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# Delaware Register of Regulations

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Issue Date: March 1, 2019

Volume 22 - Issue 9, Pages 703 - 798

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

General Notices

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, 2019.

*"Sunset at Port Mahon"*  
Cover Photo by Arun Reddy



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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
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.
August 1	July 15	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

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

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**Symbol Key**

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

**Proposed Regulations**

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

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

Statutory Authority: 14 Delaware Code, Section 8906D (14 **Del.C.** §8906D)

**PUBLIC NOTICE****Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****237 Educational Support Professional of the Year****A. Type of Regulatory Action Required**

New Regulation

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

Pursuant to §8906D of 14 **Del.C.**, the Secretary of Education intends to create 14 **DE Admin. Code** 237 Educational Support Professional of the Year. This new regulation is being created to comply with House Bill 134 as amended by House Amendment 1 of the 149<sup>th</sup> General Assembly which requires the Department of Education to establish guidance concerning how Education Support Professional of the Year Award funds may be used by the award recipient.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 5, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, located at the address listed above.

**C. Impact Criteria**

1. Will the regulation help improve student achievement as measured against state achievement standards? The regulation does not address student achievement.
2. Will the regulation help ensure that all students receive an equitable education? The regulation is intended to continue to help ensure all students receive an equitable education.
3. Will the regulation help to ensure that all students' health and safety are adequately protected? The

regulation does not address students' health and safety.

4. Will the regulation help to ensure that all students' legal rights are respected? The regulation continues to help ensure that all student's legal rights are respected.

5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation does not change the decision making at the local board and school level.

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation does not place any unnecessary reporting or administrative requirements on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the regulation.

8. Will the regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is an expected cost of approximately \$5,000 to the Department of Education, as well as a cost of \$2500 to each District and Charter School to implement this regulation.

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 714RFA 03-01-19.pdf>

## **237 Educational Support Professional of the Year**

### **1.0 Purpose**

The purpose of this regulation is to establish policies and procedures by which Educational Support Professional of the Year award funds may be used by the designated recipient pursuant to 14 Del.C. §8906D.

### **2.0 Definitions**

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

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

**"Educational Support Professional of the Year Award Fund"** means a \$2,500 set aside fund within the budget of the Department of Education for the award recipient to make withdrawals from as necessary to fund educational materials to serve educational purposes and objectives as described in 14 **Del.C. §8906D.**

**"Educational Support Professional of the Year Award Recipient"** or **"Recipient"** means a school employee whose position is instructional in nature or who provides other direct or indirect services to students and their parents such as paraprofessionals, instructional aides, custodial staff, secretaries, nutritional staff and school bus drivers, who is recognized for their outstanding service as described in 14 **Del.C. §8903D.** This designation is given at both the local school district and at the statewide level.

### **3.0 Funding**

**3.1** The Educational Support Professional of the Year Award Fund, in the amount of \$2,500, shall be set aside within the budget of the Department to be used for the statewide Educational Support Professional of the Year Award Recipient's exclusive assignment and disbursement.

**3.2** The Educational Support Professional of the Year Award Recipient shall not directly receive the funds, but may make withdrawals solely for educational purposes and to benefit students. No amount of such award shall be used for the personal benefit of the award recipient; however, in the use of such funds

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for educational purposes, the Recipient may be an indirect or incidental beneficiary as educational support professional of the benefited pupils.

- 3.3 In order to withdraw funds, the Recipient shall present to the superintendent of the local school district a plan for utilization of the award in order to avoid wasteful duplication of materials or violation of school district policy.
- 3.4 Possible use of funds includes, but is not limited to:
- 3.4.1 Purchase of non-consumable materials and supplies (library books, audio/visual equipment, computer equipment, etc.);
- 3.4.2 Purchase of otherwise consumable materials that are used by students (paper, notebooks, binders, pencils, etc.);
- 3.4.3 Employment of performers or consultants (musical group, author, poet or other subject matter expert);
- 3.4.4 Student-centered professional development for building level Educational Support Professionals;  
or
- 3.4.5 Reimbursements to the recipient, not to exceed \$500, for personal expenses.
- 3.5 Materials, equipment or other items purchased with such funds shall be the property of the local school district in which the recipient is employed at the time of expenditure.
- 3.6 Invoices, purchase orders or personal reimbursement forms related to withdrawals from the Educational Support Professional of the Year Award Fund shall be retained by the local school district and shall be available for inspection as public records and subject to regular audit by the State Auditor of Accounts.

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 8513 (14 Del.C. §8513)  
14 DE Admin. Code 282

### PUBLIC NOTICE

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

### 282 Private Business and Trade Schools

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

Pursuant to 14 Del.C. §8513, the Delaware Department of Education intends to amend 14 DE Admin. Code 282 Private Business and Trade Schools. This regulation is being amended to clarify content, especially definitions, and to comply with the Delaware Administrative Code Style Manual.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 5, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

#### C. Impact Criteria

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

regulation is intended to continue to help ensure all students receive an equitable education.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amended regulation.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 716RFA 03-01-19.pdf>

## 282 Private Business and Trade Schools

### 1.0 Definitions. ~~For purposes of this regulation~~

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

"**Agent**" ~~has the same meaning as in 14 Del.C. §8501(4)~~ means a person employed by a Private Business or Trade School, located within or outside Delaware, to act as an agent, solicitor, broker, or independent contractor to directly procure students or enrollees for such school by solicitation.

"**Agent Card**" ~~shall mean~~ means the pocket card provided for in 14 Del.C. §8510 which contains the name and address of the Agent of the employing Private Business or Trade School which signifies that this person is an authorized agent of the school.

"**Certificate of Approval**" means the document issued by the Department that permits a private school to conduct courses in business or trades.

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

"**Private Business and or Trade School**" ~~has the same meaning as in 14 Del.C. §8501(1)~~ means an educational institution privately owned and operated for profit or nonprofit by an owner, partnership, or corporation, offering business or trade and industrial courses for which tuition may or may not be charged, and which may include those courses usually associated with business training schools, trade schools, specialized skill training schools, or institutes.

### 2.0 General Provisions

2.1 The distinguishing characteristic of a ~~private business or trade school~~ Private Business or Trade School shall be the potential for wage earning by its graduates.

2.2 ~~Private business and trade schools~~ Business or Trade Schools shall include:

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- 2.2.1 Correspondence school courses offered as post high school courses in trade or business subjects; and
- 2.2.2 Programs that may also be available as high school introductory courses in trade or business subjects, without regard for the age or the prior educational attainment of the student.
- 2.3 A ~~private business and trade school~~ Private Business or Trade School which actively seeks enrollees from the State of Delaware, or which sends an ~~agent or agents~~ Agent into the State of Delaware to solicit enrollees, shall ensure that each of ~~its agents~~ Agent maintains a current ~~agent~~ Agent permit issued by the Department.
- 2.4 ~~The term agent~~ An Agent shall include individuals who solicit enrollees in Delaware even though the institution the ~~agent~~ Agent represents does not conduct classes within ~~the State of Delaware~~.
- 2.5 All advertising by a ~~private business and trade school~~ Private Business or Trade School shall be in accordance with the statutes, rules and regulations for advertising administered and supervised by the Department of Justice Consumer Protection Division.
- 2.6 **14 DE Admin. Code 225 Prohibition of Discrimination** shall apply to all ~~private business and trade schools and agents~~ Private Business or Trade Schools and Agents approved by the Department.

## 3.0 Certificates of Approval

- 3.1 Applications for an initial ~~certificate of approval~~ Certificate of Approval to conduct a ~~private business and trade school~~ Private Business or Trade School, and for annual renewal of such ~~certificates~~ Certificates of Approval, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department.
- 3.2 A ~~private business and trade school~~ Private Business or Trade School offering more than one program of instruction must have each program approved by the Department.
- 3.3 The Department may conduct an on site evaluation of any applicant for a ~~certificate of approval~~ Certificate of Approval or for renewal of a ~~certificate of approval~~ Certificate of Approval. The Secretary of Education may waive an on site evaluation if the applicant is accredited by a regional or national accrediting association recognized by the Department, or is certified to conduct a similar program or school by the state education agency of another state with comparable standards for such schools.
- 3.4 If a ~~private business and trade school~~ Private Business or Trade School makes any material change in its operation, such as, but not limited to, corporate structure or financial structure, the school shall notify the Department of the change within thirty days. The school shall also identify the change in its next renewal application.
- 3.5 The fees charged as filing and renewal fees are not refundable.
- 3.6 For purposes for this section, the following definitions shall apply: first calendar quarter, January 1st through March 31st; second calendar quarter, April 1st through June 30; third calendar quarter, July 1st through September 30th; and fourth calendar quarter, October 1st through December 31st.
- 3.6.1 Any current and valid Certificate of Approval with an expiration date of December 31, 2005, shall automatically be extended to the end of the calendar quarter in which the ~~private business and trade school~~ Private Business or Trade School was originally granted its Certificate of Approval, conditioned on the school providing the Department with evidence of continuation of surety bond at least through the extension period.
- 3.6.2 Beginning with the fourth quarter of 2005, a ~~private business and trade school~~ Private Business or Trade School will be required to renew its certification by the end of the calendar quarter in which the Department originally granted ~~its~~ the Certificate of Approval.
- 3.6.3 ~~Private business and trade schools~~ Business or Trade Schools with multiple campuses may request the Department to renew all campuses on a single renewal date based on initial approval of any one of the campuses.

## 4.0 Agent Permits



- 4.1 Applications for an initial ~~agent~~ Agent permit, and for renewal of such permits, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department.
- 4.2 An ~~agent~~ Agent representing more than one ~~private business and trade school~~ Private Business or Trade School must apply for separate permits for each ~~such~~ school.
- 4.3 Agents shall apply to renew their ~~permit(s)~~ permit each year at the same time that the ~~school or schools~~ school the ~~agent~~ Agent represents ~~make~~ makes application to renew their respective ~~certificates of approval~~ Certificates of Approval. In the case of a school not conducting classes in Delaware, but sending ~~agents~~ Agents into Delaware, the application for an ~~agent~~ Agent permit must be accompanied by a notarized verification of employment from the school represented and must be received by the Department on or before the expiration of the current permit. No permit shall be issued for a period of more than twelve calendar months.
- 4.4 No ~~agent~~ Agent shall solicit Delaware enrollees on behalf of the ~~private business and trade school~~ Private Business or Trade School represented until the Department issues the appropriate ~~agent card~~ Agent Card.
- 4.5 The lapse, suspension, revocation, or non renewal of a ~~private business and trade school certificate of approval~~ Private Business or Trade School Certificate of Approval for any cause shall terminate all ~~agent~~ Agent permits for that institution.
- 4.6 A school shall report the discharge or resignation of any ~~agent~~ Agent to the Department within thirty days.
- 4.7 The fee for the ~~agent~~ Agent permit will be waived for the owner or chief executive officer of a ~~private business and trade school~~ Private Business or Trade School who also serves as its ~~agent~~ Agent. Each such individual must still apply for and obtain the ~~agent~~ Agent permit. Any additional ~~agents~~ Agents must obtain permits as otherwise described.
- 4.8 The fees charged as filing and renewal fees are not refundable.

## 5.0 Complaints

- 5.1 Each ~~private business and trade school~~ Private Business or Trade School shall adopt a policy and procedures to address complaints by its students. The school catalogue shall contain its complaint policy and procedures or a reference to where the policy and procedures can be obtained.
- 5.2 In addition to the complaint procedures adopted by a ~~private business and trade school~~ Private Business or Trade School for its students, the Department will investigate complaints by any person alleging facts that, if true, would constitute grounds for refusing or revoking a ~~certificate of approval~~ Certificate of Approval or an ~~agent~~ Agent permit. In either event, the Department will notify the complainant of its conclusions and provide the complainant with a copy of the school or ~~agent's~~ Agent's initial response, if any.
  - 5.2.1 Such complaints must be in writing and verified by the signature of the person making the complaint. Oral, anonymous or unsigned complaints will not be investigated.
  - 5.2.2 A copy of the written complaint will be provided to the affected ~~private business and trade school~~ Private Business or Trade School or ~~agent~~ Agent for their written response. The Department may require that the complainant provide written permission for the Department to forward the complaint to the school or ~~agent~~ Agent.
    - 5.2.2.1 If, after reviewing the school or ~~agent's~~ Agent's response, the Department concludes that there is insufficient evidence to believe that the school or ~~agent~~ Agent has violated applicable law or a standard, rule or regulation of the Department, the Department may close the complaint without further investigation. In such case, the Department will notify the complainant and the school or ~~agent~~ Agent of this conclusion and provide the complainant with a copy of the school or ~~agent's~~ Agent's response.
    - 5.2.2.2 If, after reviewing the school or ~~agent~~ Agent response, the Department concludes that there is sufficient evidence to believe that the school or ~~agent~~ Agent has violated

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applicable law or a standard, rule or regulation of the Department, the Department may continue its investigation or begin revocation or other action against the school or agent as the Department determines appropriate. The Department may also continue its investigation or begin revocation or other action if the school or agent Agent fails to respond to a complaint within the time established by the Department.

- 5.3 The Department may also investigate circumstances that would constitute grounds for refusing or revoking a ~~certificate of approval~~ Certificate of Approval or an agent Agent permit on its own initiative.

## 6.0 Denials and Revocations of Certificates and Permits

- 6.4 In view of an apparent conflict between the statutory statement in 14 **Del.C.** §8516 (for any combination of the following) and 14 **Del.C.** §8517 (for any cause enumerated in §8516), the Department interprets and shall administer §8516 to mean that a ~~certificate of approval~~ Certificate of Approval or an agent Agent permit may be denied or revoked for any one or combination of the causes identified in that ~~Section~~ section.

## 7.0 Bonds

- 7.1 Applications for an initial ~~certificate of approval~~ Certificate of Approval or renewal of certificates shall include evidence that the required surety bond is valid from the date of the complete application through the new ~~certificate of approval~~ Certificate of Approval expiration date.
- 7.2 The amount of the surety bond required of a school shall be determined as provided in 14 **Del.C.** §8505(b). In no event shall a bond be for less than \$25,000 per calendar year.
- 7.3 The Department interprets and shall administer the phrase ~~fail~~ "fail to provide the services called for in a contract or agreement with a ~~student~~, student," as used in 14 **Del.C.** §8523 to mean failure to substantially provide the essential ~~services~~ "services."
- 7.4 Forfeiture
- 7.4.1 In the event a surety bond is forfeited, the Department shall notify the students identified on the last available school roster of their right to submit a claim for reimbursement. Such students shall have thirty days from the date they are notified by the Department to submit a claim for reimbursement. Claims received more than thirty days after the ~~Departments~~ Department's notification shall not be considered.
- 7.4.2 Other students wishing to submit a claim for reimbursement must contact the Department within thirty days of the schools closing to submit their claim for reimbursement. Claims received more than thirty days after the schools closing shall not be considered.
- 7.4.3 Claims for reimbursement shall be submitted and documented as directed by the Department. The Department shall consider only appropriately documented claims in distributing the proceeds of any surety bond.

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(18) (14 **Del.C.** §122(b)(18))  
14 **DE Admin. Code** 910

### PUBLIC NOTICE

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

### 910 Delaware Requirements for Issuance of the Secondary Credential

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

## B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. §122(b)(18), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 910 Delaware Requirements for Issuance of the Secondary Credential. This regulation is being amended to add definitions for clarification purposes and to comply with the Delaware Administrative Code Style Manual.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 5, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

## C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by providing the requirements for the issuance of a secondary credential.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to help ensure all students receive an equitable education.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amended regulation.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 720RFA 03-01-19.pdf>

### 910 Delaware Requirements for Issuance of the Secondary Credential

#### 1.0 Purpose

A Pursuant to 14 Del.C. §122(b)(18), a Delaware secondary credential is given to persons who satisfactorily pass a ~~recognized~~ secondary credential assessment approved and recognized by the Delaware Department of Education.

#### 2.0 Definitions

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

clearly indicates otherwise:

**“Assessment”** means a set of tests that evaluates high school skill levels in the content areas of English Language Arts, Math, Science and Social Studies.

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

**“Secondary Credential”** means a document that verifies the successful completion of the assessment that evaluates high school level skills in the areas of English Language Arts, Math, Science and Social Studies.

## **4.03.0 Eligibility to take a secondary credential assessment for a Secondary Credential Assessment**

~~4.1.3.1~~ For persons 18 years of age or older, an applicant shall:

~~4.1.23.1.1~~ Be a resident of Delaware or, if a resident of another state, be currently employed in Delaware and have been so employed for a minimum of six months prior to taking the test; and

~~4.1.23.1.2~~ Certify ~~under his or her~~ by signature on the secondary credential assessment application form that ~~he or she is~~ they are not enrolled in a public or non public school program.

~~4.2.3.2~~ For a person 16 or 17 years of age an applicant shall:

~~4.2.43.2.1~~ Seek a waiver of the 18 years of age requirement by completing a written application to the Delaware Department of Education that includes showing good cause for taking the test early and designating where the test will be taken; and

~~4.2.23.2.2~~ Be a resident of the State of Delaware; and

~~4.2.33.2.3~~ Verify that they are at least 16 years of age at the time of the application for the waiver of the age requirement using a birth certificate, driver’s license, a State of Delaware Identification Card or other comparable and reliable documentation of age; and

~~4.2.43.2.4~~ Provide verification of withdrawal from the applicant’s public or non public school program; and

~~4.2.53.2.5~~ Provide a transcript from the applicant’s public or non public school program.

## **2.04.0 Scores Required for a Delaware ~~secondary~~ Secondary Credential**

An individual shall attain the minimum passing standard as approved by the ~~Delaware~~ Department of Education.

## **3.05.0 Assessment Approval Process**

~~3.1.5.1~~ The assessment provider must complete a ~~DOE~~ Department-approved application. The application must ~~include~~ include, at ~~minimum~~ a minimum, the following:

~~3.1.15.1.1~~ ~~provider’s~~ Provider’s qualification and experience;

~~3.1.25.1.2~~ ~~assessment~~ Assessment content and form;

~~3.1.35.1.3~~ ~~validation~~ Validation and norming processes;

~~3.1.45.1.4~~ ~~assessment~~ Assessment delivery;

~~3.1.55.1.5~~ ~~technology~~ Technology processes;

~~3.1.65.1.6~~ ~~security~~ Security provisions;

~~3.1.75.1.7~~ ~~accommodations~~ Accommodations processes;

~~3.1.85.1.8~~ ~~assessment~~ Assessment scoring and reporting processes;

~~3.1.95.1.9~~ ~~assessment~~ Assessment data access requirements;

~~3.1.105.1.10~~ ~~practice~~ Practice test and supplementary instructional materials;

~~3.1.115.1.11~~ ~~staff~~ Staff training;

~~3.1.125.1.12~~ ~~alignment~~ Alignment with college and career readiness standards and Delaware accountability system; and

~~3.1.135.1.13~~ ~~cost~~ Cost and timeframe for implementation.

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## 4-06.0 Currently Recognized Assessments and Publication

- 4-16.1 The GED® Test has been previously approved and is a ~~Department of Education~~ Department- recognized secondary credential assessment.
- 4-26.2 ~~DOE~~ The Department will publish annually a list of approved assessments.
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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 7903(9) (16 **Del.C.** §7903(9))  
16 **DE Admin. Code** 3325

### PUBLIC NOTICE

#### 3325 Financial Capability Reporting

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the Delaware Code, Section 7903(9), Delaware Health and Social Services (DHSS) / Division of Health Care Quality is proposing to amend Regulation 3325, Financial Capability Reporting, the Division's assessment of the financial capability of licensed providers revise the process for establishing capital availability for newly established facilities or facilities with a parent organization as well as to make some minor technical changes to other regulations.

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 Gabriela Kejner, Chief of Staff, Office of the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Monday, April 1, 2019. Tom Murray of the Division of Health Care Quality, 3 Mill Road, Wilmington, DE 19806, (302) 421-7442 is the Division contact person.

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 PROPOSED CHANGES

The proposal amends Regulation 3325 at the following sections:

- 2.2 Applicability of regulations on licensed facilities.
- 3.1 Definitions
- 4.1.4 Surety Bond
- 4.1.5 Memorandum of Understanding
- 5.2.6 Inclusion of certain items
- 5.3.6.1 Capital availability
- 5.3.7.4 Certified financial statements
- 13.0 Facilities with three or fewer residents

#### Statutory Authority

29 **Del.C.** §7903(9), Powers, duties and functions of the Secretary

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 723RFA 03-01-19.pdf>

**3325 Financial Capability Reporting**  
*(Break in Continuity of Sections)*

## 2.0 Purpose and Scope

- 2.1 The purpose of this regulation is to detail the Department of Health and Social Services' (DHSS) authority to monitor the financial capability of licensed long term care (LTC) providers. It details the level of information that must be provided by the licensee, or potential licensee, under various circumstances. It also defines when and in what form the Department will require the submission of audited financial statements reporting the financial position and the results of operations of facilities by accountants.
- 2.2 Every facility (as defined in 16 Del.C. §1102(4)) licensed to provide care for more than three (3) residents shall be subject to this regulation, with the exception of state owned/operated facilities. Facilities licensed to provide care for 3 or fewer residents licensed as Family Care Homes shall only be required to submit documentation demonstrating financial capability as required by ~~the Department~~ DHSS in Section 13.0 of these regulations.
- 2.3 This regulation shall not prohibit, preclude or in any way limit DHSS from ordering, conducting or performing examinations of facilities under the rules and regulations of the Delaware Department of Health and Social Services and the practices and procedures of its regulations.

## 3.0 Definitions

*(Break in Continuity Within Section)*

**"Department DHSS"** means the Delaware Department of Health and Social Services (DHSS).

**"Division"** means the DHSS Division of ~~Long Term Care Residents Protection (DLTCRP)~~ Health Care Quality (DHCQ).

*(Break in Continuity Within Section)*

**"Family Care Home"** means a home as defined in 16 Del.C. §1102(4).

*(Break in Continuity Within Section)*

**"Reasonable Profit"** means a net profit of 1-1.5 percent of Gross Receipts/Sales/Revenue.

## 4.0 Requirements for the Submission of Financial Documents Upon Application for Renewal of a License.

- 4.1 With the exception of Family Care Homes, which are addressed in Section 13.0 of these regulations. All all annual applications for renewal of a license shall be submitted at least thirty (30) calendar days prior to the expiration date of the license. The application must include a transmittal letter containing:

*(Break in Continuity Within Section)*

4.1.4 Evidence of a surety bond in an amount equal to or greater than the sum of the previous four (4) months of all expenses as indicated on the most recent year-end profit and loss statement.

4.1.5 A copy of the Memorandum of Understanding executed by and between the principal and chief financial officer of the facility and the DHSS Cabinet Secretary, or their designee, agreeing and acknowledging any and all expenditures from this account will be at the call of and with the express written consent of DHSS for the emergency maintenance of the health, housing and welfare of the residents.

4.1.44.1.6 A list of officers with addresses;

4.1.54.1.7 Organization charts with names and titles (personnel – facility and controlling organization);

4.1.64.1.8 Organization chart (corporate structure), delineating senior, subordinate and affiliated organizations, lines of authority/ownership, and domicile;

4.1.74.1.9 Facility address (domicile), all aliases and E.I.N. (employer identification number);

4.1.84.1.10 Information on the ownership of the real estate on which the facility is located including: name of the organization, address (domicile), E.I.N and principals with 5% or greater ownership;

4.1.94.1.11 Name, address (domicile, and E.I.N. of the management entity involved in the operation of the facility, if any;

4.1.104.1.12 All items submitted separately must bear the signed certification statement: "I certify, under penalty of perjury, the attached statement is true, complete and correct";

- 4.1.14.1.13 Information on the controlling organization to include:
  - 4.1.14.1.13.1 The most recent year-end financial statements for the controlling organization;
  - 4.1.14.1.13.2 The most recent year-end personal financial statements of the proprietors or partners if the Controlling Organization is a proprietorship or partnership; and
  - 4.1.14.1.13.3 The most recent year-end personal financial statement for guarantors of a corporate transaction if the Controlling Organization is a proprietorship or partnership.
- 4.2 Any material adverse change to the facility's financial position must be reported to the Department by the facility in writing within five (5) business days of its occurrence or discovery.

**5.0 Requirements for the Submission of Financial Documents Upon Application for New Facility/  
Change of Ownership**

- 5.1 All applications for a license for a new facility or for a change of ownership for an existing facility shall include with the application a transmittal letter to include all the items listed in subsection 4.4 4.1, except 4.1.3 and:
- 5.2 Transaction Documents to include:

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

5.2.6 The above listed items must include all attachments, addendums, revisions and reference items.

- 5.3 Financial Documents to include:

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

5.3.3 Beginning Pro Forma Balance Sheet for the first three years of operation; ~~(end of first, second and third years);~~

5.3.4 Ending Pro Forma Balance Sheets for the first three years of operation; ~~(end of first year, second and third years);~~

5.3.5 The documents shall be prepared in a month-by-month format for 36 months.

5.3.6 Any newly established Facility without a parent, or any new or newly owned facility with a newly established parent without a financial history of at least thirty-six (36) months ~~will~~ must provide evidence of capital availability in the name of the facility equal to four (4) months of anticipated facility expenses as evidenced on the pro forma profit and loss statement.

5.3.6.1 The capital availability shall be in the form of Cash or Surety Bond.

5.3.6.1.1 All cash and surety bonds shall be in the name of the facility and the DHCQ.

5.3.6.1.2 Further, a Memorandum of Understanding will be executed by and between the principal and Chief Financial Officer of the facility and the Director of DHCQ agreeing and acknowledging any and all expenditures from this account will be at the call of and with the express written consent, direction and supervision of the DHCQ for the emergency health, housing and welfare of the residents.

5.3.6.1.3 Said capital availability shall be maintained at a local financial institution for the first twenty-four (24) months of operation of the ~~facility.~~ facility, and the facility will provide a copy of a letter from it to the local financial institution instructing it to notify ~~the~~ Department DHSS immediately if the agreed upon balance is not ~~maintained;~~ maintained.

~~5.3.6.5.~~3.7 Information on the controlling organization to include:

5.3.6.5.3.7.1 The most recent three (3) years of audited year-end financial statements for the controlling organization;

5.3.6.5.3.7.2 The most recent three (3) years of audited personal financial statements for the proprietors or partners if the Controlling Organization is a proprietorship or partnership;

5.3.6.5.3.7.3 The most recent three (3) years of audited personal financial statements for guarantors of a corporate transaction if the Controlling Organization is a proprietorship or partnership;

5.3.7.4 If the controlling organization is an affiliation of individuals each individual shall provide certified financial statements for the most recent three (3) years, or recent financial

# PROPOSED REGULATIONS

information acceptable to DHSS on which an analysis and judgement of financial strength and capability can be determined.

~~5.3.75.3.8~~ The ~~Department~~ DHSS may accept draft transaction documents and unaudited financial statements pending the receipt of executed transaction documents and audited financial statements and reserves the right to require the submission of additional information upon initial review; and

~~5.3.85.3.9~~ Additional materials which will facilitate analysis are encouraged.

5.4 Effective upon the date of purchase or change of ownership the facility will provide monthly financial information to DHSS ~~as required 30 days past the month reported.~~ All in-house prepared financial information is to include the following certification signed by the Chief Financial Officer: "All financial information provided herewith is certified to be true and correct to the best of my knowledge and belief, under penalty of perjury." The information will include:

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

5.5 Any material adverse change to the facility's cash flow or financial position must be reported to ~~the Department~~ DHSS by the facility in writing within five (5) business days of its occurrence or discovery.

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

## 7.0 Audited Financial Disclosure Requirement

7.1 When ~~the Department~~ DHSS determines that financial conditions exist which threaten the health or safety of a resident(s) in a facility, ~~the Department~~ DHSS may require the facility to submit certified in-house financial statements within 15 days of request and an audited financial report prepared by an accountant within 60 days. The foregoing time frames may be extended by ~~the Department~~ DHSS upon written request.

7.2 Conditions which may prompt ~~the Department~~ DHSS to require audited financial disclosure include but are not limited to:

7.2.1 Substandard Quality of Care ~~due to an adverse financial condition.~~

7.2.2 A material adverse change to the facility's financial position.

7.2.3 Facility/Equipment maintenance inadequacies ~~due to an adverse financial condition.~~

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

7.2.6 Personnel shortages (understaffing and /or under-qualification of staff) ~~due to an adverse financial condition.~~

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

7.3 Audits may initially be transmitted to ~~the Department~~ DHSS by electronic means. The electronic submission must be followed by an original, bound, signed audit, prepared by an accountant.

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

## 8.0 Qualifications of Accountants

In order for ~~the Department~~ DHSS to recognize a person or firm as a qualified accountant, the person or firm must be in good standing with the Delaware Board of Accountancy.

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

## 11.0 Notification of Adverse Financial Condition

11.1 A facility that is required to furnish an annual audited financial report shall require the accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the accountant that the facility has materially misstated its financial condition to ~~the Department~~ DHSS. A facility that receives a report pursuant to this paragraph shall forward a copy of the report to ~~the Department~~ DHSS within five (5) business days of receipt of the report accompanied by any amended or corrected audit generated as a result of the misstatement.



- 11.2 No accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with ~~subsection 40.4~~ Section 10.0.
- 11.3 If the accountant, subsequent to the date of the audited financial report filed pursuant to this regulation, becomes aware of facts that might have affected his or her report, ~~the Department~~ DHSS notes the obligation of the accountant to take such action as prescribed by the Delaware Board of Accountancy.

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

**13.0 Facilities With Three or Fewer Residents/Family Care Homes**

- 13.1 Facilities licensed to house 3 or fewer residents are private family residences. As such, they have no corporate structure or accounting procedures by which the Division is able to assess their financial capability.
- 13.2 An annual application for renewal of a license shall be submitted at least thirty (30) calendar days prior to the expiration date of the current license.
- 13.3 The financial capability of Family Care Homes will be measured by an analysis of the license-holder's credit worthiness through credit checks at the discretion of DHSS. These will be conducted by a nationally recognized credit check agency at the time of license renewal, inception or at the discretion of DHSS.
- 13.3.1 To facilitate this process it will be necessary for every license-holder to submit identification information including full name, address, date of birth and Social Security Identification number annually on their application for a license or license renewal.

**~~43-014.0~~ Enforcement and Oversight Authority**

- ~~43-114.1~~ The Department DHSS is authorized to impose the below listed actions to monitor the financial capability of a facility it has determined to be in financial distress. Noncompliance with any imposed action may result in the imposition of civil penalties or other remedies for compliance as authorized by 16 Del.C., Chapter 11, Subchapter I.
- ~~43-1.1-14.1.1~~ Monthly submission within thirty (30) calendar days of the end of the month of monthly financial information from the facility to include:
- ~~43-1.1-14.1.1.1~~ Balance Sheet, Profit and Loss Statement, Statement of Cash Flows, Census Information; and
- ~~43-1.1-214.1.1.2~~ Certification by the Chief Financial or Corporate Officer with the following statement: "All financial information provided herein is certified to be true and correct to the best of my knowledge and belief, under penalty of perjury."
- ~~43-1.214.1.2~~ Submission of monthly certifications from the facility that all required licenses, taxes and insurances are paid-to-date, are current and in effect.
- ~~43-1.314.1.3~~ Attendance of facility and corporate staff at periodic meetings with the Department DHSS to discuss past performance and expectations for future performance, to include:

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

- ~~43-1.414.1.4~~ Requirement of a written plan from the facility indicating how it will return to profitability.
- ~~43-1.514.1.5~~ Reclassification of the facility license from annual to provisional status.
- ~~43-1.614.1.6~~ Requirement that the Controlling Organization (if any) of the facility provide a written assurance to the Department DHSS that the Controlling Organization will step in to provide financial support to ensure that the residents continue to receive quality care. The written assurance is to include text as provided by the Department DHSS.
- ~~43-1.714.1.7~~ Query courts of local jurisdiction for pending or past legal actions or judgments against the facility by suppliers and/or government agencies
- ~~43-1.814.1.8~~ Notification to The Centers for Medicare and Medicaid Services of the facility's financial difficulty (federally certified facilities).

# PROPOSED REGULATIONS

~~13.1.9~~14.1.9 The issuance of an emergency order temporarily transferring the management of the facility to another qualified entity in cases where the physical health or safety of a resident(s) is in imminent risk.

~~13.1.9.1~~14.1.9.1 The terms and conditions of the emergency order including costs of implementation are to be determined by ~~the Department~~ DHSS. The terms and conditions of the emergency order are effective until ~~the Department~~ DHSS conducts an administrative hearing to determine the facility management's ongoing licensure status, which hearing must be conducted within 60 days from the date of the issuance of the order unless the facility requests a continuance of the hearing date. At the conclusion of the hearing ~~the Department~~ DHSS will make a final determination regarding the costs of implementation of such management and the facility's ongoing licensure status.

14.1.9.2 Any costs associated with the actions taken in subsection 14.1.9.1 will be paid via the reserve fund established under subsection 5.3.5.

~~13.1.10~~14.1.10 Require written notification from the facility, to each individual resident and, if known, a family member or legal representative that the financial capability of the facility is under review by ~~the Department~~ DHSS. The notification must be written in a language and manner that is easily understood by the individual resident and/or individual resident's representative.

~~13.1.10.1~~14.1.10.1 Provide a copy of the notice to the DHSS; the State Long Term Care Ombudsman; managed care organization (MCO), as appropriate; any ~~Departmental~~ DHSS DDHSS agency involved in the resident placement in the facility, including Adult Protective Services; and the protection and advocacy agency as defined in 16 **Del.C.** §1102 if the resident is an individual with a developmental disability or mental illness.

## ~~14.015.0~~ Confidentiality of Facility Financial Records

~~14.115.1~~ 14.115.1 ~~The Department~~ DHSS shall maintain the financial documents submitted by facilities in a secure and confidential manner.

~~14.215.2~~ 14.215.2 ~~The Department~~ DHSS will consider financial documents submitted pursuant to these regulations as exempt from public disclosure consistent with 29 **Del.C.** §10002(l)(2) and 16 **Del.C.** §1104(e).

## ~~15.016.0~~ Severability Provision

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

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

**3325 Financial Capability Reporting**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

### PRTFs – Provision of EPSDT Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Psychiatric Residential Treatment Facilities (PRTFs), specifically, *to ensure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to*

*necessary 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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on April 1, 2019. Please identify in the subject line: PRTFs – Provision of EPSDT Services.

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

### **SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Psychiatric Residential Treatment Facilities (PRTFs), specifically, *to ensure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary services.*

#### **Background**

The Medicaid program's benefit for enrolled children and adolescents is known as the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit. EPSDT provides a comprehensive array of prevention, diagnostic, and treatment services for low-income individuals under age 21 as specified in section 1905(r) of the Act.

Previously, covered services not provided by or in the psych under 21 hospital or facility could be reimbursed when they were 1) provided to a child residing in an inpatient psychiatric hospital or facility, 2) authorized under the child's plan of care, and 3) provided by individual practitioners or suppliers under an arrangement with the hospital or facility. The Section 12005 of the Cures Act requires that individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to the full range of EPSDT services. A plan of care is not necessary to authorize any other medically necessary services and Medicaid services may be provided by community practitioners not affiliated with the facility.

#### **Summary of Proposal**

##### *Purpose*

The purpose of this proposed regulation is to ensure individuals under 21 residing in a Psychiatric Residential Treatment Facilities are guaranteed access to necessary services.

##### *Summary of Proposed Changes*

Effective for services provided on and after January 1, 2019, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 4.19-A3 through A.3.2 of Title XIX Medicaid State Plan regarding Psychiatric Residential Treatment Facilities (PRTFs), specifically, *to ensure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary services.*

##### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on April 1, 2019.

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

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

## *Provider Manuals and Communications Update*

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

## **Fiscal Impact**

There is no fiscal impact associated with this policy.

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 728RFA 03-01-19.pdf>

AMENDED

ATTACHMENT 4.19-A.3

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

## DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES  
INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR UNDER AGE 21

### 1. Psychiatric Residential Treatment Facility (PRTF) Reimbursement

Reimbursement for services are based upon a Medicaid fee schedule established by the State of Delaware. Psychiatric residential treatment facilities will be reimbursed the lesser of:

- The Delaware Medicaid per diem reimbursement rate for activities in the per diem plus additional fee-for-service reimbursement using the Delaware Medicaid fee schedule for ~~activities on the plan of care~~ any other medical services under 1905(a) of the Social Security Act that children under age 21 who are residing in a PRTF are determined to need in order to correct or ameliorate health conditions, regardless of whether such services are identified in the child's plan of care, but not in the per diem PRTF reimbursement rate;
- The facility's usual and customary charge to privately insured or private-pay beneficiaries; or
- If an out of state facility, the lesser of a negotiated per diem reimbursement rate, the facility's usual and customary charge, or the Delaware Medicaid per diem rate. For ~~plan of care activities not included in the per diem~~ any other medical services under 1905(a) of the Social Security Act that children under age 21 who are residing in a PRTF are determined to need in order to correct or ameliorate health conditions, regardless of whether such services are identified in the child's plan of care, that are not included in the per diem PRTF reimbursement rate, additional fee-for-service reimbursement using the Delaware Medicaid fee schedule is available.

Except as otherwise noted in the State Plan, the State-developed fee schedule is the same for both governmental and private individual providers and the fee schedule and any annual/periodic adjustments to the fee schedule are published in the Delaware *Register of Regulations*. The Agency's fee schedule rate was set as of July 1, 2016 and is effective for services provided on or after that date. All rates are published on the Delaware Medical Assistance Program (DMAP) website at

<http://www.dmap.state.de.us/downloads/feeschedules.html>

<https://medicaidpublications.dhss.delaware.gov/dotnetnuke/search?EntryId=17>

- A. Community-Based Delaware Medicaid per diem PRTF reimbursement rate includes the following covered inpatient psychiatric residential treatment facility (PRTF) activities for individuals under twenty-one years of age ~~when included on the patient's inpatient psychiatric active treatment plan of care:~~

- a. Behavioral Health care by staff who are not physicians
- b. Occupational Therapy / Physical Therapy / Speech Therapy
- c. Laboratory
- d. Transportation
- e. ~~Dental~~
- f. ~~Vision~~
- g. Diagnostics/radiology (x-ray)

~~Starting on 1/1/2019, dental, vision, laboratory, and diagnostics/radiology are excluded from this rate and paid through EPSDT under authority of the 21st Century Cures Act.~~

No. SPA# _____	Approval Date _____
TN Supersedes	
TN No. SPA# 17-012	Effective Date _____

AMENDED

ATTACHMENT 4.19-A.3.1

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

STATE: DELAWAREMETHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES  
– INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21 CONTINUED

1. Psychiatric Residential Treatment Facility (PRTF) Reimbursement (continued)
  - B. Hospital-Based Delaware Medicaid per diem PRTF reimbursement rate includes the following covered inpatient psychiatric residential treatment facility (PRTF) activities for individuals under twenty-one years of age ~~when included on the patient's inpatient psychiatric active treatment plan of care:~~
    - a. Behavioral Health care by staff who are not physicians
    - b. Occupational Therapy / Physical Therapy / Speech Therapy
    - c. Laboratory
    - d. Transportation
    - e. Dental
    - f. Vision
    - g. Diagnostics/radiology (x-ray)
  - C. Pharmaceuticals and physician activities provided to the youth in a PRTF, when on the active treatment plan of care, are components of the Medicaid covered PRTF service. These activities will be paid directly to the treating pharmacy or physician, using Medicaid pharmacy and physician fee schedule rates excluded from the psychiatric residential treatment facility (PRTF) State of Delaware Medicaid per diem reimbursement rates.
  - D. ~~Medical services under 1905(a) of the Social Security Act that are listed on the inpatient psychiatric active treatment plan and~~ Any other medical services under 1905(a) of the Social Security Act that children under age 21 who are residing in a PRTF are determined to need in order to correct or ameliorate health conditions, regardless of whether such services are identified in the child's plan of care, that are excluded in A, B, or C above, shall be paid directly to the treating provider, using Medicaid fee schedule rates. Such services are excluded from the psychiatric residential treatment

# PROPOSED REGULATIONS

facility (PRTF) State of Delaware Medicaid per diem reimbursement rates.

E. The Medicaid PRTF per diem reimbursement rates shall also exclude such costs, other than pharmaceutical, physician, and other medical services that could be covered under 1905(a) of the Social Security Act on the inpatient psychiatric active treatment plan any additional costs that are unrelated to providing inpatient psychiatric care for individual less than twenty-one (21) years of age including, but not limited to the following:

- 1) Group education, including elementary and secondary education.
- 2) Medical services that are not listed in Items A, B, and C A or B above.
- 3) Activities not on the inpatient psychiatric active treatment plan.

2. ~~Psychiatric Residential Treatment Facility (PRTF) Reimbursement Rate Methodology~~

~~A. Medicaid certified providers will be reimbursed for covered PRTF services using a Medicaid per diem reimbursement rate consistent with the principles in section 1 above. The Medicaid per diem reimbursement rate paid to the provider will be determined by the following service criteria:~~

- ~~1) PRTF specializing in sexually-based treatment programs.~~
- ~~2) PRTF specializing in substance use disorder treatment programs.~~
- ~~3) PRTF treating children with mental health diagnoses.~~

No. SPA# _____	Approval Date _____
TN Supersedes _____	
TN No. SPA# 17-012	Effective Date _____

AMENDED

ATTACHMENT 4.19-A.3.2

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

### STATE: DELAWARE

#### METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21 CONTINUED

2. Psychiatric Residential Treatment Facility (PRTF) Reimbursement Rate Methodology ~~(continued)~~

A. Medicaid certified providers will be reimbursed for covered PRTF services using a Medicaid per diem reimbursement rate consistent with the principles in section 1 above. The Medicaid per diem reimbursement rate paid to the provider will be determined by the following service criteria:

- 1) PRTF specializing in sexually-based treatment programs.
- 2) PRTF specializing in substance use disorder treatment programs.
- 3) PRTF treating children with mental health diagnoses.

The Delaware Medicaid PRTF fee development methodology will build fees considering each component of provider costs as outlined below. These reimbursement methodologies will produce rates sufficient to enlist enough providers so that services under the State Plan are available to beneficiaries at least to the extent that these services are available to the general population, as required by 42 CFR 447.204. These rates comply with the requirements of Section 1902(a)(3) of the Social Security Act and 42 CFR 447.200, regarding payments and are consistent with economy, efficiency, and quality of care. Provider enrollment and retention will be reviewed periodically to

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ensure that access to care and adequacy of payments are maintained.

No. SPA# _____	Approval Date _____
TN Supersedes _____	
TN No. SPA# <u>17-012</u>	Effective Date _____

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**DIVISION OF PUBLIC HEALTH  
HEALTH PROMOTION AND DISEASE PREVENTION**

Statutory Authority: 16 Delaware Code, Sections 122(3)a. and 707 (16 **Del.C.** §§122(3)a. & 707)  
16 **DE Admin. Code** 4202

**PUBLIC NOTICE**

**4202 Control of Communicable and Other Disease Conditions**

Pursuant to 16 **Del.C.** §122(3)a. and §707, Health Promotion and Disease Prevention (HPDP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On March 1, 2019, the Division of Public Health plans to publish as "proposed" revisions to the Control of Communicable and Other Disease Conditions regulations. The revisions include the addition of HIV nucleotide sequence test results reporting.

Copies of the proposed regulations are available for review in the March 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Friday, April 5, 2019, at:

Alanna Mozeik  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Alanna.Mozeik@state.de.us](mailto:Alanna.Mozeik@state.de.us)  
Phone: (302) 744-4951

**\*Please Note:**

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

[http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 733RFA 03-01-19.pdf](http://regulations.delaware.gov/register/march2019/proposed/22%20DE%20Reg%20733RFA%2003-01-19.pdf)

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

**4202 Control of Communicable and Other Disease Conditions**

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# PROPOSED REGULATIONS

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 24 Delaware Code, Sections 5306(b) and 5314(b) (24 **Del.C.** §§5306(b) and 5314(b))

### PUBLIC NOTICE

#### 4471 Massage and Bodywork Facilities

Pursuant to 24 **Del.C.** §§5306(b) and 5314(b), the Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing new regulations for facilities that offer massage and body work services. The regulations are in response to the revisions to 24 **Del.C.** §§5306(b) and 5314(b) which provide the Division of Public Health the authority to promulgate these regulations. On March 1, 2019, DPH plans to publish as proposed the new regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the March 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the DPH at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Monday, April 1, 2019, at:

Alanna Mozeik  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Alanna.Mozeik@state.de.us](mailto:Alanna.Mozeik@state.de.us)  
Phone: (302) 744-4951

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

[http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 734RFA 03-01-19.pdf](http://regulations.delaware.gov/register/march2019/proposed/22%20DE%20Reg%20734RFA%2003-01-19.pdf)

#### 4471 Massage and Bodywork Facilities

### 1.0 General Provisions

- 1.1 Preamble. The Secretary, Delaware Health and Social Services (DHSS), adopts these regulations pursuant to the authority vested by 24 Del.C. §5306. These regulations establish requirements for the practice of massage and bodywork in massage establishments and provide for the investigation of complaints involving unsanitary or unsafe practices or conditions in such facilities.
- 1.2 Purpose. These regulations shall establish minimum requirements for public health assurance in the practice of massage and body work in massage establishments licensed by the Board of Massage and Bodywork (Board). License holders are encouraged to employ more stringent requirements. License holders must also comply with the Board's rules and regulations applicable to massage establishments.
- 1.3 Facilities – Existing and New. Facilities that are lawfully in existence and operating at the time of adoption of the regulations shall be permitted to have their use and maintenance continued if the use, maintenance or repair of the physical establishment and structure is in accordance, with the original design and no hazard to life or health is created by the existing establishment.
- 1.4 Variance
  - 1.4.1 A licensee may request a variance from these regulations from DHSS. DHSS may grant a variance by modifying or waiving the requirements of these regulations if in the opinion of DHSS a health hazard or nuisance will not result from the variance.
  - 1.4.2 A variance shall not be transferred from person to person, nor from location to location.



- 1.4.3 If a variance is granted, DHSS shall retain the information specified below in its records for the establishment:
- 1.4.3.1 Statement of the proposed variance of the regulations, citing the relevant Section of these regulations;
  - 1.4.3.2 An analysis of the rationale for how the potential public health hazards or nuisance will be alternatively addressed by the proposal; and
  - 1.4.3.3 Any other information requested by DHSS that may be deemed necessary to render judgment.
- 1.4.4 A variance, if granted, is rendered void upon occurrence of one or more of the following:
- 1.4.4.1 The physical establishment is demolished or sold;
  - 1.4.4.2 A remodeling project in the establishment includes area(s) addressed in the variance; or
  - 1.4.4.3 The license or certificate holder granted the variance ceases to operate the establishment for a period exceeding thirty (30) consecutive days.
- 1.5 Severability. If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect other provisions or applications, which can be given effect without the invalid provision.
- 1.6 Effective Date. These regulations are effective May 11, 2019.

## **2.0** **Definitions**

For purposes of these regulations the following definitions shall apply:

“**Board**” means and refers to the Delaware Board of Massage and Bodywork.

“**Department**” or “**DHSS**” means the Delaware Department of Health and Social Services.

“**DNREC**” means the Delaware Department of Natural Resources and Environmental Control.

“**EPA**” means the United States Environmental Protection Agency.

“**Equipment**” means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus used in connection with the operation of the establishment.

“**FDA**” means the United States Food and Drug Administration.

“**Handwashing sink**” means a permanent lavatory equipped with hot and cold running water, under pressure and used solely for washing hands, arms or other portions of the body.

“**Hot water**” means water which attains and maintains a temperature of at least 110<sup>o</sup>F.

“**Invasive**” means any entry into the body either by incisions or insertion of an instrument or through the skin or mucosa, or by any other means intended to puncture, break or compromise the skin or mucosa.

“**Licensee**” means any person licensed by Board.

“**Massage establishment**” has the same meaning as 24 Del.C. §5302(4).

“**Person**” means an individual, any form of business or social organization or any other non-governmental legal entity including but not limited to a corporation, partnership, limited liability company, association, trust or incorporated organization.

“**Professional in charge**” means a licensee who is responsible for the operation of a massage establishment, including ensuring that all employees are licensed where required by law.

“**Sanitize / Sanitization Procedure**” means a process of reducing the numbers of microorganisms on cleaned surfaces and equipment to a safe level as judged by DHSS.

“**Secretary**” means the Secretary of DHSS or designee.

“**Single use**” means products or items that are intended for one-time, one-person use and are disposed of after use on a single client, including but not limited to disposable face cradle covers, tissues or paper products and paper or plastic protective gloves.

**3.0 Inspections**

The Secretary shall have right of entry without fee or hindrance, for the purpose of determining if the establishment is in compliance with these regulations. The establishment shall allow for inspection and shall provide information and records needed to determine compliance with these regulations, whether or not the evidence exists that the establishment is in violation of these regulations.

**4.0 Operational Requirements****4.1 General Requirements**

- 4.1.1 All areas shall be maintained in a safe and sanitary condition.
- 4.1.2 Licensed facilities including or connected to residential spaces shall be separate from living quarters.
- 4.1.3 All doors to dressing rooms, toilet rooms, and massage therapy rooms or cubicles shall open inward. Draw drapes, curtain enclosures or accordion-pleated closures in lieu of doors are acceptable on all inner dressing rooms and massage therapy rooms or cubicles.
- 4.1.4 A massage table / chair shall be used for all massage therapy, with the exception of Thai, shiatsu and similar forms of massage therapy, which may be provided on a padded mat on the floor.
- 4.1.5 All locker facilities that are provided for the use of patrons shall be fully secured for the protection of the patron's valuables, and the patron shall be given control of the key or other means of access.

4.2 Equipment Construction and Design. All interior surfaces and fixtures of a licensed establishment shall be designed so as to be easily maintained and kept clean. Procedure surfaces shall be easy to clean and sanitize.

4.3 Floors, Walls and Ceilings. All floors, walls and ceilings shall be free of open holes or cracks, washable, maintained clean and in good repair.

4.4 Ventilation. Licensed establishments shall be provided with adequate ventilation which draws air from employees and clients and vents to the outside. Ventilation must be in compliance with all applicable local codes.

4.5 Laundry. Soiled reusable cloth items may be mechanically washed with detergent and then dried on premises provided that washers and dryers are installed per local codes and are not included in the area used by clients.

**4.6 Water Supply**

4.6.1 Water shall be obtained from an approved source that is constructed, maintained and operated according to the requirements of DNREC and DHSS and other applicable codes and requirements.

4.6.2 The water source and system shall be of sufficient capacity and pressure to meet the demands of the establishment. Hot and cold water shall be provided at all sinks.

4.7 Plumbing. All plumbing systems shall be designed, constructed and installed according to all applicable laws, codes and regulations.

4.8 Handwashing sinks. A permanent handwashing sink which is convenient and accessible to all work stations shall be provided. This sink shall be supplied with liquid soap, disposable paper towels and a waste receptacle. One handwashing sink per 40 people is required. The number of people will be determined by the occupant load.

**4.9 Restrooms**

4.9.1 Establishments shall provide the number of toilets and handwashing sinks required by the applicable plumbing code. Restrooms are required to be accessible during business hours and maintained in good working order, have adequate ventilation, and may not be used for storage of linen or supplies beyond normal restroom supplies.

4.9.2 Restrooms shall be kept in a sanitary condition, maintained in a safe and orderly manner and be equipped with an operational handwashing sink, liquid soap dispenser, disposable towels, toilet paper and a waste receptacle.

- 4.10 Sewage. Sewage shall be disposed of through an approved public treatment sewage plant or private disposal system that is sized, constructed, maintained and operated according to the requirements of DNREC and DHSS.
- 4.11 Garbage and Refuse. A waste receptacle shall be provided in each client room and shall be emptied daily. Exterior refuse containers shall be cleanable with a tight fitting lid and collected weekly, at a minimum.
- 4.12 Animals. No animals shall be allowed in any licensed establishment except for those that assist persons with disabilities. Notwithstanding the foregoing, fish aquariums are allowed in the waiting area.
- 4.13 Insect and Rodent Control. Establishments shall be designed so as to prevent the entry and occurrence of insects and rodents. Pest control measures shall be provided and, if a problem occurs, professional pest control services shall be provided.

## **5.0 Safety and Sanitation Requirements**

### **5.1 General Requirements**

- 5.1.1 Instruments shall be clean and, when necessary, sanitized in accordance with Section 7.0 of these regulations.
- 5.1.2 An instrument that caused a skin abrasion or a cut to the skin shall be cleaned and sanitized immediately. If bleeding occurs, a tissue or cotton shall be used to collect the blood. Blood contaminated materials shall be disposed of immediately in a sealed, double-plastic bag.
- 5.1.3 Objects dropped on the floor may not be used until they are cleaned and, if necessary, sanitized in accordance with Section 7.0 of these regulations.
- 5.1.4 All instruments that have been used on a client or soiled in any manner shall be placed in a properly labeled receptacle while awaiting cleaning.
- 5.1.5 All supplies or instruments which come in direct contact with a client and cannot be disinfected, including single use items, shall be disposed of in a waste receptacle immediately after use.
- 5.1.6 Shower facilities shall be cleaned and sanitized after each client use in accordance with Section 7.0 of these regulations.
- 5.1.7 All bathrobes, bathing suits and/or other garments that are provided for the use of clients shall be either disposable and shall not be used by more than one person or shall be laundered after each use.

## **6.0 Single Use Service**

- 6.1 Only clean cloth towels or disposable paper towels shall be used on clients. A cloth towel that has been used on a client shall be immediately placed in a container for soiled linen. A disposable paper towel that has been used on a client shall be immediately discarded in a waste receptacle.
- 6.2 The cushion, mat, table or other procedure surface shall be covered with a clean cloth towel, sheet, disposable paper sheet or the similar before the start of each procedure.

## **7.0 Instruments, Equipment and Supplies**

### **7.1 Non-electric Instruments and Equipment**

- 7.1.1 Before use upon a client, all non-electrical instruments may be sanitized in the following manner:
  - 7.1.1.1 Cleaned with soap or detergent and water; and
  - 7.1.1.2 Then totally immersed in one of the following:
    - 7.1.1.2.1 Commercially marketed EPA approved and registered sanitizer agent sold for the purpose of sanitizing implements and tools used in the practice of beauty culture, provided that all manufacturer's instructions are carefully followed;
    - 7.1.1.2.2 A solution of one part commercial bleach to ten parts water for ten (10) minutes; or
    - 7.1.1.2.3 Seventy (70) percent alcohol for a minimum of 20 minutes.

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# PROPOSED REGULATIONS

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7.1.2 The sanitizing solutions required in subsection 7.1.1 shall:

7.1.2.1 Remain covered at all times;

7.1.2.2 Be changed per the manufacturer's instructions but at least once per week or whenever visibly cloudy or dirty; or

7.1.2.3 Be changed daily if bleach based.

7.2 Electrical Instruments and Equipment

7.2.1 Electrical instruments, including but not limited to electric heating pads, hot towel warmers, and aromatherapy dispensers, may be sanitized prior to each use by:

7.2.1.1 Removing all foreign matter; and

7.2.1.2 Using a commercially marketed EPA-approved and registered sanitation agent(s) sold for the purpose of sanitizing implements and tools used in the practice of beauty culture, provided that all manufacturer's instructions are carefully followed.

7.3 Equipment Storage

7.3.1 Cleaned and sanitized implements and equipment shall be stored in a clean and dry cabinet or drawer.

7.3.2 Unused clean cloth towels and disposable towels shall be stored in a clean cabinet or towel dispenser.

7.3.3 A cabinet or separate bin or hamper for the disposal of soiled towels is required as appropriate.

7.4 Supplies

7.4.1 Lotions, oils and any other type of liquid shall be dispensed into a container or cleaned hand. Any excess remaining after application shall be discarded immediately and not returned to the original container or applied to another client.

7.4.2 All liquids, creams and other preparations shall be kept in clean, closed and distinctly labeled containers. Poisonous substances shall be in marked containers. Powders may be kept in clean shakers.

## **8.0 Massage Therapists and Other Personnel**

8.1 Sanitary and Hygienic Practices

8.1.1 Massage therapists and personnel performing services shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before serving each client.

8.1.2 Disposable gloves shall be worn if the massage therapist or personnel has an open wound.

8.1.3 A massage therapist or personnel whose hands come in contact with blood or other bodily fluids shall wash them immediately.

8.2 Health

8.2.1 No massage therapist or personnel shall knowingly permit a person afflicted with an infection or parasitic infestation capable of being transmitted to a client to serve clients, or instructor train in the licensed establishment.

8.3 Clothing

8.3.1 Massage therapists, personnel, and their uniform or attire shall be clean at all times.

## **9.0 Infectious, Contagious or Communicable Diseases**

9.1 No professional in charge shall knowingly require or permit an employee to work upon a person believed to have an infection or parasitic infestations capable of being transmitted to the employee unless the client can produce a physician's certification that the client does not have an infectious, contagious or communicable disease.

9.2 A massage therapist or personnel shall wear gloves when required to serve a client with skin that is inflamed, broken, abraded, cut or where a skin infection or eruption is present.

9.3 Infections or parasitic infestations capable of being transmitted to a client include but are not limited to:

- 9.3.1 Cold, influenza or other respiratory illness accompanied by a fever, until twenty-four hours after resolution of the fever;
  - 9.3.2 Streptococcal pharyngitis ("strep throat") until twenty four (24) hours after treatment has been initiated and twenty-four (24) hours after resolution of fever;
  - 9.3.3 Purulent conjunctivitis ("pink eye") until examined by a physician and approved for return to work;
  - 9.3.4 Pertussis ("whooping cough") until five days of antibiotic therapy has been completed;
  - 9.3.5 Varicella ("chicken pox") until the sixth day after onset of rash or sooner if all lesions have dried and crusted;
  - 9.3.6 Mumps, until nine days after onset of parotid gland swelling;
  - 9.3.7 Tuberculosis, until a physician or local health department authority states that the person is noninfectious;
  - 9.3.8 Impetigo (bacterial skin infection) until twenty-four (24) hours after treatment has begun;
  - 9.3.9 Pediculosis (head lice) until the morning after first treatment; and
  - 9.3.10 Scabies ("crabs") until after treatment has been completed.
- 9.4 Blood-borne diseases such as HIV/AIDS and Hepatitis B (HBV) shall not be considered infectious or communicable diseases for the purpose of this regulation.

## **10.0 Prohibited Hazardous Substances / Use of Products**

- 10.1 No establishment shall have on the premises products containing hazardous substances, which have been banned by federal, state or local law for use in products. Establishments permitted under these regulations may only use and store pesticides and cleaning products approved for use in compliance with subsection 10.2.
- 10.2 No product shall be used in a manner that is disapproved by the Board, DHSS or the FDA or is in violation of any applicable Federal or State statute or regulation.

## **11.0 Invasive Procedures**

- 11.1 No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:
  - 11.1.1 Application of electricity which contracts the muscle;
  - 11.1.2 Application of substances which affect living tissue, such as chemical peel preparations or bleaches;
  - 11.1.3 Penetration of the skin with any needle-like instrument for any purpose;
  - 11.1.4 Abrasion of the skin below the nonliving, epidermal layers; and
  - 11.1.5 Removal of skin by means of any razor-edged instrument or other device or tool.

## **12.0 Compliance and Enforcement**

- 12.1 The professional in charge of a massage establishment shall be responsible for maintaining the Standards for Public Health Assurances established by these regulations.
- 12.2 Refusal to permit, or interference with, an inspection by DHSS, or the Board, constitutes violation of the regulations.
- 12.3 DHSS shall investigate all complaints for violations of these regulations as herein regulated and shall refer any failure to comply with these regulations to the Board for disciplinary sanctions as allowed by law.
- 12.4 When a professional in charge of a massage establishment is not in compliance with the provisions of these regulations, the Department shall refer the matter to the Board for enforcement action. However, in the event there is an immediate risk to the public health, the Secretary, in accordance with 16 **Del.C.** §122(1) may take immediate action.
- 12.5 Penalties. Any person violating any of the requirements established by these regulations is subject to be referred to the Board for disciplinary sanctions pursuant to 24 **Del.C.** Ch. 53.

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# PROPOSED REGULATIONS

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 9055

### PUBLIC NOTICE

#### Food Supplement Program

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) is proposing to amend the Division of Social Services Manual regarding the Food Supplement Program, specifically, *to define household income*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on April 1, 2019. Please identify in the subject line: Food Supplement Program.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend Division of Social Services Manual regarding the Food Supplement Program, specifically, *to define household income*.

#### Statutory Authority

7 CFR 273.9 (b)

#### Background

The policy has been amended to more clearly define household income and income reporting requirements for the Food Supplement Program.

#### Summary of Proposal

##### *Purpose*

This policy defines household income for the Food Supplement Program.

##### *Summary of Proposed Changes*

Effective for services provided on and after May 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend section 9055 of the Division of Social Service Manual.

##### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on April 1, 2019.

#### Fiscal Impact

This is an existing policy that defines a program component. There is no fiscal impact associated with this policy.

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 740RFA 03-01-19.pdf>

AMENDED

## **POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

### **9055 ~~Definition of~~ Defining Household Income**

~~{273.9(b)}~~

~~Household income means all income from whatever source, excluding only the exceptions listed at DSSM 9058 and DSSM 9059.~~

7 CFR 273.9 (b)

DSS must consider household income when determining food benefit eligibility.

- 1. Household income means the combined income of all members of a food benefit household from all sources, excluding only the exceptions listed in DSSM 9058 and DSSM 9059.**
- 2. DSS requires applicants and participants of the Food Supplement Program to report household income from all sources, including both earned and unearned income.**

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## **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 11003

### **PUBLIC NOTICE**

#### **Purchase of Care - Determination of Homeless**

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) is proposing to amend the Division of Social Services Manual regarding Purchase of Care, specifically, to define homeless.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on April 4, 2019. Please identify in the subject line: Purchase of Care – Determination of Homeless.

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

## SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend Division of Social Services Manual regarding Purchase of Care, specifically, to define homeless.

### Statutory Authority

45 CFR 98.41, 42 USC 11434a (2), 42 USC 11302 (a)

### Background

The reauthorized Child Care and Development Block Grant Act requires lead agencies to adopt the homeless definition established by the McKinney-Vento Act to ensure consistency in identifying children that meet the criteria. The adoption of this policy will also be in alignment with Head Start and other education programs that are bound by the McKinney-Vento Act. The revised policy specifically details the homeless definition and the eligibility criteria for families who are determined homeless.

Delaware Health and Social Services/Division of Social Services will revise current policy regarding homeless families as required by the reauthorized Child Care and Development Block Grant Act.

### Summary of Proposal

#### *Purpose*

To establish a homeless policy that adopts the definition from section 725 of Subtitle VII-B of the McKinney-Vento Act.

#### *Summary of Proposed Changes*

Effective for services provided on and after May 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend section 11003.7.2 of the Division of Social Service Manual regarding Purchase of Care, specifically, to define homeless.

#### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on April 4, 2019.

### Fiscal Impact

The policy amendment will have no fiscal impact since the purpose is to revise the requirements of the program. The policy amendment does not require any additional staff, system changes, agency costs, etc.

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 741RFA 03-01-19.pdf>

AMENDED

### **POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit



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## 11003.7.2 ~~Income-Eligible/Homeless~~ **Determining Child Care for Homeless Families**

~~Parent/caretakers who are homeless and whose incomes are at or below 200 percent of the federal poverty level can receive income eligible services exclusive of meeting any other need requirement. DSS defines homeless as:~~

~~A. families living in a shelter or receiving emergency assistance to live in a temporary arrangement (an example of a temporary arrangement are those families receiving assistance to live in a local motel); or~~

~~B. families without a fixed address or not living in a permanent dwelling (examples of families without a fixed address are families living in cars or tents, excluding families who live with other families).~~

~~DSS will provide child care services to homeless families for up to three months or until the family is able to obtain suitable living arrangements. Once families have obtained suitable living arrangements, child care services can only continue if families have another need for service, such as the family needs child care in order to work.~~

~~45 CFR 98.41, 42 USC 11434a (2), 42 USC 11302 (a)~~

Families who apply for Purchase of Care and meet the definition of "homeless" will receive presumptive child care services for 90 days, regardless of whether documentation is provided at the time of application.

**1. This policy references The McKinney-Vento Homeless Assistance Act definition of "homeless" which means individuals who lack a fixed, regular, and adequate nighttime residence, and includes individuals who are:**

- Living in the housing of others due to loss of housing, economic hardship, or a similar reason;
- Living in a motel, hotel, trailer park, or camping ground due to lack of alternative adequate accommodations;
- Living in an emergency or transitional shelter;
- Living primarily at a public or private place not designed or ordinarily used as a regular sleeping accommodation for human beings;
- Living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting;
- Abandoned in a hospital; and
- Migrant children who have joined a parent or the spouse of a parent within the past 36 months and who are living in any of the above situations.

**2. Families who make a personal choice to reside in the housing of others are not considered homeless.**

**3. Families who are homeless will qualify for child care services when:**

- The family is determined homeless based on the definition in this policy;
- The family's income is at or below 185% of the Federal Poverty Level; and
- The parent or caretaker is seeking employment or housing.

**4. Child care providers are required to allow children who are determined homeless and children in foster care to begin receiving child care services once they are determined eligible for child care subsidy, regardless of whether documentation has been provided, including immunization records.**

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# PROPOSED REGULATIONS

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 3000

### PUBLIC NOTICE

#### Temporary Assistance for Needy Families (TANF) - CMR

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) is proposing to amend the Division of Social Services Manual regarding Temporary Assistance for Needy Families (TANF), specifically, *to update the Contract of Mutual Responsibility (CMR)*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on April 4, 2019. Please identify in the subject line: Temporary Assistance for Needy Families (TANF) - CMR.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend Division of Social Services Manual regarding Temporary Assistance for Needy Families (TANF), specifically, *to update the Contract of Mutual Responsibility (CMR)*.

#### Statutory Authority

- 13 DE Reg. 847
- 10 DE Reg. 706
- 14 DE Reg. 304

#### Background

The caretaker of children in the TANF program enters into a Contract of Mutual Responsibility (CMR) with the Division of Social Services (DSS) of the Department of Health and Social Services (DHSS). Applicants and recipients have a face-to-face interview. During this interview, the DSS worker explains to the recipient the CMR and those elements specific to the client. The CMR is an agreement between the TANF client and the Division of Social Services which sets obligations and expectations for helping the client achieve self-sufficiency.

DSS is amending policies to more concisely define the TANF CMR and to update the required elements of the contract. The formatting of the policies has been revised for better readability.

#### Summary of Proposal

##### *Summary of Proposed Changes*

Effective for services provided on and after May 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend sections 3009.1, 3009.3, 3010, 3010.1, 3017.1, 3017.1.1, and 3017.1.2 of the Division of Social Service Manual regarding Temporary Assistance for Needy Families (TANF), specifically, *to update the Contract of Mutual Responsibility (CMR)*.

#### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS) gives public notice and provides an open comment period for

thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on April 4, 2019.

## Fiscal Impact

DSS is amending the policies to outline the requirements of the CMR and clarify the text and formatting of the existing TANF CMR policies. The policies are currently in place and there are no new financial responsibilities.

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 744RFA 03-01-19.pdf>

AMENDED

### **POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

### **3009.1 Failure to Comply With CMR and Imposition of Sanctions Imposing Sanctions for Non-Compliance with CMR Requirements**

~~The Contract of Mutual Responsibility encompasses three broad categories of requirements: 1) enhanced family functioning, 2) self-sufficiency and 3) teen responsibility requirements.~~

~~1) Enhanced family functioning requirements of the Contract of Mutual Responsibility include, but are not limited to, attending family planning and parenting education sessions, ensuring that children are immunized, and participating in substance abuse assessment and treatment. Sanctions for non-compliance with these requirements start at \$50.~~

~~2) Self-sufficiency requirements of the Contract of Mutual Responsibility are employment and training responsibilities. Sanctions for non-compliance with these requirements result in the closure of the TANF case.~~

~~3) Teen responsibility requirements include maintaining satisfactory school attendance. Teens under the age of 16 must maintain satisfactory school attendance. The parent must work with the child and school to ensure satisfactory attendance. If the teen does not maintain satisfactory attendance at school and the parent fails to work with the school or appropriate agency to ensure school attendance, the case will be sanctioned. This sanction is an initial reduction of \$50. This reduction will increase by \$50 every month until there is compliance with the requirement. If the parent complies and works with the school the TANF benefit will be restored, even if the child does not return to school.~~

~~4) Teen responsibility requirements include maintaining satisfactory school attendance, or ensuring satisfactory attendance, for dependent children 16 years of age and older or participating in employment and training activities. The sanction for non-compliance with these requirements is the removal of the teen from the assistance grant. The teen can not be added back into the case until verification of school attendance is received or verification of four consecutive weeks of participation and one month of being removed from the grant.~~

~~5) The severity of the sanctions differs depending upon the type of violations. Individual penalties and the cure for each are noted in the policy sections which follow. However, when imposing sanctions, these are the rules in which sanctions are applied:~~

~~1. The penalty for failure to comply with self-sufficiency requirements of the Contract of Mutual Responsibility (employment and training responsibilities) is the closure of the TANF case.~~

~~2. The penalty for failure to comply with teen responsibility requirements for a child under 16 years of age is a \$50 reduction in the grant, if the teen does not comply. If the caretaker does not work with the appropriate agencies to remedy the situation, an additional \$50 penalty continues each month until the caretaker works with the appropriate agency, the child returns to school or the grant reduces to zero. The only way to cure the sanction~~

# PROPOSED REGULATIONS

is for the caretaker to work with the appropriate agency and/or the child returns to school. If the child does not return to school but the caretaker has been working with the appropriate agency then the sanction can be lifted.

3. The sanction for teens 16 years or older who do not attend school and/or employment and training activity for the required hours is the removal of that teen from the TANF grant and a reduction in the household size. The sanction can only be cured when the teen is removed from the grant for one month and participation in employment and training for four consecutive weeks is verified or satisfactory school attendance is verified.

4. The penalty for failure to comply with enhanced family functioning requirements of the Contract of Mutual Responsibility is an initial \$50 reduction of the TANF benefit. This reduction will increase by \$50 every month until there is compliance with the requirement. The initial \$50 reduction will be imposed whether the family fails to comply with one, or more than one, family functioning requirement. Clients will have to comply with all requirements before the sanction can end.

5. Failing to comply with both enhanced family functioning and self-sufficiency requirements of the Contract of Mutual Responsibility will result in combined penalties for each. For example, impose the \$50 reduction and then close the case.

6) When there are multiple sanctions always impose the monetary sanctions first; enhanced family functioning and teen under 16. The removal of a teen from the case is second, and the self-sufficiency which results in a case closure is last. All sanctions need to be imposed.

DSS imposes sanctions on TANF cases when clients fail to comply with their CMR requirements. If DSS determines a client has good cause for non-compliance with the CMR, DSS will not sanction the TANF case.

1. **DSS applies sanctions to a TANF case based on a penalty hierarchy for the three broad categories of CMR requirements: self-sufficiency, enhanced family functioning, and teen responsibility.**
2. **DSS case workers must follow the CMR sanctions penalty hierarchy as outlined in this policy. Case workers must apply sanctions that reduce benefits before applying sanctions that close the TANF case. Case workers must impose all CMR sanctions.**
  - A. DSS applies teen responsibility sanctions first. The teen responsibility sanction removes a teen, age 16 and older, from the TANF case when the teen does not maintain satisfactory school or employment and training attendance.
  - B. DSS applies family functioning sanctions second. The family functioning sanction reduces the TANF benefit amount by \$50 initially, with an additional reduction of \$50 in the benefit amount each month the client is non-compliant with the CMR requirements for:
    - CMR development,
    - Satisfactory school attendance for children under 16 years old,
    - Immunizations,
    - Family planning information,
    - Parenting education,
    - Bridge Program participation,
    - Transitional Work Program (TWP) participation,
    - Financial coaching orientation, and
    - Other requirements specified in the CMR.
  - C. DSS applies self-sufficiency sanctions last. The self-sufficiency sanction closes the TANF case when the client is non-compliant with the CMR requirements for:
    - Employment and training (E&T) participation, and
    - Cooperation with the Division of Child Support Services (DCSS).
3. **DSS removes sanctions from TANF cases when clients comply with their CMR requirements.**

- A. DSS case workers must verify that clients are compliant with their CMR requirements before the sanctions can end.
- B. A sanction is removed from the TANF case on the date proof of compliance is provided to DSS.

AMENDED

## **POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

### **3009.3 Benefit Reduction for Multiple Sanction Types**

~~The sanctions for failure to meet Contract requirements allow for the possibility of multiple penalties to be imposed at the same time. The hierarchy is as follows:~~

- ~~1. The sanction for teens 16 and over who fail to meet school attendance requirements is the removal of the teen from the grant first, if applicable.~~
- ~~2. The \$50 sanction for failure to meet enhanced family functioning requirements (CMR) and the teen under 16 years of age sanction is imposed next.~~
- ~~3. The self sufficiency sanction, failure to meet participation requirements is a full TANF sanction resulting in a case closure. This is imposed last.~~

~~The order in which sanctions are imposed is important because we can not sanction a closed case. If a client has both an enhanced family function and a self-sufficiency sanction for the same period it is important to make sure the enhanced family sanction that reduces the TANF grant is imposed prior to the self sufficiency sanction that closes the case.~~

AMENDED

## **POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

### **3010 Requiring Participation and Cooperation in Developing the CMR**

~~It is mandatory that the caretaker enter into a Contract of Mutual Responsibility. The Contract applies to those families in the Time Limited Program and Children's Program, as well as to teen parents. Other family members within the assistance unit may be subject to compliance with provisions of the Contract, even if the caretaker is a non-needy caretaker payee.~~

~~If the caretaker is a non-needy caretaker, the individual would not be required to participate in employment-related activities, but may be required to participate in other Contract activities.~~

~~The caretaker may object to certain aspects of the Contract. The caretaker needs to present any objections up front, at the time of the initial Contract or upon Contract revision. DSS retains the ultimate decision making authority as to what elements are put into the Contract of Mutual Responsibility.~~

~~DSS expects clients to cooperate in the development of the Contract of Mutual Responsibility. Certain aspects of the Contract, such as, but not limited, to participation in employment-related activities, meeting school attendance requirements and immunization, cannot be amended. However, even though certain aspects cannot be amended, this does not imply that caretakers cannot discuss and/or negotiate Contract requirements. Further, this is not to imply that such discussion and/or negotiation is non-cooperation. To the extent possible, each caretaker should be able to mutually develop her/his Contract. DSS is to give caretakers the opportunity to understand the~~

# PROPOSED REGULATIONS

~~Contract and its requirements, as well as to discuss the Contract with persons outside the DSS office. Reasons for requesting such an outside review of the Contract include, but are not limited to, language barriers, developmental disabilities, or to seek legal or other counsel. Caretakers therefore, should be granted their requests to remove proposed Contracts from the DSS office in order to review it with another person. This should not be considered non-cooperation.~~

~~Negotiating elements of the CMR can mean that aspects of the CMR are waived. On a case by case basis, elements of the CMR can be waived if good cause exists. If the particular circumstances of a family warrant waiving elements of the CMR it is to be justified and properly documented in the case record.~~

~~See Administrative Notice A-10-99 DFS/DSS Procedures.~~

~~For example: a parent's only child is terminally ill. It is reasonable to determine that a parent would want to spend as much time with the child as possible. Therefore, waiving school attendance requirements and parenting education requirements are reasonable. Document the child's illness and the reason for the waiving of the CMR requirements in the case record.~~

Participating and cooperating with DSS in developing the CMR is a required CMR element for all TANF clients.

- 1. TANF clients are required to develop a CMR in collaboration with their DSS case workers. Compliance with developing the CMR applies to all TANF cases.**
- 2. DSS case workers will discuss the CMR elements with clients and assist clients in developing and customizing the CMR.**
  - A. DSS will give clients the opportunity to mutually develop their CMRs.
  - B. CMRs will include requirements for self-sufficiency, enhanced family planning, and teen responsibility.
  - C. Prior to signing the CMR, DSS will give clients the opportunity to understand the CMR and its requirements. Upon request, DSS will give clients a copy of the proposed CMR to review outside of the DSS office; this should not be considered non-cooperation.
  - D. Clients may object to certain elements of the CMR. Clients are to present any objections at the time of the initial CMR development or CMR revision.
  - E. On a case by case basis, DSS may waive elements of the CMR if good cause exists. If the particular circumstances of a family warrant waiving an element of the CMR, the case worker must justify and properly document the waiver in the client's case record.
  - F. DSS has the final determination of what elements are required in each client's CMR.
- 3. Failure to comply (without good cause) in developing the CMR will result in a sanction to the TANF case.**
  - A. The sanction will be an initial \$50.00 reduction in the household's TANF benefit amount.
    - i. If the client is actively negotiating the terms of the CMR or reviewing the CMR outside of the DSS office, DSS will not impose the \$50.00 penalty. DSS must allow clients up to 10 days to reach a resolution or to complete contract review.
    - ii. DSS will consider clients who have not returned their CMRs within 10 days as non-compliant and subject to the \$50.00 penalty.

- B. This reduction increases each month by \$50.00 until there is compliance or the TANF case is closed.
- C. The client will receive written notification of compliance requirements.
- D. The sanction will end when DSS receives proof that the client completed the development of the CMR.

AMENDED

**POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

**~~3010.1 Penalties for Not Cooperating in Development of GMR~~**

~~The fiscal sanction for not cooperating, without good cause, in the development of the Contract will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until there is compliance or the case is closed.~~

~~If caretakers are actively negotiating the terms of their Contracts, DSS will not impose the \$50.00 penalty. DSS will provide caretakers up to 10 days to reach a resolution. After this time, DSS will consider caretakers as not cooperating if they refuse to participate in the further development of their Contracts.~~

~~DSS will also give those caretakers, who choose to do so, the opportunity to discuss their Contracts with persons outside of the DSS office. DSS will allow caretakers up to 10 days to take Contracts outside of the office, during which DSS will not impose the \$50.00 penalty. DSS will consider caretakers who have not returned Contracts after that time as not cooperating and subject to the \$50.00 penalty.~~

AMENDED

**POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

**~~3017.1 Transitional Work Program (TWP) Requirements Participating in the Transitional Work Program~~**

~~The Transitional Work Program (TWP) is designed to help TANF parents and caretakers who as a result of physical and/or mental disability have been determined to be unable to work in an unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management. Services will be provided in a manner that accommodates the individual needs of clients including in-home services when necessary. Clients will not be expected to participate beyond the maximum limits established by health care professionals. All parents and caretakers receiving a TANF grant in the Non-Time Limited program are eligible for referral to the TWP.~~

~~The goal of the TWP program is to support clients in achieving the highest level of self-sufficiency possible given their individual circumstances. This goal will be reached by:~~

- ~~• Promoting wellness activities and health maintenance planning for clients with disabilities that are expected to be of limited duration.~~
- ~~• Identifying and accessing accommodations, educational programs, and appropriate work settings for clients with disabilities amenable to those interventions.~~
- ~~• Identifying and assisting clients who are likely eligible for federal disability programs gain entry into these programs.~~

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# PROPOSED REGULATIONS

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The TWP Employability Plan is a tool used to assist clients in reaching TWP program and client identified goals. The Employability Plan will detail the activities clients will need to engage in to reach the goals. The TWP program will collaborate with each client to develop their TWP Employability Plan. Goals and activities will include but are not limited to; completion of assessments and healthcare appointments, enrollment/completion of training activities, completion of activities aimed at improving or maintaining wellbeing and the completion of activities necessary for application for federally funded disability programs.

The CMR and the TWP Employability Plan will establish time limits for the completion of TWP activities or goals.

All TANF E&T exempt clients are eligible for referral to the Transitional Work Program (TWP). Participating in TWP

is a required CMR element for all clients who are referred to the program.

- 1. TWP provides assessment and case management services to TANF E&T exempt clients who have been determined unable to work in an unsubsidized employment setting by a health professional.**
- 2. TWP offers services to:**
  - Develop an Employability Plan with identified activities and goals that promote self-sufficiency. The Employability Plan is developed in collaboration with the client and is tailored to the client's individual circumstances.
  - Promote wellness activities and health maintenance planning for clients with short-term disabilities.
  - Identify and access accommodations, educational programs, and appropriate work settings for clients with disabilities amenable to those interventions.
  - Identify and assess clients who are potentially eligible for federal disability programs and assist clients in applying for those programs.
  - Provide in-home services, when necessary.
- 3. All clients who are referred to TWP are required to participate in the program. Clients are not expected to participate beyond the maximum limits established by a health professional.**
- 4. The CMR and the TWP Employability Plan establish time limits for the completion of TWP activities and goals.**
- 5. Failure to comply (without good cause) with the TWP element in the CMR will result in a sanction to the TANF case.**
  - A. The sanction will be an initial \$50.00 reduction in the household's TANF benefit amount.
  - B. This reduction increases each month by \$50.00 until there is compliance or the TANF case is closed.
  - C. The client will receive written notification of compliance requirements.
  - D. The sanction will end when DSS receives proof that the TANF client is actively participating with TWP.



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AMENDED

**POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

**~~3017.1.1 – Sanctions for Not Meeting the TWP Requirements~~**

~~The sanction for failure, without good cause, to meet the time limits established in the CMR and the TWP Employability Plan will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until all activities which exceed the time limits established in the CMR and TWP employability plan are completed or the case is closed.~~

AMENDED

**POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

**~~3017.1.2 – Curing TWP Sanctions~~**

~~The sanction will end when all activities which exceed the time limits established in the CMR and TWP Employability Plan are completed.~~

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 2501 (18 Del.C. §§311 & 2501)  
18 DE Admin. Code 704

### PUBLIC NOTICE

#### 704 Homeowners Premium Consumer Comparison

**A. Type of Regulatory Action Required**

Repeal of Existing Regulation

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

Chapter 18 of the Delaware Administrative Code at Regulation 704 requires insurers who have a prescribed market share to, annually, by April 15, submit certain data to the Department of Insurance (Department) concerning homeowners insurance rates so that the Department may use those data as the basis of its on-line rate comparison tool. The purpose of the on-line rate comparison tool was to allow consumers to easily compare homeowners insurance rates based on set factors such as homeowner profiles, home construction type and zip codes.

However, since the inception of the rate calculator in 2010, insurers have built their own calculators which can be precisely tailored to fit an exact consumer profile. Thus, the Department's calculator is obsolete and the regulation requiring the data call should be repealed.

The Department does not plan to hold a public hearing on the proposed repeal of Regulation 704. The regulation proposed for repeal appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed repeal of the regulation. Any written submission in response to this notice and relevant to the proposed repeal must be received by the Department of Insurance no later than 4:30 p.m. EST, the 1<sup>st</sup> day, April, 2019. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
 Delaware Department of Insurance  
 ATTN: Regulation 704 Repeal  
 841 Silver Lake Blvd.  
 Dover, 19904  
 (302) 674-7379  
 Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 751RFA 03-01-19.pdf>

## 704 Homeowners Premium Consumer Comparison

### 1.0 Authority

- 1.1 This regulation is adopted by the Commissioner pursuant to the authority granted by 18 ~~Del.C.~~ §§311 and 2501 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 ~~Del.C.~~ Chapter 101.

### 2.0 Definitions

~~“Homeowners market share” shall be determined by data from the National Association of Insurance Commissioners for the prior calendar year for line number 04 (“Homeowners Multiple Peril) for the State of Delaware.~~

~~“Insurer” shall mean every insurer licensed to offer and sell non-commercial residential homeowners insurance coverage in the State of Delaware.~~

~~“Rate estimates” shall mean the estimated annual insurance premiums produced for the Department’s rate survey.~~

~~“Rate survey” shall mean a request by the Department that insurers calculate estimated annual insurance premiums based on hypothetical consumer profiles. The rate survey shall include estimated premiums for zip codes or other geographic area identified by the Department.~~

### 3.0 Scope

- 3.1 Insurers with .01 percent or more of the Delaware homeowners insurance market share shall be required to complete the full rate survey required by this regulation.
- 3.2 Insurers with less than .01 percent of homeowners insurance market share shall not be required to complete a rate survey pursuant to this regulation.
- 3.3 The provisions of this regulation shall only apply to policies of insurance covering those properties described in 18 ~~Del.C.~~ §4120.

### 4.0 Insurer Information

- 4.1 Each insurer will be provided with an account on the Department’s website to provide basic company information and to administer the submission of rate survey data.

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## **5.0 Survey Completion Deadline**

- 5.1 The Department of Insurance shall make available the rate survey request format with hypothetical consumer profiles, coverage levels, and other information necessary for calculating rate estimates on the Department's website no later than April 1st of each year.
- 5.2 In 2007, all required rate survey data from insurers must be submitted to the Department on or before April 15, 2007. In all subsequent years, all required rate survey data from insurers must be submitted to the Department on or before May 1st of each year.
- 5.3 Rate survey data that is incomplete or not reported according to the Department's instructions will be returned to the insurer for correction and must be resubmitted within 10 business days.

## **6.0 Survey Format**

- 6.1 Insurers shall provide rate estimates based on rates in effect as of March 1 of the year when the rate survey is being completed.
- 6.2 All rate estimates shall be rounded to the nearest dollar.
- 6.3 Insurers shall submit rate data utilizing an electronic spreadsheet provided by the Department or by other means specified by the Department. Insurers shall be required to upload the data to the Department via the internet.

## **7.0 Responsibility for Information and Data**

- 7.1 Insurers shall be responsible for the accuracy of company information and rate data submitted to the Department for publication. As part of the submission process, insurers will be subject to examination to verify the accuracy of the data being submitted.

## **8.0 Consumer Quote Requests**

- 8.1 Insurers shall provide a single electronic mail address to the Department for the purpose of allowing consumers to request a personalized homeowners insurance premium quote as part of the rate comparison process.
- 8.2 The insurer shall be required to provide a direct email response to the consumer, confirming receipt of the quote request.
- 8.3 The insurer shall be required to maintain an electronic log of all email responses to consumer requests for rate quotes for a period of one year after the request. The electronic log shall be capable of being transferred to the Department upon request.

## **9.0 Penalties**

- 9.1 Insurers that do not comply with this regulation are subject to the provisions of 18 ~~Del.C.~~ §329.

## **10.0 Severability**

- 10.1 If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

## **11.0 Effective Date**

- 11.1 This Regulation was originally effective February 15, 2007.
- 11.2 The amended Regulation shall become effective ten days after execution of an Order by the Commissioner and publication.

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# PROPOSED REGULATIONS

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## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 535 (18 Del.C. §§311 & 535)  
18 DE Admin. Code 904

### PUBLIC NOTICE

#### 904 Privacy of Consumer Financial and Health Information

#### A. Type of Regulatory Action Required

Proposed amendments to an existing Regulation.

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

##### 1. Background on the Federal Gramm-Leach Bliley Act and subsequent FAST Act Amendments

The Federal Gramm-Leach Bliley Act (GLBA) governs the treatment of nonpublic personal financial information. The GLBA was enacted in 1999 and governs the privacy practices of a broad range of financial institutions. State insurance departments are the functional regulators of all financial firms engaged in the business of insurance. See Proceedings of the NAIC, 1999 Proc. 4<sup>th</sup> Quarter I 33-34.

Title V, Subtitle A of the GLBA requires financial institutions to provide to each of their customers an annual notice regarding those institutions' privacy policies. If financial institutions share certain consumer information with particular types of third parties, the annual notices must also provide customers with an opportunity to opt out of having their information shared.

Federal Regulation P, which implements the GLBA, sets forth requirements for how financial institutions must deliver these annual privacy notices. In certain circumstances, Regulation P permits financial institutions to use an alternative delivery method to provide annual notices. This method requires, among other things, that the annual notice be posted on a financial institution's website. For more information on Regulation P see 81 FR 44801 (July 11, 2016) and 83 FR 40945 *et seq.* (August 17, 2018).

On December 4, 2015, Congress amended the GLBA as part of the Fixing America's Surface Transportation Act (FAST Act). This amendment, entitled "Eliminate Privacy Notice Confusion" (see P.L. 114-94, section 75001), added new GLBA section 503(f). This new section provides an exception under which financial institutions that meet certain conditions are not required to provide annual privacy notices to customers. To qualify for this exception, a financial institution: 1) must not share nonpublic personal information about customers except as described in certain statutory exceptions; and 2) must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that the institution disclosed in the most recently distributed privacy notice. *Id.* The amendment was effective upon enactment. Regulation P was subsequently amended to implement the FAST Act amendments, effective on September 17, 2018.

##### 2. NAIC Model Regulation 672 and subsequent amendments

In response to the GLBA, the National Association of Insurance Commissioners (NAIC) convened a Privacy Issues Working Group in 2000 to discuss how the NAIC and the State Departments of Insurance should proceed with respect to drafting a model privacy regulation. Proceedings of the NAIC, 2000 Proc. 1<sup>st</sup> Quarter 978. Note that NAIC Model Regulations are for the use of State Departments of Insurance in their state regulatory initiatives.

The resulting Model Regulation 672, Privacy of Consumer Financial and Health Information Regulation, was adopted by the NAIC at its third quarterly meeting in 2000. See Proceedings of the NAIC, 2000 Proc. 3<sup>rd</sup> Quarter 7, 10. The Model Regulation includes an Appendix A, which contains a series of sample clauses for use by licensees in their privacy notices.

After the Federal FAST Act Amendments were enacted in 2015, the NAIC once again responded by convening the Privacy Disclosures (D) Working Group. The group was charged with 1) determining if Model Regulation 672 should be amended to make it more consistent with Federal Regulation P's alternative electronic delivery option; and 2) reviewing the sample privacy notices set forth in Model 672 Appendix A for consistency with the Federal privacy model notice forms, and whether the Federal Model Privacy Notice should be added as an Appendix B and be used as a safe harbor of compliance with the privacy modification requirements of the GLBA. Proceedings of the NAIC, 2017 Proc. 1<sup>st</sup> Quarter 41.

At its Fall 2016 Meeting, the NAIC determined to adopt the following revisions to Model Regulation 672 (see *id.* at 42):

- Eliminate the requirement for financial institutions to provide annual privacy notices if certain conditions are met;
- Sunset the safe harbor of compliance with the privacy notice content requirements for the existing sample privacy notice clauses in Appendix A by July 1, 2019; and
- Create a new safe harbor of compliance with the privacy notice content requirement by replacing the existing sample privacy notice clauses with the federal model privacy form, to be codified in Appendix B.

### 3. The purpose of this proposal

The primary purpose of this proposal is to incorporate the NAIC revisions adopted at the NAIC 2016 fall meeting. Specifically:

- At proposed new subsections 1.5.2 and 1.5.3, the Department proposes to replace the sample privacy notices currently codified in Regulation 904 Appendix A, which provide a safe harbor of compliance with the privacy notice content requirements, with the Federal Model Privacy Form codified at 16 C.F.R. Pt. 313, App. A. The Federal Model Privacy Form was issued by Federal regulatory agencies for use by financial institutions, such as banks and security investment companies, as a safe harbor of compliance with the privacy notification requirements of the GLBA. As part of this proposed amendment, the Department proposes to add Appendix B, which incorporates the Federal sample forms and instructions, as codified at 16 C.F.R. Pt. 313, App. A. (adopted at 74 FR 63966 (Dec. 1, 2009)), by reference, as may, from time to time, be amended.
- At proposed new subsection 2.2.1.2, the Department proposes to eliminate the requirement for financial institutions to provide annual privacy notices if certain conditions are met. The Department has already publicized this exception in Domestic and Foreign Insurers Bulletin No. 97. A related amendment appears at subsection 2.6.

An additional purpose of this proposal is to correct codification style errors and erroneous cross references in Regulation 904. Regulation 904 was originally codified as Regulation 84 when it was first adopted in 2001 (see 4 **DE Reg.** 1752 (May 1, 2001) for the proposal and 5 **DE Reg.** 1752 (July 1, 2001) for the adoption). When the State of Delaware switched to a new regulatory codification system, Regulation 84 was recodified as Regulation 904 (18 **DE Admin. Code** 904), with new tabulation enumeration that purported to comply with the new codification system requirements. Even so, the regulation in its current form contains codification style errors and erroneous internal cross references that the Department is updating as a part of this proposal. Two items are of particular note. First, the Department is recodifying examples of defined terms from the definition of a particular term to separate, cross-referenced subsections within Section 1. Second, the Department is recodifying subsections 1.4.1.14.1 through 4 to applicability subsections 1.3.2 through 6, respectively.

The bulk of the codification style errors are in Section 1 of the regulation.

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 904. The regulation with proposed amendments appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 1<sup>st</sup> day, April, 2019. Any such requests should be directed to:

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

**\*Please Note:**

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 754RFA 03-01-19.pdf>

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

**904 Privacy of Consumer Financial and Health Information**

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**OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Section 311 and 24 Delaware Code, Section 2621  
(18 Del.C. §311 & 24 Del.C. §2621)

**PUBLIC NOTICE****1321 Compensation for Physical Therapy Services****A. Type of Regulatory Action Required**

Proposal of new regulation

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

The Department of Insurance hereby gives notice of proposed new Regulation 1321 relating to Compensation for Physical Therapy Services. The proposed new regulation would prohibit insurance carriers from including in any insurance policy terms and conditions that unreasonably discriminate against the payment for physical therapy care or services, prohibits numerical limits on physical therapy visits for the treatment of back pain, and puts in place a mechanism by which the Department of Insurance may enforce these prohibitions.

The Delaware Code authority for the new regulation is 18 Del.C. §311 and the amendments to 24 Del.C. Ch. 26, which added new section 2621 entitled "Physical therapists eligible for compensation from insurance." See Del. S.B. 225/S.A. 1/S.A.2, 149<sup>th</sup> Gen. Assem. §2621 (2018), with an effective date of March 9, 2019.

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

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 1<sup>st</sup> day of April, 2019. Any such requests should be directed to:

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

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 756RFA 03-01-19.pdf>

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## 1321 Compensation for Physical Therapy Services

### **1.0 Authority**

This regulation is adopted pursuant to 18 **Del.C.** §311 and 24 **Del.C.** §2621 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

### **2.0 Purpose**

The purpose of this regulation is to implement 24 **Del.C.** §2621.

### **3.0 Scope**

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

### **4.0 Definitions**

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

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

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

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

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

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

**"Physical Therapist"** means a person who is licensed to administer physical therapy care or services pursuant to 24 **Del.C.** Ch. 26 and 24 **DE Admin. Code** 2600.

**"Physical therapy"** means **"physical therapy"** as defined in 24 **DE Admin. Code** 2600.

**"Physical therapy care or services"** means those practices that a licensed Physical Therapist is licensed to provide pursuant to 24 **Del.C.** Ch. 26 and 24 **DE Admin. Code** 2600.

### **5.0 Unreasonable and Discriminatory Access to Physical Therapy Care or Services Prohibited**

- 5.1 No carrier shall include in any insurance policy, contract or certificate any provision that unreasonably discriminates against access to physical therapy care or services, including but not limited to:
- 5.1.1 A cost containment or managed care provision that denies or restricts access to physical therapy care or services in a manner that is more restrictive than a cost containment or managed care provision placed on a provider who is not licensed as a physical therapist but who is otherwise licensed to perform the same or substantially similar service, for the treatment of a patient with a condition that is within the scope of physical therapy practice;
  - 5.1.2 A provision that classifies physical therapy care or services as "maintenance care" or "not medically necessary," solely for the purpose of denying access to physical therapy care or services;

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# PROPOSED REGULATIONS

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- 5.1.3 A provision that requires a patient to pay a higher copay or deductible when being treated by a physical therapist than that patient would otherwise be require to pay for the same or substantially similar care or services had that care or services been rendered by a provider who is not licensed as a physical therapist but who is otherwise licensed to render that or a substantially similar care or service;
- 5.1.4 A provision that requires a patient to pay a copayment or coinsurance that is more than 25 percent of the fee due or to be paid to a physical therapist for physical therapy care or services;
- 5.1.5 A provision that contains a utilization or compensation restriction or practice for a physical therapist that is more restrictive than a utilization or compensation restriction or practice placed on a provider who is not licensed as a physical therapist but who is otherwise licensed to perform the same or substantially similar care or service for the treatment of patients with conditions within the scope of physical therapy care or services, including but not limited to:
  - 5.1.5.1 Unreasonable or discriminatory restrictions on the number of compensated visits per condition, or per episode, year, or other period; or
  - 5.1.5.2 Unreasonable or discriminatory precertification requirements and allowances for initial or subsequent visits, or for the determination of medical necessity; or
- 5.1.6 Including a provision that would unreasonably deny coverage for a physical therapy technique, method or diagnostic procedure if that physical therapy technique, method or diagnostic procedure is taught by an educational program described in 24 **Del.C.** §2606(a)(1), or has been approved by the Delaware Examining Board of Physical Therapists and Athletic Trainers.
- 5.2 No carrier shall include in any insurance policy, contract or certificate any provision that places any annual or lifetime numerical limits on physical therapy visits for the treatment of back pain.

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

- 6.1 No carrier or TPA shall discriminate against or unreasonably deny a physical therapist compensation for a physical therapy service rendered by that physical therapist if the carrier would otherwise compensate a provider who is not licensed as a physical therapist but who is otherwise licensed to perform that same or substantially similar service.
- 6.2 Every carrier or TPA shall utilize nondiscriminatory cost containment and managed care payment strategies to provide payment for physical therapy care or services, regardless of whether the care or services were delivered by a licensed physical therapist or by a provider who is not licensed as a physical therapist but who is otherwise licensed to perform the same or substantially similar service.

## **7.0 Reasonable and Nondiscriminatory Provisions**

Nothing in this regulation shall prohibit a carrier or a TPA from implementing reasonable and nondiscriminatory cost containment or managed care provisions as permitted by 24 **Del.C.** §2621(b).

## **8.0 Waiver not permitted**

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

## **9.0 Causes of Action**

This regulation shall not create a private cause of action for any person or entity other than the Commissioner against a carrier or its representative based upon a violation of 24 **Del.C.** §2621 or any provision of this regulation.

## **10.0 Effective Date**

This regulation shall be effective for all policies issued on or renewed on or after the effective date of 24 **Del.C.** §2621.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**3900 BOARD OF CLINICAL SOCIAL WORK EXAMINERS**

Statutory Authority: 24 Delaware Code, Section 3906(a)(1) (24 **Del.C.** §3906(a)(1))  
24 **DE Admin. Code** 3900

**PUBLIC NOTICE**

**3900 Board of Clinical Social Work Examiners**

Pursuant to 24 **Del.C.** §3906(a)(1), the Board of Clinical Social Work Examiners (“the Board”) has proposed extensive revisions to the rules and regulations to implement amendments to the Board’s licensing law, Chapter 39 of Title 24 of the Delaware Code, which will go into effect on June 11, 2019. Specifically, the proposed amendments implement multi-tier licensure, including the requirements for licensure by grandfathering and for continuing education. Requirements are added for licensees providing supervision and the requirements for licensure as a clinical social worker are clarified in the interests of professional competence.

A public hearing will be held on March 25, 2019 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Board of Clinical Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Alison Warren, Administrator for the Board, at the above address or at [alison.warren@delaware.gov](mailto:alison.warren@delaware.gov). Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be **April 9, 2019**. The Board will deliberate on the proposed revisions at its next regularly scheduled meeting.

**\*Please Note:**

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

<http://regulations.delaware.gov/register/march2019/proposed/22 DE Reg 759RFA 03-01-19.pdf>

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

**3900 Board of Clinical Social Work Examiners**

## 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 AGRICULTURE****DELAWARE FOREST SERVICE**

Statutory Authority: 3 Delaware Code, Sections 101(3) and 1011, and 29 Delaware Code, Section 10113(b)(6) (3 **Del.C.** §§101(3) & 1011; 29 **Del.C.** §10113(b)(6))  
3 **DE Admin. Code** 402

## Secretary's Order

**RE: FINAL EXEMPT ORDER: 3 DE Admin. Code 402:  
State Forest Regulations**

**Date of Issuance: February 5, 2019**

**Effective Date of the Amendment: March 11, 2019**

**402 State Forest Regulations**

Under the authority vested in the Secretary of the Delaware Department of Agriculture ("Department"), pursuant to 3 **Del.C.** §§101(3) and 1011, and 29 **Del.C.** §10113(b)(6), Section 402 of Title 3 of the Delaware Administrative Code is hereby revised to modify specific regulatory language as set forth below. This modification to 3 **DE Admin. Code** 402: *State Forest Regulations* is required by the October 11, 2018 Opinion of the Honorable Jeffrey J. Clark, Superior Court Judge of the State of Delaware, *Delaware State Sportsmen's Association, et al., v. Garvin, et al.* (C.A. No. K18C-05-047 JJC).

Judge Clark's Opinion was issued subsequent to the Department's promulgation of its final Amendments to 3 **DE Admin. Code** 402 ("Amendments"), as set forth in its Secretary Order issued April 16, 2018, and published in the May 1, 2018 edition of the Delaware *Register of Regulations*. This Exempt Order now revises the regulatory language of the Department's final Amendments, so that the same mirrors the regulatory language set forth in Judge Clark's Opinion, as noted above.

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## Findings of Fact

Based on Delaware law and the record as reflected in the prior Secretary's Order referenced above, I make the following findings of fact:

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

## Decision and Order Concerning the Regulation

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revisions to 3 **DE Admin. Code** 402: *State Forest Regulations* be adopted and promulgated as follows, to wit:

1. Subsection 8.8.1 shall be modified by removing the term, "and lodges" from the existing regulatory language;
2. Subsection 8.8.2 shall be modified by removing the phrase, "provided that proper and current credentials shall be produced upon request" from the existing regulatory language;
3. Subsection 8.8.3 shall be modified by removing "...provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Department" from the existing regulatory language; and
4. Subsection 8.8.6 shall be removed in its entirety.

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

Michael T. Scuse  
Secretary

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

### 8.0 Hunting Rules and Regulations

#### (Break in Continuity Within Section)

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

- 8.8.1 Designated areas shall include State Forest Offices, education centers, ~~and lodges~~, and shall be identified by appropriate signage.
- 8.8.2 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Department, including designated areas, ~~provided that proper and current credentials shall be produced upon request.~~
- 8.8.3 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Department, including designated areas, ~~provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Department.~~

#### (Break in Continuity Within Section)

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

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

**402 State Forest Regulations**

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# FINAL REGULATIONS

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 4139 (14 **Del.C.** §§122(b) and 4139)  
14 **DE Admin. Code** 505

### REGULATORY IMPLEMENTING ORDER

#### 505 High School Graduation Requirements and Diplomas

##### I. Summary of the Evidence and Information Submitted

Pursuant to 14 **Del.C.** §§4139 and 122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. This regulation is being amended to include computer science standards as required by House Bill 15 with Senate Amendment 1 and the State of Delaware - Diploma for Alternate Achievement Standards as required by House Substitute No. 1 to House Bill 287 as amended by House Amendment No. 1, both from the 149<sup>th</sup> General Assembly. Also, the Student Success Plans section of the regulation is being removed and a new regulation will be created in the near future that will specifically provide guidance around Student Success Plans. Therefore, reference to Student Success Plans in the definition of "Career Pathway" has been struck.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on November 1, 2018, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities and Dr. Amelia Hodges of PolyTECH School District. The two Councils were in support of the regulation as written but did request further clarification on Student Success Plans. The Department notes that such clarification will be noted in the Student Success Plan regulation. Dr. Hodges commented that the regulation did not take into account expanded career pathway credit requirements. The Department notes that the regulation states the credits required are the minimum number of credits required and local education agencies do have the flexibility to expand on any of those credit requirements.

##### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in order to include computer science standards as required by House Bill 15 with Senate Amendment 1 and the State of Delaware - Diploma for Alternate Achievement Standards as required by House Substitute No. 1 to House Bill 287 as amended by House Amendment No. 1, both from the 149<sup>th</sup> General Assembly. Also, the Student Success Plans section of the regulation is being removed and a new regulation will be created in the near future that will specifically provide guidance around Student Success Plans.

##### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas 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** 505 High School Graduation Requirements and Diplomas amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 505

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High School Graduation Requirements and Diplomas in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 17, 2019. 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 17<sup>th</sup> day of January 2019.  
**Department of Education**

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

Approved this 17<sup>th</sup> day of January 2019

**State Board of Education**

Whitney Townsend Sweeney, President

Audrey J. Noble, Ph.D., Vice President

Candace Fifer

Vincent Lofink

Nina Lou Bunting

Wali W. Rushdan, II

## 505 High School Graduation Requirements and Diplomas

### 1.0 Definitions:

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

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

"**Career Pathway**" means the three (3) credits of pre planned and sequential courses required for graduation designed to develop knowledge and skills in a particular career or academic area. ~~["The Career Pathway shall be included in the Student Success Plan."]~~

\*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2018 issue of the *Register* at page 335 (22 DE Reg. 335). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**505 High School Graduation Requirements and Diplomas**

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 103(b) and 122(a) (14 **Del.C.** §§103(b) and 122(a))

### REGULATORY IMPLEMENTING ORDER

### 507 Student Success Planning

#### I. Summary of the Evidence and Information Submitted

Pursuant to 14 **Del.C.** §§103(b) and 122(a), the Secretary of Education intends to create 14 **DE Admin. Code** 507 Student Success Planning. This new regulation is needed to provide guidance for districts and charters in their role to support students in establishing goals that lead to post-secondary plans for the student's desired career.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities, and Freire Charter

School Wilmington. The two Councils were in support of the regulation as written but did request further clarification on Student Success Plans. Freire Charter School had one comment noted below. The Councils requested that:

(1) The Department include clarification that school districts will still assist students with developing a program of study of plan to clearly identify what steps a student must follow to achieve career goals, even if it is no longer placed in the Student Success Plan. The Department notes that the regulation requires school district's post-secondary advisement plans to list the specific activities and supports they are providing to help students explore potential career interests, establish and refine goals to prepare them to pursue the goals after high school;

(2) The Department include a requirement that school districts identify and provide supports necessary to help a student achieve their career goals. The Department believes this is outlined in 4.1.1.2 of the regulation that notes district plans must include the activities, supports and resources to enable students to fulfill the opportunities identified in the regulation, as well as requires the plan to be district-wide to enable a comprehensive approach to support students from 8<sup>th</sup> to 12<sup>th</sup> grade. Incorporating this into their plans will enable districts to identify areas where students need additional supports and continue those supports between middle and high school;

(3) The Department include an annual transcript review requirement. The Department notes that school counselors will continue to conduct course transcripts as part of the requirement to increase graduation rates under the Every Student Succeeds Act. DSSF additionally monitors on track to graduation and will be reported annually. This aspect was not required to be outlined in regulation;

(4) The Department include a section that requires Student Success Plans to incorporate the IEP transition plan requirements in 14 **DE Admin Code** 925. The Department believes it is the expectation that a transition plan can meet the requirements of the Student Success Plan if it includes each of the aspects identified in the regulation. Two separate documents would be unnecessary; (4) we remove the definition of "Core Course Credit" as it is not used in the regulation. We agree with this change and the definition has been removed to correct a technical error; and

(5) The Department include a requirement for some data measures for students with IEPs related to equal access to ESSA measures and Career Pathways programming. The Department notes that district plans are required to identify how they will measure student impact in meeting their post-secondary goals and progress reports will show their progression towards these goals, including measurable outcomes as outlined in the regulation. This includes all students, including those with IEPs.

Additionally, Freire Charter School noted the regulation could place an undue burden on school staff, finances or technological resources, and asked the Department to evaluate post-secondary advising plans to ensure they are not burdensome. The Department notes that the SSP template consists of two simple excel spreadsheets that do not require any additional software or technology. Charter Schools and Districts are not required to list every individual activity they offer to students or to track those individual activities. The plan looks at broader categories to ensure students meet the opportunities required in the regulation. Therefore, the Department does not believe the regulation places any unnecessary work or burden on districts or charter schools, and that the Student Success Plan provides for significant flexibility for district and charter school tracking while ensuring that the Department can adequately review the post-secondary advisement process statewide for students.

## II. Findings of Facts

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 507 Student Success Planning in order to provide guidance for districts and charters in their role to support students in establishing goals that lead to post-secondary plans for the student's desired career.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 507 Student Success Planning. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 507 Student Success Planning attached hereto as *Exhibit "B"* is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 507 Student Success Planning hereby created 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** 507 Student Success Planning created hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 507 Student Success Planning 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 15, 2019. 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 15<sup>th</sup> day of February 2019.

**Department of Education**

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

Approved this 15<sup>th</sup> day of February 2019

**507 Student Success Planning**  
***(Break in Continuity of Sections)***

### **2.0 Definitions**

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

**["Core Course Credit" means a credit in an English Language Arts, Mathematics, Science or Social Studies course.]**

\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2019 issue of the *Register* at page 562 (22 DE Reg. 562). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**507 Student Success Planning**

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### **OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) and 303(a) (14 **Del.C.** §§122(b) & 303(a))

14 **DE Admin. Code** 1008

### **REGULATORY IMPLEMENTING ORDER**

**1008 DIAA Junior High and Middle School Interscholastic Athletics**

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

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education ("Department"), developed the amendments to 14 **DE Admin. Code** 1008. Section 8.0 is being amended to add fees for officiating contests and competitions in accordance with the amendments to 14 **Del.C.** Ch. 3, which went into effect on July 17, 2018. In addition, subsection 2.7.3.1 is being amended to correct a technical error.

Notice of the proposed regulation was published in *The News Journal* and *Delaware State News* on December 1, 2018 in the form attached hereto as Exhibit "A." In addition, notice of the proposed regulation was published in the *Register of Regulations* on December 1, 2018 in the form attached hereto as Exhibit "B." Persons wishing to present their views concerning the amendments were invited to do so in writing by January 4, 2019. The Department did not receive any written submittals concerning the amendments.

On January 17, 2019, the DIAA Board of Directors voted to propose 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics, in the form that was published, for adoption by the Department subject to the State Board of Education's approval.

## II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement the provisions of 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics attached hereto as Exhibit "B" is hereby amended.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics adopted hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited as 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics 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 Department pursuant to 14 **Del.C.** §§122(b) and 303(a) on February 21, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 21<sup>st</sup> day of February, 2019.

### Department of Education

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

Approved this 21<sup>st</sup> day of February, 2019.

### State Board of Education

Whitney Townsend Sweeney, President	Vincent Lofink
Audrey J. Noble, Ph.D., Vice President (absent)	Wali W. Rushdan, II
Nina Lou Bunting (absent)	
Candace Fifer	

\*Please note that no changes were made to the regulation as originally proposed and published in the December 2018 issue of the *Register* at page 440 (22 DE Reg. 440). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1008 DIAA Junior High and Middle School Interscholastic Athletics**



## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 303(a) (14 **Del.C.** §§122(b) & 303(a))  
14 **DE Admin. Code** 1009

### REGULATORY IMPLEMENTING ORDER

#### 1009 DIAA High School Interscholastic Athletics

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

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics. The Delaware Interscholastic Athletic Association (“DIAA”), working in consultation and cooperation with the Department of Education (“Department”), developed the amendments to 14 **DE Admin. Code** 1009. Section 8.0 is being amended to add fees for officiating contests and competitions in accordance with the amendments to 14 **Del.C.** Ch. 3, which went into effect on July 17, 2018. In addition, subsection 2.7.3.1 is being amended to correct a technical error.

Notice of the proposed regulation was published in *The News Journal* and *Delaware State News* on December 1, 2018 in the form attached hereto as Exhibit “A.” In addition, notice of the proposed regulation was published in the *Register of Regulations* on December 1, 2018 in the form attached hereto as Exhibit “B.” Persons wishing to present their views concerning the amendments were invited to do so in writing by January 4, 2019. The Department did not receive any written submittals concerning the amendments.

On January 17, 2019, the DIAA Board of Directors voted to propose 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics, in the form that was published, for adoption by the Department subject to the State Board of Education’s approval.

#### II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement the provisions of 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics subject to the State Board of Education’s approval. Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics attached hereto as Exhibit “B” is hereby amended.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics adopted hereby shall be in the form attached hereto as Exhibit “B,” and said regulation shall be cited as 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics 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 Department pursuant to 14 **Del.C.** §§122(b) and 303(a) on February 21, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 21<sup>st</sup> day of February, 2019.

**Department of Education**

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

Approved this 21<sup>st</sup> day of February, 2019.**State Board of Education**

Whitney Townsend Sweeney, President

Vincent Lofink

Audrey J. Noble, Ph.D., Vice President (absent)

Wali W. Rushdan, II

Nina Lou Bunting (absent)

Candace Fifer

\*Please note that no changes were made to the regulation as originally proposed and published in the December 2018 issue of the *Register* at page 443 (22 DE Reg. 443). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1009 DIAA High School Interscholastic Athletics**

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

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

**ORDER****Chiropractic Services****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan and the DMMA Provider Policy Specific Manual regarding chiropractic services, specifically, to remove annual numerical limitations placed on chiropractic care visits for the purpose of treating back pain. 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 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after January 11, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1-A Page 3 Addendum of Title XIX Medicaid State Plan and the Practitioner Provider Specific Manual, of the DMMA Provider Policy Specific Manuals sections 13.2.2 - 13.2.3.2 regarding chiropractic services.

**Background**

Senate Bill 225, an Act to Amend Title 16, Title 24, Title 29, and Title 31 of the Delaware Code Relating to Insurance Coverage for the Treatment of Back Pain, was enacted by the General Assembly of the State of Delaware, and signed into law on September 10, 2018, with an effective date of March 9, 2019. This Act encourages prescribers and patients to use proven non-opioid methods of treating back pain by prohibiting numerical limits on physical therapy and chiropractic care, which might deter prescribers or patients from using those treatments rather than opioids. As a result, DMMA is proposing to amend policy by removing annual limits associated with chiropractic treatment services.

**Statutory Authority**

Senate Bill 225

**Purpose**

The purpose of this proposed regulation is to remove annual numerical limitations placed on chiropractic care visits for the purpose of treating back pain.

*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 2019.

*Centers for Medicare and Medicaid Services Review and Approval*

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

*Provider Manuals and Communications Update*

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

**Fiscal Impact**

The following fiscal impact is projected:

	Federal Fiscal Year 2019	Federal Fiscal Year 2020
General (State) Funds	212,250	215,968
Federal Funds	287,750	296,533

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

DMMA received the following summarized observations:

**Comment:** The regulation is endorsed as proposed since it expands access to alternative pain care treatment options.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the January 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan and the DMMA Provider Policy Specific Manual regarding chiropractic services, specifically, to remove annual numerical limitations placed on chiropractic care visits for the purpose of treating back pain, is adopted and shall be final effective March 11, 2019.

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2/14/19

Date of Signature

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

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2019 issue of the *Register* at page 566 (22 DE Reg. 566). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Chiropractic Services**

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Chapter 30F and §§122(3)bb and 139 (16 **Del.C.** Ch. 30F and §§122(3)bb and 139)

**ORDER**

**4502 Regulations for Certification of Animal Welfare Officers**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing Certification of Animal Welfare Officers. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 3104.

On September 1, 2018 (Volume 22, Issue 3), 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 October 1, 2018, after which time 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 Certification of Animal Welfare Officers were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (September 1, 2018 through October 1, 2018).

Entities offering written comments include:

- Delaware Department of Agriculture, Michael T. Scuse, Secretary
- Ms. Catherine Samardza

**Comments from the Delaware Department of Agriculture**

The curriculum requirements in section 4.2 of the proposed regulations are unclear about whether and the extent to which the training and certification curriculum would include material that educates new DDA hires on the distinction between authorities as an Animal Welfare Officer, within the OAW and as an Investigator II within DDA.

- **Response:** The distinction between authorities is made clear in the law, 16 **Del C.** §3031. It would be up to the hiring agency to clarify for the employee their role and authority as outlined in the law.

The language provided in 9.1.1-9.1.5 describing disciplinary authority of DPH does not include language indicating how DPH will consider or consult with DDA regarding disciplinary matters and sanctioning of DDA employees (reference in section 10.2). DDA reserves the authority to discipline DDA employees and take any action DDA may deem appropriate.

- Response: For clarification, OAW's authority for discipline is strictly limited to the offenses as detailed in law, 16 Del.C. §139. Likewise, sanctions are limited to those outlined in the same law. OAW does not have any authority for discipline outside of these parameters, and other disciplinary actions for performance will be the responsibility of the employer. However, OAW agrees with the suggestion to include the employer in disciplinary sanctions decisions regarding certification. The final regulation adds subsection 9.2.4 which reads, "Consultation with certified animal welfare officer's employing agency."

As referenced in sections 3.4 and 4.5, DPH may waive all or part of the certification requirements, as well as the exam, for a DDA employee if the employee has completed equivalent training or experience. In addition, states that new people being hired have 60 days to complete requirements. DDA's job description for the position entitled Investigator II does not require that a candidate complete trainings or have certification as required by the proposed regulations.

- Response: Certification is statutorily required for anyone serving as an animal welfare officer in Delaware. Future job postings should be amended to include the requirement for training and certification in the "Conditions of Hire".

DDA has 1 position designated to address animal welfare issues and conduct investigations related to issues of animal welfare. If DDA hires an individual to fill this position, DDA would expect that a new hire perform duties required by the DDA Investigator II position and any duties specified by DDA. As referenced in section 4 of the proposed regulations, if new hires are subject to the training and certification timeline and requirements referenced in the proposed regulations, DDA may be subject to a period with no coverage for animal welfare matters.

- Response: The agency appreciates this concern. OAW officers or police may enforce Title 11 cruelty to animals laws and would provide coverage during the transition if required.

## Comments from Ms. Catherine Samardza

- I still believe drug testing should be required.
- 3.1 - Does this requirement apply to animal control officers with the Newark and Dover Police Departments (and any others that may have their own)? Otherwise, who, exactly, would be working as an animal welfare officer in Delaware outside of OAW/DAS?
- 4.0 - 40 hours seems inadequate considering the amount of material to be covered.
- 4.3 - I think 75% is too low to be a passing grade for law enforcement and animal handling.
- 5.0 - Is there a training course - official or otherwise - actually established/in place? Who created it, and who teaches it?
- 7.1 - 8 hours of continuing education seems low, again, with the amount of material covered in training.
- 8.0 - how many officers are currently using CEWs in the field? And how often are CEWs/stun guns actually being used on animals? I don't question the training requirement. But between this and the requirement in 4.2.5, it really seems like training needs more than 40 hours.
- 9.0 - given that this is about animal welfare laws, shouldn't sanctions also be imposed if an officer is guilty of animal cruelty in some way? A crime against people or property rules out stray animals.
- 10.1, 10.2 - The references to a contracting entity and other agencies/employer/entity concern me. See my note at 3.1. Who, exactly, will be contracting with animal welfare officers, or an organization who employs them? These sections sound suspiciously as if the State plans to dump animal welfare and dog control back onto the counties.

## Response

The agency acknowledges and appreciates these comments. Most comments address the training requirements set forth by the regulations. The requirements represent the minimum levels of training needed, and may be exceeded. They are in line with similar certification requirements in other states, such as New Jersey and Connecticut. The Office of Animal Welfare has a training course already in place that was created after researching best practices throughout the country, and with input from other experts in the fields of animal control, law enforcement and veterinarians. The regulations apply to anyone who employs animal welfare officers in the state, including Newark and Dover Police Departments. One comment addresses the use of Conducted Electrical Weapons (CEW): only officers who have received training by a certified instructor carry CEWs. Another comment asks about sanctions for officers found guilty of animal cruelty. This is considered a crime against person or property. Lastly, Section 10.0 will be edited to remove reference to "contracting entity" which is no longer applicable.

FINDINGS OF FACT:

Some changes were made to the regulations based on the comments received. 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 Radiation Control is adopted and shall become effective March 11, 2019, after publication of the final regulation in the Delaware *Register of Regulations*.

2/12/19

Date

Dr. Kara Odom Walker  
Secretary

**4502 Regulations for Certification of Animal Welfare Officers**

**1.0 Authority and Purpose**

*(Break in Continuity Within Section)*

1.3 These regulations define:

- 1.3.1 ~~[training~~ Training] and certification requirements for animal welfare officers;
- 1.3.2 ~~[procedures~~ Procedures] for obtaining a certification from the Office of Animal Welfare;
- 1.3.3 ~~[training~~ Training] course approval processes;
- 1.3.4 ~~[continuing~~ Continuing] education and recertification obligations;
- 1.3.5 ~~[disciplinary~~ Disciplinary] sanctions; and
- 1.3.6 ~~[complaint~~ Complaint] documentation and investigation procedures.

[1.4 **Effective Date. These regulations are effective March 11, 2019.**]

*(Break in Continuity of Sections)*

**3.0 Animal Welfare Officer Certification**

- 3.1 Except as permitted by subsection 4.7, below, no person shall serve as a Delaware animal welfare officer unless such person is trained and certified by the Office of Animal Welfare ~~[("Office")]~~ as set forth in this section.
- 3.2 Individuals seeking certification as an animal welfare officer shall submit a written application to the Department of Health and Social Services, Division of Public Health, Office of Animal Welfare ~~[("Office")]~~.

*(Break in Continuity of Sections)*

**6.0 Issuance of Certification**

*(Break in Continuity Within Section)*

- 6.6 If a certified animal welfare officer has been found by an employer to be unfit or incompetent, the Office may impose sanctions as outlined in subsection ~~[10-2~~ 9.3].

*(Break in Continuity of Sections)*

**9.0 Denial, Revocation and Disciplinary Sanctions**

*(Break in Continuity Within Section)*

- 9.2 In determining whether to impose sanctions, the Department shall consider the following factors:
  - 9.2.1 The seriousness of the offense;
  - 9.2.2 The circumstances surrounding the offense: ~~[and]~~
  - 9.2.3 The relation of the offense to the duties of a certified animal welfare officer~~;~~ and

## 9.2.4 Consultation with the certified animal welfare officer's employing agency.]

*(Break in Continuity Within Section)*

### 9.5 During an administrative hearing:

9.5.1 The animal welfare officer has the right to be represented by counsel[;:]

9.5.2 All statements made shall be under oath[;:]

9.5.3 The animal welfare officer has the right to examine and cross-examine witnesses[; and]

*(Break in Continuity Within Section)*

## 10.0 Documenting and Investigating Complaints

10.1 The Office shall document all complaints filed directly with the Office[; or] the employer[; ~~or with a contracting government entity~~] against certified animal welfare officers of alleged violations of 16 Del.C. §139.

*(Break in Continuity Within Section)*

10.3 The Office shall notify the animal welfare officer[; and] the officer's employer[; ~~and contracting entity, if applicable,~~] of the complaint investigation within 10 days of receipt of said complaint.

10.4 The Office shall issue a final written report of the complaint investigation findings and any associated disciplinary sanctions outlined in subsection ~~[40-2 9.3]~~ to the animal welfare officer[; and] the officer's employer[; ~~and the contracting entity, if applicable,~~] sent by Certified Mail or hand delivered. If the complaint concerns an officer employed by the Office of Animal Welfare, the complaint will be forwarded to the Division Director or Deputy Director for investigation.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2018 issue of the Register at page 197 (22 DE Reg. 197). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**4502 Regulations for Certification of Animal Welfare Officers**

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 3000

### ORDER

### Temporary Assistance for Needy Families (TANF)

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Service Manual (DSSM) regarding the Temporary Assistance for Needy Families (TANF), specifically, to revise the requirements of the Contract of Mutual Responsibility (CMR). 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 July 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

Effective for services provided on and after March 11, 2019 the Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Services Manual sections 3009, 3013, 3013.1, 3013.2, 3014, 3014.1, 3014.2, 3015, 3015.1, 3015.2, 3016, 3016.1, 3016.2, 3017, 3017.2, 3017.2.1, 3017.2.2 regarding the Temporary Assistance for Needy Families (TANF), specifically, *to revise the requirements of the Contract of*

*Mutual Responsibility (CMR).*

### **Statutory Authority**

- Social Security Act Title IV Part A—Block Grants To States For Temporary Assistance For Needy Families
- CFR Title 45 Public Welfare Subtitle B Regulations Relating To Public Welfare Chapter II-Office Of Family Assistance (Assistance Programs), Administration For Children And Families, Department Of Health And Human Services

### **Background**

The Contract of Mutual Responsibility (CMR) is an agreement between the TANF client and DSS which sets obligations and expectations for helping the client achieve self-sufficiency. The policies define the Temporary Assistance for Needy Families (TANF) as well as the requirements of the contract and the responsibilities of TANF recipients and the Division of Social Services.

### **Purpose**

#### *Purpose*

The purpose of this proposed regulation is to enhance the definition, provide clarity to the requirements, increase readability, and add a financial coaching orientation to the CMR.

#### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on July 31, 2018.

### **Fiscal Impact Statement**

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

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

Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) received the following summarized observations:

**Comment:** Several commenters were concerned that some of the changes intended to simplify the language removed obligations of DSS workers. In addition, the substitute of some words, for example "will" to "may", changed the CMR to discretionary. For example if a family requires a change to the CMR as a reasonable accommodation.

**Agency Response:** DSS appreciates the perspective of the commenters on the CMR revised regulations; however, the goal of the revision is to give DSS staff clear guidance on how to develop a CMR with the client. Due to the input, DSS will amend the policy to include, "DSS will work with clients to identify barriers that may hinder compliance with the CMR requirements. DSS will provide supportive services to clients to assist in reducing identified barriers." DSS will continue to make accommodations for any client with barriers to complying with the CMR components. The CMR has always been mandatory and some of the components are discretionary; however, all TANF clients must comply with the CMR. DSS will make accommodations for any client with barriers to complying with the CMR components.

**Comment:** Several commenters were concerned about reasonable accommodations as there were no proposed changes to Section 3017.1 the Transitional Work Program or TWP, which is designed to allow recipients with disabilities avoid mandatory work requirements under the CMR.

**Agency Response:** DSS appreciates the commenters perspective regarding addressing barriers for persons with disabilities. The Transitional Work Program policy (DSSM 3017.1) outlines accommodations for compliance for individuals who have been determined unable to work in an unsubsidized employment setting by a health professional. Policy 3017.1 remains valid and was not in the initial group of amended CMR policies. DSS will continue to make accommodations for any client with barriers to complying with the CMR components.

**Comment:** One commenter expressed concern with the "insufficient emphasis on good cause exceptions."



**Agency Response:** Good Cause encapsulates a broad range of issues and circumstances DSS families experience daily. DSS does not limit the scope of good cause due to each family's unique circumstances. DSS will continue to explore issues with families to determine when barriers exist that prevent compliance. Due to input received, DSS will amend the policy to include, "DSS encourages clients to disclose any difficulties that may create barriers for meeting the CMR requirements. DSS will not impose a sanction if good cause exists." The policy that speaks to ADA accommodations is DSSM 3017.1 Transitional Work Program has yet to be revised and is still valid.

**Comment:** One commenter found that Section 3009 did not contain a reference to "good cause" exceptions to CMR requirements.

**Agency Response:** DSS is modifying 3009 to mention good cause.

**Comment:** One commenter raised due process and privacy concerns related to Section 3016: Requiring Substance Abuse Assessment and Treatment.

**Agency Response:** DSS appreciates the commenters concern about due process, and shares the commenters concerns; however, DSS is operating in an environment where there is a current opioid epidemic. The current protocol is to refer clients upon self-disclosure of a substance abuse issue to the Bridge program which provides case management, resources, and referrals to treatment providers. DSS adheres to strict confidentiality and privacy policies. DSS will take the comments under consideration.

**Comment:** One commenter indicated that Section 3017: Establishing Additional Contract of Mutual Responsibility Elements was vague and stated that, "it is unclear whether DSS or "other agencies" are permitted, or even encouraged, to unilaterally determine that these "other services" "may aid in self-sufficiency" and therefore be required."

**Agency Response:** The CMR is an agreement between DSS and the client. If during their discussion, other elements are identified, these can be added to the CMR. This allows DSS and the client to customize the contract.

**Comment:** One commenter questioned the value of mandatory financial coaching for families.

**Agency Response:** Delaware was awarded technical assistance from Prosperity Now for integrating financial coaching into the TANF program. This is a federally supported initiative. DSS, Prosperity Now, Administration for Children and Families, Delaware Department of Labor, Stand by Me, and the TANF Employment and Training vendors collaborated in developing this component. This component requires clients to attend a short information session regarding the free financial literacy services that are available to them. The goal of this component is to prepare clients as they obtain employment and may experience the benefit cliff as they transition from DSS benefits towards self-sufficiency.

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

## FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the July 2018 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding the Temporary Assistance for Needy Families (TANF), specifically, *to revise the requirements of the Contract of Mutual Responsibility (CMR)*, is adopted and shall be final effective March 11, 2019.

1/24/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, 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:**

**Temporary Assistance for Needy Families (TANF)**

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

Statutory Authority: 7 Delaware Code, Section 103(a) and (b) (7 **Del.C.** §103(a) & (b))  
7 **DE Admin. Code** 3300

Secretary's Order No.: 2019-F-0011

**3300 Non-Tidal Finfish****3301 Definitions****3304 Creel Limits, Size Limits and Seasons**

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 3300: *Non-Tidal Finfish (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)***

**Date of Issuance: February 11, 2019**

**Effective Date: March 11, 2019**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("DNREC," "Department"), pursuant to 7 **Del.C.** §103(a) and (b), and any other relevant statutory authority, the following findings of fact based on the record, reasons, and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

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

This Order relates to proposed Amendments ("Amendments") to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)*. This action is being taken by the Department to adjust the start time for opening day of freshwater trout season on designated trout streams and to provide clarity on stream boundary locations and protected slot limit lengths.

Opening day of freshwater trout seasons often have a specified start time to help manage angler competition for fishing locations, but the current 7:30 a.m. opening day start time for Delaware's designated trout streams serves no current resource management purpose, is not meaningful for managing angler competition for fishing locations, and unnecessarily limits angler access and participation. At the suggestion of a member of the public, Delaware's Advisory Council on Wildlife and Freshwater Fish recommended that the start time of Delaware's opening freshwater trout season be changed from 7:30 a.m. to 7:00 a.m. This change will make the start time consistent with the 7:00 a.m. opening day start time established for designated trout ponds in Kent and Sussex Counties and provide for expanded angler opportunity and participation. Angling hours for the remainder of the trout season, which are one-half hour before sunrise to one-half hour after sunset, remain the same.

The Department also proposes to add clarity to the definition for the portion of Pike Creek that is designated as a trout stream to reflect contemporary landmark and roadway naming. The Department also proposes to add clarity that the upper bound of the smallmouth bass protected slot limit includes those fish measuring 17 inches in total length.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed Amendments to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)*, pursuant to 7 **Del.C.** §103(a) and (b). The Department published its proposed Amendments in the January 1, 2019 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on January 23, 2019. No members of the public attended the public hearing. Pursuant to Delaware law, the record remained open for fifteen additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at the close of business on February 7, 2019, with no comments having been received by the Department during any phase of this proposed regulatory promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Bethany A. Fiske prepared a Hearing Officer's Report dated February 8, 2019. The report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the report as Appendix A.

## Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed Amendments to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final. I further find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these proposed Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)*, pursuant to 7 **Del.C.** §103(a) and (b);

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

3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on January 23, 2019, and during the 15 days subsequent to the hearing (through February 7, 2019), before making any final decision;

4. Promulgation of the proposed Amendments to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)* will adjust the start time for opening day of freshwater trout season on designated trout streams and to provide clarity on stream boundary locations and protected slot limit lengths;

5. The Department has reviewed the proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption B1, as this regulation is not substantially likely to impose additional costs or burdens to individuals or small businesses;

6. The Department's Hearing Officer's Report, including its established record and the recommended proposed Amendments as set forth in Appendix A, are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed Amendments, as published in the January 1, 2019 *Delaware Register of Regulations*, and as set forth in Appendix A, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the Amendments are approved as final, and shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2019 issue of the *Register* at page 572 (22 DE Reg. 572). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3300 Non-Tidal Finfish**

# FINAL REGULATIONS

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 6010 and 29 Delaware Code, Section 10113(b)(6) (7 **Del.C.** §6010 and 29 **Del.C.** §10113(b)(6))  
7 **DE Admin. Code** 3900

Secretary's Order No.: 2019-F-0009  
RE: FINAL EXEMPT ORDER: 7 DE Admin. Code 3900: *Wildlife*

Date of Issuance: January 31, 2019  
Effective Date of the Amendment: March 11, 2019

### 3900 Wildlife

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 **Del.C.** §6010 and 29 **Del.C.** §10113(b)(6), DNREC hereby revises Section 3900 of Title 7 of the Delaware Administrative Code to modify specific regulatory language as set forth below. This modification to 7 **DE Admin. Code** 3900: *Wildlife* is required by the October 11, 2018 Opinion of the Honorable Jeffrey J. Clark, Superior Court Judge of the State of Delaware, *Delaware State Sportsmen's Association, et al., v. Garvin, et al.* (C.A. No. K18C-05-047 JJC).

Judge Clark's Opinion was issued subsequent to DNREC's promulgation of its final Amendments to 7 **DE Admin. Code** 3900 ("Amendments"), as set forth in DNREC's Secretary Order No. 2018-F-0028, issued April 16, 2018, and published in the May 1, 2018 edition of the Delaware *Register of Regulations*. This Exempt Order now revises the regulatory language of the Department's final Amendments, so that the same mirrors the regulatory language set forth in Judge Clark's Opinion, as noted above.

### Findings of Fact

Based on Delaware law and the record as reflected in the prior Secretary's Order referenced above, I make the following findings of fact:

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

### Decision and Order Concerning the Regulation

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revisions to 7 **DE Admin. Code** 3900: *Wildlife* be adopted and promulgated as follows, to wit:

1. Subsection 8.3.4.8 shall be modified by removing the phrase, "provided that proper and current credentials shall be produced upon request" from the existing regulatory language;
2. Subsection 8.3.4.9 shall be modified by removing "...provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Director" from the existing regulatory language; and
3. Subsection 8.3.4.12 shall be removed in its entirety.

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

Shawn M. Garvin  
Secretary

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

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

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## 8.3 Hunting and Firearms.

*(Break in Continuity Within Section)*

### 8.3.4 Firearms on Division Areas.

*(Break in Continuity Within Section)*

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

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

*(Break in Continuity Within Section)*

~~8.3.4.12 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.~~

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

**3900 Wildlife**

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## DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code, Section 6010 and 29 Delaware Code, Section 10113(b)(6) (7 **Del.C.** §6010 and 29 **Del.C.** §10113(b)(6))  
**7 DE Admin. Code 9201**

**Secretary's Order No.: 2019-P-0010**  
**RE: FINAL EXEMPT ORDER: 7 DE Admin. Code 9201:**  
***Regulations Governing State Parks***

**Date of Issuance: January 31, 2019**  
**Effective Date of the Amendment: March 11, 2019**

## **9201 Regulations Governing State Parks**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 **Del.C.** §6010 and 29 **Del.C.** §10113(b)(6), DNREC hereby revises Section 9201 of Title 7 of the Delaware Administrative Code to modify specific regulatory language as set forth below. This modification to 7 **DE Admin. Code 9201: *Regulations Governing State Parks*** is required by the October 11, 2018 Opinion of the Honorable Jeffrey J. Clark, Superior Court Judge of the State of Delaware, *Delaware State Sportsmen's Association, et al., v. Garvin, et al.* (C.A. No. K18C-05-047 JJC).

Judge Clark's Opinion was issued subsequent to DNREC's promulgation of its final Amendments to 7 **DE Admin. Code 9201** ("Amendments"), as set forth in DNREC's Secretary Order No. 2018-P-0029, issued April 16, 2018, and published in the May 1, 2018 edition of the Delaware *Register of Regulations*. This Exempt Order now revises the regulatory language of the Department's final Amendments, so that the same mirrors the regulatory language set forth in Judge Clark's Opinion, as noted above.

### **Findings of Fact**

Based on Delaware law and the record as reflected in the prior Secretary's Order referenced above, I make the following findings of fact:

1. The proposed regulation is not in conflict with Delaware law; and

2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

### Decision and Order Concerning the Regulation

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revisions to **7 DE Admin. Code 9201: Regulations Governing State Parks**, be adopted and promulgated as follows, to wit:

1. Subsection 21.1.1 shall be modified by removing the term, "camping areas" from the existing regulatory language;
2. Subsection 21.1.3 shall be modified by removing the phrase, "provided that proper and current credentials shall be produced upon request" from the existing regulatory language;
3. Subsection 21.1.4 shall be modified by removing "...provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Director" from the existing regulatory language; and
4. Subsection 21.1.7 shall be removed in its entirety.

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

Shawn M. Garvin  
Secretary

### 9201 Regulations Governing State Parks (Break in Continuity of Sections)

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

- 21.1 It shall be unlawful to display, possess or discharge firearms of any description, air rifles, B.B. guns, sling shots, or archery equipment within designated areas administered by the Division, except with prior written approval of the Director, or as set forth below.

- 21.1.1 Designated areas shall include park offices, visitor centers, nature centers, bathhouses, restaurants and snack bars, stadiums and facilities while used for sporting events, concerts, and festivals, museums, zoos, stables, educational facilities, dormitories, playgrounds, ~~camping areas~~, swimming pools, guarded beaches, and water parks, and shall be identified by appropriate signage.

#### (Break in Continuity Within Section)

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

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

#### (Break in Continuity Within Section)

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

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

**9201 Regulations Governing State Parks**

## DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 91 (7 **Del.C.** Ch. 91)  
7 **DE Admin. Code** 1375

Secretary's Order No.: 2019-WH-0012

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1375:  
*Regulations Governing Hazardous Substance Cleanup***

**Date of Issuance: February 12, 2019**

**Effective Date: March 11, 2019**

### 1375 Regulations Governing Hazardous Substance Cleanup

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("DNREC," "Department"), pursuant to 7 **Del.C.** Ch. 91, and any other relevant statutory authority, the following findings of fact based on the record, reasons, and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

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

This Order relates to proposed Amendments ("Amendments") to 7 **DE Admin. Code** 1375: *Regulations Governing Hazardous Substance Cleanup*. This action is being taken by the Department to provide clarity to provisions under the Brownfields Development Program (BDP).

The BDP is contained under 7 **DE Admin. Code** 1375: *Regulations Governing Hazardous Substance Cleanup*, and the intent of this program is to encourage developers to clean up and redevelop vacant, abandoned, or underutilized properties which may be contaminated by hazardous substances (i.e., a Brownfield). Under the BDP, the contaminated property will be investigated, the type and quantity of contamination will be identified, the potential harm assessed, and a remedial cleanup plan will be developed. This program provides liability protection to parties who did not cause or contribute to a release of hazardous substances on the property, and provides an avenue for cleanup and redevelopment of that property.

Remediation of contamination that extends beyond the boundaries of a Brownfield property is not the responsibility of the Brownfield developer, but rather all other potentially responsible parties. Currently, under this regulation, Brownfields are considered "facilities," a classification which requires the investigation and cleanup of hazardous substance releases wherever they may occur- meaning on or off the Brownfield property. The Amendments create a definition of "Certified Brownfield," which identifies a parcel of real property that has been certified by the Department as to the actual, threatened, or perceived release of hazardous substances at said property. The Amendments also add the word "Certified" to other appropriate definitions, and substitutes the references of "facilities" with "Certified Brownfield" to limit the responsibility of remediation to only within the boundaries of a Brownfield property.

In addition, when referencing Brownfields, the Amendments replace the terminology of "abandoned, vacant or underutilized" with "expansion, redevelopment or reuse." The new terminology mirrors the language in the BDP's enabling statute, 7 **Del.C.** Ch. 91, which has been recently modified to more closely align with federal Brownfield statutes. The Amendments also make other minor revisions to provide clarity and consistency.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed Amendments to 7 **DE Admin. Code** 1375: *Regulations Governing Hazardous Substance Cleanup*, pursuant to 7 **Del.C.** Ch. 91. The Department published its proposed Amendments in the December 1, 2018 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on January 9, 2019.

No members of the public attended the public hearing. Pursuant to Delaware law, the record remained open for fifteen additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at the close of business on January 24, 2019, with no comments having been received by the Department during any phase of this proposed regulatory promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the

Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Bethany A. Fiske prepared a Hearing Officer's Report dated January 28, 2019. The report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the report as Appendix A.

### Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed Amendments to 7 **DE Admin. Code** 1375: *Regulations Governing Hazardous Substance Cleanup* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final. I further find that the Department's experts in the Division of Waste and Hazardous Substances fully developed the record to support adoption of these proposed Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** 1375: *Regulations Governing Hazardous Substance Cleanup*, pursuant to 7 **Del.C.** Ch. 91;

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

3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on January 9, 2019, and during the 15 days subsequent to the hearing (through January 24, 2019), before making any final decision;

4. Promulgation of the proposed Amendments to 7 **DE Admin. Code** 1375: *Regulations Governing Hazardous Substance Cleanup* will provide greater clarity to provisions under the Brownfields Development Program;

5. The Department has reviewed the proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption B1, as this regulation is not substantially likely to impose additional costs or burdens to individuals or small businesses;

6. The Department's Hearing Officer's Report, including its established record and the recommended proposed Amendments as set forth in Appendix A, are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed Amendments, as published in the December 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendix A, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the Amendments are approved as final, and shall go into effect ten days after publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 1375: *Regulations Governing Hazardous Substance Cleanup* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2018 issue of the *Register* at page 448 (22 DE Reg. 448). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1375 Regulations Governing Hazardous Substance Cleanup**



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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Sections 8402 & 8404(a)(14) (11 **Del.C.** §§8402, 8404(a)(14))  
1 **DE Admin. Code** 801

### ORDER

#### 801 Regulations of the Delaware Council on Police Training

#### NATURE OF THE PROCEEDINGS

At 22 **DE Reg.** 452 (December 1, 2018), The Council on Police Training (COPT), pursuant to 11 **Del.C.** §8404(a)(14) and in accordance with 29 **Del.C.** §10115, published notice of intent to adopt regulations that seek to update, clarify and provide more detailed information regarding training requirements and records, employment status, COPT certification, and procedures for non-compliance. At the same time, the COPT submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del.C.** Ch. 104. The COPT solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

#### SUMMARY OF EVIDENCE

In accordance with law, public notice regarding the proposed revised regulation was published in the Delaware *Register of Regulations*. The public comment period was open from December 1, 2018 through December 31, 2018. During this period, the COPT did not receive any written responses.

#### FINDINGS OF FACT

The public was given the required notice of the Council's intention to adopt the proposed revised regulation and was given opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. No written responses were received during the comment period. Thus, the COPT finds that the proposed revised regulations should be adopted as submitted with the technical corrections identified by the COPT.

#### EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the COPT pursuant to 11 **Del.C.** §8404(a)(14). The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

### ORDER

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Council on Police Training does hereby ORDER this 22<sup>nd</sup> day of January, 2019 that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

**IT IS SO ORDERED**, this 22<sup>nd</sup> day of January 2019.

#### COUNCIL ON POLICE TRAINING

Robert M. Coupe, Department of Safety and  
Homeland Security, Chair

Chris Jones, Sergeant, Proxy for Chief of Police  
Newark Police Department

Robert J. Irwin,  
Proxy for Attorney General Matthew P. Denn

Robert Hudson, Major, Delaware State Police,  
Proxy for Superintendent of State Police

Susan Bunting, Secretary,  
Department of Education (absent)

Marvin Mailey, Chief of Police,  
Dover Police Department

Tashawn Counts, Captain, Proxy for Chief of Police  
Wilmington Police Department

Robin R. Christiansen, Mayor,  
City of Dover, Kent County

Diane Smith, Captain, Proxy for Colonel Vaughn Bond, Jr., Chief of New Castle County Police Department

Jeffrey Horvath, Proxy for Delaware Police Chiefs' Council

William West, Mayor, Sussex County (absent)

Lew Killmer, Mayor, President of the Delaware League of Local Governments

### 801 Regulations of the Delaware Council on Police Training (Break in Continuity of Sections)

#### 2.0 Definitions

As used in this chapter:

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

"**Police officer**" means a sworn member of a police force or other law-enforcement agency of this State or of any county or municipality who is responsible for the prevention and the detection of crime and the enforcement of laws of this State or other governmental units within the State **[as defined in 11 Del.C. §8401(5)(a)(b)]**, irrespective of the number of the hours worked.

For the purposes of this chapter this ~~[This term shall include permanent full-time law enforcement officers of the University of Delaware Police Department, Delaware State University Police Department and the Delaware River and Bay Authority.~~

~~Permanent law enforcement officers of the Department of Natural Resources and Environmental Control including Park Rangers, Fish and Wildlife Agents, and Environmental Protection Officers.]~~

For purposes of this chapter this ~~[This term shall not include the following:~~

- ~~A sheriff, regular deputy sheriff or constable;~~
- ~~A security force for a state agency or other governmental unit~~
- ~~A person holding police power by virtue of occupying any other position or office.](11-Del.C. 1953, & 8401; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670, & 1A, 63 Del. Laws, c. 31, & 1.)~~

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

#### 3.0 Minimum Standards for Initial Certification

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

- 3.4 A licensed physician shall examine the applicant, at the expense of the employing agency, to determine that he/she is physically fit for normal police duties. The following shall be met[;:]

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

- 3.10 The applicant shall successfully complete a written job related examination, in the form and manner as prescribed by the Council on Police Training, and the results shall be retained for a period of two years for inspection by the Council or its authorized representative. Form and manner being a validated test related to specific requirements needed to perform duties of a police officer[.]

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

#### 5.0 Minimum Standards For Training

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

- 5.2 Waiver of Equivalent Training – RECIPROCITY

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

5.2.4 The Administrator will examine the equivalent training records and make a comparison with the Delaware Mandatory Requirements. Any areas not meeting Delaware Standards will be required, prior to submission of the waiver application to Council for consideration[.]

**(Break in Continuity Within Section)**

5.3 Annual required training to maintain certification

**(Break in Continuity Within Section)**

5.3.2 In addition to the above 16 hours, the officer must also recertify in C.P.R., AED, and First Responders recertification as noted in Section II-16[.]

**(Break in Continuity of Sections)**

## **8.0 Re-activation Requirements of Police Officers**

8.1 Inactive Status

**(Break in Continuity Within Section)**

8.1.3 The Administrator may re-activate the individual's certification upon written application from the individual that he or she has accepted another full-time police position with a law enforcement agency whose training is regulated by the COPT and provided that the individual is not the subject of a de-certification proceeding pursuant to 29 **Delaware Code** §8404(4) and the individual meets all other criteria for re-activation which the Council has adopted in Regulation 8.2[.]

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2018 issue of the Register at page 452 (22 DE Reg. 452). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**801 Regulations of the Delaware Council on Police Training**

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1900 BOARD OF NURSING**

Statutory Authority: 24 Delaware Code, Section 1906(a)(1) (24 **Del.C.** §1906(a)(1))  
24 **DE Admin. Code** 1900

**ORDER**

**1900 Board of Nursing**

Pursuant to 29 **Del.C.** §10113(b)(4) and 24 **Del.C.** §1906(a)(1), the Delaware State Board of Nursing issues this Order adopting the below amendment to the Board's Rules. Specifically, pursuant to 29 **Del.C.** §10113(b)(4), Regulation 14 of the Board of Nursing must be changed to correct a technical error as it incorrectly sets forth the website for the enhanced nurse licensure compact rules.

**SUMMARY OF THE EVIDENCE**

1. Rule 14.0 now states: "14.0 The Board hereby incorporates by reference the enhanced Nurse Licensure compact rules and regulations found at [www.ncsbn.org/enlcrules](http://www.ncsbn.org/enlcrules)."

2. The Board makes the following change to its regulations (additions are underlined, removals are stricken through):

14.0 "14.0 The Board hereby incorporates by reference the enhanced Nurse Licensure compact rules and regulations found at [www.ncsbn.org/enlcrules](http://www.ncsbn.org/enlcrules) [www.ncsbn.org/nlcrules](http://www.ncsbn.org/nlcrules)."

The effective date of this Order will be ten days from the publication of this Order in the *Register of Regulations*.

**IT IS SO ORDERED** this 13<sup>th</sup> day of February, 2019 by the Delaware Board of Nursing.

Megan Williams, DNP, FNP-C, RN, President	Ron Castaldo, RN, APRN (absent)
Nancy Bastholm, RN	Precious Benson, Public Member
Krystal Little, RN (absent)	Carol Abdill, RN
Linda Darling, RN	William Hare, Public Member
Sherry Lambertson, Public Member (absent)	David Salati, RN
Kenyette Walters, LPN	Victoria Udealer, RN Member
George Brown, Public Member	Prameela Kaza, Public Member (absent)

**1900 Board of Nursing  
(Break in Continuity of Sections)**

**14.0 Nurse Licensure Compact Rules and Regulations**

The Board hereby incorporates by reference the enhanced Nurse Licensure Compact rules and regulations as adopted on January 1, 2019 and found at [www.ncsbn.org/enlcrules](http://www.ncsbn.org/enlcrules) [www.ncsbn.org/nlcrules](http://www.ncsbn.org/nlcrules).

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

**1900 Board of Nursing**

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**DEPARTMENT OF TRANSPORTATION  
DIVISION OF PLANNING AND POLICY**

Statutory Authority: 29 Delaware Code, Section 8404(8) (29 Del.C. §8404(8))  
2 DE Admin. Code 2306

**ORDER**

**2306 Crash Data Release**

Pursuant to the authority provided by 29 Del.C. §8408(8), the Delaware Department of Transportation ("DelDOT") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on January 1, 2019 (Vol. 22, Issue 7). Following notice and opportunity for public comment on the proposed change, DelDOT makes the following Findings and Conclusions:

**Summary of Evidence and Information Submitted**

1. DelDOT received written information pertaining to the proposed change, which included two questions or comments regarding clarification of the change. Neither inquiry requires any further revision.
2. The change to this regulation was proposed to eliminate the overlap of crash data release regulations between DelDOT and the Delaware Department of Safety and Homeland Security ("DSHS"), as DSHS is the owner of all crash data.

**Findings of Fact**

3. The public was given notice and the opportunity to provide comments in writing on the proposed amendments. The written comments received are described in paragraph 1.
4. DelDOT finds that the elimination of this regulation is in the best interest of the State of Delaware for the reasons described in paragraph 2.

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## Decision and Effective Date

Based on the provision of Delaware law and the record of this docket, DelDOT hereby rescinds the Crash Data Release regulation, as set forth in the version attached hereto, to be effective March 11, 2019.

It is so ordered on this 13<sup>th</sup> day of February 2019.

Jennifer Cohan, Secretary  
Delaware Department of Transportation

## 2306 Crash Data Release

### Authority

~~29 Del.C. §10002(g)(6) states that any records that are specifically exempted from public disclosure by statute or common law shall not be deemed public in accordance with the Freedom of Information Act.~~

~~21 Del.C. §313(b) of the Delaware Code, states that accident reports shall not be open to public inspection.~~

~~23 USC §409 states, "Notwithstanding any other provision of law, reports, surveys, schedules, lists or data compiled or collected for the purpose of identifying, evaluating or planning the safety enhancement of potential accident sites, hazardous roadway conditions or railway highway crossings, pursuant to sections 130, 144 and 148 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists or data."~~

~~29 Del.C. §8404(8) states, "The Secretary [of the Department of Transportation] shall have the following powers, duties and functions: to establish and to promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof;"~~

### 1.0 Purpose

~~This regulation describes the requirements and procedures to be followed by all DelDOT employees with respect to releasing, to any entity or personnel outside of DelDOT, crash data and/or information related to sites identified under the Highway Safety Improvement Program (HSIP). For purposes of this regulation, the HSIP includes the Hazard Elimination Program (HEP), High Risk Rural Roads Program (HRRRP), the Highway Rail Grade Crossing Safety Program (HRGX) and the Transparency Report~~

### 2.0 Definitions

~~**"Crash (Accident) Rates"**—A distribution of the numerical data of the number of crash occurrences per year.~~

~~**"Crash (Accident) Report"**—The State of Delaware Uniform Traffic Collision Report supplied by the Delaware Department of Safety and Homeland Security and the Delaware Criminal Justice Information System (DELJIS) via the E-Crash program, on which all reported crashes involving an impaired driver, apparent property damage to the extent of \$1,500 or more or personal injury or death to a person, when such crashes occur within that agency's jurisdiction.~~

~~**"Crash (Accident) Summaries"**—A summary of the numerical data classified by several crash criteria such as Manner of Impact, Surface Conditions, Lighting Conditions, Weather Conditions, Time of Day, Day of Week etc. that pertains to the crash events.~~

~~**"GIS (Geographical Information System) Crash Data"**—The geographic location of a crash as well as the attributes that are related to the crash. This data can be used to conduct analyses and produce maps of the crash data.~~

~~**"Highway Safety Improvement Program (HSIP)"**—The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established 23 USC §148 to create the~~

Highway Safety Improvement Program (HSIP) as a core Federal Highway Administration (FHWA) program. The overall purpose of the program is to achieve a significant reduction in traffic fatalities and incapacitating injuries through the implementation of infrastructure-related highway safety improvements on all state-maintained roadways. Components of Delaware's HSIP include the Strategic Highway Safety Plan (SHSP), the Hazard Elimination Program (HEP), the High Risk Rural Roads Program (HRRRP), the Highway Rail Grade Crossing Safety Program (HRGX), and the Transparency Report.

**"Requestor"**—Any person, employee, consultant, or other state agency, who requests crash data for analytical purposes.

**"State Agency"**—Any department of State Government that is recognized under the applicable sections of Delaware Code. This includes the Federal Highway Administration, Office of Highway Safety, Wilmington Area Planning Council and the Dover/Kent County Metropolitan Planning Organization for the purposes of this regulation.

### 3.0 Regulation

The Delaware Department of Safety and Homeland Security are the owners of all crash data received by DelDOT. Given the responsibilities of DelDOT, crash data is transferred from the Department of Safety and Homeland Security databases to DelDOT databases and the use of this data by DelDOT is solely for the purposes of reviewing crash data to make engineering decisions to improve safety on the roadways under the jurisdiction of the Department. Given the sensitive personal nature of this data, it is important that this data and all HSIP-related information be handled with the utmost responsibility and not released outside of the Department except for Department business purposes. DelDOT personnel must ensure that all released crash data, associated police reports, and HSIP-related information be used for official purposes only and shall not be transmitted, copied, distributed or provided to any other entity or personnel unless written approval is received from the Delaware Department of Transportation Traffic Safety Programs Section or the Statistics and Research Section in the Division of Planning.

The purpose of this regulation is to outline a list of personnel or entities that request such privileged information on a regular basis as well as define the level of disclosure or exemption that should be followed based on the requestor (see Table 1: Crash Data Release Guideline Matrix).

When data is approved to be released to any requestor outside of DelDOT, a concurrence letter shall be prepared by the DelDOT section that is releasing the data, and this letter shall be signed by the requestor and returned to DelDOT prior to the data being released. This concurrence letter shall be a binding agreement between DelDOT and the requestor and shall require the requestor to seek approval from DelDOT to release the data to a third party individual or agency. A copy of the concurrence letter shall be provided electronically to the Deputy Attorney General assigned to DelDOT, the DelDOT Safety Programs Manager in the Traffic Section and the Manager of the Statistics and Research Section in Planning. An example of a concurrence letter is provided at the end of this regulation.

### 4.0 Responsibility

The Division of Planning shall have primary responsibility for implementation of this regulation since they are the distributors of crash data.

### 5.0 Effective Date

This regulation shall become effective ten (10) days after it is published in its final adopted form in the Register of Regulations in accordance with 29 ~~Del.C.~~ §10118(e).

**Table 1: Crash Data Release Guideline Matrix**

Requester	Raw Crash Data (Number of Crashes Only)	Crash Rates	Crash Summaries	Crash Reports	GIS Crash Layers	HSIP Site Listing
Citizen	Yes	Yes	Yes	No	No	No
Legislator	Yes	Yes	Yes	No	No	Yes
DelDOT (internal operations)	Yes	Yes	Yes	Yes	Yes	Yes
DelDOT Consultant	Yes	Yes	Yes	Yes	Yes	Yes
Non-DelDOT Consultant <sup>1</sup>	Yes	Yes	Yes	Yes	No	No
Other State Agency	Yes	See Note 2	Yes	No	See Note 2	See Note 2
Media	Yes	No	Yes	No	No	No

**NOTES:**

1. Non-DelDOT Consultant must provide proof that the work they are doing involves state maintained roadways (i.e., developer's consultant)
2. This data may be released to FHWA, Office of Highway Safety, WILMAPCO or Dover/Kent County MPO. Release of data to other state agencies requires the approval of the Safety Programs Manager.

**Example Concurrence Letter**

September 7, 2014

Mr. John Smith  
 Sample Area Planning Council (SAPCO)  
 123 Main Avenue  
 Newark, Delaware 19711

Dear Mr. Smith:-

The Delaware Department of Transportation (DelDOT) has received your request for crash data. As you might be aware, the Delaware Department of Safety and Homeland Security are the sole owners of the crash data and DelDOT is strictly the end user of the data. Hence, any information contained within the requested crash data are privileged, confidential and/or exempt from disclosure under applicable law. As such, any crash data that will be provided is for SAPCO business use only and shall not be transmitted, copied, distributed or provided to any other entity unless written approval is received from the Delaware Department of Transportation.

DelDOT will release the requested crash data on the terms and conditions set forth herein. By your signature below, SAPCO acknowledges that this letter has been read and understood and agrees to terms and conditions stated in this letter.

The requested crash data will be released as soon as the letter is signed and sent back at your earliest convenience. Future requests for crash data should be sent to my office for review, and the request should be in the form of a letter and on SAPCO letterhead. Should you have any questions regarding this information, please contact me at (302) 659-4073 or by e-mail at Adam.Weiser@state.de.us.

Sincerely,  
 Donna Robinson

Statistics, Planning & Research  
Division of Planning

Ge: ~~Tyrone Crittenden, Planning Supervisor~~  
~~Frederick Schranck, Deputy Attorney General~~  
~~Adam Weiser, Safety Programs Manager~~

Concurrence Date

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

Statutory Authority: 16 Delaware Code, Sections 210-218 (16 Del.C. §§210-218)

### PUBLIC NOTICE

#### Birth to Three Early Intervention System

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 26 - March 27, 2019, and the application will be available until April 26, 2019.

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, Herman Holloway Campus, Main Building, 1<sup>st</sup> floor Annex, Room H105, 1901 N. DuPont Hwy, New Castle, DE 19720 or fax to 302-255-4407.

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

The State Board of Education will hold its monthly meeting on Thursday, March 21, 2019 at 5:00pm in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF HEALTH CARE QUALITY**  
**PUBLIC NOTICE**  
**3325 Financial Capability Reporting**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the Delaware Code, Section 7903(9), Delaware Health and Social Services (DHSS) / Division of Health Care Quality is proposing to amend Regulation 3325, Financial Capability Reporting, the Division's assessment of the financial capability of licensed providers revise the process for establishing capital availability for newly established facilities or facilities with a parent organization s well as to make some minor technical changes to other regulations.

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 Gabriela Kejner, Chief of Staff, Office of the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Monday, April 1, 2019. Tom Murray of the Division of Health Care Quality, 3 Mill Road, Wilmington, DE 19806, (302) 4217442 is the Division contact person.

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

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**  
**PRTFs – Provision of EPSDT Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Psychiatric Residential Treatment Facilities (PRTFs), specifically, *to ensure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary 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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on April 1, 2019. Please identify in the subject line: PRTFs – Provision of EPSDT Services.

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

**DIVISION OF PUBLIC HEALTH**  
**HEALTH PROMOTION AND DISEASE PREVENTION**  
**PUBLIC NOTICE**

**4202 Control of Communicable and Other Disease Conditions**

Pursuant to 16 **Del.C.** §122(3)a. and §707, Health Promotion and Disease Prevention (HPDP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On March 1, 2019, the Division of Public Health plans to publish as "proposed" revisions to the Control of Communicable and Other Disease Conditions regulations. The revisions include the addition of HIV nucleotide sequence test results reporting.

Copies of the proposed regulations are available for review in the March 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Friday, April 5, 2019, at:

Alanna Mozeik  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Alanna.Mozeik@state.de.us](mailto:Alanna.Mozeik@state.de.us)  
Phone: (302) 744-4951

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**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE**

**4471 Massage and Bodywork Facilities**

Pursuant to 24 **Del.C.** §§5306(b) and 5314(b), the Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing new regulations for facilities that offer massage and body work services. The regulations are in response to the revisions to 24 **Del.C.** §§5306(b) and 5314(b) which provide the Division of Public Health the authority to promulgate these regulations. On March 1, 2019, DPH plans to publish as proposed the new regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the March 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the DPH at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Monday, April 1, 2019, at:

Alanna Mozeik  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Alanna.Mozeik@state.de.us](mailto:Alanna.Mozeik@state.de.us)  
Phone: (302) 744-4951

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

**Food Supplement Program**

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) is proposing to amend the Division of Social Services Manual regarding the Food Supplement Program, specifically, *to define household income*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on April 1, 2019. Please identify in the subject line: Food Supplement Program.

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

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**DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****Purchase of Care - Determination of Homeless**

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) is proposing to amend the Division of Social Services Manual regarding Purchase of Care, specifically, *to define homeless*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on April 4, 2019. Please identify in the subject line: Purchase of Care – Determination of Homeless.

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

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**DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****Temporary Assistance for Needy Families (TANF) - CMR**

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) is proposing to amend the Division of Social Services Manual regarding Temporary Assistance for Needy Families (TANF), specifically, *to update the Contract of Mutual Responsibility (CMR)*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on April 4, 2019. Please identify in the subject line: Temporary Assistance for Needy Families (TANF) - CMR.

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 INSURANCE****OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****704 Homeowners Premium Consumer Comparison**

Chapter 18 of the Delaware Administrative Code at Regulation 704 requires insurers who have a prescribed market share to, annually, by April 15, submit certain data to the Department of Insurance (Department) concerning homeowners insurance rates so that the Department may use those data as the basis of its on-line rate comparison tool. The purpose of the on-line rate comparison tool was to allow consumers to easily compare homeowners insurance rates based on set factors such as homeowner profiles, home construction type and zip codes.

However, since the inception of the rate calculator in 2010, insurers have built their own calculators which can be precisely tailored to fit an exact consumer profile. Thus, the Department's calculator is obsolete and the regulation requiring the data call should be repealed.

The Department does not plan to hold a public hearing on the proposed repeal of Regulation 704. The regulation proposed for repeal appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed repeal of the regulation. Any written submission in response to this notice and relevant to the proposed repeal must be received by the Department of Insurance no later than 4:30 p.m. EST, the 1<sup>st</sup> day, April, 2019. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Regulation 704 Repeal  
841 Silver Lake Blvd.  
Dover, 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****904 Privacy of Consumer Financial and Health Information****1. Background on the Federal Gramm-Leach Bliley Act and subsequent FAST Act Amendments**

The Federal Gramm-Leach Bliley Act (GLBA) governs the treatment of nonpublic personal financial information. The GLBA was enacted in 1999 and governs the privacy practices of a broad range of financial institutions. State insurance departments are the functional regulators of all financial firms engaged in the business of insurance. See Proceedings of the NAIC, 1999 Proc. 4<sup>th</sup> Quarter I 33-34.

Title V, Subtitle A of the GLBA requires financial institutions to provide to each of their customers an annual notice regarding those institutions' privacy policies. If financial institutions share certain consumer information with particular types of third parties, the annual notices must also provide customers with an opportunity to opt out of having their information shared.

Federal Regulation P, which implements the GLBA, sets forth requirements for how financial institutions must deliver these annual privacy notices. In certain circumstances, Regulation P permits financial institutions to use an alternative delivery method to provide annual notices. This method requires, among other things, that the annual notice be posted on a financial institution's website. For more information on Regulation P see 81 FR 44801 (July 11, 2016) and 83 FR 40945 *et seq.* (August 17, 2018).

On December 4, 2015, Congress amended the GLBA as part of the Fixing America's Surface Transportation Act (FAST Act). This amendment, entitled "Eliminate Privacy Notice Confusion" (see P.L. 114-94, section 75001), added new GLBA section 503(f). This new section provides an exception under which financial institutions that

meet certain conditions are not required to provide annual privacy notices to customers. To qualify for this exception, a financial institution: 1) must not share nonpublic personal information about customers except as described in certain statutory exceptions; and 2) must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that the institution disclosed in the most recently distributed privacy notice. *Id.* The amendment was effective upon enactment. Regulation P was subsequently amended to implement the FAST Act amendments, effective on September 17, 2018.

## 2. NAIC Model Regulation 672 and subsequent amendments

In response to the GLBA, the National Association of Insurance Commissioners (NAIC) convened a Privacy Issues Working Group in 2000 to discuss how the NAIC and the State Departments of Insurance should proceed with respect to drafting a model privacy regulation. Proceedings of the NAIC, 2000 Proc. 1<sup>st</sup> Quarter 978. Note that NAIC Model Regulations are for the use of State Departments of Insurance in their state regulatory initiatives.

The resulting Model Regulation 672, Privacy of Consumer Financial and Health Information Regulation, was adopted by the NAIC at its third quarterly meeting in 2000. See Proceedings of the NAIC, 2000 Proc. 3<sup>rd</sup> Quarter 7, 10. The Model Regulation includes an Appendix A, which contains a series of sample clauses for use by licensees in their privacy notices.

After the Federal FAST Act Amendments were enacted in 2015, the NAIC once again responded by convening the Privacy Disclosures (D) Working Group. The group was charged with 1) determining if Model Regulation 672 should be amended to make it more consistent with Federal Regulation P's alternative electronic delivery option; and 2) reviewing the sample privacy notices set forth in Model 672 Appendix A for consistency with the Federal privacy model notice forms, and whether the Federal Model Privacy Notice should be added as an Appendix B and be used as a safe harbor of compliance with the privacy modification requirements of the GLBA. Proceedings of the NAIC, 2017 Proc. 1<sup>st</sup> Quarter 41.

At its Fall 2016 Meeting, the NAIC determined to adopt the following revisions to Model Regulation 672 (see *id.* at 42):

- Eliminate the requirement for financial institutions to provide annual privacy notices if certain conditions are met;
- Sunset the safe harbor of compliance with the privacy notice content requirements for the existing sample privacy notice clauses in Appendix A by July 1, 2019; and
- Create a new safe harbor of compliance with the privacy notice content requirement by replacing the existing sample privacy notice clauses with the federal model privacy form, to be codified in Appendix B.

## 3. The purpose of this proposal

The primary purpose of this proposal is to incorporate the NAIC revisions adopted at the NAIC 2016 fall meeting. Specifically:

- At proposed new subsections 1.5.2 and 1.5.3, the Department proposes to replace the sample privacy notices currently codified in Regulation 904 Appendix A, which provide a safe harbor of compliance with the privacy notice content requirements, with the Federal Model Privacy Form codified at 16 C.F.R. Pt. 313, App. A. The Federal Model Privacy Form was issued by Federal regulatory agencies for use by financial institutions, such as banks and security investment companies, as a safe harbor of compliance with the privacy notification requirements of the GLBA. As part of this proposed amendment, the Department proposes to add Appendix B, which incorporates the Federal sample forms and instructions, as codified at 16 C.F.R. Pt. 313, App. A. (adopted at 74 FR 63966 (Dec. 1, 2009)), by reference, as may, from time to time, be amended.
- At proposed new subsection 2.2.1.2, the Department proposes to eliminate the requirement for financial institutions to provide annual privacy notices if certain conditions are met. The Department has already publicized this exception in Domestic and Foreign Insurers Bulletin No. 97. A related amendment appears at subsection 2.6.

An additional purpose of this proposal is to correct codification style errors and erroneous cross references in Regulation 904. Regulation 904 was originally codified as Regulation 84 when it was first adopted in 2001 (see 4 **DE Reg.** 1752 (May 1, 2001) for the proposal and 5 **DE Reg.** 1752 (July 1, 2001) for the adoption). When the State of Delaware switched to a new regulatory codification system, Regulation 84 was recodified as Regulation 904 (18 **DE Admin. Code** 904), with new tabulation enumeration that purported to comply with the new codification system requirements. Even so, the regulation in its current form contains codification style errors and erroneous internal

cross references that the Department is updating as a part of this proposal. Two items are of particular note. First, the Department is recodifying examples of defined terms from the definition of a particular term to separate, cross-referenced subsections within Section 1. Second, the Department is recodifying subsections 1.4.1.14.1 through 4 to applicability subsections 1.3.2 through 6, respectively.

The bulk of the codification style errors are in Section 1 of the regulation.

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 904. The regulation with proposed amendments appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 1<sup>st</sup> day, April, 2019. Any such requests should be directed to:

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

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**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE**

**1321 Compensation for Physical Therapy Services**

The Department of Insurance hereby gives notice of proposed new Regulation 1321 relating to Compensation for Physical Therapy Services. The proposed new regulation would prohibit insurance carriers from including in any insurance policy terms and conditions that unreasonably discriminate against the payment for physical therapy care or services, prohibits numerical limits on physical therapy visits for the treatment of back pain, and puts in place a mechanism by which the Department of Insurance may enforce these prohibitions.

The Delaware Code authority for the new regulation is 18 **Del.C.** §311 and the amendments to 24 **Del.C.** Ch. 26, which added new section 2621 entitled “Physical therapists eligible for compensation from insurance.” See Del. S.B. 225/S.A. 1/S.A.2, 149<sup>th</sup> Gen. Assem. §2621 (2018), with an effective date of March 9, 2019.

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

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 1<sup>st</sup> day of April, 2019. Any such requests should be directed to:

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

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**3900 BOARD OF CLINICAL SOCIAL WORK EXAMINERS**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3906(a)(1), the Board of Clinical Social Work Examiners (“the Board”) has proposed extensive revisions to the rules and regulations to implement amendments to the Board’s licensing law, Chapter 39 of Title 24 of the Delaware Code, which will go into effect on June 11, 2019. Specifically, the proposed amendments implement multi-tier licensure, including the requirements for licensure by grandfathering and for continuing education. Requirements are added for licensees providing supervision and the requirements for licensure as a clinical social worker are clarified in the interests of professional competence.

A public hearing will be held on March 25, 2019 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Board of Clinical Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Alison Warren, Administrator for the Board, at the above address or at [alison.warren@delaware.gov](mailto:alison.warren@delaware.gov). Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be **April 9, 2019**. The Board will deliberate on the proposed revisions at its next regularly scheduled meeting.

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