time the supervision began.
- 3.2.12 The supervision agreement should specify the frequency and length of supervision, type of supervision, and shall specify accumulated supervision hours. At least one hour of supervision specific to sex offender treatment/evaluation will be provided for every 30 hours of clinical contact with sex offenders.
- 3.2.13 Full Operating Level Treatment Providers who are supervising individuals who have not made application to the SOMB for listing shall conduct co-therapy group treatment, in the same room with that individual, or shall ensure that a Full Operating Level Treatment Provider is conducting co-therapy groups, in the same room, as well as review and sign off on all treatment plans and reports.
- 3.2.14 Continued Placement on the Provider List. Treatment providers must apply for continued placement on the list every two (2) years by the date provided by the Board. Requirements are as follows:
- 3.2.14.1 The Full Operating Level Treatment Provider must demonstrate continued compliance with the standards.
- 3.2.14.2 The individual shall accumulate a minimum of six hundred (600) hours of clinical experience every two years, three hundred (300) hours of which shall be face-to-face therapy with adult convicted sex offenders or adjudicated juvenile offenders depending on the population you service.
- 3.2.14.3 If the provider has ten (10) or more years of clinical experience, they may be eligible for an exception to the 300 hours of face-to-face clinical experience, as long as they meet the 600 hours requirement, as determined by the Application Review Committee.
- 3.2.14.4 Treatment Providers shall complete a minimum of forty (45) hours of continuing education every three years in order to maintain proficiency in the field of sex offender treatment and to remain current on any developments in the assessment, treatment, and monitoring of sex offenders. Thirty-five (35) hours shall come from the subject areas listed as sex

offense specific training, six (6) of the thirty-five (35) hours shall be specific to developmental disabilities, ten (10) hours coming from the general topic areas, as described in Section 4.1 of the Adult Standards. Four (4) of the 10 hours of training in the general topic areas shall be in the area of victimology. Training shall be specific to the population you serve.

3.2.14.4.1 To receive credit for training not identified on this list, it is incumbent on the trainee to write a justification demonstrating relevance to sex offender assessment/treatment/management as described in these standards.

3.2.14.5 Provide satisfactory references as requested by the Sex Offender Management Board. The Sex Offender Management Board may also solicit such additional references as necessary to determine compliance with the Standards. The references shall include other members of the community supervision team.

3.2.14.6 The individual shall never have been convicted of, plead no contest to, or received a deferred judgment for any offense involving criminal sexual or violent behavior, or a felony that would bring into question the competence or integrity of he individual to provide sex offense specific treatment.

3.2.14.7 At their own expense, the individual will complete an entire criminal history check including Federal information pursuant to the Federal Bureau of Investigation appropriation of Title 11 of Public Law 92-544 (28 U.S.C. 534). The individual will submit to fingerprinting as part of this process.

3.2.14.8 Report any practice that is in significant conflict with the Standards.

3.3 Treatment Provider- Associate Level. An Associate Level Treatment Provider may treat sex offenders under the supervision of a Full Operating Level Treatment Provider under these standards. To qualify to provide sex offender treatment at the Associate Level an individual must meet all the following criteria:

3.3.1 The individual shall have a baccalaureate degree or above in a behavioral science.

3.3.2 The individual shall have completed within the past five (5) years a minimum of six hundred (600) hours of supervised clinical experience. Five hundred (500) hundred hours of supervised clinical experience specifically in the area of treatment of sex offenders. At least half (250) of these hours must be in face-to-face therapy with convicted or adjudicated sex offenders depending on the population you serve. In addition at least one hundred sixty (160) of these face-to-face hours must have been in co-therapy, in the same room, with a Full Operating Level Treatment Provider.

3.3.3 The individual must have received at least one hundred (100) hours of face-to-face clinical supervision by a Full Operating Level Treatment Provider. The supervision must be reasonably distributed over the time in which the above clinical experience was being obtained (approximately one (1) hour of supervision for each 10 hours of clinical experience).

3.3.4 Treatment providers shall complete a minimum of fifty (50) hours of continuing education every five (5) years to maintain proficiency in the field of sex offender treatment and to remain current on any developments in the assessment, treatment, and monitoring of sexual offenders. Forty (40) hours shall come from the subject areas listed as sex offense specific training, twelve (12) of the forty hours shall be specific to developmental disabilities, ten (10) hours coming from the general topic areas, as described in section 4.1. Four (4) of the ten (10) hours of training in the general topic areas shall be in the area of victimology. Training shall be specific to the population you serve.

3.3.5 To receive credit for training not identified on this list, it is incumbent on the trainee to write a justification demonstrating relevance to sex offender assessment/treatment/management as described in these standards.

3.3.6 In concert with the generally accepted standards of practice of the individual's mental health profession, the individual shall adhere to the Professional Code of Ethics published by the Association of Treatment of Sexual Abusers (ATSA). It is the responsibility of each provider/evaluator to comply with this Professional Code of Ethics. The provider/evaluator shall demonstrate competency according to the individual's respective professional standards and

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- conduct all treatment in a manner that is consistent with the reasonably accepted standard of practice in the sex offense specific treatment community.
- 3.3.7 Provide satisfactory references as requested by the Sex Offender Management Board. The Sex Offender Management Board may also solicit such additional references as necessary to determine compliance with the Standards. The references shall include other members of the community supervision team.
- 3.3.8 The individual shall never have been convicted, plead no contest, or received a deferred judgment for an offense involving criminal sexual or violent behavior, or a felony that would bring into question the competence or integrity of the individual to provide sex offense specific treatment.
- 3.3.9 At their own expense, the individual will complete an entire criminal history check including Federal information pursuant to the Federal Bureau of Investigation appropriation of Title 11 of Public Law 92-544 (28 U.S.C. 534). The individual will submit to fingerprinting as part of this process.
- 3.3.10 Individuals who are approved as Full Operating Level Juvenile Treatment Providers may be approved at the Associate Operating Level to treat adults under these standards if they meet the following requirements:
- 3.3.10.1 The individual must be supervised by an adult Full Operating Level Treatment Provider under these standards.
- 3.3.10.2 Must have one hundred (100) hours of clinical face-to-face contact with convicted adult sex offender.
- 3.3.10.3 Must meet standards in section 4.1 training requirements.
- 3.3.10.4 Must meet the requirements identified in Standard 4.11 for continued placement on the list.
- 3.3.11 Movement to Full Operating Level. Associate Level Treatment Providers wanting to move to Full Operating Level status must complete and submit documentation of all of the requirements listed in Section 4.0-4.7 of the Adult Standards as well as a letter from the applicant's supervisor indicating the applicant's readiness to move to Full Operating Level status.
- 3.3.12 Continue Placement. Associate Level Treatment Providers must apply for continued placement on the list every two (2) years by the date provided by the Board. Requirements are as follows:
- 3.3.12.1 The Associate Level Treatment Provider must demonstrate continued compliance with Standards.
- 3.3.12.2 The individual shall accumulate a minimum of four hundred (400) hours of clinical experience every two years, 200 hours of which shall be face-to-face clinical experience with convicted/adjudicated sex offenders.
- 3.3.12.3 The individual shall obtain a minimum of one hour of face-to-face supervision, from an individual listed at the Full Operating Level under these standards. For every thirty (30) hours of clinical contact with sex offenders. This standard pertains both to those seeking licensure who have not yet met the licensing requirement of the state and to those who intend to provide treatment at the Associate Level for an indefinite period of time.
- 3.3.12.4 Associate Level Treatment Providers shall complete a minimum of forty-five (45) hours of continuing education every two years in order to maintain proficiency in the field of sex offender treatment and to remain current on any developments in the assessment, treatment, and monitoring of sex offenders. Thirty-five (35) hours shall come from the subject areas listed as sex offense specific training, six (6) of the thirty-five (35) hours shall be specific to developmental disabilities, ten (10) hours coming from the general topic areas, as described in Section 4.1 of the Adult Standards, four (4) of the ten (10) hours of training in the general topic areas shall be in the area of victimology. Training shall be specific to the population you serve.
- 3.3.12.5 To receive credit for training not identified on this list, it is incumbent of the trainee to write a justification demonstrating relevance to sex offender assessment/treatment/management as described in these standards.

- 3.3.12.6 Provide satisfactory references as requested by the Sex Offender Management Board. The Sex Offender Management Board may also solicit such additional references as necessary to determine compliance with the standards. The references shall include other members of the community supervision team.
 - 3.3.12.7 The individuals shall never be convicted of, plead no contest to, or received a deferred judgment for any offense involving criminal sexual or violent behavior, or a felony that would bring into question the competence or integrity of the individual to provide sex offense specific treatment.
 - 3.3.12.8 At their own expense, the individual will complete an entire criminal history check including Federal information pursuant to the Federal Bureau of Investigation appropriation of Title 11 of Public Law 92-544 (28 U.S.C. 534). The individual will submit to fingerprinting as part of this process.
 - 3.3.12.9 Report any practice that is in significant conflict with the standards.
- 3.4 Evaluator- Full Operating Level. An evaluator at the Full Operating Level may evaluate sex offenders without supervision and may supervise an evaluator operating at the Associate Level. To qualify to provide sex offender evaluations at the Full Operating Level an individual must meet all the following criteria.
- 3.4.1 The individual must be listed as a Full Operating Treatment Provider and complete all requirements as listed in Sections 4.0-4.11 of the Adult Standards.
 - 3.4.2 An evaluator shall have completed a minimum of forty (40) sex-offense specific evaluations as defined in section 2.000 of these standards within the last five years.
 - 3.4.3 The individual shall have had at least eighty (80) hours of documented training specifically related to evaluation and treatment methods described in sections 2.000 and 3.000, and including training in the area of victimology, within the last five years. The individual must demonstrate a balanced training, with twenty (20) of the hours coming from the subject areas listed as sex offense specific training and forty (40) hours specifically regarding the evaluation of adult or juvenile sex offenders and twenty (20) hours coming from the general topic areas as described in Section 4.1 of the Adult Standards. Training shall be specific to the population you serve.
 - 3.4.4 To receive credit for training not identified on this list, it is incumbent on the trainee to write a justification demonstrating relevance to sex offender assessment/ treatment/ management as described in these Standards.
 - 3.4.5 In concert with the generally accepted standards of practice of the individual's mental health profession, the individual shall adhere to the Professional Code of Ethics published by the Association for the Treatment of Sexual Abusers (ATSA). It is the responsibility of each provider/ evaluator to comply with this Professional Code of Ethics. The provider/evaluator shall demonstrate competency according to the individual's respective professional standards and conduct all treatment in a manner that is consistent with the reasonably accepted standard of practice in the sex offense specific treatment community.
 - 3.4.6 Provide satisfactory references as requested by the Sex Offender Management Board. The Sex Offender Management Board may also solicit such additional references as necessary to determine compliance with the Standards. The references shall include other members of the community supervision team.
 - 3.4.7 The individual shall never have been convicted of, or plead no contest to, or received a deferred judgment for any offense involving criminal sexual or violent behavior, or a felony that would bring into question the competence or integrity of the individual to provide sex offense specific treatment.
 - 3.4.8 At their own expense, the individual will complete an entire criminal history check including Federal information pursuant to the Federal Bureau of Investigation appropriation of Title 11 of Public Law 92-544 (28 U.S.C. 534). The individual will submit to fingerprinting as part of this process.
 - 3.4.9 Report any practice that is in significant conflict with the standards.

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- 3.4.10 Evaluators shall comply with section 2.000 Standards for sex-offense specific evaluations.
- 3.4.11 Providers who are approved at the Full Operating Level and wish to supervise Associate Level Evaluators or individuals who have not applied, but are earning their clinical hours, shall submit supervision agreements with all individuals that they are supervising within 30 days from the time supervision began.
- 3.4.12 The supervision agreement should specify the frequency and length of supervision, type of supervision, and shall specify accumulated supervision hours and that at least one hour (1) of supervision specific to sex offender treatment/evaluation will be provided for every thirty (30) hours of clinical contact with sex offenders.
- 3.4.13 Full Operating Level Evaluators who are supervising individuals who have not made application to the SOMB for listing shall review and sign off on all evaluations.
- 3.4.14 Continued Placement on the Provider List. Evaluators must apply for continued placement on the list every 2 years by the date provided by the Board. Requirements are as follows:
- 3.4.14.1 The evaluator must demonstrate continued compliance with the Standards.
- 3.4.14.2 The individual may maintain as a Full Operating Level Treatment Provider and Evaluator. In this case, the individual shall accumulate a minimum of 400 hours of clinical experience every two years, 200 hours of which shall be face-to-face consultation or therapy with sex offenders. This evaluator shall complete a minimum of ten (10) sex-offense specific evaluations in a two year period.
- 3.4.14.3 The individual shall have had at least forty (45) hours of documented training specifically related to evaluation and treatment methods described in sections 2.000 and 3.000, and including training in the area of victimology, within the last five years. The individual must demonstrate a balanced training, with fifteen (15) of the hours coming from the subject areas listed as sex offense specific training six (6) of the fifteen (15) shall be specific to developmental disabilities, twenty (20) hours specifically regarding the evaluation of adult or juvenile sex offenders, and ten (10) hours coming from the general topic areas as described in Section 4.1 of the Adult Standards. Training shall be specific to the population you serve.
- 3.4.14.3.1 To receive credit for training not identified on this list, it is incumbent of the trainee to write a justification demonstrating relevance to sex offender assessment/treatment/management as described in these standards.
- 3.4.15 Provide satisfactory references as requested by the Sex Offender Management Board. The Sex Offender Management Board may also solicit such additional references as necessary to determine compliance with the standards. The references shall include other members of the community supervision team.
- 3.4.16 The individuals shall never be convicted of, plead no contest to, or received a deferred judgment for any offense involving criminal sexual or violent behavior, or a felony that would bring into question the competence or integrity of the individual to provide sex offense specific treatment.
- 3.4.17 At their own expense, the individual will complete an entire criminal history check including Federal information pursuant to the Federal Bureau of Investigation appropriation of Title 11 of Public Law 92-544 (28 U.S.C. 534). The individual will submit to fingerprinting as part of this process.
- 3.4.18 Report any practice that is in significant conflict with the standards.
- 3.5 Evaluator Associate Level. An evaluator at the Associate Level may evaluate sex offenders under the supervision of an evaluator approved at the Full Operating Level. An evaluator at the Associate Level is an individual who has completed fewer than 40 sex-offense specific evaluations in the last five years. To qualify to provide sex offender evaluation at the Associate Level an individual must meet all the following criteria:
- 3.5.1 The applicant must be listed as an Associate Level or Full Operating Level Treatment Provider.
- 3.5.2 The individual must have received at least fifty (50) hours of face-to-face clinical supervision by a Full Operating Level Treatment Provider. The supervision must be reasonably distributed over the

- time in which the above clinical experience was being obtained (approximately one (1) hour of supervision for every 10 hours of clinical experience).
- 3.5.3 The individual shall have had at least forty (40) hours of documented training specifically related to evaluation and treatment methods described in sections 2.000 and 3.000, and including training in the area of victimology, within the last five years. The individual must demonstrate a balanced training, with ten (10) of the hours coming from the subject areas listed as a sex offense specific training and twenty (20) hours specifically regarding the evaluation of adult or juvenile sex offenders and ten (10) hours coming from the general topic areas as described in Section 4.1 of the Adult Standards. Training shall be specific to the population you serve.
- 3.5.3.1 To receive credit for training not identified on this list, it is incumbent of the trainee to write a justification demonstrating relevance to sex offender assessment/treatment/management as described in these standards.
- 3.5.4 Provide satisfactory references as requested by the Sex Offender Management Board. The Sex Offender Management Board may also solicit such additional references as necessary to determine compliance with the standards. The references shall include other members of the community supervision team.
- 3.5.5 The individuals shall never be convicted of, plead no contest to, or received a deferred judgment for any offense involving criminal sexual or violent behavior, or a felony that would bring into question the competence or integrity of the individual to provide sex offense specific treatment.
- 3.5.6 At their own expense, the individual will complete an entire criminal history check including Federal information pursuant to the Federal Bureau of Investigation appropriation of Title 11 of Public Law 92-544 (28 U.S.C. 534). The individual will submit to fingerprinting as part of this process.
- 3.5.7 Report any practice that is in significant conflict with the standards.
- 3.5.8 Movement to Full Operating Level Evaluator. Associate Level Treatment Providers wanting to move to Full Operating Level status must complete and submit documentation of all of the requirements listed in section 4.25, as well as a letter from the applicant's supervisor indicating the applicant's readiness to move to Full Operating Level Status.
- 3.5.9 Continued Placement. Associate Level evaluators must apply for continued placement on the list every two years by the date provided by the board. Requirements are as follows:
- 3.5.9.1 The evaluator must demonstrate continued compliance with the standards.
- 3.5.9.2 The evaluator at the Associate Level shall maintain listing as an Associate Level or Full Operating Level Treatment Provider and shall complete a minimum of ten (10) sex-offense specific evaluations in the two year period.
- 3.5.9.3 The individual shall have had at least forty (40) hours of documented training specifically related to evaluation and treatment methods described in sections 2.000 and 3.000, and including training in the area of victimology, within the last five years. The individual must demonstrate a balanced training, with ten (10) of the hours coming from the subject areas listed as sex offense specific training, six (6) of the ten (10) hours shall be specific to developmental disabilities, twenty (20) hours specifically regarding the evaluation of adult or juvenile sex offenders, and ten (10) hours coming from the general topic areas as described in Section 4.1 of the Adult Standards. Training shall be specific to the population you serve.
- 3.5.9.3.1 To receive credit for training not identified on this list, it is incumbent of the trainee to write a justification demonstrating relevance to sex offender assessment/treatment/management as described in these standards.
- 3.5.9.4 Provide satisfactory references as requested by the Sex Offender Management Board. The Sex Offender Management Board may also solicit such additional references as necessary to determine compliance with the standards. The references shall include other members of the community supervision team.

PROPOSED REGULATIONS

- 3.5.9.5 The individuals shall never be convicted of, plead no contest to, or received a deferred judgment for any offense involving criminal sexual or violent behavior, or a felony that would bring into question the competence or integrity of the individual to provide sex offense specific treatment.
- 3.5.9.6 At their own expense, the individual will complete an entire criminal history check including Federal information pursuant to the Federal Bureau of Investigation appropriation of Title 11 of Public Law 92-544 (28 U.S.C. 534). The individual will submit to fingerprinting as part of this process.
- 3.5.9.7 Report any practice that is in significant conflict with the standards.
- 3.6 **Grandfathering**
- 3.6.1 Individuals who currently work with sex offenders in a counseling capacity but whom do not meet the criteria set forth in these standards on the date that they are adopted have two (2) years from the date of adoption to gain the knowledge, experience and/or degree necessary to provide services to sex offenders either as a full operating level provider or an associate level provider.
- 3.6.2 To be considered for Grandfathering, the individual must complete an application with the SOMB providing information on work experience, education hours, current position and required letters of recommendation.
- 3.6.3 To be eligible for the grandfathering process, the candidate must have the following credentials and experience:
- 3.6.3.1 A minimum of a Bachelor's degree in a behavioral science field of study (e.g. psychology, counseling, psychiatric nursing ect.)
- 3.6.3.2 Documentation of at least two (2) years of individual or group counseling experience with a minimum of 500 hours within the past three years specific to working with sex offenders.
- 3.6.3.3 Documentation of clinical supervision from a clinician in the behavioral health field. Supervision from a Fully Operating Treatment Provider should begin at the time application is made for Grandfathering and continue until the candidate receives their approval to provide treatment to sex offenders.
- 3.6.3.4 Three (3) references are required; two of which must be familiar with your professional qualifications and at least two (2) of the individuals must be members of a Community Supervision Team and/or Multidisciplinary Teams in which you participate. If you are applying as an adult and juvenile provider, please provide references that can speak about your ability to work with both populations.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Gaming Control Board

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

PUBLIC NOTICE

101 Regulations Governing Bingo

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Delaware Board of Charitable Gaming will seek public comments on the issue of whether certain amendments to its current rules should be adopted.

One proposed amendment is to Rule 3.10 in 10 DE Admin. Code 101. The amendment would clarify how the

value of certain prizes is determined.

Another proposed amendment is to Rule 4.11 in 10 **DE Admin. Code** 101. The amendment would provide that when there are multiple winners in a game, the organization may in its own house rules determine how one winner will be declared.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, April 4, 2013 at the meeting of the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before April 19, 2013 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

C. Summary of Proposal

The amendment to Rule 3.10 would change the current rule. The current rule states that a prize must be valued at its full retail value. This causes difficulties for organizations who purchase items at a discount to use as prizes. With the current limits in the law on the maximum value of a prize (\$250) and the maximum value allowed for all prizes at an event (\$1250), an item purchased at a low price may have a high retail value which might be more than the allowable maximum. The Board has decided to allow an organization to list the price paid for an item as its value, provided the organization produces a receipt showing the price paid. However, a donated item must be given a proper retail value by the donor, whether an organization or an individual, and the organization will use that amount as the value for the prize. An individual donating a prize must provide proof of its retail value.

The amendment to Rule 4.11 would change the current rule, which provides that when there are multiple winners, the prize should be divided as evenly as possible. When the prize is not a monetary prize, but rather a pocketbook, basket, or other type of non-monetary prize, dividing the prize is not practical. The Board therefore wishes to allow the organization holding the event to determine in its own house rules, how one winner will be declared. For example, an organization may call an extra number, or have some other method of determining a single winner.

The other players qualifying to win may be given a chance to win a prize at a subsequent game or drawing during the event, provided the value of that prize appears in the application for the event and is counted toward the maximum permissible amount for prizes.

101 Regulations Governing Bingo

(Break in Continuity of Sections)

3.0 Bingo Licenses

- 3.1 Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.
- 3.2 The Board may issue a license only after it determines that:
 - 3.2.1 The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.
 - 3.2.2 The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.
 - 3.2.3 The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.
 - 3.2.4 The proceeds are to be disposed of as provided in the State Constitution and statutes.
 - 3.2.5 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.
- 3.3 The license shall be issued. The original thereof shall be transmitted to the applicant.

- 3.4 If the findings and determinations of the Board are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.
- 3.5 In the event of a request for an amendment of a license, the request shall be promptly submitted to the Board in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Board may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Board may require the payment of an additional license fee before granting the request. The licensee shall be notified of the Board's action by appropriate communication, so that the licensee will not be unduly inconvenienced.
- 3.6 No license shall be effective for a period of more than one year from the date it was issued.
- 3.7 No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.
- 3.8 No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.
- 3.9 No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July 14, 1998 whose license lapses for six (6) months or more due to non-renewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 3.10 The license application shall contain a full and fair description of the prize and the appraised value of the prize. ~~In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.~~ applicant shall maintain a copy of the receipt and the price paid for the prize shall be listed as its value. If the prize has been donated at no cost to the organization by an entity or by an individual, the organization may use the prize only if the donor has provided proof of the full retail value of the prize, and that value is used by the organization as the value of the prize.
- 3.11 When bingo is conducted in conjunction with a carnival, festival, or similar event scheduled for more than one day, the game may be played up to every night of the event and shall be considered a single event for purposes of the rule allowing one event per week for those licensed after July 10, 1998 or ten events per month for those licensed before July 10, 1998.

4.0 Conduct of Bingo

- 4.1 The officers of a licensee shall designate a bona fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he or she is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.
- 4.1.1 Neither the member in charge of conducting the event, nor any other member of the sponsoring organization who is assisting in conducting the event or otherwise working at the event shall be permitted to play the bingo games.
- 4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 1:30 p.m. and the operation of a function shall be limited to six hours.

- Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.
- 4.3 No person under the age of eighteen (18) may participate in any bingo game. No person under the age of 18 shall be permitted to participate in any instant bingo game. Persons between the ages of 16 through 18 may conduct or assist in conducting the bingo game and persons over the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.
- 4.4 No organization licensed prior to enactment of 71 **Del. Law** 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 4.5 The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.
- 4.6 No prize in an amount or value greater than \$250 shall be offered or given in any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,250. The amount of the prize in each bingo game shall be announced at the start of the game. At the end of each game, there will be an announcement of the total number of winners and the amount paid to each. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. Holiday dates means those holiday dates officially recognized by the State of Delaware as holidays. The event itself must take place within the period of seven days before the holiday or on the holiday itself. However, a licensee may offer inducements, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.
- 4.7 Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), only one licensed organization may hold bingo games in a licensed organization's building during any given week.
- 4.8 No alcoholic beverages shall be permitted in the room from the time the bingo hall opens until the conclusion of the last bingo game of the occasion.
- 4.9 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.
- 4.10 All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played.
- 4.11 When more than one player is found to be the winner on the call of the same number in the same game, the designated prize if monetary, shall be divided as equally as possible; ~~and when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other.~~ When the prize is not a monetary prize, a single winner may be determined in accordance with the organization's own house rules. The other players who qualified to win the game may be given a chance to win a later game or drawing with the winner of that game or drawing receiving the prize offered at that time. The

value of the prize at the subsequent game or drawing shall be counted toward the maximum allowable prizes for the entire event.

- 4.12 The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects drawn shall be essentially equal as to size, shape, weight, and balance, and as to all other characteristics that may control their selection, and all shall be present in the receptacle before each game is begun. All numbers shall be announced so as to be visible or audible to all players present.
- 4.13 The particular arrangement of numbers required to be covered in order to win the game shall be clearly described and announced to the players immediately before each game is begun.
- 4.14 No arrangement of numbers shall be required to be covered in order to win the game other than the following:
- 4.14.1 one unspecified horizontal row;
 - 4.14.2 one unspecified vertical row;
 - 4.14.3 one unspecified full diagonal row;
 - 4.14.4 one unspecified row (horizontal, vertical, or diagonal);
 - 4.14.5 Two or more of the foregoing, forming a specified arrangement;
 - 4.14.6 The entire card;
 - 4.14.7 Four corners;
 - 4.14.8 Eight spaces surrounding the free space.
 - 4.14.9 Any other configuration or shape on the card established by an organization, provided the players are informed of the shape needed to win before play commences.
- 4.15 Within the limits contained in Title 28 of the **Delaware Code**, alternate prizes may be offered depending upon the number of calls within which bingo is reached, provided the application for the bingo license and the license so specify.
- 4.16 Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge on the occasion, but if such member is also the announcer, then in the immediate presence of an officer of the licensee.
- 4.17 No licensee shall conduct more than forty (40) games on a single occasion.
- 4.18 In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.
- 4.19 Within the limits contained in Title 28 of the **Delaware Code**, the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.
- 4.20 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.
- 4.21 Any local rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.
- 4.22 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.
- 4.23 A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.

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- 4.24 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.
- 4.25 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.

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

101 Regulations Governing Bingo

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 10113(b)(4) (24 **Del.C.** §10113(b)(4))
24 DE Admin. Code 2930

PUBLIC NOTICE

2930 Council on Real Estate Appraisers

The Delaware Council on Real Estate Appraisers, pursuant to 24 **Del.C.** §4006(a)(1), proposes to revise its rules and regulations. The majority of the proposed revisions to the rules are changes required to come into compliance with the new AQB criteria, additional changes remove the requirement of pre-certification examination for assessors, lower the acceptable late renewal time period from twelve months to sixty days for all licensees and certificate holders.

The Board will hold a public hearing on the proposed rule change on April 22, 2013 at 2:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Council on Real Estate Appraisers, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 7, 2013.

The proposed rule changes are as follows, additions shown underline, deletions in strike-through:

(Break in Continuity of Sections)

2.0 Appraiser Licensing and Certification

- 2.1 Qualifications for Appraiser Licensure and Certification
- 2.1.1 The qualifications for licensure or certification shall be the criteria established by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation for:
- 2.1.1.1 certified general real property appraiser;
 - 2.1.1.2 certified residential real property appraiser;
 - 2.1.1.3 licensed real property appraiser; and
 - 2.1.1.4 trainee real property appraiser.
- 2.1.2 A summary of the criteria set by the AQB is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from The Appraisal Foundation, 1155 15th Street, NW, Suite 1111, Washington, DC 20005.
- 2.1.3 The 2008 qualification criteria established by the AQB will be phased in using the segmented approach. The three AQB components that must be satisfied to obtaining licensure are: education, experience and examination. An applicant must meet the criteria in effect at the time he or she completes one of these components. Therefore, all applicants for certification or licensure must

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meet the 2008 qualifications criteria established by the AQB for any component completed on or after January 1, 2008. This regulation will become null and void on December 31, 2014.

2.2 License and Certificate Renewal

- 2.2.1 In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensees and certificate holders. Certificates and licenses will expire on October 31st of each odd numbered year.
- 2.2.2 As a condition of renewal, all licensees and certificate holders, either resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.3 of this Section.
- 2.2.3 A licensee or certificate holder shall not perform appraisals after a license has expired. A licensee or certificate holder may renew a certificate or license within ~~12 months~~ 60 days of its expiration. After ~~12 months~~ 60 days, the individual must reapply as a new applicant.
- 2.2.4 A licensee or certificate holder may apply for inactive status for an indefinite time period if he or she is not performing appraisals in Delaware.
- 2.2.4.1 Persons with in an inactive license or certificate must complete the same continuing education requirement as active licensees or certificate holders. Evidence of completion is due at renewal as provided in Rule 2.3.
- 2.2.4.2 An inactive license or certificate can be reactivated by notifying the Council in writing.

2.3 Continuing Education

- 2.3.1 All licensees and certificate holders are required to attest to the completion of continuing education according to the following schedule:
- 2.3.1.1 No continuing education is required for fewer than 6 months of licensure;
- 2.3.1.2 ~~Effective with the licensure period beginning November 1, 2007, f~~ourteen (14) hours of continuing education are required after at least 6 months but fewer than ~~24~~ 12 months of licensure; and
- 2.3.1.3 twenty-eight (28) hours of continuing education are required after ~~24~~ 12 months of licensure by the end of the first renewal cycle.

2.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 2.0.

- 2.4.1 Attestation may be completed electronically if the renewal is accomplished online. ~~In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~
- 2.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 2.5.

2.5 Random audits will be performed by the Council to ensure compliance with the CEU requirements. At least 25% of the licensees shall be audited at each renewal. The Council shall have the discretion to increase the percentage of licensees to be audited. Every licensee renewing during the permissible late period after the expiration of the license or certificate will be included in the audit.

- 2.5.1 The Council will notify licensees within sixty (60) days after ~~January 31~~ renewal that they have been selected for audit.
- 2.5.2 Licensees selected for random audit shall be required to submit verification within ~~ten (10)~~ thirty days of ~~receipt~~ the date of notification of selection for audit.
- 2.5.3 Verification shall include such information necessary for the Council to assess whether the course or other activity meets the CE requirements in Section 2.0, which may include, but is not limited to, the following information:
- 2.5.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance;
- 2.5.3.2 Date of CE course;
- 2.5.3.3 Instructor of CE course;
- 2.5.3.4 Sponsor of CE course;
- 2.5.3.5 Title of CE course; and
- 2.5.3.6 Number of hours of CE course.

- 2.5.4 The Council shall review all documentation submitted by licensees pursuant to the continuing education audit. If the Council determines that the licensee has met the continuing education requirements, his or her license shall remain in effect. If the Council determines that the licensee has not met the continuing education requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. ~~The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the continuing education requirements.~~ Unjustified noncompliance with the continuing education requirements set forth in these rules and regulations shall constitute a violation of 24 **Del.C.** §4014(a)(5) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §4016.
- 2.5.5 All licensees and certificate holders, except as provided in 2.3.1.1, must complete as a condition of each renewal:
- 2.5.5.1 The seven (7) hour National USPAP Update Course or its equivalent as determined through the AQB Course Approval Program or by an alternate method established by the AQB and
- 2.5.5.2 Beginning November 1, 2009, and thereafter three (3) hours of education on Delaware Law, Rules and Regulations
- 2.5.6 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:
- Influences on real estate value
 - Legal consideration of appraisal
 - Types of value
 - Real estate markets and analysis
 - Valuation process
 - Property description
 - Highest and best use
 - Appraisal math & statistics
 - Sales comparison approach
 - Site value
 - Cost approach
 - Income approach
 - Estimation of income and expenses
 - Operating statement ratios
 - Direct capitalization
 - Cash flow estimates
 - Measures of cash flow
 - Discounted cash flow analysis
 - Gross rent multiplier analysis
 - Valuation of partial interests
 - Appraisal standards and ethics
 - Narrative report writing
 - Appraisal Statistical concepts
 - Ad valorem taxation
 - Arbitration
 - ~~Business courses related to real estate appraisal~~
 - Development cost estimating
 - Ethics and standards of professional practice
 - Land use planning, zoning and taxation
 - Management, leasing, brokerage, timesharing
 - Property development
 - Real estate appraisal (valuations/evaluations)
 - Real estate financing and investment
 - Real estate law

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- Real estate litigation
 - Real estate appraisal related computer applications
 - Real estate securities and syndication
 - Real property exchange
 - Delaware law and regulations
- 2.5.7 Continuing education credit, up to 14 hours per licensure cycle, may also be granted for participation, other than as a student, in:
- 2.5.7.1 Teaching, ~~not including preparation time up to the number of hours spent teaching, for example, a 3 hour class can be submitted for 6 hours if the preparation time was at least 3 hours.~~
 - 2.5.7.2 Program development
 - 2.5.7.3 Authorship of textbooks
- 2.5.8 Continuing education credit may be awarded for participation in field trips, conferences, and trade association meetings, excluding travel time, if those activities specifically relate to real estate appraisal education, but for no more than eight (8) hours per licensure period.
- 2.5.9 A creditable hour is defined as fifty minutes out of each sixty minute segment. The educational offering must be at least two hours.
- 2.5.10 The Delaware Council on Real Estate Appraisers may approve the content of a distance education course after approval of the delivery mechanism is approved from one of the following sources:
- 2.5.10.1 AQB approved organizations providing approval of course design and delivery, such as the International Distance Education Certification Center (IDECC);
 - 2.5.10.2 A college that qualifies for content approval and awards academic credit for the distance education course; or
 - 2.5.10.3 A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity;
- 2.5.11 Beginning November 1, 2009, and thereafter, at least 14 hours per licensure period must be taken in a traditional classroom setting, with an instructor.
- 2.5.12 Courses must be approved by the Council to qualify as continuing education. Either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.
- 2.5.13 ~~Hardship. An applicant for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. Hardship may include, but is not limited to, disability, illness, extended absence from the country and exceptional family responsibilities. The Council may grant an extension, not to exceed two years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Council reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Council prior to the expiration of the license.~~
- 2.6 Duplicate License or Certificate Fee
- 2.6.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. A certified copy of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.
- 2.7 Federal Appraiser Registry
- Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid biennially by the license or certificate holder to the State of Delaware.

10.0 Assessors

10.1 Definitions

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

“Ad valorem taxation purposes” The establishment of the value of real property as determined by a government employee or revaluation company personnel on contract with a governmental entity for real estate tax assessment.

“Appraisal assessing profession” The body of individuals who are deemed to be qualified to perform ad valorem tax appraisals.

“Assessor” A person responsible for the valuation of real property for ad valorem taxation purposes.

“Business with which a licensed assessor is associated” A business in which the licensed assessor or a member of the licensed assessor’s immediate family is a director, officer, owner or employee, or has a financial interest.

“Conflict of interest” A situation in which a licensed assessor uses the licensed assessor’s employment or confidential information received through the course of the employment for the private pecuniary benefit of the licensed assessor, a member of the licensed assessor’s immediate family, or a business with which the licensed assessor or a member of the licensed assessor’s immediate family is associated.

“Financial interest” A financial interest in a legal entity engaged in business for profit which comprises more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness.

“Immediate family” A parent, spouse, child, brother, sister, grandparent or grandchild and, when living in the family household (or under a common roof), all other individuals related by blood or marriage.

“Licensed assessor” An individual who has completed a minimum of 90 hours of basic courses of study covering the appraisal assessing profession and has ~~successfully completed a comprehensive examination covering all phases of the appraisal process and the assessment function established by the assessment statutes of the State~~ obtained a certification from the Board.

“Real estate tax assessment” A valuation placed on real property for governmental purposes by a government employee or revaluation company personnel on contract with a government.

10.2 Certification requirements. An assessor employed on or before June 30, 2011, who does not hold the title of “licensed assessor,” and an assessor employed after June 30, 2011, shall obtain certification as a assessor within 3 years from the effective date of these regulations.

10.3 Application process.

10.3.1 *Application forms.* Application forms for certification as a licensed assessor may be obtained from the Division of Professional Regulations.

10.3.2 *Application fee.* The application form shall be accompanied by the fee for certification as an assessor. The application fee is nonrefundable. Payment shall be in the form of a personal check or money order.

~~10.3.3 *Approved applications.* An approved application will be valid for 1 year from the date of approval. If an applicant does not pass the certification examination within this 1 year period, the applicant’s application will be considered to have been abandoned. If the applicant wishes to take the examination after 1 year from the date of approval, a new application, along with the required fee, shall be reviewed on the basis of statutes and regulations in effect at the time the new application is received by the Board.~~

10.3.43 *Disapproved applications.* An applicant whose application has been disapproved by the Board will be notified in writing of the reasons for the disapproval and will have 1 year from the date of disapproval to correct the deficiencies or to file a request for reconsideration. A request for reconsideration shall give the reason for the applicant’s request, shall be accompanied by documentary materials not previously submitted which the applicant wishes the Board to consider and may include a request for an informal interview with the Board. If a request for reconsideration is denied or an applicant is unable to correct the deficiencies which resulted in disapproval of the

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application within 1 year from the date of disapproval, a new application, along with the required fee, shall be submitted to the Board. An applicant's new application will be reviewed on the basis of statutes and regulations in effect at the time that the new application is received by the Board.

- 10.4 Scope of practice. Assessors and revaluation company personnel who receive certification as an assessor may perform appraisals of real property only in limited circumstances, that is, for tax assessment/governmental purposes.
- 10.5 Qualifications for certification as an assessor.
- 10.5.1 To be considered for certification as an assessor, an assessor shall meet the following requirements. The assessor shall:
- 10.5.1.1 Have a high school diploma or its equivalent, or 2 years of assessing experience; and
 - 10.5.1.2 Be 18 years of age or older; and
 - 10.5.1.3 Have successfully completed a minimum of 90 classroom hours of courses of study in subjects covering the appraisal assessing profession, including coverage of the topics in Rule 10.6 (relating to required courses of study); and
 - ~~10.5.1.4 Have successfully completed a comprehensive examination covering all phases of the appraisal process and the assessment function.~~
- 10.5.2 An applicant for certification as an assessor who has demonstrated compliance with the requirements of Rule 10.5.1 and Rule 10.6 will be granted a certificate by the Board.
- 10.5.3 Each certificate holder will be issued a wall certificate indicating initial certification and a registration packet, including a biennial renewal certificate and a wallet-size certification card, both of which show the expiration date of the certificate.
- 10.5.4 Applicants who hold a certified residential or certified general appraiser license from the Board do not need a certification as an assessor, but may practice assessing in this state.
- 10.6 Required courses of study.
- 10.6.1 *Courses of study.* The applicant for certification as an assessor shall submit evidence to the Board of having completed 90 classroom/on-line hours of courses in subjects covering the appraisal assessing profession. The following topics are appropriate, but not exclusive:

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

2930 Council on Real Estate Appraisers

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 624

REGULATORY IMPLEMENTING ORDER

624 School District/Charter School Policy Prohibiting Cyberbullying

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks to establish a new regulation 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying. This regulation is a result of Senate Bill 193 of the 146th General Assembly, which requires that the Delaware Department of Education shall collaborate with the Delaware Department of Justice to develop a model cyberbullying policy. This legislation and this subsequent regulation expands upon the policy found in 14 **Del.C.** §4112D and also explicitly prohibits cyberbullying by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district and charter school's policy against bullying. The proposed regulation was published in the October *Register of Regulations*. Section 2.1 and 2.4 of the regulation were amended subsequent to public comments received.

Notice of the revised proposed regulation was published in the *News Journal* and the *Delaware State News* on January 5, 2013, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities and from the American Civil Liberties Union of Delaware. After considering the comments, the Department, working with the Attorney General's Office, decided not to further revise the proposed regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to promulgate 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying as required by legislation passed by the 146th General Assembly and based upon the model provided by the Department of Justice.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to establish 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying attached hereto as *Exhibit "B"* is hereby established. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying hereby established shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying established hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on February 21, 2013. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of February 2013.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 21st day of February 2013

624 School District/Charter School Policy Prohibiting Cyberbullying

1.0 Cyberbullying Forbidden

In addition to the policy prohibiting bullying put in place by school districts and charter schools pursuant to 14 **Del.C.** §4112D(b)(2), each school district and charter school shall also prohibit cyberbullying (as defined herein) by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district's and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district's and charter school's policy against bullying.

2.0 Definition of Cyberbullying

2.1 Cyberbullying means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that

- student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.
- 2.2 Whether speech constitutes cyberbullying will be determined from the standpoint of a reasonable student of the same grade and other circumstances as the victim.
- 2.3 The place of origin of speech otherwise constituting cyberbullying is not material to whether it is considered cyberbullying under this policy, nor is the use of school district or charter school materials.
- 2.4 Upon implementation of this policy, and again at the beginning of each academic year, each school district and charter school shall inform students in writing of mediums where posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings. From implementation of this policy through the end of the 2013-2014 school year, postings on Facebook, Twitter, MySpace, YouTube, and Pinterest shall be included in each district's [and charter school's] list of mediums where posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings.
- 2.5 Nothing in this policy shall limit in any way a school district's or charter school's ability to regulate student conduct, including bullying, in any manner provided for by existing law, regulation, or policy.
-

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 817

REGULATORY IMPLEMENTING ORDER

817 Medications and Treatments

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 817 Medications and Treatments to include the addition of definitions, clarification of the process for the administration of medications and treatments, and also changes to reflect recent amendments to 24 Del.C., Section 1921(a)(7) relating to who may assist students with medications and when they may do so.

Notice of the revised proposed regulation was published in the *News Journal* and the *Delaware State News* on January 5, 2013, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Department has amended the proposed regulation in response by adding a definition of "dose" or "dosage"; clarifying the storage of controlled medications in section 5.1.1.2.1; and making a grammatical correction. In response to an additional comment, the Department plans to update the Permission Form in the School Nursing: Technical Assistance Manual to alert parents of the possible need for a second labeled container from a pharmacy when filling prescriptions. A comment related to medications and dosages administered by the school nurse and the limitations of such is not being amended. This language was not amended from the original regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 817 Medications and Treatments in order to include the addition of definitions, clarification of the process for the administration of medications and treatments, and also changes to reflect recent amendments to 24 Del.C., Section 1921(a)(7) relating to who may assist students with medications and when they may do so.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 817

Medications and Treatments. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 817 Medications and Treatments attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 817 Medications and Treatments hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 817 Medications and Treatments amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 817 Medications and Treatments in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on **February 21, 2013**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of February 2013.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 21st day of February 2013.

817 Medications and Treatments

1.0 Medication

- 1.1 Medication may be administered to a public school student by the school nurse when a written request to administer the medication or treatment is on file from the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a).
 - 1.1.1 The school nurse shall check the student health records and history for contraindications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms or conditions persist.
 - 1.1.2 The school nurse shall also document the student's name, the name of medication and treatment administered, the date and time it was administered and the dosage if medication was administered.
- 1.2 In addition to the requirements set forth in 2.1 below, in the case of a Prescription Medication, the requirements set forth below in 2.2.1 through 2.2.4 shall also apply.
 - 1.2.1 Prescription medication shall be provided to the school in the original container and properly labeled with the student's name; the prescribing licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
 - 1.2.2 Medications and dosages administered by the school nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses or guidelines that are both safe and effective, or guidelines that are specified in regional or national guidelines.
 - 1.2.3 The prescription and the medication shall be current and long term prescriptions shall be re authorized at least once a year.
 - 1.2.4 All medications classified as controlled substances shall be counted and reconciled each month by the school nurse and kept under double lock. Such medications should be transported to and from school by an adult.

- 1.3 Non-prescription Medication must be in an original container with full label and may be given by the school nurse after the school nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered.

2.0 Definitions

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

“Assist with Medication” means assisting a student in kindergarten through grade 12 in the self-administration of a medication taken orally, by inhalation, or applied topically, provided that the medication is in a properly labeled container. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Assistance does not include making nursing judgments. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail in lifesaving circumstances.

“Controlled Medication” means those prescribed drugs regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

“Dosage” or “Dose” means a specific amount of medication prescribed or directed to be taken at any one time.]

“Educators” means teachers, administrators, and paraeducators employed by a school serving students in Pre-Kindergarten through Grade 12.

“Field Trip” means any off campus, school sponsored activity.

“Licensed Health Care Provider” means anyone lawfully authorized to prescribe medications and treatments.

“Medication” means a drug, which has been authorized for a student to use and includes both prescription and non-prescription drugs.

“Non-prescription Medication” means any over-the-counter medication that can be sold legally without a prescription.

“Other school employees” means coaches or persons hired or contracted by schools serving students in Kindergarten through Grade 12.

“Paraeducators” mean teaching assistants or aides.

“Prescription Medication” means a legal drug that has a written order for an individual student by a licensed health care provider licensed to prescribe medication.

“School Nurse” means a Registered Nurse licensed to practice in the State of Delaware, who is employed by a school district, charter school, or private school.

“Traditional School Day” means the hours within the days counted to meet the state minimum number of school days each year and summer school.

3.0 Treatments

Treatments, including specialized health procedures, shall be prescribed by a licensed health care provider with directions relative to administration or supervision.

4.0 IEP Team

For a student who requires significant medical or nursing interventions, the Individual Education Program (IEP) team shall include the school nurse.

5.0 Assistance With Self-Administration of Medications at Approved School Activities

- 5.1 Educators and other school employees are authorized by 24 DeI.C. §1921(a)(17) to assist a student with self-administration of medication on a field trip or approved school activity outside of the traditional school day or off-campus are subject to the following provisions:

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- 5.1.1 Assistance with medication shall not be provided without the prior written request or consent of a parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time(s) and date(s) of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip or approved school activity outside of the traditional school day or off-campus.
- 5.1.1.1 Medications shall be prescribed by a licensed health care provider and are ones that cannot be rescheduled for times when a person, who may legally administer medication, is available.
- 5.1.1.1.1 Doses may be provided for up to one week and shall be maintained in a secure location.
- 5.1.1.2 Prescription medications shall be provided to the school nurse and shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy; and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
- 5.1.1.2.1 Controlled medications must be stored on the person assisting or in a secure location under double lock. Maintaining **[multiple]** doses **[for greater than one day]** is not permitted except in the case of an overnight activity.
- 5.1.1.3 Non-prescription medications shall be provided to the school nurse by the parent in an original container along with a current, written directive from the student's licensed health care provider and shall include the student's name; the licensed health care provider's name; the name of the medication; the dosage; and how and when it is to be administered.
- 5.1.2 In order to be qualified to assist with medications, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 Del.C. §1921(a)(17). Training shall be renewed minimally every five years. No person shall assist a student with medication without written acknowledgment that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein. A school nurse employed by the public or private district or charter in which the student is enrolled shall:
- 5.1.2.1 Complete instructor training as designated by the Department of Education and shall submit a list of educators and other school employees, who have completed the training, to the Department of Education.
- 5.1.2.2 Provide the training for educators and other school employees.
- 5.1.2.3 Coordinate the collection and review of the written parental consent.
- 5.1.2.4 Provide the appropriately labeled medication, copy of the consent, and directions on assistance to the trained educator or other school employee.
- 5.1.3 Each school district shall maintain a record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student's name; the name of the medication; the dose; the time of administration; the method of administration; and the name of the person assisting.
- 5.1.4 Except for a school nurse, no educator or other school employee shall be compelled to assist a student with medication. If a facility is otherwise required to have a school nurse, nothing contained here shall be interpreted to relieve the school of such obligation.

Non-regulatory note: 14 DE Admin. Code 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses student self-administration of a prescribed asthmatic quick relief inhaler and student self-administration of prescribed autoinjectable epinephrine.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1550

REGULATORY IMPLEMENTING ORDER

1550 AgriScience Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1550 AgriScience Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This regulation is being reviewed under a five year cycle. One small change has been deemed necessary to update language and to delete the reference to the Limited Standard Certificate which no longer is valid. This regulation sets forth the requirements for an AgriScience Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on January 1, 2013. The notice invited written comments. No comments were received.

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1550 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 7th DAY OF FEBRUARY, 2013

Kathleen Thomas, Chair

Michael Casson

Joanne Christian

Samtra Devard

Stephanie DeWitt

Marilyn Dollard

Karen Gordon

Cristy Greaves

Chris Kenton

David Kohan

Wendy Murray

Mary Pinkston

Whitney Price

Jacque Wisnauskas

IT IS SO ORDERED this 21st day of February, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 21st day of February, 2013.
State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

Randall L. Hughes

* Please note that no changes were made to the regulation as originally proposed and published in the January 2013 issue of the *Register* at page 701 (16 DE Reg. 701). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1550 AgriScience Teacher

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1551

REGULATORY IMPLEMENTING ORDER

1551 Business Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1551 Business Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This regulation is being reviewed under a five year cycle. One small change has been deemed necessary to update language and to delete the reference to the Limited Standard Certificate which no longer is valid. This regulation sets forth the requirements for a Business Education Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on January 1, 2013. The notice invited written comments. No comments were received.

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1551 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 7th DAY OF FEBRUARY, 2013

Kathleen Thomas, Chair

Cristy Greaves

Michael Casson

Chris Kenton

Joanne Christian

David Kohan

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Jacque Wisnauskas

IT IS SO ORDERED this 21st day of February, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 21st day of February, 2013.

State Board of Education

Teri Quinn Gray, Ph.D., President

Gregory Coverdale

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

Randall L. Hughes

Barbara B. Rutt

* Please note that no changes were made to the regulation as originally proposed and published in the January 2013 issue of the *Register* at page 703 (16 DE Reg. 703). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1551 Business Education Teacher

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1554

REGULATORY IMPLEMENTING ORDER

1554 Family and Consumer Sciences Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1554 Family and Consumer Science Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This regulation is being reviewed under a five year cycle. One small change has been deemed necessary to update language and to delete the reference to the Limited Standard Certificate which no longer is valid. This regulation sets forth the requirements for a Family and Consumer Science Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on January 1, 2013. The notice invited written comments. No comments were received.

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1554 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 7th DAY OF FEBRUARY, 2013

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

IT IS SO ORDERED this 21st day of February, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 21st day of February, 2013.

State Board of Education

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

1554 Family and Consumer Sciences Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Family and Consumer Sciences Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.

- 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 Family and Consumer Sciences Teacher 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 ~~If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:~~
- 4.1.1 ~~If the educator is applying for their second Standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Family and Consumer Sciences, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1555

REGULATORY IMPLEMENTING ORDER

1555 Marketing Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1555 Marketing Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This regulation is being reviewed under a five year cycle. One small change has been deemed necessary to update language and to delete the reference to the Limited Standard Certificate which no longer is valid. This regulation sets forth the requirements for a Marketing Education Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on January 1, 2013. The notice invited written comments. No comments were received.

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1555 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 7th DAY OF FEBRUARY, 2013

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

IT IS SO ORDERED this 21st day of February, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 21st day of February, 2013.

State Board of Education

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

1555 Marketing Education Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Marketing Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 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 Marketing Education Teacher 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 If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:
- 4.1.1 If the educator is applying for their second Standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Marketing Education, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1557

REGULATORY IMPLEMENTING ORDER

1557 Technology Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1557 Technology Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This regulation is being reviewed under a five year cycle. One small change has been deemed necessary to update language and to delete the reference to the Limited Standard Certificate which no longer is valid. This regulation sets forth the requirements for a Technology Education Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on January 1, 2013. The notice invited written comments. No comments were received.

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1557 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 7th DAY OF FEBRUARY, 2013

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

IT IS SO ORDERED this 21st day of February, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 21st day of February, 2013.

State Board of Education

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

1557 Technology Education Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Technology Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 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 words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Technology Education" means a study of technology, which provides an opportunity for students to learn about the processes and knowledge related to technology that are needed to solve problems and extend human capabilities. This study includes the application of the Design Process, the Systems Model, technological resources, engineering design and Design Briefs. Technology Education is not a curricular area defined by the study and application of computer-based skills e.g., keyboarding, word processing, spreadsheets, data bases and/or multi-media presentations.

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Technology Education Teacher 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 ~~If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:~~
- 4.1.1 ~~If the educator is applying for their second Standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Technology Education, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1591

REGULATORY IMPLEMENTING ORDER

1591 School Principal and Assistant School Principal

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1591 School Principal and Assistant Principal. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order provide research-based pathways to certification for school building leaders. This regulation sets forth the requirements for a School Principal or an Assistant School Principal.

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

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1591 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 7th DAY OF FEBRUARY, 2013

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

IT IS SO ORDERED this 21st day of February, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 21st day of February, 2013.

State Board of Education

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

* Please note that no changes were made to the regulation as originally proposed and published in the October 2012 issue of the *Register* at page 362 (16 DE Reg. 362). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1591 School Principal and Assistant School Principal

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1592

REGULATORY IMPLEMENTING ORDER

1592 Certified Central Office Personnel

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to adopt 14 **DE Admin. Code** 1592 School Leader I. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to upgrade the requirement's rigor and to build upon the amended pathways to certification for school building leaders in 14 **DE Admin. Code** 1591 School Principal. This regulation

sets forth the requirements for Certified Central Office Personnel.

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

II. FINDINGS OF FACTS

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

III. DECISION TO ADOPT THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1592 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 7th DAY OF FEBRUARY, 2013

Kathleen Thomas, Chair

Cristy Greaves

Michael Casson

Chris Kenton

Joanne Christian

David Kohan

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Jacque Wisnauskas

IT IS SO ORDERED this 21st day of February, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 21st day of February, 2013.

State Board of Education

Teri Quinn Gray, Ph.D., President

Gregory Coverdale

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

Randall L. Hughes

Barbara B. Rutt

* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 499 (16 DE Reg. 499). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1592 Certified Central Office Personnel

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1593

REGULATORY IMPLEMENTING ORDER

1593 Superintendent or Assistant Superintendent

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to adopt 14 **DE Admin. Code** 1593 School Leader II. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to upgrade the requirement's rigor and to build upon the amended pathways to certification for school building leaders in 14 **DE Admin. Code** 1591 School Principal, and district level leaders in 14 **DE Admin. Code** 1592 Certified Central Office Personnel. This regulation sets forth the requirements for Superintendent or Assistant Superintendent.

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

II. FINDINGS OF FACTS

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

III. DECISION TO ADOPT THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1593 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 7th DAY OF FEBRUARY, 2013

Kathleen Thomas, Chair

Cristy Greaves

Michael Casson

Chris Kenton

Joanne Christian

David Kohan

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Jacque Wisnauskas

IT IS SO ORDERED this 21st day of February, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 21st day of February, 2013.

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

Randall L. Hughes

* Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 505 (16 DE Reg. 505). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1593 Superintendent or Assistant Superintendent

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1595

REGULATORY IMPLEMENTING ORDER

1595 Certification Programs For Leaders In Education

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to adopt 14 DE Admin. Code 1595 Certification Programs for Leaders in Education. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to adopt this regulation in order to define and set out the parameters for additional programs for Delaware leaders in education. This regulation sets forth the requirements for Certification Programs for Leaders in Education.

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

II. FINDINGS OF FACTS

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

III. DECISION TO ADOPT THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 DE Admin. Code 1595 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 7th DAY OF FEBRUARY, 2013

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

IT IS SO ORDERED this 21st day of February, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 21st day of February, 2013.

State Board of Education

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

* Please note that no changes were made to the regulation as originally proposed and published in the October 2012 issue of the *Register* at page 365 (16 DE Reg. 365). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1595 Certification Programs For Leaders In Education

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

Statutory Authority: 31 Delaware Code, Sections 1145 and 1146 (31 Del.C. §§1145 & 1146)
16 DE Admin. Code 3105

ORDER**3105 Criminal History and Drug Testing for Nursing and Similar Facilities****NATURE OF THE PROCEEDINGS:**

The Department of Health and Social Services ("Department") / Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings to revise Regulation 3105 Criminal History Record Checks and Drug Testing. The Department's proceedings to establish the regulation was initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 16 **Delaware Code** Section 1124 and 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the January 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2013, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED AMENDMENT

The proposal establishes Regulation 3105 History Record Checks and Drug Testing. The proposed change will establish the regulation as required by 16 Del.C., §1141(m).

Statutory Authority

29 Del.C. Chap. 79, "Department of Health and Social Services."

16 Del.C. §1141(m), "Criminal Background Checks."

Background

DLCTRP is revising these regulations pursuant to 16 Del.C. §1141(m).

Summary of Proposed Amendment

The proposal revises regulations to incorporate the role of the new "Background Check Center" established by statute and to conform to 2012 EEOC guidance on reliance on arrest and conviction records as they apply to hiring decisions.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

On further review, the Division has determined that it is beyond the scope of our authority to issue or mandate the use of guidelines set forth by federal agencies. Therefore we have deleted §§8.3.1 and 8.3.2 that mandated that employers abide by the Equal Employment Commission, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, 915.002, issued 4/25/12. The Division will provide copies of this document on request and have posted a link to the document on the Division website: <http://www.dhss.delaware.gov/dhss/dlctcrp/>

The Governor's Advisory Council for Exceptional Citizens ("GACEC"), the State Council for Persons with Disabilities (SCPD) offered comments and The Delaware Health Care Facilities Association ("DHCFA") also offered comments and suggestions. DLCTRP has considered each comment and responds as follows:

Comment: 1: First, in §3.0, definition of "criminal history", the Division includes the following sentence: "It shall be limited to convictions and arrests for which no disposition is available.". This is problematic. The EEOC guidance (incorporated by reference at §8.6) discourages reliance on arrest records by employers. Moreover, the incidence of arrest records without disposition is high:

A 2006 study by the DOJ/BJS found that only 50% of arrest records in the FBI's III database were associated with a final disposition.

At 5. Routinely including a high volume of arrest records without disposition manifestly violates a basic precept of the EEOC guidance.

Response: *Except for the offenses listed at §8.2 the Division will no longer automatically disqualify applicants. The burden of analyzing and assessing suitability for employment rests with the employer. We are providing employers with the full record so they can conduct such an analysis and assessment in accordance with the EEOC guidelines.*

Comment 2: Second, §5.2 envisions the BCC continuously monitoring employees in its Master List for both arrests and convictions. The BCC is then authorized to use its discretion in sharing arrest information with the employer. This is not consistent with the EEOC guidance. The EEOC provides the following characterization of arrest records:

The fact of an arrest does not establish that criminal conduct occurred. Arrests are not proof of criminal conduct. Many arrests do not result in criminal charges, or the charges are dismissed. Even if an individual is charged and subsequently prosecuted, he is presumed innocent unless proven guilty.

Response: *The Division will receive and analyze the rap back updates. Charges with unknown dispositions or non-convictions will only be forwarded to the employer at the discretion of the Division. Again, the only convictions the Division will classify as disqualifying" are listed at §8.2. Other considerations are left to the employer.*

Comment 3: Third, §5.2 contains the following sentences:

DLCTRP will monitor the charge until there is a disposition. When the disposition is known, DLCTRP

will inform the Employer of the conviction.

This incorrectly presumes that all dispositions will be convictions. Consider substituting “any conviction” for “the conviction”.

Response: *The Division reserves the discretion to notify employers of any new criminal court action including both pending and resolved cases, and any wanted status. The Division will inform the employer of the resolution of the criminal court action when known. We have replaced the word “conviction” with “outcome.”*

5.2 The BCC automatically conducts a Rap-back on all employees listed on the Master List. The Rap-back process will provide DLTCRP with information regarding any new arrest or conviction in the state. DLTCRP will determine, at its discretion and depending of the nature of the alleged crime, whether or not to inform the employer of the arrest. DLTCRP will monitor the charge until there is a disposition. When the disposition is known, DLTCRP will inform the Employer of the **[conviction outcome]**.

Comment 4: Fourth, the term “discrete” should be substituted for “discreet” throughout the document. It is incorrectly used in §§6.3, 6.4, 9.2, and 10.3.

Response: *Substitutions made as recommended.*

6.3 The original Grandfathered employee consent form shall accompany the employee to SBI for fingerprinting if so directed by DLTCRP because an SBI# is not already known by DLTCRP due to prior fingerprinting. A copy of the Grandfathered employee consent form shall be maintained in a **[discreet discrete]** file which is readily accessible, without delay, upon request by an agent of DLTCRP.

6.4 A copy of the BCC consent form executed by an Applicant for employment and a copy of the Master List Retention form executed by an employee who seeks to continue their place on the Master List pursuant to 6.2 above shall be maintained in separate **[discreet discrete]** files which are readily accessible, without delay, upon request by an agent of DLTCRP.

9.2 Evidence of all drug tests not transmitted through the BCC which have been represented to have been secured must be maintained in a **[discreet discrete]** file and be available for inspection, without delay, upon request from an agent of DLTCRP.

10.3 The employer shall ensure that copies of all BCC consent forms signed by Applicants are maintained in a **[discreet discrete]** file which is immediately available, upon request, from any agent of DLTCRP.

Comment 5: Fifth, in §6.4, there is a plural pronoun (their) with a singular antecedent (employee). Consider substituting “inclusion” for “their place”.

Response: *Substitutions made as recommended.*

6.4 A copy of the BCC consent form executed by an Applicant for employment and a copy of the Master List Retention form executed by an employee who seeks to continue **[their place inclusion]** on the Master List pursuant to 6.2 above shall be maintained in separate **[discreet discrete]** files which are readily accessible, without delay, upon request by an agent of DLTCRP.

Comment 6: Sixth, §7.1 states as follows:

7.1 Before hiring an Applicant, employers are required by law to obtain from prior employers and to provide to prospective employers Service Letters which provide specific information as required by the Department of Labor. 19 Del.C. §708.

This is not entirely accurate. Title 19 Del.C. §708(b)(6) authorizes conditional employment based on difficult circumstances. At a minimum, consider inserting “generally” prior to “required”.

Response: *Revision made as recommended.*

7.1 Before hiring an Applicant, employers are **[generally]** required by law to obtain from prior employers and to provide to prospective employers Service Letters which provide specific information as required by the Department of Labor. 19 Del.C. §708.

Comment 7: Seventh, §7.2 recites as follows:

When an employee hired after the effective date of the BCC is terminated, the employer shall promptly complete a Service Letter which will be stored by the BCC and available to the next prospective employer. The Service Letter shall expire after 5 years.

While this employer requirement may be conceptually sound, it may lack statutory authority. Title 19 Del.C.

§708(b)(5) contemplates employers maintaining the Service Letters and honoring requests from prospective employers for the Service Letters pertaining to applicants. Violations of the law result in civil penalties. Council could not locate any statute which permits an employer to simply send the Service Letters to the BCC which would then respond to employer requests for the Letters.

Response: 19 *Del.C. §708(b)(5) requires the previous employer to provide the letter, it does not specify the manner in which it must be delivered. The mandatory posting of the letter in the BCC by the previous employer upon termination of the employee will result in increased compliance with the statute and provide the letter to the new employer with no delay by the previous employer.*

Comment 8: Eighth, in §8.1, first sentence, the word “to” should be inserted between “authorized” and “furnish”. Moreover, in the first sentence, the word “to” should be inserted between “person” and “employers”.

Response: *Insertions made as recommended.*

8.1 The SBI is authorized **[to]** furnish information pertaining to the identification and conviction data for any person **[to]** employers or prospective employers so long as the information is used solely for purposes of making an employment decision. 11 **Del.C.** 8513(c) and(c)(1).

Comment 9: Ninth, in §8.2, the 15-year period for abuse/neglect convictions seems a bit long. By analogy, felony theft convictions have a 10-year disqualifying period. Consider a shorter period for misdemeanors involving abuse/neglect. The conviction information would still be disclosed pursuant to the criminal background check but there would not be a categorical, “no-exceptions” disqualification from employment if the 15-year standard were modified.

Response: *Theft will no longer be an automatic disqualifier. The Division has determined that 15 years is an appropriate time period.*

Comment 10: Tenth, in §8.3.1, consider substituting “inform” for “informs”. There is also a plural pronoun (them) with a singular antecedent (individual). Consider substituting “the individual” for “them”. Alternatively, the term “him” could be substituted. See Delaware Administrative Code Style Manual, §3.3.2.1.

Response: *§8.3.1 has been deleted.*

Comment 11: Eleventh, in §8.3.2, I believe the fourth “bullet” (Evidence...conduct) is “bunched” with the third bullet.

Response: *§8.3.2 has been deleted.*

Comment 12: Twelfth, in §12.3, capitalize “Bureau”.

Response: *Amended as recommended.*

12.3 DHSS shall not release to employers copies of actual electronic reports of criminal history records prepared by the Federal **[B]**ureau of Investigation.

Comment 13: Thirteenth, in §12.5.1, there is a plural pronoun (their) with a singular antecedent (Applicant). Consider substituting “his”. See Delaware Administrative Code Style Manual, §3.3.2.1.

Response: *Amended as recommended.*

12.5.1 An Applicant shall submit a request in writing to the Department for an on-site review of **[their his]** BCC disclosures.

Comment 14: Fourteenth, in §11.5.4, substitute “names” for “name”.

Response: *Not found in §11.5.4 but amended as recommended at §12.5.4.*

12.5.4 Written documentation of the date and time of the review and the **[name names]** of those present shall be maintained by DLTCRP.

Comment 15: Fifteenth, Title 29 **Del.C.** §7972 provides for due process and a hearing to contest BCC errors. Hearings must be consistent with the APA. The regulation omits information in this context. For example, in §11.5, an applicant should be able to obtain a written copy of BCC disclosures to bring to an attorney or facilitate checking accuracy based on other records. Moreover, there is no mention of a hearing in the regulation. There is only an obtuse reference to “appeal” in §15.5.5.

Response: *The determination of a disqualifying conviction based on §8.2 is the only determination made by the Division. Consistent with the statutory language at 29 Del.C. §7972 challenges to those determinations will be consistent with the Administrative Procedures Act, 29 Del.C. Chapter 101. That process for appeal has been successfully applied previously under 16 Del.C., in particular for appeals of remedies imposed for noncompliance and is set forth at §1114. All other information provided through the BCC originates from other sources. Determinations are made by those other sources or by the employers themselves and challenges will be directed to those sources for resolution.*

Comment 16: We believe that some “grandfathered employees” may not consent to be fingerprinted to obtain an SBI number or may not comply within the 120 day timeframe prescribed in the proposed regulations and will have to be terminated by the employer.

Response: *The 120 day timeframe is a statutory requirement.*

Comment 17: It has been reported to our association that regularly employees who are terminated for “abuse or neglect” have successfully obtained unemployment benefits. We believe that this should not be permitted under any circumstances but fear it will also occur with grandfathered employees that are terminated for lack of compliance with the new BCC regulations.

We hereby request that language be included, where appropriate, to prevent grandfathered employees who refuse to comply with the new requirements from collecting unemployment benefits.

Response: *Unemployment benefits are the purview of the Department of Labor. The Division cannot control or regulate policies or decisions of another agency. We appreciate the comment and will share it with the Department of Labor administration.*

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the January 2013 *Register of Regulations*, amended as noted herein, should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Medical Assistance during Transition to the Medicare Program is adopted and shall be final effective March 11, 2013

Rita Landgraf, Secretary, DHSS

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

3105 Criminal History and Drug Testing for Nursing and Similar Facilities

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 31 Delaware Code, Sections 1145 and 1146 (31 Del.C. §§1145 & 1146)
16 DE Admin. Code 3110

ORDER

3110 Background Checks and Drug Testing for Programs and Home Care Agencies

NATURE OF THE PROCEEDINGS:

The Department of Health and Social Services (“Department”) / Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings to revise Regulation 3110 Criminal History Record Checks and Drug Testing for Programs and Home Health Agencies. The Department’s proceedings to establish the regulation was initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 16 **Delaware Code** Section 1124 and 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section

10115 in the January 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2013, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED AMENDMENT

The proposal establishes Regulation 3110 History Record Checks and Drug Testing for Programs and Home Health Agencies. The proposed change will establish the regulation as required by 16 Del.C. §1145(m).

Statutory Authority

29 Del.C. Chap. 79, "Department of Health and Social Services."

16 Del.C. §1145 (m), "Criminal Background Checks."

Background

DLCTRP is revising these regulations pursuant to 16 Del.C. §1145 (m).

Summary of Proposed Amendment

The proposal revises regulations to incorporate the role of the new "Background Check Center established by statute and to conform to 2012 EEOC guidance on reliance on arrest and conviction records as they apply to hiring decisions.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

On further review, the Division has determined that it is beyond the scope of our authority to issue or mandate the use of guidelines set forth by federal agencies. Therefore we have deleted §§8.3.1 and 8.3.2 that mandated that employers abide by the Equal Employment Commission, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, 915.002, issued 4/25/12. The Division will provide copies of this document on request and have posted a link to the document on the Division website: <http://www.dhss.delaware.gov/dhss/dlctcrp/>

The Governor's Advisory Council for Exceptional Citizens ("GACEC") and the State Council for Persons with Disabilities (SCPD) offered comments. The Delaware Health Care Facilities Association ("DHCFA") also offered comments and suggestions. DLCTRP has considered each comment and responds as follows:

Comment: 1. First, in §3.0, definition of "criminal history", the Division includes the following sentence: "It shall be limited to convictions and arrests for which no disposition is available." This is problematic. The EEOC guidance (incorporated by reference at §8.6) discourages reliance on arrest records by employers. Moreover, the incidence of arrest records without disposition is high:

A 2006 study by the DOJ/BJA found that only 50% of arrest records in the FBI's III database were associated with a final disposition.

At 5. Routinely including a high volume of arrest records without disposition manifestly violates a basic precept of the EEOC guidance.

Response: *Except for the offenses listed at §8.2 the Division will no longer automatically disqualify applicants. The burden of analyzing and assessing suitability for employment rests with the employer. We are providing employers with the full record so they can conduct such an analysis and assessment in accordance with the EEOC guidelines.*

Comment 2: Second, in §3.0 definition of "Division or DLCTRP", consider adding "and home health agencies" to the end since this is the subject of the regulation.

Response: *Amended as recommended.*

"Division" or "DLCTRP" means the Division of Long Term Care Residents Protection, Department of Health and Social Services. The Division is responsible for background checks for ~~[licensed facilities programs and home health agencies]~~.

Comment 3: Third, §5.2 envisions the BCC continuously monitoring employees in its Master List for both arrests and convictions. The BCC is then authorized to use its discretion in sharing arrest information with the

employer. This is not consistent with the EEOC guidance. The EEOC provides the following characterization of arrest records:

The fact of an arrest does not establish that criminal conduct occurred. Arrests are not proof of criminal conduct. Many arrests do not result in criminal charges, or the charges are dismissed. Even if an individual is charged and subsequently prosecuted, he is presumed innocent unless proven guilty.

Response: *The Division will receive and analyze the updates. Charges with unknown dispositions or non-convictions will only be forwarded to the employer at the discretion of the Division. Again, the only convictions the Division will classify as disqualifying” are listed at §8.2. Other considerations are left to the employer.*

Comment 4: Fourth, §5.2 contains the following sentences:

DLTCRP will monitor the charge until there is a disposition. When the disposition is known, DLTCRP will inform the Employer of the conviction.

This incorrectly presumes that all dispositions will be convictions. Consider substituting “any conviction” for “the conviction”.

Response: *The Division reserves the discretion to notify employers of any new criminal court action including both pending and resolved cases, and any wanted status. The Division will inform the employer of the resolution of the criminal court action when known. We have replaced the word “conviction” with “outcome.”*

5.2 The BCC automatically conducts a Rap-back on all employees listed on the Master List. The Rap-back process will provide DLTCRP with information regarding any new arrest or conviction in the state. DLTCRP will determine, at its discretion and depending of the nature of the alleged crime, whether or not to inform the employer of the arrest. DLTCRP will monitor the charge until there is a disposition. When the disposition is known, DLTCRP will inform the Employer of the ~~conviction~~ **outcome**].

Comment 5: Fifth, the term “discrete” should be substituted for “discreet” throughout the document. It is incorrectly used in §§6.3, 6.4, 9.2, and 10.3.

Response: *Substitutions made as recommended.*

6.3 The original Grandfathered employee consent form shall accompany the employee to SBI for fingerprinting if so directed by DLTCRP because an SBI# is not already known by DLTCRP due to prior fingerprinting. A copy of the Grandfathered employee consent form shall be maintained in a ~~discreet discrete~~ **file** which is readily accessible, without delay, upon request by an agent of DLTCRP.

6.4 A copy of the BCC consent form executed by an Applicant for employment and a copy of the Master List Retention form executed by an employee who seeks to continue their place on the Master List pursuant to 6.2 above shall be maintained in separate ~~discreet discrete~~ **files** which are readily accessible, without delay, upon request by an agent of DLTCRP.

9.2 Evidence of all drug tests not transmitted through the BCC which have been represented to have been secured must be maintained in a ~~discreet discrete~~ **file** and be available for inspection, without delay, upon request from an agent of DLTCRP.

10.3 The employer shall ensure that copies of all BCC consent forms signed by Applicants are maintained in a ~~discreet discrete~~ **file** which is immediately available, upon request, from any agent of DLTCRP.

Comment 6: Sixth, in §6.4, there is a plural pronoun (their) with a singular antecedent (employee). Consider substituting “inclusion” for “their place”.

Response: *Substitutions made as recommended.*

6.4 A copy of the BCC consent form executed by an Applicant for employment and a copy of the Master List Retention form executed by an employee who seeks to continue ~~their place~~ **inclusion**] on the Master List pursuant to 6.2 above shall be maintained in separate ~~discreet discrete~~ **files** which are readily accessible, without delay, upon request by an agent of DLTCRP.

Comment 7: Seventh, §7.1 states as follows:

7.1 Before hiring an Applicant, employers are required by law to obtain from prior employers and to provide to prospective employers Service Letters which provide specific information as required by the Department of Labor. 19 Del.C. §708.

This is not entirely accurate. Title 19 Del.C. §708(b)(6) authorizes conditional employment based on difficult circumstances. At a minimum, consider inserting “generally” prior to “required”.

Response: *Revision made as recommended.*

7.1 Before hiring an Applicant, employers are **[generally]** required by law to obtain from prior employers and to provide to prospective employers Service Letters which provide specific information as required by the Department of Labor. 19 **Del.C.** §708.

Comment 8: Eighth, §7.2 recites as follows:

When an employee hired after the effective date of the BCC is terminated, the employer shall promptly complete a Service Letter which will be stored by the BCC and available to the next prospective employer. The Service Letter shall expire after 5 years.

While this employer requirement may be conceptually sound, it may lack statutory authority. Title 19 **Del.C.** §708(b)(5) contemplates employers maintaining the Service Letters and honoring requests from prospective employers for the Service Letters pertaining to applicants. Violations of the law result in civil penalties. Council could not locate any statute which permits an employer to simply send the Service Letters to the BCC which would then respond to employer requests for the Letters.

Response: 19 **Del.C.** §708(b)(5) requires the previous employer to provide the letter, it does not specify the manner in which it must be delivered. The mandatory posting of the letter in the BCC by the previous employer upon termination of the employee will result in increased compliance with the statute and provide the letter to the new employer with no delay by the previous employer.

Comment 9: Ninth, in §8.1, first sentence, the word “to” should be inserted between “authorized” and “furnish”. Moreover, in the first sentence, the word “to” should be inserted between “person” and “employers”.

Response: *Insertions made as recommended.*

8.1 The SBI is authorized **[to]** furnish information pertaining to the identification and conviction data for any person **[to]** employers or prospective employers so long as the information is used solely for purposes of making an employment decision. 11 **Del.C.** 8513(c) and(c)(1).

Comment 10: Tenth, in §8.2, the 15-year period for abuse/neglect convictions seems a bit long. By analogy, felony theft convictions have a 10-year disqualifying period. Consider a shorter period for misdemeanors involving abuse/neglect. The conviction information would still be disclosed pursuant to the criminal background check but there would not be a categorical, “no-exceptions” disqualification from employment if the 15-year standard were modified.

Response: *The Division has determined that 15 years is an appropriate time period.*

Comment 11: Eleventh, in §8.3.1, consider substituting “inform” for “informs”. There is also a plural pronoun (them) with a singular antecedent (individual). Consider substituting “the individual” for “them”. Alternatively, the term “him” could be substituted. See Delaware Administrative Code Style Manual, §3.3.2.1.

Response: *§8.3.1 has been deleted.*

Comment 12: Twelfth, in §8.3.2, I believe the fourth “bullet” (Evidence...conduct) is “bunched” with the third bullet.

Response: *§8.3.2 has been deleted.*

Comment 13: Thirteenth, in §10.8 insert “any” before ‘other’. Compare analogous §10.8 in the proposed Criminal History Record Checks and Drug Testing regulation. 16 DE Reg. 716 (January 1, 2013).

Response: *Amended as recommended.*

10.8 The employer is prohibited from sharing BCC disclosure information with **[any]** other person, agency, or facility except when requested because the subject of the BCC disclosure will be working for that employer in a facility or in the personal private residence of the requesting party.

Comment 14: Fourteenth, in §11.1, capitalize “Bureau”.

Response: *Amended as recommended.*

11.3 DHSS shall not release to employers copies of actual electronic reports of criminal history records prepared by the Federal **[b B]**ureau of Investigation.

Comment 15: Fifteenth, in §11.5.1, there is a plural pronoun (their) with a singular antecedent (Applicant). Consider substituting “his”. See Delaware Administrative Code Style Manual, §3.3.2.1.

Response: Amended as recommended.

11.5.1 An Applicant shall submit a request in writing to the Department for an on-site review of [~~their~~ his] BCC disclosures.

Comment 16: Sixteenth, in §11.5.4, substitute “names” for “name”.

Response: Amended as recommended at §12.5.4.

11.5.4 Written documentation of the date and time of the review and the [~~name~~ names] of those present shall be maintained by DLTCRP.

Comment 17: Seventeenth, Title 29 **Del.C.** §7972 provides for due process and a hearing to contest BCC errors. Hearings must be consistent with the APA. The regulation omits information in this context. For example, in §11.5, an applicant should be able to obtain a written copy of BCC disclosures to bring to an attorney or facilitate checking accuracy based on other records. Moreover, there is no mention of a hearing in the regulation. There is only an obtuse reference to “appeal” in §15.5.5.

Response: The determination of a disqualifying conviction based on §8.2 is the only determination made by the Division. Consistent with the statutory language at 29 **Del.C.** §7972 challenges to those determinations will be consistent with the Administrative Procedures Act, 29 **Del.C.** Chapter 101. That process for appeal has been successfully applied previously under 16 **Del.C.**, in particular for appeals of remedies imposed for noncompliance and is set forth at §1114. All other information provided through the BCC originates from other sources. Determinations are made by those other sources or by the employers themselves and challenges will be directed to those sources for resolution.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the January 2013 *Register of Regulations*, as amended herein, should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Medical Assistance during Transition to the Medicare Program is adopted and shall be final effective March 11, 2013.

Rita Landgraf, Secretary, DHSS

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

3110 Background Checks and Drug Testing for Programs and Home Care Agencies

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 3365 (16 **Del.C.** §3365)

ORDER

4102 School-Based Health Centers

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing School-Based Health Centers. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 18 **Delaware Code**, Chapter 33, Section 3365.

On December 1, 2012 (Volume 16, Issue 6), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions

from the public concerning the proposed regulations be delivered to DHSS by December 31, 2012, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing School-Based Health Centers were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Entities offering written comments include:

- Aetna, Larry Lewis, Jr., Director, State Government Affairs
- State Council for Persons with Disabilities
- Governor's Advisory Council for Exceptional Citizens

Public comments and the DHSS (Agency) responses are as follows:

Aetna, Larry Lewis, Jr., Director, State Government Affairs:

Aetna offers suggestion and seeks clarification on the section of the proposed regulation pertaining to Billing and Reimbursement.

6.1 SBHC are required to implement and maintain a third-party insurance billing process for services provided at the SBHC.

Comment: For purposes of effective adjudication Aetna suggest that a claim for services shall provide: (i) detailed and descriptive medical and patient data, (ii) a corresponding referral (whether in paper or electronic format), if required for the applicable claim, (iii) whether submitted via an electronic transaction using permitted standard code sets (e.g., CPT-4, ICD-10 or its successor standard, HCPCS) as required by the applicable Federal or state regulatory authority (e.g., U.S. Dept. of Health & Human Services, U.S. Dept. of Labor, state law or regulation) or otherwise, all the data elements of the UB-04 or CMS-1500 (or successor standard) forms (including but not limited to Member identification number, national provider identifier ("NPI"), date(s) of service, complete and accurate breakdown of services).

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will not include details for billing claims within the regulation. The Agency recommends that the requirements for submitting billing claims be established with the School-Based Health Center medical vendors directly.

6.2 SBHC shall not charge co-pays or any other out-of-pocket fees for use of SBHC services.

Comment: Is it anticipated carriers should recovery the uncollected member out-of-pocket expense from the plan sponsor for employer sponsored plans?

Agency Response: The Agency appreciates and acknowledges these comments. However, the Agency will not advise on billing practices.

State Council for Persons with Disabilities and Governor's Advisory Council for Exceptional Citizens:

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

First, the Administration promoted legislation (H.B. 303) which was enacted in 2012 despite considerable debate and introduction of multiple amendments. SCPD identified a significant concern with the application of the legislation to parents of students with disabilities. In a nutshell, federal law bars claims against insurance policies of IDEA and §504-identified students if there would be any adverse financial impact without parental consent. At the behest of SCPD and the Governor's Advisory Council for Exceptional Citizens (GACEC), Rep. Quinton Johnson introduced H.A. 3 to H.B. 303. In exchange for not pursuing the amendment, DHSS agreed to adopt a conforming regulation with specific language. This agreement was confirmed in writing through a May 10, 2012 email which can be provided on request. Unfortunately, the DPH proposed regulation does not conform to the Department's commitment. The truncated reference in the regulation is as follows:

6.3 Any services provided by SBHCs pursuant to a student's Individualized Education Program (IEP) are not subject to third-party billing.

This omits all federally required protections for students with §504 plans. It also omits federally required protections for students being evaluated for eligibility under the IDEA and §504 who do not yet have an IEP or §504

plan.

At a minimum, this section should be revised as follows:

6.3 The following services shall be exempt from third-party billing:

6.3.1 Any services provided to a student related to an evaluation or assessment of eligibility under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq., or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq.; and

6.3.2 Any services provided to a student implementing an Individualized Education Program (IEP) or Section 504 Plan developed in conformity with either of the above federal laws.

Agency Response: The Agency appreciates and acknowledges these comments.

The Agency agrees to revise section 6.3 to read:

6.3 The following services shall be exempt from third-party billing:

6.3.1 Any services provided to a student related to an evaluation or assessment of eligibility under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq., or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq.; and

6.3.2 Any services provided to a student implementing an Individualized Education Program (IEP) or Section 504 Plan developed in conformity with either of the above federal laws.

Second, in §1.0, substitute “§§3365 and 3571G” for “§3365 and 3517G”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to make the revision in 1.0 to read §3365 and 3517G

Third, in §2.0, the first sentence does not conform to the Administrative Code Drafting and Style Manual available at <http://regulations.delaware.gov/documents/drafting&stylemanual.pdf>. Section 3.1.2 of the Manual recites as follows:

The first paragraph should read,

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

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to revise the first sentence of 2.0 to read “The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise.”

Fourth, in §3.1, third sentence, the grammar is problematic. Consider substituting “SBHCs do not supplant...”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to revise the third sentence of 3.1 to read “SBHCs do not supplant the primary care provider, but rather serve to coordinate care between students and their primary care provider, as well as increase access to services.”

Fifth, §4.1 limits the authority to enroll a minor to a parent or guardian. The Division should consider whether a “relative caretaker” or “custodian” could authorize enrollment or if a definition of “parent” should be added which includes a “relative caregiver” or “custodian”. See Title 14 **Del.C.** §§202 and 3101(7) and Title 13 **Del.C.** §707.

Agency Response: The Agency appreciates and acknowledges these comments.

The Agency agrees to revise 4.1 to include a parent, guardian or relative caregiver acting pursuant to an Affidavit of Establishment of Power to Consent to Medical Treatment of Minors in accordance with Title 13 **Del.C.** §708.

Sixth, there is no provision authorizing a student who has reached the age of majority to “self-enroll”. See Title 14 **Del.C.** §3101(7) and Title 13 **Del.C.** §707. This should be addressed in the regulation.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to add a second sentence to 4.1 that states “A student of the age of 18 years or more may consent for himself or herself”.

The public comment period was open from December 1, 2012 through December 31, 2012.

Based on comments received during the public comment period only non-substantive changes have been made to the proposed regulation. The regulation has been approved by the Delaware Attorney General’s office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Based on public comments received, non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing School-Based Health Centers are adopted and shall become effective March 11, 2013, after publication of the final regulation in the Delaware Register of Regulations.

Rita M. Landgraf, Secretary

4102 School-Based Health Centers

1.0 Statement of Purpose

These regulations are intended to implement the provisions of 18 Del.C. §3365 and 3517G, school-based health centers. These regulations apply to medical vendors who provide services at school-based health centers and health insurance plans who reimburse for covered medical services. These regulations define: (1) services offered in a school-based health center; (2) criteria for recognition as a school-based health center; (3) interactions with primary care providers; and (4) criteria for health promotion.

2.0 Definitions

The following [words and] terms, when used in [these this] regulations, [should shall] have the following meaning unless the context clearly indicates otherwise:

“Agency” means the Division of Public Health, Bureau of Adolescent and Reproductive Health, school-based health center program.

“Parent” means the parent or legal guardian authorized to enroll a student in the school-based health center.

“School-based health center” means a health care clinic located in or near a school facility that is organized through school and health provider relationships that provides services designated in section 4.0 of this regulation.

“Student” means a child or adolescent who is enrolled in school.

3.0 Designation as a School-Based Health Center

3.1 School-based health centers (SBHC) are designed to reduce risk behaviors and improve health among children and adolescents through health promotion and education, early intervention, and preventive care. These services include physical examinations, treatment of minor acute medical conditions, counseling and community referrals. SBHC[s] do not supplant the primary care provider, but rather serve to coordinate care between students and their primary care provider, as well as increase access to services.

3.2 A health care clinic may be designated as a school-based health center (SBHC) by the Agency if it has demonstrated that it meets the criteria provided in paragraphs 4.0-8.0 in these regulations. The Agency shall be the sole arbiter of the satisfaction of these criteria.

3.3 Application for designation shall be made to the Agency using a standard application form. The form is available by contacting the Division of Public Health, school-based health center program.

3.4 Designations are non-transferable and valid for a period of five years from date of issue. Application for renewal is available by contacting the Division of Public Health, school-based health center program.

4.0 Service Provision

4.1 [In order to obtain services at the SPHC, aA] minor student must be enrolled in the SBHC by his or her parent/guardian [in order to obtain services at the SBHC or relative caregiver acting pursuant to an Affidavit of Establishment of Power to Consent to Medical Treatment of Minors in accordance with Title 13 Del.C. §708. A student of the age of 18 years or more may consent for himself or herself].

- 4.2 A SBHC shall be open during hours accessible to students. Information on hours of operation must be posted in areas frequented by students.
- 4.3 A SBHC is required to make services available under the categories of physical health, mental health, health education, and nutrition consultation/education, as outlined in this section.
- 4.3.1 Physical Health
- 4.3.1.1 Assessment, diagnosis and treatment of minor illness/injury.
- 4.3.1.2 Immunizations, in accordance with recommendations from the Division of Public Health.
- 4.3.2 Mental Health
- 4.3.2.1 Individual and group counseling.
- 4.3.2.2 Referral for long-term counseling and mental health evaluations and emergency treatment.
- 4.3.3 Health Education
- 4.3.3.1 Individual, group or classroom education, including but not limited to, healthy lifestyles and preventive health.
- 4.3.4 Nutrition Consultation/Education
- 4.3.4.1 Individual, group or classroom education, including but not limited to, healthy eating and weight management.
- 4.3.5 Subject to school board approval
- 4.3.5.1 Diagnosis and treatment of sexually transmitted diseases, reproductive health, provision of contraceptives, and HIV testing and counseling. Provision of these services by SBHCs is subject to the approval of the school board governing the SBHC locale.
- 4.3.6 Promotion of vaccination among enrolled students
- 4.3.6.1 SBHCs must promote provision of all vaccinations required or recommended by the Division of Public Health to enrolled students either on site or through referral to a primary care provider.
- 4.3.6.2 SBHCs shall promote vaccination among students through education and awareness activities.

5.0 Staffing

- 5.1 A SBHC shall provide services through health professionals who:
- 5.1.1 Are experienced in community health and providing health services to school-aged children and adolescents.
- 5.1.2 Have knowledge of health promotion and preventive health strategies for children and adolescents.
- 5.1.3 Maintain up to date training and proper certification for the population to be served.
- 5.2 The organizational structure of the SBHC must be adequate to provide for appropriate clinic supervision of staff, and to ensure that staff are assigned responsibilities that are consistent with their education and experience and legally within their scope of practice. Staffing of the SBHC must include:
- 5.2.1 An individual designated as having overall responsibility for the management of the SBHC.
- 5.2.2 A licensed advanced practice nurse, physician assistant or physician, on a part-time basis at minimum.
- 5.2.3 An individual trained and experienced in nutrition for school-aged children and adolescents.
- 5.2.4 A licensed clinical social worker, psychologist or mental health counselor.
- 5.2.5 An individual responsible for the management of medical records.

6.0 Billing and Reimbursement

- 6.1 SBHCs are required to implement and maintain a third-party insurance billing process for services provided.

- 6.2 A SBHC shall not charge co-pays or any other out-of-pocket fees for use of SBHC services.
- 6.3 ~~Any services provided by SBHCs pursuant to a student's Individualized Education Program (IEP) are not subject to third party billing.~~ The following services shall be exempt from third-party billing:
- 6.3.1 Any services provided to a student related to an evaluation or assessment of eligibility under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq, or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq.; and
- 6.3.2 Any services provided to a student implementing an Individualized Education Program (IEP) or Section 504 Plan developed in conformity with either of the above federal laws.]
- 6.4 Insurance information on each student enrolled in the SBHC must be updated annually at minimum.

7.0 Information Storage and Sharing

- 7.1 A SBHC must keep detailed records on the treatment of students receiving services, including but not limited to, documentation of contact with primary care providers.
- 7.2 A SBHC shall establish written protocol that describes how information will be shared with the student's primary care provider.

8.0 Quality Improvement

- 8.1 A SBHC must implement and maintain a quality assurance plan. Components of the plan shall include at a minimum:
- 8.1.1 Ongoing clinical and medical record reviews by peers to ensure conformity with current standards of practice. The plan must include provisions for implementing corrective actions when deficiencies are noted.
- 8.1.2 Satisfaction assessments conducted with parents, students and/or school staff on a biennial basis.
- 8.1.3 The Agency may perform such reviews as it determines necessary to ensure continued compliance with SBHC standards. Review may include site visits, reviews of records and documents, or such other oversight as determined necessary by the Agency.

DIVISION OF SOCIAL SERVICES

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

NOTICE OF WITHDRAWAL OF PROPOSED ACTION

Child Care Subsidy Program Proposed Phase-out Of Purchase Of Care Plus

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, notice is hereby given that the proposed regulation published in Volume 16, Issue 6, Number 603 of the December 1, 2012 issue of the Delaware Register of Regulations is withdrawn.

Summary of Notice of Withdrawal of a Proposed Action

On December 1, 2012, the Division of Social Services (DSS) published a notice for public information regarding a proposal to phase-out the Purchase of Care Plus (POC+) care option commencing January 1, 2013.

Effective March 1, 2013, the proposed action published in the Delaware *Register of Regulations* on December 1, 2012 (16 DE Reg. 603) is withdrawn. DSS will continue to explore options related to the Purchase of Care Plus (POC+) care option and the impact of proposed options on both recipients and providers.

DSS received approximately 7 public comments from the child care community in response to the December 1, 2012 proposed action. The written comments led to the conclusion that the proposed action should be withdrawn as written. Following are two representative examples of the type of comments that were received.

Representative Example #1

As background, this program is an option which allows providers to charge DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service rate. Historically, some providers may have limited DSS purchase of care slots since the compensation was so low the providers arguably could not sustain their businesses if they had too many POC slots. By inference, the POC+ program gave families an option, i.e., if a preferred provider had no POC slots, the family could offer the DSS subsidized compensation supplemented by a family payment. The family would still enjoy a State subsidy but have to pay a supplement resulting in the provider receiving an aggregate of its "private-pay" rate. The purpose and rationale for the proposed phase-out is: In 2011, the provider rates were raised to sixty five percent of the market rate plus fifty cents. In addition, providers who join the Quality Rating and Improvement System known as Stars can potentially receive up to one hundred percent of the market rate. Some providers may choose the option of not participating in Stars, but will make up the difference by collecting the additional POC Plus fees through low income families. Phasing out of POC+ will encourage providers to participate in Stars and give some financial relief to our low income families.

There are pros and cons to this initiative.

The "pros" are as follows: 1) giving providers an incentive to participate in Stars quality rating program; 2) giving providers an incentive to offer more "regular" POC slots; and 3) reducing prospects for providers to negotiate payment of supplemental fees from families.

The "cons" are as follows: 1) reducing the network of providers who are willing to participate in the overall State subsidy program; 2) eliminating an option for families seeking a preferred provider with no "open" POC slots; and 3) being a disincentive for TANF clients to seek employment. For example, if DVR has a client with the opportunity to work, they will then exceed the FPL, will lose POC and have to pay out of pocket for child care services. This person will most likely not be able to attain a salary to pay for child care services and may just opt to rely totally on state benefits. Therefore, if POC+ is eliminated, the Division should adopt a program that has a buy-in option, similar to DMMAs Medicaid for Workers with Disabilities (MWD) program so there is an incentive for people to go to work, gain self-sufficiency and still keep their child care services.

We do not know how many families participate in the POC+ program, how attractive the 65% + 50 cent payments are, and how difficult it is to identify child care providers with openings. However, we do believe that the disadvantages outweigh the advantages and cannot endorse the regulation.

Representative Example #2

The POC plus system currently allows child care providers to charge the difference between what the State pays and the provider's private fee for service. I have recently been made aware that The Division of Social Services (DSS) is currently scheduled to phase out the POC plus program in 2013.

We strive to maintain our prices as low as possible while providing quality care and also pay competitive wages and treat our employees fairly. It is often extremely difficult to balance these three goals. Lower prices equates to less money for improvements and programs for the children, lower wages and fewer benefits for employees. Higher pricing places additional burden on all families, not just those already receiving State aid in the form of POC. We proudly advertise our pricing on our website at <http://www.pandaearlyed.com/rates.html> as our prices are significantly below market 75th percentile pricing. (see: 2011 Local Child Care Market Rate Study, Executive Summary Report for The Delaware Division of Social Services, June 2011).

We are strongly opposed to the elimination of the POC plus program for several reasons:

1. Elimination of POC plus will unfairly shift more of the burden to families who pay at our full rate. If necessary to increase prices in the future, even higher price increases will be required as they will be spread over fewer customers as the POC customers would not participate in the price increase. Our full paying clients supplement our lower income families already within their tuition and also through their Delaware income taxes. The economy has been very difficult and we struggle to have sufficient cash to meet our needs as many full paying families have fallen way behind in their payments. One of my families is currently \$5000 behind in their tuition. In total all my customers are in excess of \$40,000 behind in their tuitions. IN ORDER TO STAY IN BUSINESS I WOULD LIKELY HAVE TO RAISE PRICES ON MY FULL PAYING CUSTOMERS WHO ALREADY ARE STRUGGLING TO KEEP UP.
2. Our POC plus fees are kept low. They vary, but an average fee of \$20 per week is not uncommon. We also work with families on an individual basis. The loss of these fees would have to be made up with a

combination of higher pricing for full paying parents, smaller pay raises for staff or fewer special events for children (field trips, guest speakers, traveling exhibits etc.)

3. In the past, changes and adjustments to the POC rates have come slowly. These changes come too slow as compared to the rapidly changing economy that every business must deal with. It's necessary to allow the business to control its pricing. The business owner is the only one who can determine what is needed to run his or her business effectively and efficiently. If necessary prices can be raised quickly to account for things like food, fuel and supply prices and changing government policies like taxes and wages.
4. Elimination of POC plus will make it more difficult for low income families to find a child care provider. Eventually providers will be forced to take full paying customers preferentially over POC customers. Reason 3 above is the biggest reason for this. It's necessary for business to be able change prices in order to meet the demands of the sometimes rapidly changing economy.
5. POC plus does not add additional cost to the State of Delaware.

I hope DSS will immediately reconsider the action to eliminate POC plus so that the quality and affordability of child care can be maintained for all families in Delaware.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed action regarding the Child Care Subsidy Program, *specifically, to phase-out the Purchase of Care Plus (POC+) care option* is withdrawn effective March 10, 2013.

Rita M. Landgraf, Secretary, DHSS

DSS NOTICE OF WITHDRAWAL OF PROPOSED ACTION #13-07

CHILD CARE SUBSIDY PROGRAM PHASE-OUT OF PURCHASE OF CARE PLUS

Delaware Health and Social Services (DHSS) and the Division of Social Services (DSS) is committed to keeping our partners, stakeholders and community informed of any changes in rules and regulations in the Child Care Subsidy Program.

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

Public Notice is hereby given that the DSS proposes to withdraw the proposed action to phase-out the Purchase of Care Plus (POC+) care option that was to commence on January 1, 2013.

Currently, Purchase of Care Plus (POC+) is an option that allows child care providers to charge Division of Social Services (DSS) clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives the DSS rate, the DSS determined child care parent fee if applicable, and any additional provider determined co-pay. This option is primarily for DSS fee-paying clients. DSS chooses not to limit childcare options for any group of individuals. DSS will allow all DSS purchase of care clients eligible for POC with no parent fee the opportunity to waive their right to receive childcare with no additional provider co-pays and choose a POC+ slot. POC+ is an option for all DSS clients, not a requirement. If a provider does not have a regular POC slot available, the client can choose to self-arrange, enter into a POC+ arrangement or find another provider that will take the regular DSS payment.

The purpose and rationale for the withdrawal is to allow the Division of Social Services (DSS) to explore other options. DSS received written comments that led to the conclusion that the proposed option should be withdrawn as written. DSS will explore other options to eliminate or reduce POC+.

Elaine Archangelo, Director
Division of Social Services
2/18/13

DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Subsidy Program; Providing Child Care for Food Benefit Volunteers

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Providing Child Care for Food Benefit Volunteers*. 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 January 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced January 31, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Providing Child Care for Food Benefit Volunteers*.

Statutory Authority

45 CFR §98.44, *Priority for child care services*

Background

Effective October 1, 1996, Congress enacted the Child Care Development Fund (CCDF) which consolidated funding for child care for low-income working families and families reentering the workforce. The Child Care Subsidy Program provides support for families with young children to enable the caretaker to hold a job, obtain training or meet special needs of the child. Child care may also be provided in child abuse cases to help protect the child.

Summary of Proposed Changes

~~DSSM 11003.3, *Parent/Caretaker on Food Stamps*~~ and ~~DSSM 11003.3.1, *Food Stamp Guarantee Providing Child Care for Food Benefit Volunteers*~~: The intent of the proposed amendment is to consolidate, reformat and clarify language to make the rules easier to understand and follow.

Additionally, the name of the section is changed to more accurately reflect the content of the policy.

The applicable federal citation is also added to the policy section.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

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

As background, eligible parents/caretakers participating in the Food Supplement Program can participate in activities promoting employment, i.e., Food Benefit Employment and Training. Such activities include job search training, adult education and training, and post-secondary education. GACEC and SCPD have the following observations on the proposed regulation:

First, §3.E. limits post-secondary education as follows: “E. Post-Secondary Education (first degree only).” This could be interpreted as an Associates or 2 -year degree. This would be inconsistent with the attached §11003.7.5 of the DSS regulations. The latter regulation envisions “that the course of instruction will lead to a job within a

foreseeable time frame, such as nursing students, ..DSS will not authorize child care services for parents/caretakers who already have one four-year college degree or are in a graduate program.” It would be preferable to modify the reference in the proposed regulation to “(not to exceed initial 4-year college degree)”.

Second, DSS is striking current §11003.3.1. At 719. This section clarifies: 1) that child care for eligible parents is an entitlement; and 2) that parents with a child under age 6 are exempt from participation unless they volunteer. If these program features remain accurate, it may be preferable to retain the substance of the standard in a regulation. We did not identify another regulation which addresses the exemption for children under age 6.

Agency Response: Thank you for pointing out the inconsistency in this regulation. DSSM 11003.3 is amended to remove and to reserve the proposed language. DSS will incorporate the content and substance of section 11003.3 into another section of the Child Care Subsidy Program administrative rules. This regulatory action will be published in a future issue of the Delaware Register of Regulations.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the January 2013 *Register of Regulations* should be adopted.

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

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #13-09 REVISION:

~~11003.3 Parent/Caretaker on Food Stamps [Providing Child Care for Food Benefit Volunteers RESERVED]~~ ~~45 CFR 98.44~~

~~A. DSS provides child care for a dependent child when a parent/caretaker receives Food Stamps and the parent/caretaker needs to:~~

- ~~1. participate in Food Stamp Employment and Training activities, or~~
- ~~2. volunteer to participate in Employment and Training activities (both are Category 21).~~

~~B. Persons can volunteer to participate in E&T Food Stamps activities only as long as the activity for which they volunteer is a component activity of E&T Food Stamps. Acceptable E&T Food Stamps component activities are:~~

- ~~1. Independent Job Search,~~
- ~~2. One Stop Delivery System,~~
- ~~3. Adult Education, and Training,~~
- ~~4. Workfare Program (ABAWD only),~~
- ~~5. Post Secondary Education (first degree only), and~~
- ~~6. Refugee and Asylee Services.~~

~~Mandatory participants who fail to participate receive a sanction. Persons who receive a sanction lose their child care while the sanction remains in effect.~~

~~11003.3.1 Food Stamp Guarantee~~

~~To the extent that child care is necessary for an eligible Food Stamp recipient to participate in Food Stamp Employment & Training Food Stamps, DSS guarantees the recipient's child care. Note, however, that parent/caretakers responsible for a child under the age of six are exempt from participation in E&T Food Stamps activities unless they choose to volunteer. DSS considers parent/caretakers receiving Food Stamp Employment & Training Food Stamps Child Care a priority, and will typically provide service when DSS has a waiting list. Again, because DSS provides E&T Food Stamps Child Care as an entitlement, recipients are to receive timely and adequate notice requirements before any termination or reduction in benefits.~~

~~Refer to DSSM 9200, 9201, 9202, and 9203 for further discussion of Food Stamp Employment & Training Food Stamps.~~

~~**[This policy applies to parents/caretakers who volunteer for Food Benefit Employment and Training**~~

~~and receive child care assistance:~~

~~1. DSS provides child care for parents/caretakers who volunteer to participate in the Food Benefit Employment and Training Program.~~

~~2. Clients may only participate in DSS approved Food Benefit Employment and Training components:~~

~~3. Food Benefit Employment and Training components are:~~

~~A. Independent Job Search~~

~~B. Job Search Training~~

~~C. Adult Education and Training~~

~~D. Workfare (ABAWD only)~~

~~E. Post Secondary Education (first degree only)~~

~~F. Refugee and Asylee Services~~

~~The DSS Worker will close the child care case of recipients of who stop volunteering with the E&T vendor or are dis-enrolled due to unsatisfactory participation in the program~~

~~Exception: The Worker will not close the case if the recipient has another need for child care that will allow the benefit to remain open.~~

~~Refer to DSSM 10000 for further discussion of Food Benefit Employment & Training (FB E&T). Refer to DSSM 10000 for further discussion of Food Benefit Employment & Training (FB E&T).]~~

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 16 Delaware Code, Chapter 51 (16 Del.C. Ch. 51)

ORDER

6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Substance Abuse and Mental Health (DSAMH) initiated proceedings to promulgate new regulations regarding the process by which individuals can be detained for behavioral health assessment and treatment. The Department's proceedings to promulgate new regulations were initiated pursuant to 29 Delaware Code, Section 10114, with authority prescribed by 29 Delaware Code, Section 7971.

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

SUMMARY OF PROPOSAL

The proposed establishes the Division of Substance Abuse and Mental Health's regulations for the eligibility criteria and means by which individuals qualify to attain credentialing as a mental health screener.

Background

House Bill 311 significantly updates the laws under which a person can be held involuntarily for up to 24 hours for a mental health evaluation. In place of the current system where a person is transported in handcuffs by police to a hospital emergency department, the bill allows a psychiatrist or credentialed mental health screener to evaluate a person anywhere and then transport that person to the most appropriate location for evaluation or

treatment in the most appropriate and least restrictive manner. The changes in this bill will be phased in over a year to ensure that the greatly expanded, community-based services are fully operational before the complete change in procedure takes place. Credentialed Mental Health Screeners are to be in use by July, 2013.

In addition to providing people with a wider array of appropriate treatment options, these changes will free law enforcement from unnecessary transportation duties and long waits in hospital waiting rooms. This bill expands the number and kind of professional staff who are credentialed to involuntarily detain someone for a mental health evaluation, increases the immunity afforded to doctors, and expands immunity to other professionals involved in the process. In addition to moving Delaware towards best practices in this field and protecting the civil rights of Delawareans, these changes will enable the State to attain compliance with the terms set forth in Settlement Agreement United States v. State of Delaware, C.A. No. 11-591-LPS. This regulation delineates what who may be eligible, what information must be contained in the application to become credentialed as a Mental Health Screener, establishes the authority for the format for the training and delineates how the credentialed status must be maintained and how it may be suspended or revoked.

Summary of Proposal

This regulation sets forth methods used to determine eligibility for training and credentialing as a mental health screener. Effective July 1, 2013, new policy is added to the Division of Substance Abuse and Mental Health at DSAMH 6002 to provide mental health screener credentialing requirements.

Fiscal Impact Statement

The proposed regulation imposes no additional costs on DSAMH. Credentialing of Mental Health Screeners is required as a piece of Delaware's legislative and other efforts to improve the State's behavioral health care system in keeping with the U.S. Department of Justice Olmstead Settlement Agreement, entered into in July, 2011. The proposed regulation completes the promulgation of changes in the laws governing how the State acts to preserve the civil and human rights of individuals who may be recommended for involuntary detention under 16 Del. C. Chapter 51 as amended by HB 311 in July, 2012.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens, the Developmental Disabilities Council, and the State Council for Persons with Disabilities and CLASI offered the comments and recommendations summarized below. DSAMH noted that the comments received from the former two entities were identical in content and that the latter's comments largely mirrored those of the former two. Both in response to comments and pursuant to DSAMH review, non-substantive changes were made several places in the regulations. For purposes of reference, DSAMH has considered each comment as it was presented in the first of the three respondents' letters and responds as follows:

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed new regulation to update the Division of Substance Abuse and Mental Health (DSAMH) to add policy regarding the process to credential mental health screeners is adopted and shall be final effective July 1, 2013.

Rita M. Landgraf, Secretary, DHSS

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

6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions

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 1147

Secretary's Order No. 2013-A-0004
1147 CO₂ Budget Trading Program

Date of Issuance: February 19, 2013
Effective Date: March 11, 2013

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control (Department or DNREC), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

The Department published the proposed amendment to Regulation 1147, 7 DE Admin. Code 1147, on January 1, 2013 in the *Delaware Register of Regulations*, and held a public hearing on January 23, 2013. The proposed amendment would allow any Delaware petroleum refinery to participate in the carbon dioxide trading program offered by the Regional Greenhouse Gas Initiative similar to the participation otherwise available to other electric generators in Delaware.

The Department's presiding hearing officer, Robert P. Haynes, issued a report that reviews the record and recommends approval of the proposed amendment. I adopt the Report and the record that supports it.

The Report indicates that the proposed amendment was supported by several environmental groups and that Delaware City Refinery Company, LLC (DCR) also supports the amendment, albeit with a minor change to clarify the language. The amendment will allow DCR, as Delaware's only petroleum refinery, to sell surplus electricity into the electric grid under certain condition and allow DCR the opportunity to participate in carbon dioxide (CO₂) trading budget trading program. The CO₂ trading is conducted by the Regional Greenhouse Gas Initiative (RGGI), which consists of Delaware and eight other states. These states joined together in order to establish a market for trading greenhouse gases, which seeks to reduce greenhouse gas emissions, such as from carbon dioxide. Delaware has received auction proceeds from the sale of allowances as a result of its participation in RGGI over the past several years and these funds have been used to reduce Delaware's energy usage through energy efficiency and conservation programs.

DCR will use its existing combustion turbines operating on natural gas to serve the energy needs of DCR, but at times the generation also produces surplus power. The amendment will allow DCR's surplus to be sold to the power grid and to have such sales participate in RGGI's CO₂ budget trading program. As a result, Delawareans will benefit from lower energy prices and may receive increased benefits from RGGI.

The Division of Air Quality (DAQ) provided a response to the comments that seeks some minor language changes to clarify the language based upon DCR's comments. The Report approves this change as appropriate albeit not substantial. I adopt the changes as set forth in Appendix A hereto.

In conclusion, the following findings and conclusions are entered:

1. The Department finds and determines that the record supports the adoption of the proposed amendment in Appendix A of this Order, which reflects the changes made by DAQ in response to public comments and which are not substantial,

2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

Collin P. O' Mara, Secretary

1147 CO₂ Budget Trading Program

41/11/08 03/11/2013

1.0 CO₂ Budget Trading Program General Provisions

1.1 Purpose

This Regulation establishes the State of Delaware component of the CO₂ Budget Trading Program, which is designed to stabilize and then reduce anthropogenic emissions of CO₂, a greenhouse gas, from CO₂ budget sources in an economically efficient manner.

1.2 Applicability.

1.2.1 *Units.* Any unit that, at any time on or after January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe shall be a CO₂ budget unit and any source that includes one or more such units shall be a CO₂ budget source, subject to the requirements of this regulation.

1.2.2 *Limited exemption for units with electrical output to the electric grid restricted by permit conditions.*

1.2.2.1 *Applicability.* Notwithstanding 1.2.1 of this regulation, a unit under 1.2.1 of this regulation that is covered by a permit issued pursuant to 7 **DE Admin. Code** 1102 or 1130 containing a practically enforceable condition restricting the supply of the unit's annual electrical output to the electric grid to less than or equal to 10 percent of the annual gross generation of the unit, and which complies with the provisions in 1.2.2.3 of this regulation, shall be exempt from the requirements of Regulation 1147, except for the provisions 1.3, 1.4, 1.6 of this regulation and, if applicable because of the allocation of CO₂ allowances during the pre-exemption time period, 5.0, 6.0 and 7.0 of this regulation.

1.2.2.2 *Effective date.* The exemption under 1.2.2.1 of this regulation shall become effective as of the January 1 that is on or after the date on which the restriction on the percentage of annual gross generation that may be supplied to the electric grid and the provisions in the permit required under 1.2.2.1 of this regulation become final.

1.2.2.3 *Compliance.*

1.2.2.3.1 A unit exempt under 1.2.2.1 of this regulation shall comply with the restriction on percentage of annual gross generation that may be supplied to the electric grid described in 1.2.2.1 of this regulation.

1.2.2.3.2 A unit exempt under 1.2.2.1 of this regulation shall report to the Department the amount of annual gross generation and the amount of annual gross generation supplied to the electric grid during the year by the following February 1.

1.2.2.3.3 For a period of 10 years from the date the records are created, the owners and operators of a unit exempt under 1.2.2.1 of this regulation shall retain, at the source that includes the unit, records demonstrating that the conditions of the permit under 1.2.2.1 of this regulation were met. The 10-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Department. The owners and operators bear the burden of proof that the unit met the restriction on the percentage of annual gross generation that may be supplied to the electric grid.

1.2.2.3.4 The owners and operators and, to the extent applicable, the CO₂ authorized account representative of a unit exempt under 1.2.2.1 of this regulation shall comply with all the requirements of this Regulation concerning all time periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

1.2.2.3.5 On the earlier of the following dates, a unit exempt under 1.2.2.1 of this regulation shall lose its exemption:

1.2.2.3.5.1 the date on which the restriction on the percentage of annual gross generation that may be supplied to the electric grid described in 1.2.2.1 of this regulation is removed from the unit's permit or otherwise becomes no longer applicable in any year that commences on or after January 1, 2009; or

1.2.2.3.5.2 the first date on which the unit fails to comply, or on which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on the percentage of annual gross generation that may be supplied to the

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electric grid described in 1.2.2.1 of this regulation during any year that commences on or after January 1, 2009.

- 1.2.2.3.6 A unit that loses its exemption in accordance with 1.2.2.3.5 of this regulation shall be subject to the requirements of Regulation 1147. For the purpose of applying permitting requirements under 3.0 of this regulation, allocating allowances under 5.0 of this regulation, and applying monitoring requirements under 8.0 of this regulation, the unit shall be treated as commencing operation on the date the unit loses its exemption.

1.2.3 Requirements for any CO₂ Budget Source that is a petroleum refinery.

1.2.3.1 Applicability. Notwithstanding 1.2.1 of this regulation, a CO₂ budget source under 1.2.1 of this regulation that is a petroleum refinery may elect to participate in the CO₂ budget trading program by securing a permit issued pursuant to 7 DE Admin. Code 1102 or 1130 that contains practically enforceable conditions that require compliance with all of the provisions of this regulation, except "CO₂ budget emissions limitation" shall mean for a CO₂ budget source, the tonnage equivalent, in CO₂ emissions associated with the [annual] gross electrical generation output to the electric grid in a control period from all CO₂ Budget Units at the CO₂ Budget Source, of the CO₂ allowances available for compliance deduction for the source for a control period[; and the amount of CO₂ allowances required to be held pursuant to 1.5.3.1, and deducted pursuant to 6.5.2.1 of this regulation shall include only the number of tons of total CO₂ emissions associated with gross generation output to the electric grid].

1.2.3.2 Effective date. The requirements of 1.2.3.1 of this regulation shall become effective as of January 1 of the year that the permit required under 1.2.3.1 of this regulation becomes final.

1.2.3.3 Compliance. For the purpose of applying permitting requirements under 3.0 of this regulation, and applying monitoring requirements under 8.0 of this regulation, the unit shall be treated as commencing operation on the date the permit required under 1.2.3.1 of this regulation becomes final.

1.2.2.4 *Deduction of tons from State of Delaware CO₂ Budget Trading Program limited industrial exemption set-aside account.* In the event that the Department grants an exemption under 1.2.2 or approval to comply under 1.2.3 of this regulation to a CO₂ source, with one or more units that on January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe, the Department shall retire the number of CO₂ allowances from the set-aside established for such purpose under 5.3 of this regulation.

***Please Note: As the rest of the sections were not amended since the proposal in the January 2013 Register, they are not being published here. A complete copy of the final regulation is available at:**

1147 CO₂ Budget Trading Program

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE**

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 Del.C. Ch. 27)

ORDER

2400 Board of Examiners of Constables

Pursuant to the Guidelines in 29 Del.C. §10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule

5.0 Firearms Policy, 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 clarify the requirements for a constable to carry a weapon while on duty.

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 the 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 clarify the requirements for a constable to carry a weapon while on duty.
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 clarify the requirements for a constable to carry a weapon while on duty.

Conclusion

7. The proposed rule was published by the Board in accord with the statutory duties and authority as set forth in 10 **Del.C.** §2701 et seq. and, in particular, 10 **Del.C.** §2702(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 **Del.C.** §2701 et. seq.
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 this amendment pursuant to 10 **Del.C.** §2702(b) 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 March 1, 2013.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 14th of February, 2013.

Chief William E. Bryson

Ralph K. Durstein, III, Esquire

Major Mark Hitch

Lt. Colonel James Paige

Mr. John F. Tharan

* Please note that no changes were made to the regulation as originally proposed and published in the January 2013 issue of the *Register* at page 728 (16 DE Reg. 728). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2400 Board of Examiners of Constables

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DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 Del.C. §2506(a)(1))
24 DE Admin. Code 2500

ORDER

2500 Board of Pharmacy

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 16, 2013 at a scheduled meeting of the Delaware Board of Pharmacy to receive comments regarding the Board's proposed revisions to its rules and regulations. The Board proposed revision to the rules which would require pharmacists to take, as part of their biennial renewal required continuing education, at least two hours in the area of medication safety/errors. The Board also proposed revisions which would add to the list of crimes deemed substantially related to the practice of pharmacy certain sexual offenses not previously included in the list of substantially related crimes.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 16, Issue 7, on January 1, 2013. Notice of the January 16, 2013 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 Del.C. § 10118(a), the date to receive final written comments was February 11, 2013, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on February 20, 2013.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

The Board received no written or public comment.

Findings of Fact and Conclusions

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

Pursuant to 24 Del.C. §2506(a)(1), the Board has the statutory authority to promulgate rules and regulations. The proposed revisions will add an important component to the required continuing education for licensees. The expansion of the list of crimes deemed substantially related to the practice of pharmacy will serve to provide greater protection to the public. The Board concludes that adoption of the rules and regulations as amended advances professional standards and is in the best interest of the public.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations remains as published in the *Register of Regulations*, Volume 16, Issue 7 on January 1, 2013.

IT IS SO ORDERED this 20th day of February 2013 by the Delaware Board of Pharmacy.

Howard Simon, R.Ph., Professional Member,
President

Cherryl Peterson, PharmD, Professional Member

Matthew Maher, Public Member, Vice-President

Kimberly Robbins, R.Ph., Professional Member

Jay Galloway, Public Member
Joli Martini, R.Ph., Professional Member

Sandra Robinson, R.Ph., Professional Member
Sandra Zaragoza, R.Ph., Professional Member

* Please note that no changes were made to the regulation as originally proposed and published in the January 2013 issue of the *Register* at page 739 (16 DE Reg. 739). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2500 Board of Pharmacy

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 10113(b)(4) (24 **Del.C.** §10113(b)(4))
24 **DE Admin. Code** 2930

ORDER

2930 Council on Real Estate Appraisers

Pursuant to 29 **Del.C.** §10113(b)(4) and 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers issues this Order adopting the below amendment to the Board's Rules to correct a technical error in the previously published rule. Specifically, pursuant to 29 **Del.C.** §10113(b)(4), regulation 10.7.1 of the Council on Real Estate Appraisers must be changed without prior publication as it incorrectly states the amount of continuing education that may be taken on-line and in the classroom. Specifically, the two stated caps, when total, exceed the total CE required. This was the result of a scrivener's error prior to submission for publication that must be corrected.

The Rule must be changed as follows; additions show in underline, deletion's show in strike-through:

10.7.1 Except as provided in 10.7.2, a licensed assessor shall complete 14 classroom hours of continuing education-including at least 7 hours on USPAP and at least 3 hours on the law, rules, and regulations of the Council-during each biennial renewal period as a condition of renewal of certification for the next biennial renewal period. ~~Fourteen~~ Seven hours may be completed via on-line, video or remote instruction; and ~~fourteen~~ seven hours must be completed in class during every biennial renewal period.

SO ORDERED this 20th day of November, 2012.

DELAWARE COUNCIL OF REAL ESTATE APPRAISERS

William Diveley, President
Brad Levering
Frank Long
Ronald Mandato

Yvonne Richards
Frank Smith
Georgianna Tietley
Richard Wheeler

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

2930 Council on Real Estate Appraisers

FINAL REGULATIONS

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))
26 DE Admin. Code 3007

IN THE MATTER OF THE CONSIDERATION OF
RULES, STANDARDS AND INDICES TO ENSURE
RELIABLE ELECTRIC SERVICE BY ELECTRIC
DISTRIBUTION COMPANIES (OPENED
SEPTEMBER 26, 2000; REOPENED
OCTOBER 11, 2005; REOPENED
NOVEMBER 19, 2009)

PSC REGULATION DOCKET NO. 50

ORDER NO. 8285

AND NOW, this 7th day of February, 2013:

WHEREAS, by Order No. 7002 (August 8, 2006), the Delaware Public Service Commission (the "Commission") approved proposed revisions to the Rules on "Electric Service Reliability and Quality Standards," 26 DE Admin. Code §3007 (the "Rules") for electric distribution companies subject to the Commission's jurisdiction; and

WHEREAS, Section 3007-1.9 of the Rules provides as follows: "This Electric Service Reliability and Quality regulation shall be effective through 2012 and may be reviewed, revised or extended as necessary to ensure the maintenance of electric reliability and quality service in Delaware;" and

WHEREAS, the Commission believed that it would be in the public interest to extend the Rules to apply beyond 2012; and

WHEREAS, by Order No. 8270 (December 18, 2012), the Commission ordered that a proposed amendment to the Rules, attached as **Exhibit "A"**, be published in the *Delaware Register of Regulations* and that notice of the Proposed Rulemaking to develop final Rules be published in the *News Journal* and the *Delaware State News* newspapers on or before December 21, 2012; and

WHEREAS, pursuant to 29 Del.C. §§10115(a) and 10116, the Commission encouraged the public to submit written comments on or before January 4, 2013, but the last date to submit written comments will be on February 22, 2013; and

WHEREAS, the Commission scheduled a public hearing on the proposed amended Rules for February 7, 2013; and

WHEREAS, the Commission also ordered that the Secretary of the Commission include proof of such publication in the docket file before the public hearing in this matter and that the Secretary serve (by regular mail or by electronic e-mail) a copy of such notice of Proposed Rulemaking on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; and (e) each person or entity that has made a timely request for advance notice of regulation-making proceedings; and

WHEREAS, the Secretary timely included proof of such publication requirements in the docket file for this matter and sent such notice to the parties as listed above; and

WHEREAS, as of February 7, 2013, the Commission has received no written comments regarding the proposed amendment to the Rules;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS:

1. That the proposed Rules, as amended, which are set forth in the attached **Exhibit "A"** (redlined version) and **Exhibit "B"** (clean version) (the "Final Rules") are approved.

2. That, pursuant to 29 Del. C. §§1133 and 10115(a), the Secretary of the Commission ("Secretary") shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order and a copy of the amended Rules (**Exhibit "B"**).

3. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as

may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

* Please note that no changes were made to the regulation as originally proposed and published in the January 2013 issue of the *Register* at page 741 (16 DE Reg. 741). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

3007 Electric Service Reliability and Quality Standards

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 **Delaware Code** §302, §2708, §2709 (21 **Del.C.** §302, §2708, §2709)
2 **DE Admin. Code** 2222

2222 School Bus Driver Qualifications and Endorsements

ORDER

Proposed Revised Administrative Code 2222 establishes administrative procedures for the issuance, renewal, removal, and reinstatement of the school bus (S) endorsement on Delaware commercial driver licenses. The Division of Motor Vehicles (OMV) uses this regulation to initiate program requirements.

The proposed regulation was published in the Delaware *Register of Regulations* on October 1, 2012. The comment period remained open until November 30, 2012. There was no public hearing on proposed Regulation 2222.

Summary of the Evidence and Information Submitted

The Department received no public comments on the proposed regulation.

Findings of Fact

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

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

Decision and Effective Date

Based on the provisions of 21 **Del.C.** §302, §2708, §2709, and the record in this docket, I hereby adopt revised Administrative Code 2222 and as may more fully and at large appear in the version attached hereto to be effective on March 10, 2013.

Text and Citation

IT IS SO ORDERED THIS day of January, 2013.

Shailen P. Bhatt, Secretary of Transportation

2222 School Bus Driver Qualifications and Endorsements**1.0 Authority**

The authority to promulgate this regulation is 21 **Del.C.** §302, 21 **Del.C.** §2708, 21 **Del.C.** §2709~~[-24 Del.C. §4362, 21 Del.C. §4363, and 21 Del.C. §4364]~~.

2.0 Purpose

- 2.1 This regulation establishes administrative procedures for the issuance, renewal, removal, and reinstatement of the school bus (S) endorsement on a Delaware commercial driver licenses.
- 2.2 The Division of Motor Vehicles (DMV) uses this regulation to initiate program requirements.

3.0 Applicability

This regulation interprets §2708 and §2709 of Title 21 of the **Delaware Code**.

4.0 Definitions.

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

“Air Brake Restriction” means a restriction that prohibits the CDL holder from operating a school bus (or any commercial motor vehicle) which is equipped with air brakes. The CDL will be marked with an “L”.

“Commercial Driver License (CDL)” means a driver license issued in accordance with the requirements of 21 **Del.C.** Chapter 26 which authorizes the holder to operate a certain class or classes of a commercial motor vehicle. The classes of a CDL are as follows:

CDL CLASS A - Required for the operation of vehicles with a registered, actual or gross vehicle weight rating (GVWR) of 26,001 or more pounds and the vehicle is towing a vehicle with a registered, actual or GVWR of 10,000 or more pounds. The holder of a Class A CDL may, with proper endorsement, operate any Class B or Class C vehicle.

CDL CLASS B - Required for the operation of vehicles with a registered, actual or GVWR of 26,001 or more pounds and not towing a vehicle with a GVWR of 10,000 or more pounds. The holder of a Class B CDL may, with proper endorsement, operate any Class C vehicle.

CDL CLASS C - Required for vehicles with a GVWR less than 26,001 pounds when the vehicle is designed to transport 16 or more passengers, including the driver, or for vehicles required to be placarded for carrying hazardous materials.

“Commercial Motor Vehicle (CMV)” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight rating (GCWR) of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating (GVWR) of more than 10,000 pounds; or
- Has a gross vehicle weight rating (GVWR) of 26,001 pounds or more; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is required to be placarded for the transportation of hazardous materials.

“Green Card” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of an annual Department of Education (DOE) physical certification. The Green Card is to be in the immediate possession of the school bus driver at all times, while operating or in

control of a school bus except when in possession of a CDL permit and undergoing training or evaluation and accompanied by a Certified Delaware School Bus Driver Trainer.

“**P**” **Endorsement**” means an endorsement that authorizes a driver to transport passengers in all classes of commercial motor vehicles.

“**Q**” **Endorsement**” means an endorsement that authorizes a driver to transport passengers in only Class B and Class C commercial motor vehicles.

“**R**” **Endorsement**” means an endorsement that authorizes a driver to transport passengers in only Class C commercial motor vehicles.

“**S**” **Endorsement**” means an endorsement that indicates the CDL holder meets the requirements of 21 Del.C. §2708 and this regulation and is authorized to operate a school bus. The CDL must also display a passenger (P, Q or R) endorsement to specify the class of commercial vehicle the driver may operate when transporting passengers.

“**School Bus**” [as specified by 21 Del.C. §2603(29)] means ~~[every motor vehicle which has the words “School Bus” displayed on the front and rear of the vehicle as specified in 21 Del.C. §4362(a) and which is painted the uniform color “national school bus chrome yellow” as specified in 21 Del.C. §4363(a), which is equipped with flashing lamps as specified in 21 Del.C. §4364(a), which meets the minimum size requirements as specified in 21 Del.C. §4363(b), and which meets other regulations as required by the Department of Transportation (DOT) and the Department of Education a commercial motor vehicle used to transport pre-primary, primary or secondary school students from home to school, from school to home, or to and from school-sponsored events, or any vehicle which meets the regulatory requirements adopted by the Department of Education with the advice of the Division of Motor Vehicles as specified under 14 Del.C. §2901. School Bus does not include a bus used as a common carrier].~~

“**Yellow Card**” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of DOE requirements for an S endorsement as specified in 21 Del.C. §2708 (b)(3). The applicant will surrender the Yellow Card to the DMV when the applicant’s school bus endorsement is issued. The DMV will forward the Yellow Cards to DOE.

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

2222 School Bus Driver Qualifications and Endorsements

**EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET**

Statewide Benefits Office

Statutory Authority: 29 Delaware Code, Section 9602 (29 Del.C., §9602)
19 DE Admin. Code 2001

ORDER

2001 Group Health Care Insurance Eligibility and Coverage Rules

Employees Eligible to Participate in the State Group Health Insurance Program
Eligibility and Enrollment Rules

Effective on March 1, 2013, under the authority of Title 29 of the **Delaware Code**, Section 9602(b)(4), the State Employee Benefits Committee is amending the Eligibility and Enrollment Rules regarding the Employees Eligible to Participate in the State Group Health Insurance Program to read as provided below. These amended rules were prepared by the Statewide Benefits Office and have been approved by the State Employee Benefits Committee with the consent of the State Employee Benefits Advisory Council. The amended rules are effective upon

publication in the *Register of Regulations* in accordance with House Bill 190, Section 31.

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

2001 Group Health Care Insurance Eligibility and Coverage Rules

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 March 1, 2013

Pursuant to 29 **Del.C.**, §5256, the State Employee Benefits Committee (SEBC), is amending the rules and regulations for the general administration of the Disability Insurance Program (DIP) established pursuant to Title 29, Chapter 52A of the **Delaware Code**. The revisions become effective March 1, 2013 and clarify provisions of the program that are currently in force.

***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

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE**

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, March 5, 2013 beginning at 1:00 p.m. A business meeting will be held the following day on Wednesday, March 6, 2013 at 12:15 p.m. Both the hearing and business meeting are open to the public and will be held at the Commission's office building located at 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**Part C of the Individuals with Disabilities Education Improvement Act of 2004****PUBLIC NOTICE**

The Delaware Department of Health and Social Services will submit its annual grant application under Part C of the Individuals with Disabilities Education Improvement Act of 2004. Public Comment is being accepted from February 21 ~ March 21, 2013, and the application will be available until April 21, 2013.

Please contact the Part C Birth to Three office at 302-255-9134 (call collect from Kent and Sussex) to secure a copy of the application. Send your written comments to Part C/Birth to Three, DMS/DHSS, 2nd floor, Main Building, Suite 249, 1901 N. DuPont Hwy, New Castle, DE 19720 or fax to 302-255-4407.

DIVISION OF DEVELOPMENTAL DISABILITY SERVICES**2102 Autism Service Providers****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 18 of the Delaware Code, Sections 3361(f) and 3570A, Delaware Health and Social Services (DHSS) / Division of Developmental Disabilities Service is proposing regulations to implement SB 22.

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 Kai-Stefan Fountain, Division of Developmental Disabilities, Community Services, 26351 Patriots Way, Suite 101LL, Georgetown, Delaware 19947, Fax: 302-934-6193, E-Mail: kai-stefan.fountain@state.de.us by March 31, 2013.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**Increased Primary Care Service Payment****PUBLIC NOTICE**

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 *increased Medicaid payments for designated primary care services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2013.

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

AUTHORITY ON RADIATION PROTECTION
DIVISION OF PUBLIC HEALTH
4465 Delaware Radiation Control Regulations
PUBLIC NOTICE

The Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed Delaware Radiation Control Regulations. Due to the extensive number of amendments the ARP has concluded that this set of five current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

Delaware Citation	Title
Part C	Licensing of Radioactive Material
Part F	Use of Diagnostic X-Rays in the Healing Arts
Part G	Use of Radionuclides in the Healing Arts
Part K	Compliance Procedures
Part X	Therapeutic Radiation Machines

The public hearing will be held on March 22, 2013 at 2:30 p.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the March 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Radiation Control at (302) 744-4546.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Monday, April 8, 2013 at:

Deborah Harvey
 Division of Public Health
 417 Federal Street
 Dover, DE 19901
 Email: Deborah.Harvey@state.de.us Phone: (302) 744-4913

DIVISION OF SOCIAL SERVICES
Case Administration Provisions: DSSM 1000 through DSSM 1008
PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding Case Administration, including, *Definitions; Treating Clients with Courtesy; Keeping Client Information Confidential; Safeguarding Case Records; Compiling and Saving Case Record Contents; Guaranteeing Civil Rights and Non-Discrimination; Making Civil Rights Complaints; and, Providing Policy*

Information.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 31, 2013.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

3511 Summer Flounder Size Limits; Possession Limits REGISTER NOTICE #2013 - 02

This action is to consider amending the summer flounder (*Paralichthys dentatus*) regulation, with possible changes to the season and minimum size limit.

Summer flounder are managed cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC) and the National Marine Fisheries Service through Amendment 13 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. The ASMFC and MAFMC approved a coastwide recreational summer flounder harvest limit for 2013 resulting in recreational summer flounder allocation of 78,512 fish to Delaware. Although this is a reduction from the 2012 allocation (87,536 fish), the 2013 quota represents a 104% increase relative to Delaware's 2012 recreational harvest (38,470 fish). As such, Delaware may liberalize its management measures for the 2013 summer flounder fishery, provided the management measures are approved by the ASMFC's Summer Flounder, Scup and Black Sea Bass Management Board following established criteria.

Four options were developed and subsequently approved by the ASMFC's Summer Flounder, Black Sea Bass and Scup Technical Committee at their January 22, 2013 meeting (Table). These options will serve as the basis for the proposed regulatory change.

The hearing record on the proposed changes to §3511 Summer Flounder Size Limits; Possession Limits will be open March 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 21, 2013 beginning at 6:30 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DIVISION OF FISH AND WILDLIFE

REGISTER NOTICE #2012 - 24 3545 Invasive Finfish

This action proposes the addition of a new section in the Tidal Finfish regulations (7 Del.C. §3500) to include definitions and measures to control the proliferation of invasive finfish in Delaware's tidal waters (§3545 Invasive Finfish). Snakehead fish, blue catfish, flathead catfish, walking catfish and grass carp are invasive finfish species likely to cause environmental and economic harm. This action proposes to: formally designate these fish as invasive finfish species; prohibit the stocking, possession, purchase, transport or sale of live invasive finfish; and specify fishing equipment and methods to take invasive finfish species.

Based on the best available biological information, the US Fish & Wildlife Service (USFWS) added the entire Channidae (snakehead) and Clariidae (walking catfish) families to the list of injurious fish, mollusks and crustaceans covered under the Lacy Act. Northern snakehead, native to Asia, are present in Delaware's tidal and non-tidal waters. The USFWS agreed that snakehead fishes threaten ecological harmony, present major risks to ecosystems and aquatic communities and could eliminate some threatened and endangered species that are restricted in distribution. There are no known records of walking catfish in Delaware. This family of fishes is native

to Asia. Walking catfish have the ability to rapidly reproduce and spread, including overland and their potential to outcompete native fishes and their potential to impact aquaculture make them a threat to Delaware's environment and economy.

Blue catfish (*Ictalurus furcatus*) and flathead catfish (*Pylodictis olivaris*) are native to the Mississippi River drainage. Flathead catfish have already been reported in Delaware's tidal waters and blue catfish have been found in adjoining states with shared waters. Both species function as top-level predators with broad diets, attain large sizes and are salinity tolerant. The introduction of these species in nearby states contributed to the extirpation of native ictalurid species such as white catfish and bullheads through competition and predation.

Grass carp (*Ctenopharyngodon idella*), a native to Asia, feed on submerged aquatic vegetation. When adequately controlled, through barriers and sterility, this species can be an effective tool at controlling nuisance aquatic vegetation. Uncontrolled, the species can denude large expanses of beneficial submerged aquatic vegetation. Submerged aquatic vegetation is valuable spawning, nursery and foraging habitat for native centrarchids and other aquatic species. The removal of submerged aquatic vegetation often leads to increased phytoplankton and diminished water quality.

Snakehead fish, blue catfish, flathead catfish, walking catfish and grass carp are invasive finfish species whose introduction or proliferation are likely to cause economic and/or environmental harm to Delaware's tidal waters. The proposed action will assist in preventing the introduction or proliferation of these invasive fishes in Delaware.

The hearing record on the proposed inclusion of a §3545 Invasive Finfish regulation will be open March 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 21, 2013 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DIVISION OF PARKS
PUBLIC NOTICE

In accordance with Title 7, Chapter 47, subsection 4701(a)(5)(A) the Secretary of the Department of Natural Resources and Environmental Control has designated March 1, 2013 through November 30, 2013 inclusive for charging the state park entrance fee on the following areas:

Alapocas Run State Park	Bellevue State Park	Brandywine Creek State Park
Cape Henlopen State Park	Beach Plum Island Nature Preserve	Delaware Seashore State Park
Fenwick Island State Park	Fort DuPont State Park	Fox Point State Park
Holts Landing State Park	Killens Pond State Park	Lums Pond State Park
Trap Pond State Park	Trussum Pond Natural Area	White Clay Creek State Park and Preserve
Wilmington State Parks at Bancroft Mills and selected parking areas		

Annual Park passes will not be honored at State Line Beach in Fenwick Island State Park, Brandywine Zoo or Fort Delaware State Park.

February 5, 2013, Collin O'Mara, Secretary

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
OFFICE OF THE SECRETARY
1100 Delaware Sex Offender Management Board
PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA- Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 41, Section 20A, Delaware Sex Offender

Management Board (SOMB) is proposing qualifications for those individuals who treat sex offenders.

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 Laurie Pezick, SOMB provider credentialing committee, 314 Cherry Lane, New Castle DE 19720 or by certified electronic mail to Laurie.Pezick@state.de.us by March 31, 2013.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of the Sex Offender Management Board and credentialing committee analysis and the consideration of the comments and written materials filed by other interested persons.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Gaming Control Board
101 Regulations Governing Bingo
PUBLIC NOTICE

The Delaware Board of Charitable Gaming will seek public comments on the issue of whether certain amendments to its current rules should be adopted.

One proposed amendment is to Rule 3.10 in 10 **DE Admin. Code** 101. The amendment would clarify how the value of certain prizes is determined.

Another proposed amendment is to Rule 4.11 in 10 **DE Admin. Code** 101. The amendment would provide that when there are multiple winners in a game, the organization may in its own house rules determine how one winner will be declared.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, April 4, 2013 at the meeting of the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before April 19, 2013 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

DIVISION OF PROFESSIONAL REGULATION
2930 Council on Real Estate Appraisers
PUBLIC NOTICE

The Delaware Council on Real Estate Appraisers, pursuant to 24 **Del.C.** §4006(a)(1), proposes to revise its rules and regulations. The majority of the proposed revisions to the rules are changes required to come into compliance with the new AQB criteria, additional changes remove the requirement of pre-certification examination for assessors, lower the acceptable late renewal time period from twelve months to sixty days for all licensees and certificate holders.

The Board will hold a public hearing on the proposed rule change on April 22, 2013 at 2:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Council on Real Estate Appraisers, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 7, 2013.