
Delaware Register of Regulations

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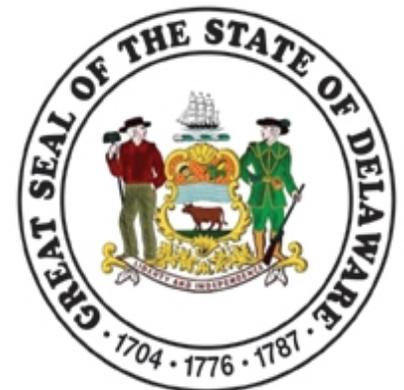


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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before April 15, 2013.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
June 1	May 15	4:30 p.m.
July 1	June 17	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 16	4:30 p.m.

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.

DEPARTMENT OF AGRICULTURE**HARNESS RACING COMMISSION****Delaware Standardbred Breeders' Fund**

Statutory Authority: 29 Delaware Code, Section 4815(b)(3)b.2.D (29 **Del.C.** §4815(b)(3)b.2.D)
3 DE Admin. Code 502

PUBLIC NOTICE**502 Delaware Standardbred Breeders' Fund Regulations**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulation under 1.2 expands eligibility to participate in Fund-sponsored races to foals of Delaware sires regardless of the out of state residence of the owner/ lessee of the foal and reduces paperwork. Under Proposed Regulation 2.0 Definitions, the terms "Delaware sire" and "stand" are more clearly articulated and the penalty for racing out of state before the end of Delaware's breeding season has been moved to Regulation 10.2. Proposed Regulation 10.0 Responsibilities of Owners or Lessees of Standardbred Stallions, changes the heading to conform with the new terminology of proposed Regulations 1.2 and 2.0 while proposed amended Regulation 10.2 elaborates the responsibilities of owners and lessees of Delaware sires and provides a one-year disqualification for violating the out-of-state racing limitation.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by June 1, 2013.

502 Delaware Standardbred Breeders' Fund Regulations

1.0 Introduction

- 1.1 These regulations are authorized pursuant to 29 Del.C. §4815(b)(3)b.2.D, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") for:
 - 1.1.1 Standardbred horses;
 - 1.1.2 that are bred in a manner prescribed in Section 2.0;
 - 1.1.3 that are the product of a registered Delaware stallion;
 - 1.1.4 that are registered, and whose sire is registered with the Administrator of the Program; and,
 - 1.1.5 listed in their registry books.
- 1.2 ~~These horses eligible to race under said in Delaware Standardbred Breeder's Fund Program races shall be any include the foal of any registered Delaware stallion sire standing at a Delaware breeding farm, and either owned by a resident of the State of Delaware or owned by a non-resident who holds a lease for a period of the breeding season and will~~ A registered Delaware sire is one that stands the stallion for that full season on a Delaware breeding farm located in Delaware. If a registered Delaware sire is leased, a copy of any such lease shall be filed with the United States Trotting Association, and the Administrator of the Delaware Standardbred Breeders' Fund Program, and the Delaware Harness Racing Commission.
- 1.3 The Board of the Delaware Standardbred Breeder's Program (herein "the Board") is authorized to do all that is reasonable and necessary for the proper administration of the Program and shall prepare, issue and promulgate rules and regulations providing for:
 - 1.3.1 Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;
 - 1.3.2 Nominating, sustaining and entry fees on horses and races;
 - 1.3.3 Such temporary programs including eligibility of horses, breeding, and other matters as may be necessary to make the Program operable as soon as possible;
 - 1.3.4 Registration and certification of Delaware stallions, mares bred to such stallions and foals produced thereby; and,
 - 1.3.5 Such other matters as the board determines to be necessary and appropriate for the proper administration and implementation of the Program.
- 1.4 The funds for the Program and any nominating, sustaining and entry fees provided for herein shall be administered by the Delaware Department of Agriculture by deposit in a trust account entitled Delaware Standardbred Breeders' Fund. The Board of the Delaware Standardbred Breeder's Program shall approve an annual budget including the payment of purses and awards, cost of administration, reimbursement of expenses of members of the Board, promotional expenses, and any other appropriate expenses. The budget shall be administered by the Secretary of Agriculture or his designee in consultation with the Board and in a manner consistent with state laws and procedures. A report shall be prepared and filed annually by the Secretary of Agriculture with the Delaware Harness Racing Commission and the Board of the Breeder's Program Fund setting forth an itemization of all deposits to and expenditures from said fund.
- 1.5 Races in the Program shall be contested at each licensed harness track in the State of Delaware. Purses and awards for program races, shall be in compliance with the rules and regulations of the Board and the Delaware Harness Racing Commission.
- 1.6 The Board can propose to amend these regulations by the affirmative vote of eight of its eleven members. Changes to the rules of eligibility for the Program will be effective at the beginning of the next breeding season and the corresponding racing season.

2.0 Definitions

The following words and terms, when used in this part for purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise.

PROPOSED REGULATIONS

Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder's Fund Program.

"Bred" means any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desiccated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a Delaware sire through interstate semen transportation when such semen is not frozen or desiccated in any way or at any time, provided that owners of mares that produce foals from Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for bonuses paid to owners of mares under the Delaware Standardbred Breeder's Program set forth in Section 4 herein. This qualification shall also apply to the same mare owner (s) and official owner (s) or legal entities of record, of four (4) year olds beginning in 2012.

"Breeder" means the owner of the dam at the time of breeding.

"Breeding Season" is the season during which reproduction occurs and which runs from February 1st to August 1st of the calendar year.

"Delaware-bred Horse" means a Standardbred by a Delaware sire and registered with the Administrator by May 15th of the yearling year.

"Delaware Resident" means a person as defined in 3 Del.C. §10032.

"Delaware Sire" means a Standardbred stallion that regularly stands for a breeding season in Delaware and is registered with the Administrator of the Delaware Standardbred Breeder's Fund Program. A Delaware sire may be: a) owned by a resident of the State of Delaware and if it standings for the entire breeding season in the State of Delaware; or b) owned or leased by a resident of a state other than Delaware, but if it standings for the entire breeding season in the State of Delaware, verified by a copy of the lease filed with the Administrator of the Program at the time of registration for the Program, as provided in section 1.1 above; or c) owned jointly by a resident (or residents) and a non-resident (or non residents) of Delaware and standing the entire breeding season in Delaware with the same lease requirements as in b) above. ~~A Delaware Sire may compete for purses within the State of Delaware at any time. However, a Delaware sire may compete for purses outside the State of Delaware, or enter claiming races within or without the State of Delaware, only after the breeding season in Delaware ends. A violation of this regulation will disqualify the Standardbred stallion from being registered with the Breeders' Program for the breeding season of the year following the violation.~~

"Owner" means any person(s) or legal entity listed on the horse's registration papers as the official owner at the time of the race.

"Private Treaty" No stallion participating in the Program may be offered for service under private treaty. Each stallion registered in the Program must make public the breeding fee.

"Registrant" is a horse owner, the horse owner's agent of record or trainer of record, or the lessee of a horse.

"Satisfactory Performance Line" means the path of the Standardbred on the racetrack as charted by the licensed charter at Dover Downs and/ or Harrington Raceway during which the horse does not break stride for any reason.

"Stand" means that a Delaware sire is available for reproductive services.

(Break in Continuity of Sections)

10.0 Responsibilities of Owners or Lessees of ~~Standardbred Stallions~~ Delaware Sires

- 10.1 An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by December 1st of the approaching breeding season with the Administrator of the Program or by January 1st of the approaching breeding season with an additional supplemental fee equal to the standard registration fee. Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the State of Delaware for the remainder of the breeding season. If a stallion is contracted to stand at stud in the southern hemisphere, a copy of said contract must be provided to the Administrator of the Program at the time of application for registration in the Program or, in the event

the contract is entered into at a subsequent date, within ten days of entering into the contract. A virgin standardbred stallion entering stud for the first time shall be registered prior to his first breeding and shall stand in the State of Delaware the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere. A stallion shall be registered on an application established by the Administrator of the Program.

- 10.2 ~~An~~ The owner or lessee of a stallion Delaware sire that is eligible to register for the Delaware Standardbred Breeders' Fund Program shall designate a resident of Delaware as the an authorized agent who shall be responsible for the registrations and records of the stallion Delaware sire; and for the records of the breeding farm; and complying with the requirements of the Delaware Standardbred Breeders' Fund Program. The "Authorized Agent" information name, current phone number and mailing address shall be incorporated into the stallion Delaware sire's registration form and be filed as such with the Administrator of the Delaware Standardbred Breeders' Fund Program. A Delaware sire may compete for purses within the State of Delaware at any time. However, a Delaware sire may compete for purses outside the State of Delaware, or enter claiming races inside or outside the State of Delaware, only after the breeding season in the State of Delaware ends. A violation of this regulation will disqualify the Delaware sire from registering for racing in the Delaware Standardbred Breeders' Fund Program for the racing season of the year following the violation.
- 10.3 No stallion participating in the Delaware Standardbred Breeder's Program may be offered under private treaty. Each stallion registered in the Delaware Standardbred Breeder's Program must make public the maximum possible breeding fee.

(Break in Continuity of Sections)

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

502 Delaware Standardbred Breeders' Fund Regulations

**DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1502

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

1502 Professional Growth Salary Increments

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1502 Professional Growth Salary Increments. The regulation concerns the requirements for educators to attain salary increments, pursuant to 14 **Del.C.** §1305(p). It is necessary to amend this regulation in order to insure equity in the issuance of salary increments for the successful completion of a Master's Specialist Certificate.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, June 3, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address addresses student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that educators are being compensated fairly.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator compensation, not students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator compensation, not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers 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 will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will 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 rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.
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? Yes.
9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There would be an overall minor cost to the State and to local school boards for compliance with the regulation.

1502 Professional Growth Salary Increments

(Effective 7/1/04)

1.0 Content

This regulation shall apply to professional growth salary increments for educators, pursuant to 14 **Del.C.** §1305 (a).

2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
 - "**Critical Needs Areas**" means content, specialty, or administrative areas identified by the Department as areas of shortage in Delaware schools.
 - "**Department**" means the Delaware Department of Education.
 - "**Graduate Level Course**" means any course which is awarded graduate level credit by a regionally accredited college or university.
 - "**Graduate Level Course of Study**" means a non matriculated but focused and coherent program of study (e.g., a eCertificate pProgram) which is directly linked to professional responsibilities.
 - "**Matriculated Graduate Credit**" means credit earned from a regionally accredited college or university earned toward a master's degree or a doctorate degree.

"**Skilled and Technical Sciences (STS)**" is also known as Trade and Industrial Education, Career and Technical Education, Career Technical Education or Career-Technical Education.

"**Specialist Degree Program**" means an organized program of study that is beyond a master's degree but below the doctorate consisting of a minimum of sixty (60) graduate semester hours [ninety (90) quarter hours] and a one (1) year supervised internship, or an equivalent program as determined by the Department. Examples of programs include a National Association of School Psychologists (NASP) approved program or an American Psychological Association (APA) accredited program including but not limited to the following: Master's of Education (MEd) with an Educational Specialist (EdS) in School Psychology or a Master's of Science in School Psychology with a Advanced Certificate or Certificate of Advanced Study (CAS) in School Psychology. A master's degree in school psychology may be recognized as a specialist degree program if it meets the additional credit and internship requirements and any graduate credits earned in the program and conferral of the master's degree beyond thirty (30) may be counted beyond the master's degree level.

"**Trades and Industry Teacher**" means a Skilled and Technical Sciences Teacher, Trade and Industrial Education Teacher or Teacher of Trade and Industries.

"**Two Years of College or Technical Training**" means a minimum of a high school diploma or its recognized equivalent and the satisfactory completion of any one of the following options in the specific career area of certification (1) an Associate's degree with a major in the specific career area; (2) two years of college majoring in the specific career area with at least 50% of the major courses required for a bachelor's degree satisfactorily completed; (3) a state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers) in the specific career area; (4) completion of four years of sequential Delaware Trade Extension courses in the specific career area; (5) completion of four years of National Center for Construction Education and Research's Contren documented training in the specific career area; (6) a 70% or above score on both the written and performance elements of a Delaware Apprentice-related Education Provider's National Center for Construction Education and Research's Contren-derived full Apprentice Equivalency test-out covering all Apprentice-related Education years in the specific career area; (7) passage of a State of Delaware Licensing Test in the specific career area, offered through the Division of Professional Regulation; (8) 576 hours of military training in the specific career area; (9) 576 hours post-secondary trade school training in the specific career area; (10) a 70% or above score on both the written and performance teacher tests for the National Occupational Competency Testing Institute in the specific career area; (11) an industry recognized certification of technical competence or journey person status in the specific career area, or (12) DOE approved equivalents of any one of the above including but not limited to equivalents from any combination of the above options.

3.0 Matriculation into Master's Degree

- 3.1 Educators who hold a bachelor's degree and who are enrolled in a master's degree program at a regionally accredited college or university may accrue graduate level credits toward salary increments on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a).
- 3.2 No credits earned prior to the conferring of a bachelor's degree may be applied toward movement on the salary schedule.
- 3.3 Credits shall be applied in the order in which they were taken and no credit may be applied more than once toward movement on the salary schedule.
 - 3.3.1 Educators enrolled in a master's degree program at an regionally accredited college or university may apply for movement to the ~~h~~Bachelor's ~~p~~Plus 15 column of the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), upon completion of fifteen (15) graduate credits toward a master's degree.
 - 3.3.2 Educators enrolled in a master's degree program at an regionally accredited college or university may apply for movement to the ~~h~~Bachelor's ~~p~~Plus 30 column of the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), upon completion of thirty (30) graduate credits toward a master's degree.

- 3.3.3 Upon completion of a master's degree program at an regionally accredited college or university, an educator may apply for movement to the master's degree column of the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a).

4.0 Post Master's Degree Course Work

- 4.1 Educators who hold a master's degree from a regionally accredited college or university may accrue credits ~~beyond~~ after the conferral of the master's degree toward salary increments toward a ~~Master's Degree~~ Plus 15 graduate credits, a Master's Degree Plus 30 graduate credits, a Master's Degree Plus 45 graduate credits, or a doctorate degree on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a). All credits taken must be graduate level and must be:
- 4.1.1 Earned through a graduate level course of study clearly related to the educator's professional responsibilities and otherwise approved pursuant to 14 **Del.C.** Ch. 12, or
- 4.1.2 Earned toward a second master's degree, or
- 4.1.3 Matriculated graduate credits earned toward a doctorate degree.
- 4.2 Notwithstanding 4.1, graduate credits earned prior to the conferral of a master's degree may be applied toward movement on the salary schedule if the graduate credits are part of a Specialist Degree Program as long as the credits were earned after matriculating into the program.

5.0 Use of Undergraduate and Inservice Credits

- 5.1 Educators entitled to rightward movement on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), on the basis of inservice or undergraduate credits approved prior to July 1, 2004, shall continue to be entitled to such movement in the event of any future application for movement submitted after July 1, 2004.
- 5.1.1 For example, an educator who holds a ~~Bachelor's~~ Plus 15 or a ~~Bachelor's~~ Plus 30 approved prior to July 1, 2004 and based entirely on inservice or undergraduate credits, shall be entitled to move to a ~~Master's Degree~~ Plus 15 or ~~Master's Degree~~ Plus 30, whichever is applicable, upon completion of a master's degree program.
- 5.1.2 In order to use undergraduate credits toward a salary increment on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), the credits must be completed by, and the application for salary increment submitted to, and approved by, the ~~Office of Professional Accountability Department~~ by June 30, 2004. Undergraduate credits will not be accepted for Plus 15, 30 or 45 salary increments after June 30, 2004.
- 5.1.3 In order to use inservice credits toward a salary increment on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), the credits must be completed by, and the application for salary increment submitted to, and approved by, the ~~Office of Professional Accountability Department~~ by June 30, 2004. Inservice credits will not be accepted for Plus 15, 30 or 45 salary increments after June 30, 2004.

6.0 Credits Expressed as Semester Hours

- 6.1 All credits must be expressed in terms of semester hours.
- 6.2 College or university credits expressed in quarter hours will be converted by the Department to semester hours by multiplying the number of quarter hours by two thirds.

7.0 Acceptable Grades

All grades for graduate level credit submitted for a professional growth salary increments must be a grade of "B" or better or satisfy the granting institution's standard for graduate level work. In the case of credits earned on a pass fail basis, a grade of "pass" is acceptable.

8.0 Skilled and Technical Sciences Teachers

- 8.1 A bachelor's degree equivalent for Skilled and Technical Sciences teachers (formerly Trade and Industrial Education) shall be two years of college or technical training and six years of work experience (14 **Del.C.** §1301).
- 8.2 Undergraduate credit in a matriculated bachelor's degree may be accepted in lieu of graduate credit for Skilled and Technical Sciences teachers who do not hold a bachelor's degree.
- 8.3 Initial placement on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305, for Skilled and Technical Sciences teachers who have completed two years of college or technical training and six years of work experience, is at the bachelor's degree level.
- 8.4 In order to be eligible for movement on the basic salary schedule, Skilled and Technical Sciences teachers must possess a Standard Certificate in Skilled and Technical Sciences.
- 8.45 Movement beyond the bachelor's degree level on the basic salary schedule for Skilled and Technical Sciences teachers shall apply as follows:
- 8.45.1 Seventy-five (75) credits toward a bachelor's degree is equivalent to a ~~b~~Bachelor's ~~d~~Degree ~~p~~Plus 15 credits.
- 8.45.2 Ninety (90) credits toward a bachelor's degree is equivalent to a ~~b~~Bachelor's ~~d~~Degree ~~p~~Plus 30 credits.
- 8.45.3 A bachelor's degree is equivalent to a master's degree on the basic salary schedule.
- 8.45.4 A master's degree is equivalent to a ~~m~~Master's ~~d~~Degree ~~p~~Plus 15 credits on the basic salary schedule.
- 8.45.5 A master's degree plus 15 credits is equivalent to a ~~m~~Master's ~~d~~Degree ~~p~~Plus 30 credits on the basic salary schedule.
- 8.45.6 A ~~m~~Master's ~~d~~Degree ~~p~~Plus 30 credits is equivalent to a ~~m~~Master's ~~d~~Degree ~~p~~Plus 45 credits on the basic salary schedule.
- 8.45.7 A ~~m~~Master's ~~d~~Degree ~~p~~Plus 45 credits is equivalent to a doctorate degree on the basic salary schedule.

9.0 Alternate Routes to Certification Program

Graduate credits which are included in the approved Alternative Routes to Certification program, as defined in 14 **Del.C.**, Ch. 12, subchapter VI, are recognized as a graduate level course of study and may be applied by educators who hold master's degrees and who are enrolled in the approved Alternative Routes program toward a ~~m~~Master's ~~d~~Degree ~~p~~Plus 15 credits, a ~~m~~Master's ~~d~~Degree ~~p~~Plus 30 credits, a ~~m~~Master's ~~d~~Degree ~~p~~Plus 45 credits or a doctorate degree on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a).

10.0 Eligibility for Professional Growth Salary Increments

- 10.1 An applicant for a professional growth salary increment must hold a ~~Limited Standard~~, Standard or Professional Status Certificate issued pursuant to General Regulations for Certification of Professional Public School Personnel and the specific regulations as adopted for certification effective July 1, 1993 ~~through August 31, 2003~~, or an Initial, Continuing, or Advanced License issued by the Department in accordance with 14 **Del.C.**, Ch. 12, Subchapter III.
- 10.2 An educator employed on an Emergency Certificate pursuant to 14 **Del.C.** §1506 is eligible to receive a salary increment.

11.0 Acceptable Professional Degrees

- 11.1 In order to be applicable to professional growth salary increments, master's and doctorate degrees must be directly related to an area or specialty in which the educator is employed, which has been identified as a critical needs area in K to 12 education, or which the district or charter school, if applicable, in which the educator is employed has requested the educator to pursue.

PROPOSED REGULATIONS

- 11.2 Any such request from a district or charter school, if applicable, must be in writing and must be submitted with the completed application for a salary increment.

12.0 Application Procedures

- 12.1 Upon completion of the credits required for movement on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305(a), an applicant may apply for a salary increment. No applications will be considered prior to the completion of credits necessary for movement on the salary schedule.
- 12.1.1 An applicant shall secure the proper form from the local school district or charter school office, complete the form, and return it to the school district office for transmittal to the ~~Office of Professional Accountability~~ Department.
- 12.1.2 The applicant shall arrange for official transcripts to be submitted by the college or university directly to the ~~Office of Professional Accountability~~ Department or delivered by the applicant in an unopened, unaltered envelope.
- 12.1.3 An application for a salary increment for the current fiscal year (July 1 to June 30) must be received in the ~~Office of Professional Accountability~~ Department no later than June 1. This date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. Applications received after June 1 will be approved effective the first day of the next fiscal year.

13.0 Effective Date of Salary Adjustment

- 13.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the ~~Office of Professional Accountability~~ Department.
- 13.1.1 The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript or official grade slip as to when the program or credit was completed.
- 13.1.2 This date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment.
- 13.1.3 Applications received after June 1 will be approved effective the first day of the next fiscal year.
- 13.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.
- 13.3 No salary increment shall be retroactive to a prior fiscal year.

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4805 (29 **Del.C.** §4805)
10 **DE Admin. Code** 203

PUBLIC NOTICE

203 Video Lottery and Table Game Regulations

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

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

The proposed amendments are to Rule 4.3, Rule 4.6.1, Rule 4.6.2 and Rule 20.2 in 10 **DE Admin. Code** 203.

The first amendment is to Rule 4.3 and would change the amount of business that must be transacted before a non-gaming vendor must file a vendor registration form (VRF) from \$10,000 to \$50,000 per year.

The second proposed amendment is to Rule 4.6.1 and would provide that a non-gaming vendor shall be deemed to be transacting regular and continuing business if the total dollar amount of transactions with a single video lottery agent is at least \$750,000 in any twelve-(12) month period, rather than \$400,000.

The third amendment is to Rule 4.6.2 and would provide that a non-gaming vendor shall be deemed to be transacting regular and continuing business if the total dollar amount of transactions with all video lottery agents is at least \$1,500,000 in any twelve-(12) month period, rather than \$750,000.

The fourth amendment is to Rule 20.2 and would provide that the table game drop may be performed by at least two persons, one of whom shall be a table games supervisor, rather than a shift supervisor.

Persons wishing to present their views regarding this matter may do so by submitting written comments by the close of business on or before May 31, 2013 at the offices of the Delaware State Lottery at 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Delaware State Lottery office at the same address.

C. Summary of Proposal

The amendment to Rule 4.3 would change the current rule to increase the amount of business that must be conducted by a non-gaming vendor before it must file a vendor registration form (VRF) from \$10,000 to \$50,000.

The amendment to Rule 4.6.1 would change the current rule to increase the amount of total dollar transactions a non-gaming vendor must have with a single video lottery agent from at least \$400,000 to at least \$750,000 in order to be deemed to be transacting regular and continuing business.

The amendment to Rule 4.6.2 would change the current rule to increase the amount of total dollar transactions a non-gaming vendor must have with all video lottery agents from at least \$750,000 to at least \$1,500,000 in order to be deemed to be transacting regular and continuing business.

The amendment to Rule 20.2 would change the current rule to allow the table game drop to be conducted by at least two persons, one of whom must be a representative of the security department and one of whom must be a table games supervisor, rather than the old rule's requirement that a table games shift supervisor must participate in the table game drop.

203 Video Lottery and Table Game Regulations

(Break in Continuity of Sections)

4.0 Licensing of Service Companies; Gaming and Non-Gaming Vendors Gaming Vendors

(Break in Continuity Within Section)

Non-Gaming Vendors and Service Companies Providing Gaming Excursion Services

4.3 A non-gaming vendor and service company providing gaming excursion services may transact business upon the filing of a vendor registration form (VRF) in accordance with this section. A VRF shall only be required for a non-gaming vendor who transacts business in excess of ~~40,000~~ \$50,000 per year.

(Break in Continuity Within Section)

4.6 A non-gaming vendor shall be deemed to be transacting regular and continuing business if:

4.6.1 The total dollar amount of transactions with a single video lottery agent is or will be equal to or greater than ~~\$400,000~~ \$750,000 within any twelve- (12) month period; or

4.6.2 The total dollar amount of such transactions with all video lottery agents is or will be equal to or greater than ~~\$750,000~~ \$1,500,000 within any twelve- (12) month period.

(Break in Continuity of Sections)

20.0 Drop Box Characteristics and Transportation to and from Table Games

- 20.1 Each agent shall place on file with the agency a schedule setting forth the specific times at which the drop boxes will be brought to or removed from the table games. Any changes to the schedule must first be approved by the agency. No drop box shall be brought to or removed from any table game at other than the time specified in such schedule except with the approval of a representative of the agency. Such approval shall be documented in a manner approved by the agency.
- 20.2 The table game drop shall be performed by a minimum of two (2) persons, one of which shall be a representative of the security department and the other a table games shift supervisor.

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

203 Video Lottery and Table Game Regulations

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

Statutory Authority: 16 Delaware Code, Section 1101 (16 Del.C. §1101)

PUBLIC NOTICE

3102 Long Term Care Transfer, Discharge and Readmission Procedures

The Division of Long Term Care Residents Protection (DLTCRP) is proposing a complete revision of Regulation 3102, Long Term Care Discharge and Impartial Hearing 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 Mary Peterson, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 by Monday June 3, 2013.

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

SUMMARY OF PROPOSED CHANGES

Background

DLTCRP has a statutory obligation to implement regulations governing impartial hearings on discharge matters, 16 Del.C. Subchapter II, (18).

Summary of Proposal

This regulatory proposal revises the current regulations on the governance of impartial hearings on contested discharges from long term care facilities.

Statutory Authority

16 Del.C. §1124, "Staff training; issuance of regulations."

29 Del.C. §7971(d)(1), "Division of Long Term Care Residents Protection."

3102 Long Term Care Transfer, Discharge and Readmission Procedures

4.0 Purpose

This regulation applies to decisions by licensed facilities to transfer or discharge a resident. It prescribes the process for providing an impartial hearing to a resident.

This regulation does not extend to decisions of DHSS, or any of its Divisions, to deny, suspend, delay, reduce, or terminate benefits. The regulation governing appeals related to benefit eligibility are found at 16 ~~DE Admin. Code~~ §5000. Be aware that the appeal requirements are different from the requirements in this regulation.

2.0 Definitions

"DHSS" means the Department of Health and Social Services

"Division" means the Division of Long Term Care Residents Protection.

"Legal representative" or "representative" includes a resident's: guardian; agent pursuant to a power of attorney, advanced health care directive, or similar document; or authorized representative pursuant to Title 16 ~~Del.C.~~ §§1121(34) and 1122.

"Party" means the resident or resident's representative and the facility.

"Resident" means resident or patient.

"Transfer and discharge" is defined separately in Section 3.0 and 4.0.

3.0 ~~Transfer, discharge and readmission rights of residents in a certified skilled nursing facility or a certified nursing facility as defined in 42 CFR §483.5 or an Intermediate Care facility (ICF/MR) as defined in 42 CFR §440.150.~~

3.1 ~~Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—~~

3.1.1 ~~The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility. If the resident appeals a notice of discharge based on this section, the facility will not be cited during the pendency of the appeal for housing a resident whose needs exceed the permitted level of care in that facility.~~

3.1.2 ~~The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;~~

3.1.3 ~~The safety of individuals in the facility is endangered;~~

3.1.4 ~~The health of individuals in the facility would otherwise be endangered;~~

3.1.5 ~~The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or~~

3.1.6 ~~The facility ceases to operate.~~

3.2 ~~Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs 3.1.1 through 3.1.5 of this section, the resident's clinical record must be documented. The documentation must be made by;~~

3.2.1 ~~The resident's physician when transfer or discharge is necessary under paragraph 3.1.1 or paragraph 3.1.2 of this section; and~~

3.2.2 ~~A physician when transfer or discharge is necessary under paragraph 3.1.4 of this section.~~

3.3 ~~Notice before transfer. Before a facility transfers or discharges a resident, the facility must—~~

3.3.1 ~~Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.~~

3.3.2 ~~Provide a copy of the notice to the Division; the State LTC ombudsman; the resident's Delaware Medicaid managed care organization (MCO), if any; any DHSS agency involved in the resident's placement in the facility, including APS; and the protection and advocacy agency as defined in Title 16 ~~Del.C.~~ §1102 if the resident is an individual with a developmental disability or mental illness.~~

3.3.3 ~~Record the reasons in the resident's clinical record; and~~

PROPOSED REGULATIONS

- 3.3.4 Include in the notice the items described in paragraph 3.5 of this section.
- 3.4 Timing of the notice.
- 3.4.1 Except as specified in paragraphs 3.4.2 and 3.8 of this section, the notice of transfer or discharge required under paragraph 3.3 of this section must be made by the facility at least 30 days before the resident is transferred or discharged.
- 3.4.2 Notice may be made as soon as practicable before transfer or discharge when:
- 3.4.2.1 The safety of individuals in the facility would be endangered under paragraph 3.1.3 of this section;
- 3.4.2.2 The health of individuals in the facility would be endangered, under paragraph 3.1.4 of this section;
- 3.4.2.3 The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph 3.1.2 of this section;
- 3.4.2.4 An immediate transfer or discharge is required by the resident's urgent medical needs under paragraph 3.1.1 of this section.
- 3.5 Contents of the notice. The written notice specified in paragraph 3.3 of this section must include the following:
- 3.5.1 A detailed individualized explanation of the reason(s) for the action being taken which includes, in terms understandable to the resident:
- 3.5.1.1 A statement of what action the agency intends to take;
- 3.5.1.2 The reasons for the intended action, including any information needed for the resident to determine from the notice alone the accuracy of the facility's intended action. When the reason is non-payment, an itemized statement of the resident's account for the preceding 12 months.
- 3.5.1.3 The specific policy or regulation supporting such action.
- 3.5.2 The effective date of transfer or discharge;
- 3.5.3 The location to which the resident will be transferred or discharged;
- 3.5.4 A statement of the resident's right to a fair hearing as provided in this section;
- 3.5.5 The method by which the resident may request a fair hearing;
- 3.5.6 A statement that the resident may represent him or herself or may be represented by counsel or by another person.
- 3.5.7 The name, address and telephone number of the State long term care ombudsman;
- 3.6 Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
- 3.7 Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the Secretary, the State LTC ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents, as required at 42 CFR §483.75(f).
- 3.8 Room changes in a composite distinct part. Room changes in a facility that is a composite distinct part (as defined in 42 CFR §483.5(c)) must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations. A facility's discretion to transfer residents to another room is limited by Title 16 ~~Del.C.~~ §§121 (13) and (28).
- 3.9 Notice of bed hold policy and readmission.
- 3.9.1 Notice before transfer. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies:
- 3.9.1.1 Notice of State bed hold. The duration of the bed hold policy under the State plan, if any during which the resident is permitted to return and resume residence in the nursing

facility, See DHSS Long Term Care Institutional Provider Specific Policy Manual at Section 4.5; and

3.9.1.2 Facility policies. The nursing facility's policies regarding bed hold periods, which must be consistent with paragraph 3.9.3 of this section, permitting a resident to return.

3.9.2 Bed hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative written notice which explains the bed hold policy described in paragraph 3.9.1.1 of this section.

3.9.3 Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:

3.9.3.1 Requires the services provided by the facility; and

3.9.3.2 Is eligible for Medicaid nursing facility services.

3.9.3.3 Additional protection for readmission is found at 16 Del.C. §1121 (18).

3.10 Readmission to a composite distinct part. When the nursing facility to which a resident is readmitted is a composite distinct part (as defined in 42 CFR§483.5(c)), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of readmission, the resident must be given the option to return to that location upon the first availability of a bed there.

4.0 ~~Transfer, discharge and readmission rights of residents of a Nursing Facility and Similar Facility as defined in 16 Del.C. 1102(4). See 16 Del.C. 1121.~~

4.1 "Transfer and discharge" includes movement of a resident to a location outside of the licensed facility.

4.2 Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility except for:

4.2.1 Medical needs which cannot be met in the facility;

4.2.2 The resident's own welfare;

4.2.3 The welfare of the other individuals in the facility;

4.2.4 Nonpayment of justified charges, after appropriate notice;

4.2.5 Termination of facility operation.

4.3 Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs 4.1.1 or 4.1.2 of this section, the resident's clinical record must be documented. The documentation must be made by:

4.3.1 The resident's physician when transfer or discharge is necessary under paragraph 4.1.1 or paragraph 4.1.2 of this section; and

4.3.2 A physician when transfer or discharge is necessary under paragraph 4.1.3 of this section.

4.4 Notice before transfer. Before a facility transfers or discharges a resident, the facility must:

4.4.1 Notify the resident and, if known, a family member or legal representative, of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

4.4.2 Record the reasons in the resident's clinical record; and

4.4.3 Include in the notice the items described in paragraph 4.5 of this section.

4.5 Timing of the notice. (i) Except as specified in paragraphs 4.4.2 and 4.8 of this section, the notice of transfer or discharge required under paragraph 4.3 of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

4.5.1 Notice may be made as soon as practicable before or after transfer or discharge when:

4.5.1.1 The welfare of individuals in the facility would be endangered under paragraph 3.1.3 of this section;

PROPOSED REGULATIONS

- ~~4.5.1.2 An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph 3.1.1. of this section; or~~
- ~~4.6 Contents of the notice. The written notice specified in paragraph 3.3 of this section must include the following:~~
- ~~4.6.1 The reason for transfer or discharge; A detailed individualized explanation of the reason(s) for the action being taken which includes, in terms understandable to the resident:~~
- ~~4.6.1.1 A statement of what action the agency intends to take;~~
- ~~4.6.1.2 The reasons for the intended action, including any information needed for the resident to determine from the notice alone the accuracy of the facilities intended action. When the reason is non-payment, an itemized statement of the resident's account for the preceding 12 months; and~~
- ~~4.6.1.3 The specific policy or regulation supporting such action.~~
- ~~4.6.2 The effective date of transfer or discharge;~~
- ~~4.6.3 The location to which the resident will be transferred or discharged;~~
- ~~4.6.4 A statement of the resident's right to a fair hearing as provided in this section:~~
- ~~4.6.4.1 The method by which the resident may request a fair hearing; and~~
- ~~4.6.4.2 A statement that the resident may represent him or herself or may be represented by counsel or by another person.~~
- ~~4.6.5 The name, address and telephone number of the State long term care ombudsman;~~
- ~~4.6.6 For nursing facility residents with a developmental disability or mental illness, the mailing address and telephone number of the Delaware protection and advocacy agency as defined in Title 16 Del.C. §1102.~~
- ~~4.7 Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.~~
- ~~4.8 Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to Division, the State LTC ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents. The notice shall be provided as far in advance of closure as possible.~~
- ~~4.9 Room changes.~~
- ~~4.9.1 Room changes in a facility must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another location. A facility's discretion to transfer residents to another room is limited by Title 16 Del.C. §§1121 (13) and (28).~~
- ~~4.9.2 The facility must give reasonable notice before the resident's room or roommate is changed, except in emergencies.~~
- ~~4.9.3 The facility shall endeavor to honor roommate requests whenever possible.~~
- ~~4.10 Notice of bed hold policy and readmission:~~
- ~~4.10.1 Notice before transfer. When a nursing facility transfers a resident out of a facility to an acute care facility it must provide written information to the resident and a family member or legal representative that specifies that the facility must accept the patient or resident back into the facility when the resident no longer needs acute care and there is space available in the facility. If no space is available, the resident shall be accepted into the next available bed.~~
- ~~4.10.2 Permitting resident to return to facility. A nursing facility must establish and follow a written policy for implementing its obligation to immediately offer the first available bed to a resident who is entitled to be readmitted to the facility when acute care is no longer required.~~
- 5.0 Fair Hearing Practice and Procedures which pertain to grievances under either Section 3.0 or 4.0 of this regulation.**
- ~~5.1 Right to hearing. An impartial hearing may be requested by a resident who believes a facility has erroneously determined that he or she must be transferred or discharged.~~

- 5.1.1 The hearing request must:
 - 5.1.1.1 Be in writing;
 - 5.1.1.2 Be received by the facility within 30 days from the date that the discharge notice is received by the resident or the resident's legal representative;
 - 5.1.1.3 Be copied to the Division and the State LTC ombudsman.
- 5.2 DHSS may deny or dismiss a request for a hearing if:
 - 5.2.1 The resident withdraws the request in writing; or
 - 5.2.2 The resident or his or her legal representative fails to appear at a scheduled hearing without good cause.
- 5.3 Impartial hearing must be conducted:
 - 5.3.1 At a reasonable time, date and place;
 - 5.3.2 After adequate written notice of the hearing;
 - 5.3.3 By an impartial fact finder who has not been directly involved in the initial determination of the action in question;
 - 5.3.4 With appropriate translation services available to parties or witnesses as needed to be provided at State expense.
- 5.4 If the hearing involves medical issues as the basis for the transfer or discharge and if the impartial fact finder considers it necessary to have a medical assessment other than that of the facility involved in making the transfer or discharge decision, such a medical assessment must be obtained at State expense and made part of the record.
- 5.5 Procedural rights. The parties must be given the opportunity to:
 - 5.5.1 Examine at a reasonable time before the date of the hearing and during the hearing all documents and records to be used by either party at the hearing;
 - 5.5.2 Bring witnesses;
 - 5.5.3 Establish all pertinent facts and circumstances;
 - 5.5.4 Present an argument without undue interference; and
 - 5.5.5 Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
 - 5.5.6 Residents within the scope of 3.0 have additional rights to as provided in 42 CFR §483.10(b)(2). All residents have additional rights under 16 ~~Del.C.~~ §1121(19).
- 5.6 Hearing decisions must be based exclusively on evidence introduced at the hearing.
- 5.7 The record must consist only of:
 - 5.7.1 The transcript or recording of testimony and exhibits;
 - 5.7.2 All papers and requests filed in the proceeding; and
 - 5.7.3 The decision of the hearing officer.
- 5.8 The parties must have the access to the record at a convenient place and time in order to review or to secure a transcript at the party's expense.
- 5.9 The impartial decision must:
 - 5.9.1 Summarize the facts; and
 - 5.9.2 Identify the statutes and/or regulations pertinent to the decision
 - 5.9.3 Specify the reasons for the decisions; and
 - 5.9.4 Identify the supporting evidence and apply the relevant legal principles.
- 5.10 The impartial fact finder must:
 - 5.10.1 Notify the parties of the decision, in writing.
 - 5.10.2 Notify the parties that this is the final decision of DHSS with the right to an appeal pursuant to the Administrative Procedures Act, Title 29, Chapter 101.

1.0 Purpose

- 1.1 This regulation applies to decisions by licensed facilities to transfer or discharge a resident. It prescribes the process for providing an impartial hearing to a resident.
- 1.2 This regulation does not extend to decisions of DHSS, or any of its Divisions, to deny, suspend, delay, reduce, or terminate benefits. The regulation governing appeals related to benefit eligibility are found at 16 DE Admin. Code §5000. Be aware that the appeal requirements are different from the requirements in this regulation.

2.0 Definitions

"DHSS" means the Department of Health and Social Services.

"Division" means the Division of Long Term Care Residents Protection.

"Facility" means a residential facility that provides shelter and food to more than 1 person who:

- a. Because of their physical and/or mental condition require a level of care and services suitable to their needs to contribute to their health, comfort, and welfare; and
- b. Who are not related within the second degree of consanguinity to the controlling person or persons of the facility.
- c. The facilities to be licensed pursuant to Chapter 11 include but are not limited to the following: nursing facilities (commonly referred to as nursing homes); assisted living facilities; intermediate care facilities for persons with intellectual disabilities; neighborhood group homes; family care homes; rest residential facilities; retirement homes; and, rehabilitation homes, with such terms to have such meaning as set forth in this title or, if not defined therein, as such terms are commonly used.

"Legal representative" or **"representative"** includes a resident's: guardian; agent pursuant to a power of attorney, advanced health care directive, or similar document; or authorized representative pursuant to 16 Del.C. §§1121(34) and 1122.

"Party" means the resident or resident's representative and the facility.

"Resident" means an individual residing in a facility.

"Transfer and discharge" includes movement of a resident to a location outside of the licensed facility.

3.0 Transfer, discharge and readmission rights of residents of a Nursing Facility and Similar Facility as defined in 16 Del.C. 1102(4). See 16 Del.C. 1121.**3.1 Transfer and discharge requirements.**

3.1.1 The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility except for the following reasons:

3.1.1.1 Medical needs which cannot be met in the facility;

3.1.1.2 The resident's own welfare;

3.1.1.3 The welfare of the other individuals in the facility;

3.1.1.4 Nonpayment of justified charges, after appropriate notice;

3.1.1.5 The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

3.1.1.6 An immediate transfer or discharge is required by the resident's urgent medical needs. If the resident appeals a notice of discharge based on this section, the facility will not be cited during the pendency of the appeal for housing a resident whose needs exceed the permitted level of care in that facility.

3.1.1.7 Termination of facility operation.

3.2 Documentation.

3.2.1 When the facility transfers or discharges a resident under any of the circumstances specified in section 3.1.1, the resident's clinical record must be documented. The documentation must be made by:

- 3.2.1.1 The resident's physician when transfer or discharge is necessary under sections 3.1.1.1 or 3.1.1.2;
- 3.2.1.2 A physician when transfer or discharge is necessary under section 3.1.1.5 or 3.1.1.6;
- 3.2.1.3 A member of the treatment team when transfer or discharge is necessary under section 3.1.1.3, 3.1.1.4 or 3.1.1.7.

3.3 Transfer/Discharge Notice.

3.3.1 Before a facility transfers or discharges a resident, the facility must:

- 3.3.1.1 Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reason(s) for the move in writing and in a language and manner they understand.
- 3.3.1.2 Provide a copy of the notice to the Division; the State LTC ombudsman; the resident's Delaware Medicaid managed care organization (MCO), if any; any DHSS agency involved in the resident's placement in the facility, including APS; and the protection and advocacy agency as defined in Title 16 **Del.C.** §1102 if the resident is an individual with a developmental disability or mental illness.
- 3.3.1.3 Record the reasons in the resident's clinical record; and document notification of the treatment team and the resident's physician.

3.3.2 Timing of the notice.

- 3.3.2.1 Except as specified in sections 3.3.2.2 and 3.6, the notice of transfer or discharge required of this section must be made by the facility at least 30 days before the resident is transferred or discharged.
- 3.3.2.2 Notice may be made as soon as practicable before or after transfer or discharge when:
 - 3.3.2.2.1 The welfare of individuals in the facility would be endangered under section 3.1.1.3;
 - 3.3.2.2.2 An immediate transfer or discharge is made under Section 3.1.1.6 or Section 3.6
 - 3.3.2.2.3 The resident's health improves sufficiently to allow a more immediate transfer or discharge under 3.1.1.6.

3.3.3 Contents of the notice.

3.3.3.1 The written notice specified in this section must include the following:

- 3.3.3.1.1 A detailed individualized reason for transfer or discharge in terms understandable to the resident;
- 3.3.3.1.2 A statement of what action the facility intends to take;
- 3.3.3.1.3 The reason(s) for the intended action including:
 - 3.3.3.1.3.1 Any information needed for the resident to determine from the notice alone the accuracy of the facilities intended action; and,
 - 3.3.3.1.3.2 An itemized statement of the resident's account for the preceding 12 months when the reason is non-payment;
- 3.3.3.1.4 The specific policy or regulation supporting such action;
- 3.3.3.1.5 The effective date of the transfer or discharge;
- 3.3.3.1.6 A description of and the address of the location to which the resident will be transferred or discharged;
- 3.3.3.1.7 A statement of the resident's right to a fair hearing which includes the following:
 - 3.3.3.1.7.1 The method by which the resident may request a fair hearing;
 - 3.3.3.1.7.2 Notice that the request for a fair hearing must be sent to the Division by U.S. mail, e-mail, or fax and providing the current contact information;
 - 3.3.3.1.7.3 Notice that the Division must receive the request within 30 days from the date the notice of discharge is received;
 - 3.3.3.1.7.4 A statement that the resident may represent him or herself or may be represented by counsel or by another person;

4.0 Fair Hearing Practice and Procedures which pertain to grievances under Section 3.0 of this regulation.

- 4.1 Right to hearing.
 - 4.1.1 An impartial hearing may be requested by a resident who believes a facility has erroneously determined that he or she must be transferred or discharged.
 - 4.1.2 The hearing request must be:
 - 4.1.2.1 In writing;
 - 4.1.2.2 Received by the Division within 30 days from the date that the discharge notice is received by the resident or the resident's legal representative;
 - 4.1.2.3 Copied to the facility and the State LTC ombudsman.
- 4.2 No facility, which has received a timely hearing request, shall take any steps to discharge or transfer a resident then on site until a fair hearing has been provided or the request has been denied, dismissed or withdrawn pursuant to 4.3.
- 4.3 DHSS may deny or dismiss a request for a hearing if:
 - 4.3.1 The resident withdraws the request in writing; or,
 - 4.3.2 The resident or his or her legal representative fails to appear at a scheduled hearing without good cause.
- 4.4 The impartial hearing must be conducted:
 - 4.4.1 At a reasonable time, date and place;
 - 4.4.2 After adequate written notice of the hearing;
 - 4.4.3 By an impartial fact-finder who has not been directly involved in the initial determination of the action in question;
 - 4.4.4 With appropriate translation services available and provided at State expense to parties or witnesses as needed.
- 4.5 If the hearing involves medical issues as the basis for the transfer or discharge and if the impartial fact finder considers it necessary to have a medical assessment other than that of the facility involved in making the transfer or discharge decision, such a medical assessment must be obtained at State expense and made part of the record.
- 4.6 Procedural rights.
 - 4.6.1 The parties must be given the opportunity to:
 - 4.6.1.1 Examine at a reasonable time before the date of the hearing and during the hearing all documents and records to be used by either party at the hearing;
 - 4.6.1.2 Bring witnesses;
 - 4.6.1.3 Establish all pertinent facts and circumstances;
 - 4.6.1.4 Present an argument without undue interference; and,
 - 4.6.1.5 Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
 - 4.6.2 Residents covered by Medicare have additional rights as provided in 42 CFR §483.10(b)(2). All residents have additional rights under 16 Del.C. §1121(19).
- 4.7 Hearing decisions must be based exclusively on evidence introduced at the hearing.
- 4.8 The hearing record must consist only of:
 - 4.8.1 The transcript or recording of testimony and exhibits;
 - 4.8.2 All papers and requests filed in the proceeding; and
 - 4.8.3 The decision of the hearing officer.
- 4.9 The parties must have access to the record at a convenient place and time in order to review or to secure a transcript at the party's expense.
- 4.10 The impartial decision must:
 - 4.10.1 Summarize the facts;

4.10.2 Identify the statutes and/or regulations pertinent to the decision;

4.10.3 Specify the reasons for the decisions;

4.10.4 Identify the supporting evidence; and

4.10.5 Apply the relevant legal principles.

4.11 The impartial fact-finder must:

4.11.1 Notify the parties of the decision, in writing; and,

4.11.2 Notify the parties that this is the final decision of DHSS with the right to an appeal pursuant to the Administrative Procedures Act, Title 29, Chapter 101.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Diamond State Health Plan Plus 1115 Demonstration Waiver

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to renew Delaware's Section 1115 demonstration waiver, entitled "Diamond State Health Plan" for an additional three years.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by June 12, 2013.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to renew Delaware's Section 1115 demonstration waiver, entitled "Diamond State Health Plan" for an additional three years.

Statutory Authority

- 42 U.S.C. §1315, *Demonstration projects*
- Social Security Act §1115, *Demonstration projects*
- 42 CFR 431 Subpart G, *Section 1115 Demonstrations*

Background

Under a waiver of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Using savings achieved under managed care, Delaware expanded Medicaid health coverage to additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Goals of the DSHP are to improve and expand access to healthcare to more adults and children throughout the State, create and maintain a managed care delivery system emphasizing primary care, and to strive to control the growth of healthcare expenditures for the Medicaid population.

In order for the Diamond State Health Plan 1115 Demonstration Waiver to continue past the expiration date, the State must request an extension no later than June 30, 2013.

Summary of Proposal

Pursuant to the notice requirements of 42 CFR §431.408(a)(2)(ii), Delaware Health and Social Services/ Division of Medicaid and Medical Assistance (DHSS/DMMA), hereby notifies the public that it intends to seek a three-year renewal of its Diamond State Health Plan (DSHP) 1115 Demonstration Waiver from the Centers for Medicare and Medicaid Services (CMS). The duration of the extension being requested is January 1, 2014 through December 31, 2016. Delaware seeks to build on the successes of its existing demonstration and deliver better health outcomes more efficiently.

Delaware supports the goals of the Affordable Care Act (ACA) to enhance access to affordable coverage, improve service delivery and control program cost growth. Delaware Medicaid is committed to collaborating with CMS to ensure that state and federal health reform activities are complimentary and coordinated. To this end, the renewal request will update obsolete sections of the waiver and align the waiver with the new requirements of the ACA.

Delaware plans on the following specific proposed waiver renewal initiatives:

- To expand Medicaid eligibility to individuals with income at or below 133% of the Federal Poverty Level (FPL) beginning January 1, 2014;
- To incorporate the new simplified Medicaid eligibility methodology called “modified adjusted gross income” (MAGI) to the extent required by the ACA;
- To follow MAGI eligibility groups once federal regulations are finalized; and,
- To ensure enrollment without interruption in coverage to the maximum extent possible for individuals who are not categorically eligible for Medicaid, the State also plans to implement a transition plan consistent with the provisions of the ACA.

Draft of Proposed Waiver Renewal Application

A draft of Delaware’s waiver renewal application is currently available for review on the Division of Medicaid and Medical Assistance (DMMA) website at <http://dhss.delaware.gov/dhss/dmma/>.

The provisions of this waiver are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

This waiver renewal maintains cost neutrality for each year in the three-year renewal period covering January 1, 2014 through December 31, 2016. A function of this waiver is to assure that coverage of the expanded population will be budget neutral. In other words, the cost of covering this population, as well as the Medicaid eligible population, will be no more than if the DHSS/DMMA had continued covering only its Medicaid population under the traditional fee-for-service program.

NOTICE OF PUBLIC HEARINGS

In accordance with the public notice requirements of 42 U.S.C. §1315(d) and 42 CFR Part 431, Subpart G, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA) gives notice of its intent to file an application with the Centers for Medicare and Medicaid Services (CMS) to request a three-year extension of the Diamond State Health Plan 1115 Demonstration Waiver, which is scheduled to expire on December 31, 2013.

Under a waiver of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Using savings achieved under managed care, Delaware expanded Medicaid health coverage to additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Goals of the DSHP are to improve and expand access to healthcare to more adults and children throughout the State, create and maintain a managed care delivery system emphasizing primary care, and to strive to control the growth of healthcare expenditures for the Medicaid population.

In order for the Diamond State Health Plan 1115 Demonstration Waiver to continue past the expiration date, the State must request an extension no later than June 30, 2013. The duration of the extension being requested is January 1, 2014 through December 31, 2016.

Under the Diamond State Health Plan (DSHP) renewal, Delaware seeks to build on the successes of the existing waiver while integrating the waiver's programs and benefits to deliver better health outcomes more efficiently and to align the waiver with the Affordable Care Act's new requirements. Delaware plans on the following specific proposed waiver renewal initiatives:

- To expand Medicaid eligibility to individuals with income at or below 133% of the Federal Poverty Level (FPL) beginning January 1, 2014;
- To incorporate the new simplified Medicaid eligibility methodology called "modified adjusted gross income" (MAGI) to the extent required by the ACA;
- To follow MAGI eligibility groups once federal regulations are finalized; and,
- To ensure enrollment without interruption in coverage to the maximum extent possible for individuals who are not categorically eligible for Medicaid, the State also plans to implement a transition plan consistent with the provisions of the ACA.

Draft of Proposed Waiver Renewal Application

A draft of Delaware's waiver renewal application is currently available on the Division of Medicaid and Medical Assistance (DMMA) website at: <http://dhss.delaware.gov/dhss/dmma/>.

Hard copies are available for review at the Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, Holloway Campus, Lewis Building, Conference Room 198, New Castle, Delaware 19720 from 8:00 a.m. – 4:30 p.m.

Public Comments

The public is invited to review and comment on the State's proposed waiver renewal request. Written comments may be sent to: Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or via fax to 302-255-4425. For consideration, written comments must be received by 4:30 p.m. on June 12, 2013. Please identify in the subject line: Proposed Diamond State Health Plan 1115 Waiver Renewal.

Public Hearings

As required by 42 CFR Part 431, Subpart G, the State agency is providing the following opportunities to the public to comment on the proposed waiver renewal application in person. Two (2) public hearings are scheduled. The detailed information for each public hearing is shown below.

1. NEW CASTLE COUNTY

Wednesday, May 22, 2013, 1:00-3:00 pm
 Delaware State Police, Troop 2,
 Robert Paris Community Room
 100 Lagrange Avenue
 Newark, DE 19702

2. KENT COUNTY

Thursday, May 23, 2013, 1:00-3:00 pm
 DNREC
 Richardson and Robbins Building
 DNREC Auditorium
 89 Kings Highway
 Dover, DE 19901

The State will take verbal and written comments at the public hearings. The outcome of this process and the input provided will be summarized for CMS upon submission of the final application for a waiver renewal extension.

If you are unable to attend the public hearing in person, you may participate by teleconference. To participate via teleconference, on the date and time of the public hearing, call 1-877-366-0711 and enter passcode 95099070#.

If you require special assistance or auxiliary aids and/or services to participate in the public hearing (e.g., sign language or wheelchair accessibility), please call the following contact at least five (5) days prior to the hearing for arrangements:

Latoya Wright at (302) 255-9561

The prompt submission of requests helps to ensure the availability of qualified individuals and appropriate accommodations in advance.

Fiscal Impact Statement

This waiver renewal maintains cost neutrality for each year in the three-year renewal period covering January 1, 2014 through December 31, 2016. A function of this waiver is to assure that coverage of the expanded population will be budget neutral. In other words, the cost of covering this population, as well as the Medicaid eligible population, will be no more than if the DHSS/DMMA had continued covering only its Medicaid population under the traditional fee-for-service program.

Delaware Waivers Page on CMS Website

As the federal agency with oversight authority over all Medicaid programs, CMS offers its own online resources regarding the Diamond State Health Plan 1115 Demonstration Waiver. Interested parties may view these materials at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/de/de-dshp-fs.pdf>.

Submission of Waiver Application to CMS

Delaware intends to submit the 1115 waiver renewal application to CMS no later than June 30, 2013. Pursuant to 42 CFR §431.416, CMS has 15 (fifteen) days from the date of receipt to determine whether the application is complete. CMS will post the application on the 1115 website and allow a 30-day public comment period on the application. Information related to the waiver will be available on the CMS website: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/public-comments.html>.

Stephen M. Groff, April 3, 2013

Director, Division of Medicaid and Medical Assistance

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512(1) (31 Del.C. 512(1))
16 DE Admin. Code 9018.2

PUBLIC NOTICE

Food Supplement Program

DSSM: 9018.2 Time Limit for Able-bodied Adults Maintaining and Regaining ABAWD (Able-Bodied Adults Without Dependent) Eligibility

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Time Limit for Able-bodied Adults*.

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

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

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Time Limit for Able-bodied Adults*.

Statutory Authority

7 CFR §273.24, *Time Limit for Able-Bodied Adults*

Background

Delaware's Food Supplement Program, formerly known as food stamps, is operated under the provisions of the Food and Nutrition Act of 2008, as amended, and is administered by the Food and Nutrition Service (FNS) under the United States Department of Agriculture (USDA). The Delaware Division of Social Services (DSS) is responsible for the administration of the Food Supplement Program (FSP), including, but not limited to certification of applicant households and issuance, control, and accountability of FSP benefits.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of food benefits to 3 months (consecutive or otherwise) in a 36-month period for ABAWDs who are not working, participating in, and complying with the requirements of a work program for 20 hours or more each week, or a workfare program. "ABAWDs" refers to Able-Bodied Adults Without Dependents.

Work registration is a technical eligibility factor for participation in the Food Supplement Program. Every able-bodied household member age 18-59, must work register unless otherwise exempt.

Summary of Proposed Changes

DSSM 9018.2, *Time Limit for Able-bodied Adults* Maintaining and Regaining ABAWD Eligibility. The intent of the proposed amendment is to clarify language to make the rules easier to understand and follow.

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

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

DSS PROPOSED REGULATION #13-14

REVISION:

9018.2 Time Limit for Able-bodied Adults

~~Individuals are ineligible to continue to receive food stamps if, during any 36-month period they received food stamps at least three (3) months (consecutive or otherwise) while they did not either:~~

- ~~-work at least 20 hours per week (averaged monthly which means 80 hours a month); or~~
- ~~-participate in a work program at least 20 hours per week; or~~
- ~~-work and participate in a work program for any combination of hours that totaled 20 hours per week; or~~
- ~~-participate and comply in a workfare program.~~

Definitions

Work is defined as:

- ~~-Work in exchange for money;~~
- ~~-Work in exchange for goods or services (in-kind work);~~
- ~~-Unpaid work which is verified; or~~
- ~~-Any combination of the above definitions.~~

Qualifying work programs include programs under:

- ~~-Workforce Investment Act;~~
- ~~-Trade Adjustment Assistance Act; or~~
- ~~-Employment and Training (except for job search or job search training programs).~~

Good Cause

~~If the individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirements if:~~

~~the absence from work is temporary; and
the individual retains his or her job.~~

~~Good cause shall include circumstances beyond the individual's control, such as:~~

~~illness;
illness of another household member requiring the presence of the member;
a household emergency; or
the unavailability of transportation.~~

Exemptions

~~Individuals are exempt from this work requirement if he or she:~~

~~is under 18 or over 50 years of age; (The month after an individual turns 18 will be the first month the individual must start meeting the work requirements. The month an individual turns 50 years of age will start the exemption.)
is medically certified as physically or mentally unfit for employment. A person is medically certified as physically or mentally unfit for employment if he or she:
is receiving temporary or permanent disability benefits issued by governmental or private sources.
is obviously mentally or physically unfit for employment.
provides a statement from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist, a social worker, or any other medical personnel, that he or she is physically or mentally unfit for employment.
a parent (natural, adoptive, or step) of a household member under age 18;
is residing in a household where a household member is under age 18, even if the household member who is under 18;
is pregnant (any trimester); or
is otherwise exempt from work requirement under DSSM 9018.3.~~

Regaining Eligibility

~~Individuals denied eligibility under this work requirement, or who would have been denied under this work requirement if they had reapplied, can regain eligibility if during a 30-day period the individual:~~

~~works (paid or non-paid) for 80 hours or more;
participates in and complies with a work program, as described above, for 80 hours or more;
participates in any combination of work and participation in work program for a total of 80 hours;
participates in a workfare program; or
becomes exempt.~~

~~Individuals who regain eligibility based on the requirements above will remain eligible as long as they meet the above requirements.~~

~~Individuals who lose their employment or cease participation in work or work supplementation programs may continue to receive food stamps for up to three (3) consecutive months beginning from the date DSS is notified that work has ended.~~

~~The only remaining cure during the 36-month period is for the individual to:~~

~~comply with the work requirements of this section; or
to become exempt under other provisions of the requirement.~~

Treatment of Income and Resources

~~The income and resources of an individual made eligible due to the time limit shall be handled according to DSSM 9076.2.~~

Benefits Received Erroneously

~~If an individual subject to the time limit receives food stamp benefits erroneously, consider the benefits to have been received unless or until the individual pays it back in full.~~

Verification

~~Verification is handled according to DSSM 9032.16 and DSSM 9038.~~

Reporting Requirements

~~Individuals subject to the time limit must report changes in work hours below 20 hours per week, averaged monthly.~~

~~Any work performed in a job that was not reported will be counted as work when determining countable months.~~

Countable Months

Countable months are months during which an individual receives food stamps for the full month while not:

- ~~-exempt;~~
- ~~-meeting the work requirements;~~
- ~~-receiving prorated benefits.~~

9018.2 Maintaining and Regaining ABAWD Eligibility

7 CFR 273.24

This policy applies to applicants for and recipients of the Food Supplement Program who are able-bodied adults who do not have dependent children living with them.

Definitions

ABAWD (able-bodied adults without dependent children) means individuals without children in their FSP household who must work 20 hours a week and/or comply with certain work requirements in order to get food benefits.

Work is defined as:

- A. Work in exchange for money;
- B. Work in exchange for goods or services (in-kind work);
- C. Unpaid work which is verified; or
- D. Any combination of the above definitions.

Qualifying work programs include programs under:

- A. Workforce Investment Act;
- B. Trade Adjustment Assistance Act; or
- C. Employment and Training (except for job search or job search training programs).

Countable months are months during which an individual receives food benefits for the full month while not:

- A. Exempt
- B. Meeting the work requirements
- C. Receiving prorated benefits

1. Benefits for ABAWDs Are Time-Limited

Able-bodied adults without dependent children (ABAWDs) can only receive 3 months of food benefits in a 36 month period if they do not meet the work requirements. When the individual meets a work requirement, he or she may get benefits longer than 3 months.

2. ABAWDs Must Meet Work Requirements

An ABAWD meets the work requirement when he or she:

- A. Works at least 20 hours per week (averaged monthly which means 80 hours a month); or
- B. Participates in a work program at least 20 hours per week; or
- C. Works and participates in a work program for any combination of hours that totaled 20 hours per week; or
- D. Participates and complies with a workfare program.

3. ABAWDs May Be Exempted from Time Limits

The following individuals are exempt from the 3 month limitation even if they do not meet the work requirements.

- A. An individual who is under age 18.
The month after the individual turns 18 is the first month he or she must start meeting the ABAWD work requirements.
- B. An individual who is 50 years of age or older.
An individual is no longer considered an ABAWD the month he or she turns 50 years old.

- C. An individual who is obviously mentally or physically unfit for employment.
- D. An individual who is medically certified as physically or mentally unfit for employment. This must be verified by a written statement from medical personnel.
- E. An individual who is receiving temporary or permanent disability benefits issued by governmental or private sources.
- F. An individual who is a parent (natural, adoptive, or step) of a household member under 18 years of age.
- G. An individual who is living in a FSP household with a person who is under age 18, even if the person under 18 is not eligible for or receiving food benefits.
- H. An individual who is pregnant.
- I. An individual who is exempt from work requirements according to DSSM 9018.3.

4. ABAWDs May Be Exempted for Good Cause

If the individual would have worked an average of 20 hours per week but missed some work for good cause, consider the individual to have met the work requirements if:

- A. The absence from work is temporary; and
- B. The individual retains his or her job.

Good cause includes circumstances beyond the individual's control, such as:

- A. Illness;
- B. Illness of household member requiring the presence of the ABAWD;
- C. A household emergency; or
- D. The unavailability of transportation.

5. ABAWDs May Regain Eligibility

Regaining eligibility applies to individuals who have received three ABAWD months then were closed or denied for failure to comply with ABAWD work requirements.

After closing, an individual can regain eligibility if during a 30-day period the individual:

- A. Works (paid or non-paid) for 80 hours or more; or
- B. Participates in and complies with a work program for 80 hours or more; or
- C. Participates in and complies with a work supplementation program; or
- D. Participates in any combination of work and participation in a work program for a total of 80 hours; or
- E. Participates in a DSS workfare program; or
- F. Becomes exempt for any reason.

6. Resources and Income of ABAWDs Must be Counted

The income and resources of individuals excluded from FSP eligibility because they have exhausted their ABAWD months are handled according to DSSM 9076.2.

7. ABAWDs Must Verify Certain Information

Verification is handled according to DSSM 9032 and DSSM 9038.

8. ABAWDs Must Report Certain Work Changes

Individuals subject to the time limit must report when their work hours fall below 20 hours per week, averaged monthly.

Any work performed in a job that was not reported will be counted as work when determining countable months.

9. Benefits Received Erroneously Count as ABAWD Months

If an individual subject to the time limit receives food benefits erroneously, consider the benefits to have been received.

Exception: If an individual pays back erroneously issued food benefits in full, that month is not counted as an ABAWD month.

PROPOSED REGULATIONS

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

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

6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 51, Delaware Health and Social Services (DHSS) / Division of Substance Abuse and Mental Health is proposing regulations for credentialing mental health screeners and paying for voluntary admissions to privately operated psychiatric hospitals.

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 Dara Schumaier, Division of Substance Abuse and Mental Health, 1901 North DuPont Highway, New Castle, Delaware 19720 or by fax to (302) 255-4428 by May 31, 2012.

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 proposed regulations described below clarify the recently enacted regulations that provide guidelines within the Division of Substance Abuse and Mental Health (DSAMH) for credentialing mental health screeners and paying for voluntary admissions of adults whose admissions are eligible for payment by the State. The Division of Substance Abuse and Mental Health (DSAMH) is amending the regulations to clarify which credentialed mental health screeners may make decisions regarding juveniles.

Statutory Authority

16 Del.C. §5122(m)

Background

Effective July 1, 2013, 16 Del.C. Ch. 51, Subchapter II will require an assessment by a credentialed mental health screener before an individual is detained on a 24-hour psychiatric hold, thereby helping to ensure that detainment and hospitalization only occur when it is clinically necessary and that the individual is afforded appropriate access to the less-restrictive alternatives being developed across the state in accordance with the United States Department of Justice and State of Delaware Settlement Agreement. The regulations set forth the qualifications, licensure, supervision, and training required for professionals to be credentialed as mental health screeners. This proposal clarifies which credentialed mental health screeners may make decisions regarding juveniles.

Summary of Proposed Changes

With the issuance of these regulations, only credentialed mental health screeners who are physicians may evaluate juveniles for an involuntary mental health evaluation.

6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions

(Break in Continuity of Sections)

3.0 Qualifications of Applicants for Credentialed Mental Health Screener

3.1 Psychiatrists

- 3.1.1 The psychiatrist must supply evidence of current licensure to practice medicine in Delaware.
- 3.1.2 No mental health screener credentialing is required.
- 3.1.3 A psychiatrist may detain or abrogate a detainment for a psychiatric evaluation of any person, over or under age 18.
- 3.2 Board Certified Emergency Physicians
 - 3.2.1 Each physician applicant must submit qualifications; and
 - 3.2.2 Each physician must supply evidence of current licensure to practice medicine in Delaware and current Board Certification by the American Board of Emergency Medicine.
 - 3.2.3 Each physician will receive and be required to review an information packet on statewide resources for clients in crisis.
 - 3.2.4 A credentialed Board Certified Emergency Physician may detain or abrogate a detainment for a psychiatric evaluation of any person, over or under age 18.
- 3.3 Physicians
 - 3.3.1 Each physician applicant must submit qualifications; and
 - 3.3.2 Each physician must supply evidence of current licensure to practice medicine in Delaware.
 - 3.3.3 Each physician will be required to attend four hours of training to be credentialed as a MH Screener.
 - 3.3.4 A credentialed physician may detain or abrogate a detainment for a psychiatric evaluation of any person, over or under age 18.
- 3.4 Licensed Non-Physician Mental Health Professionals
 - 3.4.1 Each applicant must submit qualifications and supply evidence that:
 - 3.4.1.1 If employed by DSAMH or a self-employed professional not affiliated with any Delaware health care facility, the applicant has five (5) years' experience in mental health clinical and/or crisis settings as an employed or as a contracted professional.
 - 3.4.1.2 If employed or contracted by any Delaware health care facility, the applicant has at least two (2) years' experience in mental health clinical and/or crisis settings as an employed or as a contracted professional, and that non-state health care facilities will take responsibility for the years of experience required for their staff to be credentialed.
 - 3.4.2 Licensed Non-Physician Mental Health Professionals must meet the following qualifications:
 - 3.4.2.1 Registered Nurse. Each applicant shall document current licensure by the State of Delaware as a Registered Nurse with a BSN degree and in good standing, as set forth in 24 **Del.C.** Ch. 19.
 - 3.4.2.2 Advanced Practice Nurse. Each applicant shall document current licensure by the State of Delaware as an Advanced Practice Nurse in good standing, as set forth in Title 24 **Del.C.** Ch. 19, and employment under a formal protocol with a Delaware licensed physician
 - 3.4.2.3 Licensed Psychologist. Each applicant shall document current licensure by in the State of Delaware as a Licensed Clinical Psychologist in good standing, as set forth in 24 **Del.C.** Ch. 35.
 - 3.4.2.5 Licensed Clinical Social Worker
 - 3.4.2.5.1 Each applicant shall document current licensure by in the State of Delaware as a Licensed Clinical Social Worker in good standing, as set forth in 24 **Del.C.** Ch. 39.
 - 3.4.2.6 Licensed Professional Counselor of Mental Health
 - 3.4.2.6.1 Each applicant shall document current licensure by in the State of Delaware as a Licensed Professional Counselor of Mental Health in good standing, as set forth in 24 **Del.C.** Ch. 30
 - 3.4.2.7 Licensed Marriage and Family Therapist
 - 3.4.2.7.1 Each applicant shall document current licensure by in the State of Delaware as a Licensed Marriage and Family Therapist in good standing, as set forth in 24 **Del.C.** Ch. 30.

PROPOSED REGULATIONS

3.4.2.8 Licensed Physician Assistant.

3.4.2.8.1 Each applicant shall document current licensure by in the State of Delaware as a Physician Assistant in good standing, as set forth in 24 **Del.C.** Ch. 17, and employment under the delegated authority of a licensed physician.

3.4.3 A credentialed Licensed Non-Physician Mental Health Professional may detain or abrogate a detainment for a psychiatric evaluation of a person age 18 or older.

3.5 Unlicensed Mental Health Professionals under Direct Supervision of a Psychiatrist

3.5.1 Each unlicensed mental health professional who is applying to become credentialed as a mental health screener must submit qualifications, and supply evidence that:

3.5.1.1 Such person has had two years of clinical and/or crisis experience if working as a State employee or contractor; or if working with a Delaware Health Care Facility as an employee or contracted staff member;

3.5.1.2 Such person has at least a bachelors or masters degree in a mental health related field if working as a State employee or contractor; or if working with a Delaware Health Care Facility as an employee or contracted staff member; and

3.5.1.3 Such person has committed to completing forty (40) hours of crisis services in an employed position under direct supervision of a psychiatrist or credentialed mental health screener following completion of the mental health screener training and satisfactory score on the mental health screener credentialing exam.

3.5.2 A credentialed Unlicensed Mental Health Professional may detain or abrogate a detainment for a psychiatric evaluation of a person age 18 or older.

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

6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 915 and 29 Delaware Code, Chapter 101 (18 **Del.C.** §§311 and 915 and 29 **Del.C.** Ch. 101)

1003 Credit for Reinsurance

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 1003 relating to Credit for Reinsurance [Formerly Regulation 79]. The docket number for this proposed regulation is 2202.

The proposed regulation supports the Credit for Reinsurance Act (18 **Del.C.** §§910-916) and reinsurance collateral reforms by establishing requirements for regulating qualified reinsurers, reinsurance risk diversification and notice requirements for ceding insurers. The Delaware Code authority for the change is 18 **Del.C.** §311 and §915; and 29 **Del.C.**, Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, May 31, 2013. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

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

1003 Credit for Reinsurance

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 Del.C. §903(e)(2)(a))
7 DE Admin. Code 3581

REGISTER NOTICE #2013-03

3581 Spiny Dogfish

1. TITLE OF THE REGULATION:

3581 Spiny Dogfish

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

The purpose of this action is to amend the spiny dogfish (*Squalus acanthias*) regulation with modification to the daily commercial “take, land or possess” limit. The Department was requested to consider an increase in the “daily take, land or possess” limit from 3,000 pounds to 10,000 pounds at a recent Advisory Council on Tidal Finfisheries meeting. This request was subsequently endorsed by the Council.

The Northeast Fisheries Science Center’s most recent update on the status of spiny dogfish found that the population is not overfished and overfishing is not occurring. Spawning stock biomass has exceeded target levels for the past five years. In response, the Atlantic States Marine Fisheries Commission (ASMFC) roughly doubled the annual quota for Delaware with the adoption of Addendum III to the Interstate Fishery Management Plan for Spiny Dogfish. Addendum III allows states from New York through North Carolina to set possession limits as best meets their needs.

In 2011, 30,670 pounds (17%) of Delaware’s 179,200 pound quota were harvested. Spiny dogfish have a low market value and the current 3,000 pound daily limit makes it economically unfeasible for commercial harvesters to target the species. Further, spiny dogfish often occur in tremendous schools and allowing a higher daily limit would minimize discard losses and improve harvest efficiency in the gill net fishery. In recent years, the high biomass of spiny dogfish has been implicated in the decline of several ecologically and economically important species, including weakfish and herrings.

The spiny dogfish quota is monitored using mandatory catch reports and a federal dealer reporting system, making it unlikely that Delaware would exceed its quota allocation.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

PROPOSED REGULATIONS

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

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

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

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to §3581 Spiny Dogfish will be open May 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on May 23, 2013 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

David E. Saveikis, Director

3581 Spiny Dogfish

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

- 1.0 It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish, *Squalus acanthias*, in Delaware except in those sizes, seasons, and quantities permitted in accordance with the most recent version of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Spiny Dogfish as amended. It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish after the Atlantic States Marine Fisheries Commission approved allocation for the region which includes Delaware has been reached during any given year. It shall be unlawful to commercially harvest, land or possess spiny dogfish taken from federal waters during any time when adjoining federal waters are closed to the taking of spiny dogfish. It shall be unlawful for any commercial fisherman to take, land or possess more than ~~3,000~~ 10,000 pounds of spiny dogfish per day from Delaware waters, with a day being defined as 24 hours. Further, it shall be unlawful for any Delaware commercial fisherman to be in possession of spiny dogfish taken from federal waters in excess of the federal daily landing limit. It shall be unlawful for any person to possess the fins from any spiny dogfish prior to landing said spiny dogfish unless said fins are naturally attached to the body of said spiny dogfish. All spiny dogfish landed in Delaware for commercial purposes must be reported through the normal state reporting system.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

Office of Child Care Licensing / Criminal History Unit

Statutory Authority: 31 Delaware Code, Section 309 (31 **Del.C.** §309)

9 **DE Admin. Code** 301

PUBLIC NOTICE

301 Criminal History Record Checks for Child Care Persons

Summary

The Office of Child Care Licensing proposes to amend Criminal History Record Checks for Child Care Persons in order to clarify and streamline regulations and to comply with changes to Delaware and Federal Code.

Comments

A copy of the proposed regulations is being published in the May 1, 2013 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on May 31, 2013.

Adoption of Proposed Regulation

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

Abuse and Background Checks 301 Criminal History Record Checks for Child Care Persons

1.0 Legal Base

- 1.1 ~~(Rule 1)~~ The legal base for these regulations is in the 31 **Del.C.** §309.

2.0 Purpose

- 2.1 ~~(Rule 2)~~ The overall purpose of these regulations is the protection of children who are in the care or custody of the Department. To this end, persons in residential child care facilities and/or employees or volunteers of the Department or a Department contractor will have their criminal history checked prior to employment or during a conditional period of employment. In addition, foster/respice/adoptive parents will have their criminal history checked prior to approval or during a period of provisional approval with the Department or contracted providers. Each employer may use his/her own employment/acceptance criteria which may be stricter than those described herein.

3.0 Definitions

~~(Rule 3)~~ **"Child Care Person"** means any person employed in a residential child care facility and/or employed by the Department or one of its contractors in a position which involves supervisory or disciplinary authority over a child or in a position which provides the opportunity to have direct access to/contact with (see "Direct Access" below) (Since definitions are not numbered we would have to use the definition title) a child without the presence of other employees or adults. This definition includes foster parents and volunteers. (See definitions "Foster Parents" and "Volunteer" below.) (Since definitions are not numbered we would have to use the definition title)

~~(Rule 4)~~ **"Conditional Child Care Person"** means a child care person who has been offered a position or has agreed to volunteer with the Department or one of its contractors or in a residential child care facility. Under the provisions of the law, a child care person may be hired on a temporary basis until the determination of suitability is made by the Department. Foster parents may be provisionally approved prior to the results of the criminal background check and in accordance with the Division of Family Services policy. If a determination of unsuitability is made, the child care person will be dismissed and in the case of foster parents the conditional placement will be rescinded.

~~(Rule 5)~~ **"Criminal History Supervisor"** means the Department staff member, located in the Office of Child Care Licensing, who is responsible for the implementation of the criminal history policies, and procedures, and regulations.

PROPOSED REGULATIONS

~~(Rule 6)~~ **"Criminal History Specialist"** means the Department staff member, located in the Office of Child Care Licensing, who is responsible for processing and reviewing criminal history information consistent with Departmental policies, procedures and regulations.

~~(Rule 7)~~ **"Department"** means the Department of Services for Children, Youth and Their Families.

~~(Rule 8)~~ **"Direct Access"** means the opportunity to approach children without the presence of ~~other adults in the course of one's assigned duties and responsibilities~~ another child care person.

~~(Rule 9)~~ **"Employer"** means any of the following:

- The Divisions within the Department of Services for Children, Youth and Their Families (PLEASE NOTE: The Divisions within the Department do not "employ" foster/adoptive parents or volunteers, but for purposes of this document, the Divisions are referred to as employer.)
- Any Delaware contractor who operates a program that provides regular direct access to children.
- Any Delaware contractor who provides foster care or adoption services.

~~(Rule 10)~~ **"Foster Parents"** means foster/respite/adoptive parents and all household members 18 years of age or older.

~~(Rule 11)~~ **"Residential Child Care Facility"** means any facility that provides care or treatment for children overnight or is a 24 hour facility. This facility is State owned and operated or is licensed by the Department to provide services.

~~(Rule 12)~~ **"Volunteer"** means any person who has direct access to children in the performance of unpaid duties and who will be in a facility or in the service of the Department for five (5) or more days in a fiscal year. Student interns, regularly scheduled volunteers, and volunteer counselors will be required to have a criminal history check under these regulations. (For limited, occasional, sporadic, one-time volunteer efforts that last less than five (5) days or 40 hours, employers must ensure that these volunteers will be supervised during any activities with children.)

4.0 Individuals Subject To The Law

4.1 ~~(Rule 13)~~ Generally, child care persons subject to a criminal history record check shall be:

- 4.1.1 persons employed or volunteering in a residential child care facility; or
- 4.1.2 employed or volunteering with ~~by~~ the Department; or
- 4.1.3 foster/adoptive parents; or
- 4.1.4 employed or volunteering at an agency that contracts with the Department; who are in a position which involves:
 - 4.1.4 ~~Supervisory or disciplinary authority over children, or~~
 - 4.1.4.1 1The opportunity to have direct access to or contact with a child without the presence of other employees or adults.

4.2 Residential Child Care Facilities and Department Contractors

- 4.2.1 ~~(Rule 14)~~ Criminal history record checks shall be conducted on the following employees of licensed residential child care facilities and Department contractors. This list is not necessarily all-inclusive, due to the various titles used in different facilities.
 - 4.2.1.1 Child care workers
 - 4.2.1.2 Child care supervisors
 - 4.2.1.3 Maintenance, transportation, kitchen, clerical workers
 - 4.2.1.4 Teachers, aides, principals
 - 4.2.1.5 Administrators, coordinators, directors, and administrative staff
 - 4.2.1.6 Volunteers as defined in 3.0
 - 4.2.1.7 Social Workers
 - 4.2.1.8 Recreation staff
 - 4.2.1.9 Medical staff

- 4.3 Foster/Adoptive Parents as defined in 3.0
- 4.3.1 ~~(Rule 15)~~ Criminal history record checks shall be conducted on:
- 4.3.1.1 Applicants for foster/respite care within the Department and in licensed child placing agencies providing foster care.
- 4.3.1.2 Applicants for adoption within the Department and in licensed child placing agencies providing adoption services.
- 4.3.1.3 Petitioners in relative adoptions.
- 4.3.1.4 Interstate applicants for adoption or foster placement when a child is from another state and is being placed in Delaware and when a Delaware child is being placed in another state.
- 4.3.1.5 ~~A criminal history check will not be required in a stepparent adoption.~~
- 4.4 Department Employees
- 4.4.1 ~~(Rule 16)~~ Criminal history record checks shall, ~~at the discretion of the Cabinet Secretary, be conducted on individuals filling the following positions within the Department:~~ be conducted on all Department employees and volunteers.
- 4.4.1.1 ~~all Division of Management Support Services employees~~
- 4.4.1.2 ~~all Division of Family Services employees~~
- 4.4.1.3 ~~all Division of Youth Rehabilitative Services employees~~
- 4.4.1.4 ~~all Division of Child Mental Health employees~~
- 4.5 Individuals subject to the law shall be those individuals who are hired or apply for the status described in 4.1 to 4.4 on or after September 1, 1990 or have less than one year service prior to that date.

5.0 Criminal History Record Check Process

- 5.1 ~~(Rule 17)~~ The employer shall require each individual subject to the law, either as soon as that individual has accepted a position, or has agreed to serve as a volunteer, or no later than the fifth working day to complete the Criminal History Record Request form and be fingerprinted. In the case of foster parents, the Criminal History Record Request form and fingerprinting must be completed prior to completion of pre-service training or the home study process.
- 5.2 ~~(Rule 18)~~ The child care person or foster parent goes to a designated Delaware State Police ~~Barrack Troop~~ and has two sets of fingerprints taken.
- 5.3 ~~(Rule 19)~~ The Delaware State Police follow established State Bureau of Identification procedures to obtain criminal history information from the State Bureau of Identification and Federal Bureau of Investigation. A report of the child care person's or foster parent's criminal history record or a statement that there is no criminal history information relating to that person is forwarded to the Criminal History ~~Specialist Unit~~.
- 5.4 ~~(Rule 20)~~ Simultaneously, the Criminal History Specialist conducts a review of the Child ~~Abuse Protection~~ Registry to determine if the child care person is named as a perpetrator in a substantiated report of child abuse or neglect.
- 5.5 ~~(Rule 21)~~ When the Criminal History Specialist receives the information from the State Bureau of Identification, Child ~~Abuse Protection~~ Registry, and Federal Bureau of Investigation she/he reviews that information, along with the Criminal History Record Request form. This review is guided by the criteria specified in Regulations 6.1-7.2.
- 5.6 ~~(Rule 22)~~ When there is no record, the Criminal History Specialist provides notification to the appropriate Division Director, who notifies the employer or child placing agency and the child care person or foster parent.
- 5.7 ~~(Rule 23)~~ When there is a criminal history, the Criminal History Specialist provides a written summary of the findings of the check with a recommendation to the appropriate Division Director.
- 5.8 ~~(Rule 24)~~ The appropriate Division Director makes the determination of suitability for employment, volunteering or foster parenting and notifies the child care person or foster parent and employer or child placing agency, with a copy of the findings attached.

- 5.9 (~~Rule 25~~) In the event that the child care person or foster parent has reason to provide additional information regarding the information in her/his criminal history check, an administrative review will be held, as delineated in regulations 9.1-9.10.

6.0 Criteria For Prohibited Offenses

- 6.1 (~~Rule 26~~) Child care persons or foster parents convicted of a sexually related offense(s) or other offenses against children shall be prohibited from employment, volunteering or foster care/adoption without consideration of other criteria. The prohibited offenses shall include but not be limited to:
- 6.1.1 Incest
 - 6.1.2 Unlawful sexual contact
 - 6.1.3 Rape
 - 6.1.4 Continuous sexual abuse of a child
 - 6.1.5 Sexual exploitation of a child
 - 6.1.6 Abandonment of child
 - 6.1.7 Sexual solicitation of a child
 - 6.1.8 Unlawful dealing with a child
 - 6.1.9 Unlawfully dealing in material depicting a child engaging in a prohibited sexual act
 - 6.1.10 Murder of a child.
 - 6.1.11 Endangering the welfare of a child
- 6.2 (~~Rule 27~~) The Adoption and Safe Families Act of 1997 prohibits individuals from becoming foster or adoptive parents if they have the following felony convictions:
- 6.2.1 Child abuse or neglect, spousal abuse, crimes against children (including child pornography), and crimes involving violence including rape, sexual assault and homicide committed at any time.
 - 6.2.2 Physical assault, battery and drug related offenses committed within the past five years.

7.0 Criteria For Unsuitability

- 7.1 (~~Rule 28~~) Information received from the criminal history record and Child Abuse Protection Registry checks shall be reviewed by the Criminal History Specialist and Division Director on the basis of the following criteria for a determination of suitability for employment, volunteering, or foster care/adoption.
- 7.1.1 Type of offense(s)/child abuse or neglect activity
 - 7.1.1.1 Offenses other than those that are prohibited shall be reviewed in consideration of other criteria below. Other convictions and arrests for offenses which may make a child care person unsuitable for employment or volunteering, or may make a prospective foster parent unsuitable for foster parenting, are those in the Delaware Code, Titles 11 and 16 which may contain (but are not limited to) the following characteristics:
 - 7.1.1.1.1 Offenses against the person where physical harm or death has taken place
 - 7.1.1.1.2 Offenses involving weapons, explosive devices or threat of harm
 - 7.1.1.1.3 Offenses involving public indecency and obscenity which may have been the result of plea bargain situations
 - 7.1.1.1.4 Offenses that show a disregard of others, such as reckless endangering, arson
 - 7.1.1.1.5 Cruelty to animals or deviant behavior such as abusing a corpse
 - 7.1.1.1.6 Offenses against the Uniform Controlled Substances Act
 - 7.1.1.2 The existence of a substantiated report of child abuse or neglect involving the child care person or foster parent as perpetrator shall be reviewed in consideration of other criteria below.
 - 7.1.2 Frequency of offense(s)
 - 7.1.3 Length of time since the offense(s)

- 7.1.4 Age at the time of the offense(s)
- 7.1.5 Severity of the offense(s)
- 7.1.6 Record since the offense(s)
- 7.1.7 Relationship of the offense(s) to the type of job assignment and/or responsibilities of the child care person or foster parent
- 7.1.8 Policies of the agency
- 7.2 ~~(Rule 29)~~ Failure by a child care person or foster parent to disclose relevant criminal history or child ~~abuse—protection~~ registry information on the Criminal History Record Request form that is subsequently disclosed as a result of the criminal history record check may be grounds for immediate termination of an employee or denial of approval for foster or adoptive care.

8.0 Sanctions

- 8.1 ~~(Rule 30)~~ Sanctions against employers (division/facility/ agency) shall be applied and enforced in the following circumstances:
 - 8.1.1 An employer fails to require criminal history record checks for affected employees, volunteers, or applicants for foster care or adoption.
 - 8.1.2 An employer knowingly hires or approves a child care person who is prohibited from employment or foster care or adoption as a result of a conviction for a prohibited offense.
 - 8.1.3 An employer does not comply with the final recommendation of an administrative review.
- 8.2 ~~(Rule 31)~~ Sanctions applied to contracted agencies residential facilities and child placing agencies for violation of the law or the regulations may include:
 - 8.2.1 Amendment or dissolution of any agreements with the Department to provide the contracted service
 - 8.2.2 Removal of children from placement
 - 8.2.3 Suspension of future child referrals
 - 8.2.4 Revocation of licensure
- 8.3 ~~(Rule 32)~~ Sanctions against Department Divisions for violation of the law or regulations shall be applied to responsible staff by the Secretary on a case-by-case basis and may include:
 - 8.3.1 Involuntary reassignment
 - 8.3.2 Discipline up to and including dismissal

9.0 Administrative Review

Criminal history is only one factor being considered in the hiring or approval process. If the employer makes an adverse judgment based on any criterion other than criminal history, this administrative review process does not apply.

- 9.1 ~~(Rule 33)~~ Any child care person or foster parent who is denied, recommended for termination, terminated from employment, volunteering or foster care as a result of an adverse judgment made on the basis of a criminal history record check shall be entitled to an administrative review.
- 9.2 ~~(Rule 34)~~ The child care person will be notified of the right to an administrative review when a determination of unsuitability has been made.
- 9.3 ~~(Rule 35)~~ If the child care person believes the criminal history information is incorrect or incomplete, she/he shall submit a request for a review of the facts of the criminal history to the Criminal History Specialist in writing or reduced to writing within five (5) working days of the receipt of the decision for denial/recommending termination/ termination of employment, volunteering, foster care or adoption resulting from a determination of unsuitability. When the corrected information is obtained by the child care person, it will be reviewed by the Criminal History Specialist's Supervisor and the Criminal History Specialist. A recommendation will be issued to the appropriate Division Director based on the corrected information. The Division Director makes a final decision and notifies the child care person, foster or adoptive parent and copies the employer or child placing agency and the Criminal History Specialist.

- 9.4 (~~Rule 36~~) If the child care person believes that additional information regarding the circumstances of the particular offense(s) would clarify the situation, she/he shall submit a written or reduced to writing request for an administrative review and the written documentation to be considered in the review to the appropriate Division Director with a copy to the employer and the Criminal History Specialist. This shall be submitted within 10 working days of the receipt of the decision for denial, recommendation to terminate employment, volunteering, foster care, or adoption resulting from a determination of unsuitability. The Division Director makes a final decision and notifies the child care person or foster parent and copies the employer or child placing agency and the Criminal History Specialist.
- 9.5.1 If the individual had previously requested a review of the facts of the criminal history, the request for an administrative review shall be submitted within five (5) working days of the receipt of the decision based on the results of that review.
- 9.5.2 The child care person may also request to give an oral presentation at her/his administrative review.
- 9.6 (~~Rule 37~~) When a child care person has requested a review of the facts of the criminal history and/or an administrative review, the following shall apply:
- 9.6.1 The child care person shall be removed from direct access to children or provisions made for on-site supervision of the person during working hours pending the results of the review.
- 9.6.2 In the case of foster parents, children may be removed from the home or no further placements shall be made pending the results of the review.
- 9.6.3 In the case of adoptive parents, the application shall remain active, but children may be removed from the home pending results of the review.
- 9.6.4 The employer shall notify the Criminal History Specialist of the action taken with the child care person pending the results of the administrative review. (This notification is in addition to following established procedures already governing state personnel or individual facilities or agencies.)
- 9.7 (~~Rule 38~~) In the case of a review of a decision involving a Department operated facility or Department staff, the Division Director (or designee) shall conduct the review in conjunction with Personnel and within the context of these regulations, merit rules/labor agreements and the employment status of the child care person. The Criminal History Specialist shall be present as a witness.
- 9.8 (~~Rule 39~~) When the review involves a Division of Family Services approved foster parent, the Director of the Division of Family Services (or designee) shall conduct the review with the County Foster Home Coordinator staffing the review and the Criminal History Specialist present as a witness.
- 9.9 (~~Rule 40~~) In the case of a review of a decision involving a contracted facility or child placing agency, the Director (or designee) of the contracting Division shall conduct the review with the employer staffing the review and the Criminal History Specialist present as a witness.
- 9.10 (~~Rule 44~~) The employer and the child care person shall be bound by the final decision of the administrative review which is made by the Division Director or designee. If the employer does not accept the decision, sanctions shall apply.

10.0 Employer Responsibilities

- 10.1 (~~Rule 42~~) The employer (division/facility/agency) shall ensure that a Criminal History Record Request has been completed as specified by law and that the employer copy is maintained in the personnel/application file. Employers shall direct child care persons to the State Police to have fingerprints taken and shall ensure the completion of this process.
- 10.1.1 The employer whenever possible, will notify the Criminal History Specialist if a child care person is terminated prior to completion of the criminal history check process.
- 10.1.2 The employer shall require all child care persons and foster parents to notify them of any subsequent arrests or charges as a condition of continued employment or approval.
- 10.2 (~~Rule 43~~) When the employer is notified of a history of prohibited offense(s), the employer shall immediately take steps to terminate the child care person. A copy of this letter shall be sent to the Criminal History Specialist and a copy maintained in the personnel/application file.

- 10.3 ~~(Rule 44)~~ In the event that a child care person requests an administrative review, the employer shall notify the Criminal History Specialist of the action taken to remove the child care person from direct access to children pending the results of the review. The employer shall abide by the decision of the administrative review. Copies of written documentation related to the administrative review shall be maintained in the personnel/application file.

11.0 Confidentiality

Title 11, subsection 8513 (c) (1) of the Delaware Code permits the State Bureau of Identification to furnish information pertaining to the identification and conviction data of any person of whom the Bureau has record individuals and agencies for the purpose of employment of the person whose record is sought, provided the use of the conviction data is limited to the purpose for which it was given.

- 11.1 ~~(Rule 45)~~ The Department shall ensure that written and electronically recorded criminal history record information shall be stored in a systematic manner, to provide for the security and confidentiality of records and to protect against any anticipated threats to their security and integrity.
- 11.2 ~~(Rule 46)~~ The Department shall ensure that the use of the criminal history record information is restricted to its purpose of determining suitability for employment or approval to provide child care services for child care persons or foster parents as defined in these regulations.
- 11.3 ~~(Rule 47)~~ The Department shall not release to employers as defined in these regulations copies of actual ~~written reports of criminal history records prepared by the State Bureau of Identification, Federal Bureau of Investigation or Division of Family Services~~ criminal history records.
- 11.4 ~~(Rule 48)~~ The Department shall provide to employers and child care persons or foster parents written summaries of criminal record information for a child care person or foster parent whose criminal history record check results in a finding of prohibited offense(s), other arrests and convictions, or information that the individual is named in the Child Abuse Protection Registry as the perpetrator of a substantiated report of child abuse or neglect.
- 11.5 ~~(Rule 49)~~ The following procedure shall be established to permit the review of criminal history record files by the child care person or foster parent:
- 11.5.1 An individual shall submit a request in writing to the Criminal History Specialist for the on-site review of his/her criminal history record file.
 - 11.5.2 An appointment shall be made for the individual to review the record in the offices of the Office of Child Care Licensing. Identification will be required at the time of the review.
 - 11.5.3 The record shall be reviewed in the presence of the Criminal History Specialist.
 - 11.5.4 Written documentation of the date and time of the review and the name of the reviewer shall be filed in the criminal history record file for the child care person or foster parent.
 - 11.5.5 The Department shall ensure that criminal history record files (written and computer-generated) shall not be removed from the secure files for any purpose other than to permit review by the named child care person or foster parent.
- 11.6 ~~(Rule 50)~~ Criminal history record information shall not be disseminated to any persons other than the child care person or foster parent whose record is being sought and his/ her employer, the Division Director or County Foster Home Coordinator, in compliance with 11 **Del.C.** §8513(d).

DIVISION OF FAMILY SERVICES

Office of Child Care Licensing / Criminal History Unit
Statutory Authority: 31 Delaware Code, Section 309 (31 **Del.C.** §309)
9 **DE Admin. Code** 302

302 Child Abuse Registry Checks for Child Care and Health Care Persons

PUBLIC NOTICE**Summary**

The Office of Child Care Licensing proposes to amend Child Abuse Registry Checks for Child Care and Health Care Persons in order to clarify and streamline regulations and to comply with changes to Delaware Code.

Comments

A copy of the proposed regulations is being published in the May 1, 2013 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on May 31, 2013.

Adoption of Proposed Regulation

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

302 Child Abuse Protection Registry Checks for Child Care and Health Care Persons**1.0 Legal Base**

The legal base for these regulations is in ~~the 19 11 Del.C. §708 8563.~~

2.0 Purpose

The overall purpose of these regulations is the protection for the “vulnerable” population in child care, public schools and health care facilities. To this end, persons seeking employment in a licensed child care facility, public school or health care facility shall submit to a Child Abuse Protection Registry check. A search of the Child Abuse Protection Registry will be conducted to determine if the person is a perpetrator in any substantiated cases of child abuse or neglect.

3.0 Definitions

“**Child Abuse Protection Registry**” means a central registry of information about persons the Division of Family Services has found cause to believe, or a court has substantiated through court adjudication, have committed child abuse or neglect since August 1, 1994.

“**Child Abuse Protection Registry Check**” means a computer search of the Child Abuse Protection Registry to determine if a person is a perpetrator in any substantiated cases of child abuse or neglect.

“**Child Care Facility**” means any child care facility which is required to be licensed by The Department of Services for Children, Youth and Their Families.

“**Child Care Person**” means any person in a child care facility in a position which provides the opportunity to have direct access to children without the presence of other employees or adults.

“**Conditional Child Care Person**” means a child care person who has been offered a position or has agreed to volunteer in a child care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child ~~abuse~~ protection registry check by the employer.

“**Conditional Health Care Person**” means a health care person who has been offered a position or has agreed to volunteer in a health care facility. Under the provisions of the law, employment shall be

conditional and contingent upon the receipt of the child ~~abuse~~ protection registry check by the employer.

“Conditional Public School Person” means a public school person who has been offered a position or has agreed to volunteer in a public school. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.

“Criminal History Unit” means the Unit located in the Division of Family Services that is responsible for the implementation of conducting the Child Abuse Protection Registry checks for child care, public school and health care persons.

“Department” means the Department of Services for Children, Youth and Their Families or any of the Divisions.

“Direct Access” means the opportunity to have personal contact with persons receiving care during the course of one’s assigned duties.

“Division of Family Services” means the Division that maintains the Child Abuse Protection Registry.

“Employer” means any child care facility, public school or health care facility as defined.

“Health Care Facility” means any custodial or residential facility where health, nutritional, or personal care is provided for persons including nursing homes, hospitals, home health care agencies and adult day care facilities.

“Health Care Person” means any person in a health care facility in a position which provides the opportunity to have direct access to persons receiving care without the presence of other employees or adults.

“Person Seeking Employment” means any person applying for employment in a ~~child care~~ public school or public school district, ~~any person applying for employment in a health care facility that affords direct access to persons receiving care at such a facility~~ or child care facility, or a person applying for licensure to operate a child care facility.

“Person Seeking Employment With a Public School” means any person seeking employment for compensation with a public school or with an agency that supplies contracted services to students of a public school or any other person who for any reason has regular direct access to children at any public school, as that term is defined in this section, including substitute teachers.

“Public School” means any public school and includes any board of education, school district, reorganized school district, special school district, or charter school, and any person acting as an agent thereof.

“Volunteer” means any person who has direct access to persons receiving care during the performance of unpaid duties.

4.0 Persons Subject to the Law

4.1 Persons subject to the law shall be those persons who are hired or apply for the status described below on or after ~~January 1, 1998~~ February 1, 2003.

4.1.1 Child care, public school and health care persons subject to the Child Abuse Protection Registry check shall be persons in a child care, public school or health care facility who are in a position which involves:

4.1.1.1 ~~Supervisory or disciplinary authority over persons receiving care, or~~

4.1.1.2 ~~the opportunity to have direct access to persons receiving care without the presence of other employees or adults.~~

5.0 Employer Responsibilities

5.1 No employer who operates a child care facility, public school or health care facility shall hire any person without requesting a Child Abuse Protection Registry check for that person. The Child Abuse Protection Registry check shall relate to substantiated cases of child abuse or neglect reported after August 1, 1994.

PROPOSED REGULATIONS

- 5.2 The employer shall obtain a full release from each person subject to the law. The release must be completed and signed in order for the employer to obtain the information provided pursuant to the Child Abuse Protection Registry check. The release is a form developed by the Department.
- 5.3 Any person hired prior to the employer receiving the results of the Child Abuse Protection Registry check, must be informed in writing, and must acknowledge in writing that employment is conditional and contingent upon the receipt and evaluation of the Child Abuse Protection Registry check.

6.0 Child Abuse Registry Check Process

- 6.1 The child care, public school or health care person completes and signs a release form in order for a Child Abuse Protection Registry check to be conducted.
- 6.2 Upon ~~receipt of the~~ verification of the signed release, the Criminal History Unit will conduct a Child Abuse Protection Registry check to determine if the person is named as a perpetrator in any substantiated cases of child abuse or neglect.
- 6.3 When the person is not listed in the Child Abuse Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the appropriate employer.
- 6.4 When the person is listed in the Child Abuse Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the employer along with details on how to obtain further information pertaining to the substantiated case(s) of child abuse or neglect.

7.0 Review of Department Records

- 7.1 When a person is listed in the Child Abuse Protection Registry as a perpetrator they will be allowed the opportunity to review the record information maintained by the Division of Family Services.
- 7.2 The following procedures shall be established to permit the review of record information.
- 7.2.1 The person shall submit a request in writing to the ~~address~~ Child Protection Registry Hearing Coordinator provided as part of the results of the Child Abuse Protection Registry ~~Request check~~.
- 7.2.2 Upon receipt of the request, an appointment shall be scheduled for the person to review the record information.
- 7.2.3 The review shall take place in the presence of a Division of Family Services staff member. ~~The employer may also be present.~~

8.0 Confidentiality

The Department shall ensure that confidentiality regarding case file reviews and the dissemination of information is followed according to Department policy.

9.0 Penalty

Any employer who hires a person seeking employment without requesting and receiving a Child Abuse Protection Registry check for such person shall be subject to a civil penalty of not less than \$1,000.00 nor more than \$5,000.00 for each violation.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))
24 **DE Admin. Code** 2925

2900 Real Estate Commission

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations.

A public hearing will be held on June 13, 2013 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be June 28, 2013, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on July 11, 2013 at 9:30 a.m., at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed an addition to Rule 13.0 to permit licensees to obtain continuing education credit for completion of a broker's licensing course. In addition, there is a typographical correction to Rule 13.1.

2900 Real Estate Commission

(Break in Continuity of Sections)

13.0 Continuing Education [24 Del.C. §§2909(a)(7), 2910(d)]

- 13.1 Effective ~~until~~ as of the license renewal period beginning May 1, 2012, Licensees shall meet the following CE requirements:
- 13.1.1 During each licensure renewal period, Licensees shall complete the following twenty-one (21) hours of CE:
- 13.1.1.1 Three (3) hours in agency and fair housing (Module 1).
 - 13.1.1.2 Three (3) hours in professional standards (Module 2).
 - 13.1.1.3 Three (3) hours in real estate documents (Module 3).
 - 13.1.1.4 Three (3) hours in office management (Module 4).
 - 13.1.1.5 Three (3) hours in legislative issues (Module 5).
 - 13.1.1.6 Three (3) hours in practices of real estate (Module 6).
 - 13.1.1.7 Three (3) hours in elective courses (Module 7).
- 13.1.2 New licensees, other than new Licensees previously licensed in another state, shall complete the following twelve (12) hours of CE during the first twelve months of licensure. These twelve (12) hours of CE will be applied to the total amount of required CE hours pursuant to the pro-ration schedule in Rule 13.2:
- 13.1.2.1 Three (3) hours in professional standards.
 - 13.1.2.2 Three (3) hours in agreement of sale and buyer representation.
 - 13.1.2.3 Three (3) hours in real estate documents and seller representation.
 - 13.1.2.4 Three (3) hours in real estate professionalism.
- 13.2 CE hours shall be prorated in accordance with the following schedule:
- 13.2.1 For new Licensees:
- 13.2.1.1 No continuing education is required for fewer than six months of licensure.
 - 13.2.1.2 Six (6) hours of continuing education are required after at least six months but less than twelve months of licensure.
 - 13.2.1.3 The twelve (12) hours of continuing education set forth in Rule 13.1.2 are required after at least twelve months but less than twenty-four months of licensure.
 - 13.2.1.4 Twenty-one (21) hours of continuing education are required after twenty-four months of licensure, consisting of: the twelve (12) hours of CE set forth in Rule 13.1.2, three (3) hours in agency and fair housing (Module 1), three (3) hours in legislative issues (Module 5) and three (3) hours in practices of real estate (Module 6).
- 13.2.2 For persons who have successfully completed the pre-licensing course but who have not yet made application:

- 13.2.2.1 Twelve (12) hours of continuing education are required more than twelve months but less than eighteen months after course completion.
 - 13.2.2.2 Twenty-one (21) hours of continuing education are required more than eighteen months after course completion, in compliance with the requirements of Rule 13.1.1.
 - 13.2.2.3 For more than eighteen months after course completion, Twenty-one (21) hours of CE are required for each biennial renewal period, in compliance with the requirements of Rule 13.1.1.
- 13.3 At the time of renewal, the Licensee shall attest to completion of the required CE. Attestation shall be completed electronically.
- 13.3.1 The Licensee's attestation as to completion of CE does not relieve the Broker of his or her duty to ensure that the Licensee has completed the required CE during the licensure renewal period. Each Broker shall maintain copies of CE certificates for his or her Salespersons and Associate Brokers for at least three years after the conclusion of each renewal period.
 - 13.3.2 Licensees selected for random audit are required to supplement the attestation with attendance verification as provided in Rule 13.3.6.
 - 13.3.3 Random audits shall be performed by the Commission to ensure compliance with the CE requirements.
 - 13.3.4 The Commission shall notify Licensees within sixty (60) days after June 30 of each biennial renewal period that they have been selected for audit.
 - 13.3.5 Licensees selected for random audit shall be required to submit verification within twenty (20) business days of receipt of notification of selection for audit.
 - 13.3.6 Verification shall include such information necessary for the Commission to assess whether the course meets the CE requirements in Rule 13.0. While course brochures may be used to verify CE hours, they are not considered to be acceptable proof for use of verification of course attendance. Verification shall include the official certificate of completion, as provided by the course provider.
 - 13.3.7 The Commission shall review all documentation submitted by Licensees pursuant to the continuing education audit. If the Commission determines that the Licensee has met the continuing education requirements, his or her license shall remain in effect. If the Commission determines that the Licensee has not met the continuing education requirements, the Licensee shall be notified and a hearing may be held pursuant to the Administrative Procedure Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying noncompliance with the continuing education requirements. Unjustified noncompliance with the continuing education requirements set forth in these Rules and Regulations shall constitute a violation of 24 **Del.C.** §2912(a)(9) and the Licensee may be subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §2914.
 - 13.3.8 Licensees who renew their licenses under the late renewal provision shall be audited for CE completion. These Licensees shall submit documents that evidence satisfactory completion of their CE requirements for the prior licensure period.
- 13.4 Definition of Acceptable Continuing Education Credits:
- 13.4.1 All CE activities shall be pre-approved by the Commission, pursuant to the Commission's Real Estate Education Guidelines.
 - 13.4.2 Activities shall be a minimum of one (1) hour and delivered in one (1) hour increments.
- 13.5 The Commission may waive or postpone all or part of the continuing education requirements of these Rules and Regulations if a Licensee submits a written request for a waiver and provides evidence to the satisfaction of the Commission of an illness, injury, financial hardship, family hardship, or other similar extenuating circumstance which precluded the Licensee's completion of the requirements. Application for waiver or postponement shall be made in writing to the Commission and shall be received by the Commission no later than 60 days prior to the biennial license renewal date.
- 13.6 The Commission may appoint a committee to assist in the Commission's educational objectives.

- 13.7 Members of the Real Estate Commission who attend at least eighty percent (80%) of Commission meetings during a biennial licensure period may receive one hour of CE for each Commission meeting attended and said hour may be applied to any CE required for licensure renewal.
- 13.8 Completion of broker's licensing course.
- 13.8.1 Delaware broker's licensing course: Upon successful completion of an approved Delaware broker's licensing course, a licensee shall receive 21 hours of continuing education credit. These 21 hours shall satisfy the continuing education requirements (Modules 1 – 7) for the biennial licensing period in which the course was completed. The course provider shall provide the licensee with a certificate stating that Modules 1 – 7 have been satisfied upon successful completion of the broker's licensing course. This Rule shall be retroactive for all licensees who have successfully completed the broker's licensing course after May 1, 2012.
- 13.8.2 Out-of-state broker's licensing course: Upon successful completion of a broker's licensing course in a state outside of Delaware, consisting of at least 99 hours of education, a licensee shall receive 18 hours of continuing education credit, satisfying Modules 1 – 4 and 6 – 7, for the biennial licensing period in which the course was completed. This Rule shall be retroactive for all licensees who have successfully completed the broker's licensing course after May 1, 2012.
- 13.9 Licensees successfully completing a minimum of 6 hours of a National Accreditation Program during a licensure renewal period and receiving a nationally recognized designation or providing proof of successfully completing a section towards a nationally recognized designation may submit pursuant to 7.2 for six (6) credit hours to satisfy Modules 6 and 7. The instructor shall be considered an approved instructor.

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

2900 Real Estate Commission

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 Del.C. §2906(a)(1))
24 DE Admin. Code 2925

PUBLIC NOTICE

2925 Real Estate Commission Education Committee

Pursuant to 24 Del.C. §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to the Real Estate Commission Education Guidelines (the "Guidelines").

A public hearing will be held on June 13, 2013 at 9:15 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 rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 Del.C. §10118(a), the final date to receive written comments will be June 28, 2013, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on July 11, 2013 at 9:15 a.m., at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed revisions to Rule 3.0, pertaining to the composition of the Education Committee. These revisions will facilitate the appointment and retention of Education Committee members and ensure that their meetings have a quorum. In addition, Rule 6.7 is added to permit licensees to obtain continuing education credit for completion of a broker's licensing course.

2925 Real Estate Commission Education Committee*(Break in Continuity of Sections)***3.0 Education Committee**

- 3.1 ~~Committee Structure—The Committee shall be comprised of twelve (12) members, four (4) from each county. Three (3) members shall be public members and the remaining members shall hold a valid Delaware real estate license.~~ Committee Structure – With the expiration of the terms of the members of the Committee in office as of the effective date of this Rule, the Committee shall be comprised of nine (9) members, three (3) from each county. Up to three (3) members may be public members and the remaining members shall be professional members.
- 3.1.1 A public member shall not be, nor have been within the last five (5) years prior to the effective date of appointment, a real estate licensee. A public member shall have a high school diploma, or the equivalent, and shall have a minimum of five (5) years experience in a professional capacity, other than in the real estate profession.
- 3.1.2 A professional member shall hold an active Delaware real estate license in good standing and shall have a minimum of three (3) years of full time real estate sales or brokerage experience. A professional member shall also demonstrate past or present interest and experience in real estate educational activities and familiarity with the Real Estate Commission's licensing law (Chapter 29 of Title 24 of the Delaware Code) and rules and regulations.
- 3.2 Committee Officers - (Chairperson and Vice-Chairperson) shall be elected from the Committee and shall serve one year terms. Election of said officers will be held in January.
- 3.3 Term of Office
- 3.3.1 With the expiration of the terms of the members of the Committee in office as of the effective date of this Rule, Each appointment shall be for ~~four (4)~~ three (3) full years. Each appointed committee member may succeed himself or herself for one (1) additional term. Committee members in office as of April 11, 2013, may serve an additional three (3) year term after completion of their current terms. No person who has been appointed to the Committee shall again be appointed to the Committee until an interim period of at least one (1) year has passed since such person last served.
- 3.3.2 Seven (7) As of the effective date of this Rule, a majority of the members holding appointed office at any given time members shall constitute a quorum; and no recommendation shall be effective without the affirmative vote of a majority of the quorum. Any member who fails to attend three (3) consecutive regular business meetings without a valid excuse, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Commission.
- 3.3.3 Committee members shall be appointed by the Commission. Applications for committee membership will be received by the Commission, via a letter of intent and a current resume 60 days prior to an anticipated vacancy. Committee members may be removed by the Commission for good cause. If an interim vacancy should occur, the Commission shall appoint a person to fill the position for a full four (4) year term commencing with the date of appointment.
- 3.4 Committee Responsibilities
- 3.4.1 It shall be the duty of the Education Committee to oversee the content and conduct of all pre-licensing courses for salesperson and broker as well as continuing education programs offered to fulfill the educational requirements for obtaining and maintaining licensure in the State of Delaware.
- 3.4.2 The Education Committee shall have the responsibility for reviewing all applications for pre-licensing and continuing education credit as well as review of instructor applicants, to insure that all applications satisfy the requirements.
- 3.4.3 After this review, the Education Committee shall recommend that an application be approved, disapproved or approved with modifications by the Commission. If approval is recommended with regard to continuing education, the Committee shall indicate the number of full credit hours for the

course. In making its decisions, the Education Committee shall follow the provisions contained in these guidelines. Any recommendation for non-approval shall be accompanied by a specific reason. Only the Delaware Real Estate Commission shall have the power to approve or disapprove the application for a course offering or instructor approval.

- 3.4.4 The Education Committee shall undertake such other duties and responsibilities directly related to education as the Commission shall direct from time to time.
- 3.4.5 Committee meeting times and places shall be as necessary, but in all cases within two weeks prior to the next regularly scheduled meeting of the Commission. Committee meetings shall be conducted in accordance with the Administrative Procedures Act.
- 3.4.6 Notwithstanding any rule, regulation, or guideline to the contrary, members of the Education Committee who attend at least eighty percent (80%) of the meetings of the Education Committee during a biennial licensure period may receive one hour of continuing education for each meeting attended and said hour may be applied to any continuing education required for renewal.

(Break in Continuity of Sections)

6.0 Continuing Education Course Criteria

(Break in Continuity Within Section)

6.6 Completion of broker's licensing course.

6.6.1 Delaware broker's licensing course: Upon successful completion of an approved Delaware broker's licensing course, a licensee shall receive 21 hours of continuing education credit. These 21 hours shall satisfy the continuing education requirements (Modules 1 – 7) for the biennial licensing period in which the course was completed. The course provider shall provide the licensee with a certificate stating that Modules 1 – 7 have been satisfied upon successful completion of the broker's licensing course. This Rule shall be retroactive for all licensees who have successfully completed the broker's licensing course after May 1, 2012.

6.6.2 Out-of-state broker's licensing course: Upon successful completion of a broker's licensing course in a state outside of Delaware, consisting of at least 99 hours of education, a licensee shall receive 18 hours of continuing education credit, satisfying Modules 1 – 4 and 6 – 7, for the biennial licensing period in which the course was completed. This Rule shall be retroactive for all licensees who have successfully completed the broker's licensing course after May 1, 2012.

6.7 Licensees successfully completing a minimum of 6 hours of a National Accreditation Program during a licensure renewal period and receiving a nationally recognized designation or providing proof of successfully completing a section towards a nationally recognized designation may submit pursuant to Rule 7.2 for six (6) credit hours to satisfy Modules 6 and 7. The instructor shall be considered an approved instructor.

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

2925 Real Estate Commission Education Committee

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 5306(a)(1) (24 **Del.C.** §5306(a)(1))
24 **DE Admin. Code** 5300

PUBLIC NOTICE

5300 Board of Massage and Bodywork

Pursuant to 24 **Del.C.** §5306(a)(1), the Delaware Board of Massage and Bodywork has proposed revisions to its rules and regulations.

PROPOSED REGULATIONS

A public hearing will be held on June 20, 2013 at 1:45 p.m. in the second floor conference room B 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 rules and regulations may obtain a copy from the Delaware Board of Massage and Bodywork, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be July 5, 2013, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting on August 15, 2013, at 1:45 p.m., at which time the Board will decide whether to adopt the revisions as proposed.

The Board has proposed extensive revisions to the rules and regulations. Certain revisions implement amendments to the Board's licensing law, Chapter 53 of Title 24 of the Delaware Code. In particular, all certified massage technicians shall be required to provide clients with client disclosure forms stating that services will be provided by a certified massage technician and not by a licensed massage therapist. This disclosure form will further advise clients that certified massage technicians are not authorized to treat medically diagnosed conditions. The revisions also add Standards of Professional Conduct for licensees and fines for unlicensed practice. The rules and regulations pertaining to continuing education have been revised to specify that, effective the 2014 – 2016 renewal period, all licensees must complete 24 hours of continuing education. Finally, the rules and regulations are updated for clarity and consistency.

The Board proposes striking the existing rules and regulations in their entirety and replacing them with the rules and regulations set forth herein.

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

5300 Board of Massage and Bodywork

DIVISION OF PROFESSIONAL REGULATION

CONTROLLED SUBSTANCE ADVISORY COMMITTEE

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

Uniform Controlled Substances Act Regulations

PUBLIC NOTICE

Pursuant to 16 **Del.C.** §4731, the Delaware Controlled Substance Advisory Committee has proposed revisions to its rules and regulations. The rules and regulations are re-organized for greater clarity and expanded to incorporate pertinent provisions from Chapter 47 of Title 16. The rules pertaining to security in dispensing, now set forth in Rule 7.0, are amended for greater public protection. Rule 8.0 is added to address dispensing by practitioners.

A public hearing will be held on May 29, 2013 at 9:30 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Committee at the above address. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be June 13, 2013, which is 15 days following the public hearing.

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

Uniform Controlled Substances Act Regulations

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 HARNESS RACING COMMISSION

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

ORDER

501 Harness Racing Rules and Regulations

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on March 7, 2013, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 5.3.3.19, 8.5.5.11, 7.1.7, 7.1.7.1, 7.1.7.1.1, 7.1.7.2 & 7.1.7.2.1 in the February 1, 2013 *Register of Regulations* (Volume 16, Issue 8) and for two consecutive weeks in February in *The News Journal* and *Delaware State News* 02/10/13 & 02/24/13. The Commission proposed to update Rule 5.3.3.19, 8.5.5.11, 7.1.7, 7.1.7.1, 7.1.7.1.1, 7.1.7.2 & 7.1.7.2.1 after Rules Committee review.

2. The Commission received no written comments. The Commission held a public hearing on April 9, 2013, in which no public comments were made.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

4. After considering the rule changes as proposed, the Commission hereby adopts the rule changes as

proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

5. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on May 1, 2013.

IT IS SO ORDERED this 9th day of April, 2013.

Beverly H. (Beth) Steele, Chairwoman

George P. Staats, Commissioner

Patt Wagner, Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the February 2013 issue of the *Register* at page 822 (16 DE Reg. 822). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

501 Harness Racing Rules and Regulations

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

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

ORDER

2102 Autism Service Providers

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Developmental Disability Services initiated proceedings to amend 2102 Autism Service Providers. The Department's proceedings to amend its regulations were initiated pursuant to 18 **Delaware Code** Sections 3361(f) and 3570A and its authority as prescribed by 31 **Delaware Code** Section 512.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Background

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

Summary of Proposal

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

Autism Delaware, the Community Legal Aid Society, Inc., Delaware Association for Behavior Analysis, The Governor's Advisory Council for Exceptional Citizens, and The State Council for Persons with Disabilities offered the following observations summarized below. The Division of Developmental Disabilities Services has considered each comment and responds as follows.

Comment: 1.

In §2.0, the definition of "applied behavior analysis" is not co-terminus with the statutory definition. The regulation adds two sentences which limit the scope of ABA and amount to an invitation to insurers to deny payment based on the exclusions and limitations. It is improper to have a regulatory definition which is narrower than a statutory definition. The enabling legislation does not confer authority on DHSS to further define ABA and the attempt is "ultra vires".

Response: Upon consideration and review of available comments, the Division will define "applied behavior analysis" per the statute to ensure continuity of the definition. The additional sentences written in the regulation are removed.

Comment: 2.

In §2.0, the definition of "autism services provider" covers a "board-certified behavior analyst" (BCBA) but omits a Board Certified Behavior-Analyst Doctoral (BCBA-D) which is treated as a distinct provider throughout the regulations. See, e.g. §2.0, definition of "behavioral technician" and §§3.1, 3.2, and 4.1.1. A reference to the BCBA-D should be added to the definition of "autism services provider".

Response: The Division used the terminology "practitioners with the national certification of board-certified behavior analyst" as a broad description to refer to individuals holding any title relative to a certified behavior analyst including Board Certified Behavior Analyst-Doctoral® (BCBA-D), Board Certified Behavior Analyst® (BCBA), Board Certified Assistant Behavior Analyst® (BCaBA). Upon consideration and review of available comments, the Division will add the titles to the definition of "Autism Services Provider" to clarify the definition.

Comment: 3.

In §2.0, definition of "autism services provider", the reference to "authorized by this section" is copied directly from the statute and makes no sense in the context of §2.0 of the regulations. Consider substituting "by this regulation" or, based on the reference to "these regulations" in the definition of "behavioral technician", substitute "these regulations".

Response: Upon review and consideration of the available comments, the Division substitutes the terminology in the "autism services provider" and the "behavioral technician" sections as suggested for clarity and continuity of the regulation.

Comment: 4.

In §2.0, definition of "therapeutic care", insert "acting" between "assistant" and "under". Compare comparable reference in definition of "psychological care".

Response: In maintaining continuity and clarity of the regulation, the Division inserts the term "acting" as referenced in the comment.

Comment: 5.

In §3.1, first sentence, delete "to be" since the regulation(s) are establishing the standards now, not in the future.

Response: In maintaining clarity of the regulation, the Division deletes the statement as referenced in the comment.

Comment: 6.

In §3.1, second sentence, substitute "it certifies" for "they certify" since the antecedent (Board) is singular.

Response: In maintaining clarity of the regulation, the Division modifies the statement as referenced in the comment.

Comment: 7.

In §3.1, referring to a website that may change in a regulation may be imprudent. It would be preferable to simply refer to the most recent ethical and practice standards adopted by the Behavior Analyst Certification Board. For example, in §2.0, definition of autism spectrum disorders”, the reference is to the most recent edition of the DSM, not a version appearing on a website.

Response: The Division amends the regulation as specified in the comment for clarity and continuity.

Comment: 8.

In §3.2, the reference to “2.2” should be “§2.0”.

Response: In maintaining continuity of the regulation, the Division modifies the reference number as specified in the comment.

Comments: 9, 10, 11, 12, 13, 14.

In §3.3.1, first sentence, substitute “reflects” or “must reflect” for “should reflect”. The word “should” is hortatory. Cf. Delaware Administrative Code Style Manual, §6.3.

AND

In §3.3.1, second sentence, substitute “hours per week” for “hours a week”. Compare reference in §3.3.2.

AND

In §3.3.1, second sentence, substitute “clinical management and case supervision” for “supervision” for consistency.

AND

§§3.3.1 and 3.3.2 are ostensibly inconsistent. Section 3.3.1 establishes a 1.5/10 hourly ratio of supervision to treatment. Thus, a supervisor could spend 0.75 hours supervising a technician conducting 5 hours of treatment. Section 3.3.2, however, would literally require a supervisor to spend 1.5 hours in supervision for a technician conducting 5 hours of treatment. Indeed, the reference to “10 hours per week or less” results in the need to spend 1.5 hours in supervision for a technician spending 1 minute to 9.99 hours in direct treatment.

AND

Sections 3.3.1 and 3.3.2 are unclear and conflicting. In 3.3.1, a ratio of 1.5:10 hours for supervision to direct treatment hours is set but then only two supervision hours are required if ABA is more than 10 hours per week. Conceivably 30 hours a week could have only two hours of supervision, contradictory to the first part of the section. 3.3.1 also does not indicate the expectation that a behavioral technician is providing those direct treatment hours. In 3.3.2, the ratio is more straightforward but does not provide the two hours of supervision for cases in which less than ten hours of ABA are delivered.

AND

For clarity, we strongly recommend one clause regarding supervision and the ratio of supervised hours to non-supervised hours, and further suggest that for less than ten hours of treatment per week, one hour of supervision per week is appropriate. We recommend the following text as 3.3.1, while renumbering sections 3.3.3-3.3.9 as 3.3.2-3.3.8.

Response: Upon reflection of the available comments and recommendations, the Division is in agreement with Autism Delaware and the Delaware Association for Behavior Analysis relative to the supervision requirements. These groups provide the services of applied behavior analysis; therefore, they possess the knowledge and understanding of the requirements of supervising behavioral technicians. In accordance to the recommendations of Autism Delaware and the Delaware Association for Behavior Analysis, the Division amends the regulation to reflect their standard of supervision. This modification will result in a renumber in the sequence of the sections following 3.3.1.

Comment: 15.

§3.3.3 refers to “other requirements” It would be preferable to clarify that this applies to “behavioral technicians”.

Response: Subsequent to a previous modification, 3.3.3 is now known as 3.3.2 referring to other requirements for behavior technicians. In maintaining clarity and continuity of the regulation, the Division modifies the statement to include “for behavioral technicians” as referenced in the comment.

Comment: 16.

§3.3.3.7, first sentence, delete the period after “BCBA”.

Response: Subsequent to a previous modification, 3.3.3.7 is now known as 3.3.2.7. The Division reviewed section 3.3.2.7 locating a comma not a period after BCBA; however, the comma was removed as it is deemed unnecessary.

Comments: 17, 18, 19.

The proposed section 3.3.3.8 requires Autism Delaware or the Delaware Association of Behavior Analysts to approve courses on ABA principles taken toward qualifying as a behavioral technician. Autism Delaware previously recommended that appropriate ABA courses be identified in a similar way to the autism courses outlined in the proposed section 3.3.3.6.

AND

In the proposed section 3.3.3.8, Autism Delaware or the Delaware Association for Behavior Analysis are required to approve courses on ABA principles for behavioral technicians. Once again, we concur with Autism Delaware that this requirement should be removed.

AND

Council understands and concurs with Autism Delaware that §3.3.3.8 should be similar in context to §3.3.3.6 of the entity approving courses. Therefore in §3.3.3.8 behavior analysis (BCaBA) should be removed.

Response: Subsequent to a previous modification, 3.3.3.8 is now known as 3.3.2.8. Upon consideration and review of available comments, the Division is in agreement with Autism Delaware and the Delaware Association for Behavior Analysis relative to training requirements. Autism Delaware and the Delaware Association for Behavior Analysis provide the services of applied behavior analysis; therefore, their expertise of the requirements for training is considered significant. The Division amends the regulation to reflect standard of training of Autism Delaware and the Delaware Association for Behavior Analysis with the addition of a BCBA-D as an entity qualified to provide training.

Comment: 20.

Referring to 3.3.2.8 of the aforementioned changes to the training standard (see 17-19 comments and response) - We suggest additional wording to the last sentence: “or someone with similar training and experience with ABA and autism spectrum disorders.” This will allow individuals who are trained in ABA principles and autism who are not Board Certified to provide training, thus increasing the pool of qualified technicians.

Response: Upon reflection and consideration of adding the statement “or someone with similar training and experience with ABA and autism spectrum disorders,” the Division did not modify the training requirements because it is not congruent with the training standards set forth in this regulation requiring the supervision and training of behavioral technicians to be completed by BCBAs and BCBA-Ds.

Comment: 21.

We further recommend two changes to proposed section 3.3.3.6. We suggest inserting the words “offered by a provider” between “that is” and “on the list.” We also request that the words “so long as such training is offered by a BCBA” be deleted, as there are other types of professionals who can very competently teach about autism spectrum disorders. We do believe in-house training in ABA principles should still be taught by a BCBA.

Response: In maintaining clarity of the regulation, the Division modifies the wording to include “offered by a provider” as referenced in the comment. In addition, the Division deletes the ‘so long as such training is offered by a BCBA’ for the reasons stated in the comment.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Developmental Disability Services Autism Services Providers is adopted and shall be final effective May 10, 2013.

Rita M. Landgraf, Secretary, DHSS

2102 Autism Service Providers**1.0 Purpose**

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

2.0 Definitions

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

“Autism services provider” means any person, entity, or group authorized by this ~~section regulation~~ that designs, supervises, and/or provides treatment of autism spectrum disorders. This includes licensed physicians, psychologists or their assistants, psychiatrists, speech therapists or their aides, occupational therapists or their aides, physical therapists or their assistants, practitioners with the national certification of board-certified behavior analyst ~~[(Board Certified Behavior Analyst-Doctoral® (BCBA-D®), Board Certified Behavior Analyst® (BCBA®), Board Certified Assistant Behavior Analyst® (BCaBA®) working under supervision),]~~ and behavioral technicians working under ~~their the~~ supervision ~~[of a board-certified behavior analyst (BCBA® or BCBA-D®)],~~ licensed professional counselors of mental health, licensed clinical social workers, and advanced practice nurses.

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

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

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

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

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

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

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

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

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

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

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

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

3.0 Qualified Autism Service Providers

- 3.1 If an autism services provider is currently certified as a BCBA or BCBA-D, such autism services provider shall be deemed to have met the standards ~~[to be]~~ established under this section to provide applied behavior analysis services. The Behavior Analyst Certification Board sets forth a task list of acceptable activities of an individual ~~[they certify it certifies]~~ and maintains disciplinary and ethical standards. Certified individuals must act within the scope of these documents and their certification, as currently set forth and as subsequently amended ~~[by the Behavior Analyst Certification Board (BACB). These documents and requirements are set forth on the Behavior Analyst Certification Board website, www.bacb.com.]~~
- 3.2 Professionals and their aides and assistants listed in ~~[2-2 2.0]~~ may provide treatment for autism spectrum disorders, provided that such services are medically necessary and within the professional's scope of practice and scope of competence and training. Aides and assistants must work under the direction and supervision of the professional. Only people certified as a BCBA or BCBA-D or behavioral technicians who work under the supervision of a BCBA or BCBA-D are considered qualified, under these regulations, to provide applied behavior analysis.
- 3.3 Behavioral Technicians who work under the supervision of a BCBA or BCBA-D and who meet the criteria listed below may implement components of applied behavior analysis treatment plans. The supervising BCBA or BCBA-D must verify that the criteria set forth have been met.
- 3.3.1 ~~[The supervision by BCBA or BCBA-D must be such that the ratio of clinical management and case supervision hours to direct treatment hours should reflect the needs of the client but shall not be less than 1.5:10. If ABA treatment is more than 10 hours a week, 2 hours of supervision is required.]~~ Supervision by a BCBA or BCBA-D includes clinical management and case supervision and may include direct treatment. The ratio of such supervision hours provided by the BCBA or BCBA-D to those direct treatment hours provided by a behavioral technician should reflect the needs of the client but shall not be less than 1.5:10 per week. In the case that less than 10 hours per week of ABA is prescribed and delivered, a minimum of 1 hour of supervision per week is required.]
- 3.3.2 ~~[Supervision means that for every 10 hours per week or less of ABA treatment delivered by a Behavioral Technician, the supervising professional provides a minimum of 1.5 hours per week of clinical management and case supervision.]~~
- ~~3.3.3~~ Other requirements [for behavioral technicians]:

- 3.3.[32].1 High School Diploma or GED;
- 3.3.[32].2 Proof of passing a federal and state criminal background and child and adult abuse registry check;
- 3.3.[32].3 Annual CPR certification;
- 3.3.[32].4 Annual signed statement that they have read and understand an explanation of Delaware's mandatory child abuse reporting law (including hotline);
- 3.3.[32].5 Signed statement that they have read and understand an explanation of HIPAA;
- 3.3.[32].6 Proof of successful completion of an online or in-person course on Autism Spectrum Disorders that is [offered by a provider] on the list of continuing education providers authorized by the BACB, provided by any accredited two or four year college (online or in-person), or provided by an ABA or behavioral health agency training its own staff ~~so long as such training is done by a BCBA~~.
- 3.3.[32].7 Proof of completion of competency-based training in implementing applied behavior analysis procedures delivered and verified by the supervising BCBA, or BCBA-D. A person holding a current certification of board certified assistant behavior analyst (BCaBA) is deemed to have met this requirement.
- 3.3.[32].8 ~~[Proof of successful completion of an online or in-person course on ABA principles that has been approved by the Delaware Association of Behavior Analysts or Autism Delaware. This may include coursework offered by an agency which provides ABA therapy and trains its employees in-house. A person holding a current certification of board certified assistant behavior analyst (BCaBA) is deemed to have met this requirement. Proof of successful completion of an online or in-person course on Applied Behavior Analysis principles that is offered by a provider on the list of continuing education providers authorized by the BACB, provided by any accredited two or four year college (online or in-person), or provided by an ABA or behavioral health agency training its own staff so long as such training is done by a BCBA or BCBA-D.]~~
- 3.3.[32].9 After completion of the above, a minimum of 10 hours of competency-based training and direct service, observed by the BCBA or BCBA-D, before providing one-on-one service.

4.0 Disqualification of Autism Service Providers

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Increased Primary Care Service Payment NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA)

initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding *increased Medicaid payments for designated primary care services*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Background

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

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

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

Summary of Proposal

Pursuant to 42 CFR §447.205, the Division of Medicaid and Medical Assistance (DMMA) is required to give public notice of any significant proposed change in its method and standards for setting payment rate for services. On December 22, 2012 in the *News Journal* and on December 21, 2012 in the *Delaware State News*, DMMA issued public notice of its intent to submit a Medicaid State Plan amendment to implement the provisions of Section 2012 of the Affordable Care Act.

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

Changes to the Medicaid State Plan

Effective January 1, 2013, this State Plan Amendment, Transmittal Number 13-001, will amend the fees for services provided by certain primary care physicians to match 100% of Medicare rates for calendar years 2013 and 2014, calculated pursuant to 42 USC §1396a(a)(13)(C) and 42 CFR §447.405(a). These increased rates will apply to the primary care procedure codes identified pursuant to 42 USC §1396a(jj) and 42 CFR §447.400(c). Primary

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

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

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

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

Fiscal Impact Statement

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

In a nutshell, states are required to adjust Medicaid payment rates for certain primary care services in 2013 and 2014 to ensure that they at least match certain Medicare rates. States are also required to adjust fees for vaccine administration under the Vaccines for Children (VFC) program to match the greater of a Medicare rate and VFC regional maximum amount. The federal government will cover 100% of the costs of the difference between the current State payment rates and the new rates so there is no State fiscal impact.

GACEC and SCPD endorse the proposed regulation since the changes are required to conform to federal law and CMS guidance.

Agency Response: DMMA thank the Councils for the endorsement.

DMMA Note: The proposed regulation has been amended upon receipt of further guidance from the Centers for Medicare and Medicaid Services (CMS). Those changes can be viewed as bold, bracketed type on pages 3 and 4 of the final order regulation.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding increased Medicaid payments for designated primary care services is adopted and shall be final effective May 10, 2013.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #13-15
REVISION:

ATTACHMENT 4.19-B
Introduction - Page 1
[OMB No. 0938-1148]

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE
Physician Services

Increased Primary Care Service Payment 42 CFR 447.405, 447.410, 447.415
Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment

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

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

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

The rates reflect all Medicare geographic/locality adjustments.

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

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

ATTACHMENT 4.19-B
Introduction - Page 2
[OMB No. 0938-1148]

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

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

Method of Payment

The state has adjusted its fee schedule to make payment at the higher rate for each E&M and vaccine administration code.

The state reimburses a supplemental amount equal to the difference between the Medicaid rate in effect on July 1, 2009 and the minimum payment required at 42 CFR 447.405.

Supplemental payment is made: monthly quarterly

Primary Care Services Affected by this Payment Methodology

This payment applies to all Evaluation and Management (E&M) billing codes 99201 through 99499.

~~[The State did not make payment as of July 1, 2009 for the following codes and will not make payment for those codes under this SPA (specify codes). (To Be Determined)]~~

[ATTACHMENT 4.19-B
Introduction - Page 3
OMB No. 0938-1148]

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE
Physician Services

FINAL REGULATIONS

Increased Primary Care Service Payment 42 CFR 447.405, 447.410, 447.415

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

The State did not make payment as of July 1, 2009 for the following codes and will not make payment for those codes under this SPA (specify codes).

99288	99324	99327	99335	99339	99359	99366	99374
99315	99325	99328	99336	99340	99363	99367	99375
99316	99326	99334	99337	99358	99364	99368	99376
99377	99380	99403	99407	99420	99442	99450	99261
99378	99401	99404	99411	99429	99443	99455	99262
99379	99402	99406	99412	99441	99444	99456	99263
99271	99274	99290	99295	99298	99301	99311	99321
99272	99275	99293	99296	99299	99302	99312	99322
99273	99289	99294	99297	99300	99303	99313	99323
99331	99351	99361	99372	99432	99436		
99332	99352	99362	99373	99433	99438		
99333	99353	99371	99431	99435	99440]		

ATTACHMENT 4.19-B
Introduction - Page [34
OMB No. 0938-1148]

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

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

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

99408 99409 99224 99225 99226]

Physician Services – Vaccine Administration

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

Medicare Physician Fee Schedule rate

State regional maximum administration fee set by the Vaccines for Children program

~~[Rate using the CY 2009 conversion factor]~~

ATTACHMENT 4.19-B
Introduction - Page [45
OMB No. 0938-1148]

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

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

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

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

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

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

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

ATTACHMENT 4.19-B
Introduction - Page [56
OMB No. 0938-1148]

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

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

E & M Services

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

Vaccine Administration

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

Supersedes Page: None

PRA Disclosure Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information

collection is 0938-1148. The time required to complete this information collection is estimated to average 20 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(1), 16 Delaware Code, §122(3)h, and 16 Delaware Code, §7904

(16 Del.C., §122(1), §122(3)h and §7904)

16 DE Admin. Code 4107

ORDER

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

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services (“DHSS”) initiated proceedings to amend the State of Delaware Regulations Governing Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders. The DHSS proceedings to amend regulations were initiated pursuant to 16 Del.C. §122(1), 16 Del.C. §122(3)(h), and 29 Del.C. §7904.

On February 1, 2013 (Volume 16, Issue 8), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by March 4, 2013, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Entities offering written comments include:

- The Birth Center, Kathleen McCarthy and Dorinda Dove, Co-Owners, Co-Directors
- American Heart Association, Julie Brackett, Vice President of Advocacy
- State Council for Persons with Disabilities, Daniese McMullin-Powell, Chairperson
- Governor’s Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson

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

The Birth Center, Kathleen McCarthy and Dorinda Dove, Co-Owners, Co-Directors:

Regarding: Pulse Oximetry Screen for CCHD and DDPH Billing.

This is a follow up to our telephone conversation and your email inquiring about our policy for pulse oximetry screening for CCHD. We are presently not providing this screening measure. We were not aware of the policy nor do we have the funds or the staff to perform the screening.

Our ladies at TBC (The Birth Center) are discharged from our center on average between six and eight hours postpartum. We do a home visit on day two or day three. The home visiting nurse performs the first newborn metabolic screening at that visit. The metabolic screening requirements dictate this timeframe for the home visit. It is not feasible for us to do an earlier home visit for oximetry screening. The parents typically see their baby’s pediatrician around the twenty- four hour post partum point; however, it is our understanding that the pediatricians

will not be equipped to do this screening. From a financial perspective we cannot afford the equipment, supplies and maintenance requirements of the equipment. We are just keeping our head above water. It is very difficult to recoup our costs from the third party payers. Many times the insurance payers will not pay for these additional services. They often say that it is included in the global charge. We are rarely able to get the insurance companies to increase their global fee. Thus each time your department increases the rates and screening requirements we are losing more money.

I was in touch with other birth centers in the country and was told that they were able to be exempt from the screening requirement. We are asking for an exemption.

Agency Response: The Agency appreciates and acknowledges these comments. While we realize that freestanding birth centers and nurse midwives who perform home deliveries may be impacted by the implementation of pulse oximetry screening, these groups will have the option to either perform the screening at the home visit within 72 hours after birth or refer an infant to the primary care provider for screening.

We are also asking that your department bill the third party payers for the services that you test for. As noted above when your departments increase their charges we are not able to recoup the cost from the third party payers. If you billed the insurance companies for your services I am sure you would receive your payment quickly.

Agency Response: The Agency appreciates and acknowledges these comments, however for the purposes of these regulations, third party payment issues for professional/medical services are not addressed and we respectfully decline to comment on this issue.

American Heart Association, Julie Brackett, Vice President of Advocacy

Subject: Pulse Oximetry Screening in Delaware

As Jonathan mentioned, he and I work together in advocacy for the Great Rivers Affiliate of the American Heart Association. I work in a five-state region that includes Delaware, Kentucky, Ohio, Pennsylvania, and West Virginia. We were pleased to be able to pass pulse oximetry legislation early in 2012 in West Virginia, and we are currently working on this policy in the other four states in our affiliate. In Kentucky, Ohio, and Pennsylvania, we will soon be introducing legislation on this topic.

The American Heart Association is delighted that the State of Delaware is planning to move forward with regulations to ensure that newborns in the state receive pulse oximetry screening prior to leaving a birthing facility. As you know, this non-invasive, economical test is critical in identifying congenital heart defects early in infants, enabling lifesaving therapy to take place as early as possible.

Based on your discussions and correspondence with Jonathan, we have had our national experts review the proposed regulatory language. Our only concern is with section 5.2 in that it seems to stop short of actually specifying that every infant shall receive pulse oximetry screening prior to discharge. In order to assure that pulse oximetry screening is indeed a requirement for every infant, may we suggest that section 5.2 be amended as follows:

5.2 Birth facilities or care providers responsible for screening newborns shall adopt protocols consistent with the scientific statement regarding the role of pulse oximetry from the American Heart Association and American Academy of Pediatrics (Pediatrics, Vol. 124, No. 2, August 1, 2009, pp. 823-836) and ensure that such screening is performed for each infant prior to discharge from the birth facility.

The American Heart Association is working across the country to ensure that this life-saving screening is available for every infant, and we have been successful in several states already. If the Department is not able to require this of all Delaware hospitals, we will work with our volunteer advocates to introduce and support legislation to accomplish this goal.

We would be happy to discuss any further concerns or to review alternate proposed language.

Agency Response: The Agency appreciates and acknowledges these comments, however we respectfully disagree. We feel that the language, as it stands already charges the Division of Public Health with oversight of this screening requirement. The Newborn Screening Program Medical Director will ensure that training for pulse oximetry screening is provided to those facilities that request such assistance.

State Council for Persons with Disabilities, Daniese McMullin-Powell, Chairperson

RE: 16 DE Reg. 827 [DPH Proposed Newborn Screening Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social

Services/Division of Health's (DPHs) proposal to adopt extensive revisions to its regulation covering screening of newborn infants for metabolic, hematologic, endocrinologic, and certain structural disorders. The proposed regulation was published as 16 DE Reg. 827 in the February 1, 2013 issue of the *Register of Regulations*. SCPD has the following observations.

First, in §1.0, the original regulation contained a second "sentence" beginning "(T)hese regulations describe...". The superseding revision is grammatically incorrect. It is not a sentence: "To regulate the procedures for the Newborn Screening Program where each newborn delivered in the state must be provided a panel of screening tests to identify certain metabolic, hematologic, endocrinologic and certain structural disorders that may result in developmental delay, cognitive disabilities, serious medical conditions, or death."

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has changed the section to read, "The purpose of these regulations is s to describe the procedures for the Newborn Screening Program where each newborn delivered in the state must be provided a panel of screening tests to identify metabolic, hematologic, endocrinologic and certain structural disorders that may result in developmental delay, cognitive disabilities, serious medical conditions, or death."

Second, in the same "sentence", SCPD recommend deletion of the word "certain" between "identify" and "metabolic". Compare comparable provisions in title to §4.0, §4.1, and 6.1. The definitions of "endocrinologic disorder", "hematologic disorder", and "metabolic disorder" are not restrictive. Indeed, the definition of "metabolic disorder" refers to "include, but are not limited to..."

Agency Response: The Agency appreciates and acknowledges these comments. The word certain has been removed before "metabolic."

Third, the regulation sometimes refers to an "institution" and sometimes refers to a "facility". The term "institution" is used in §§1.0, 5.2, 7.2, 9.1, 9.2, and 10.1. The term "facility" is used in §§1.0, 4.1.1, 4.3, 6.1.1, 6.1.3, 6.2, and 6.3.1. The Delaware Manual for Drafting Regulations issued by the *Register of Regulations* offers the following guidance:

6.2.2. Strive for consistency in terminology, expression and arrangement. Avoid using the same word or term in more than one sense. Conversely, avoid using different words to denote the same idea. ...

SCPD recommends using the term "facility".

Agency Response: The Agency appreciates and acknowledges these comments. We have made the terminology consistent and have replaced "institution" with "facility" throughout the regulations.

Fourth, in §2.0, definition of "hematologic disorder", the term "result" should be "results".

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has changed "result" to "results."

Fifth, the structure of §4.0 merits overhaul. Both §§4.1 and 4.3 purport to establish a sequence of responsibility for assuring collection and submission of results. Both sections contemplate parental responsibility. Query whether a parent of a child born in a hospital should be made responsible for collection and submission of results if "overlooked" by the hospital. Section 4.1 covers hospitals and non-hospitals. Section 4.3 overlaps, covering non-hospitals. An undefined "primary care provider" is made responsible before a parent or guardian. Thus, a grandparent providing most general care for an infant would be responsible for ensuring the screening before a parent or legal guardian. SCPD suspects the Division intended to refer to "primary health care provider". Compare §8.3.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has added "health" to read "primary health care provider."

Sixth, §6.1.1 refers to "no later than 3 days after birth..." The strikeout of "3" results in a confusing reference.

Agency Response: The Agency appreciates and acknowledges these comments. The word "three" has been added for clarification.

Seventh, in §7.1, some words are ostensibly missing from the following sentence: "The sample must be taken from every newborn who one or more of the following categories:..."

Agency Response: The Agency appreciates and acknowledges these comments. This section has been reworded for clarification.

Eighth, §11.0 refers only to "Hereditary Disorders". This may not be co-extensive with "metabolic, hematologic, endocrinologic, and certain structural disorders". It is unclear if abnormalities in any of these contexts could be non-hereditary (e.g. induced by oxygen deprivation during birth). If so, the reference to "Hereditary Disorders" may

be too narrow.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has removed the terminology “hereditary disorders” so that the language refers to newborn screening, in general.

Governor’s Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson

RE: DPH Proposed Newborn Screening Regulation [16 DE Reg. 827 (February 1, 2013)]

The Governor’s Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Public Health (DPH) proposal to adopt extensive revisions to its regulation covering screening of newborn infants for metabolic, hematologic, endocrinologic, and certain structural disorders. The GACEC would like to share the following observations.

First, in §1.0, the original regulation contained a second “sentence” beginning “(T)hese regulations describe...”. The superseding revision is grammatically incorrect. It is not a sentence: “To regulate the procedures for the Newborn Screening Program where each newborn delivered in the state must be provided a panel of screening tests to identify certain metabolic, hematologic, endocrinologic and certain structural disorders that may result in developmental delay, cognitive disabilities, serious medical conditions, or death.”

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has changed the section to read, “The purpose of these regulations is s to describe the procedures for the Newborn Screening Program where each newborn delivered in the state must be provided a panel of screening tests to identify metabolic, hematologic, endocrinologic and certain structural disorders that may result in developmental delay, cognitive disabilities, serious medical conditions, or death.”

Second, in the same “sentence”, Council recommend deletion of the word “certain” between “identify” and “metabolic”. Compare comparable provisions in title to §4.0, §4.1, and 6.1. The definitions of “endocrinologic disorder”, “hematologic disorder”, and “metabolic disorder” are not restrictive. Indeed, the definition of “metabolic disorder” refers to “include, but are not limited to...”.

Agency Response: The Agency appreciates and acknowledges these comments. The word certain has been removed before “metabolic.”

Third, the regulation sometimes refers to an “institution” and sometimes refers to a “facility”. The term “institution is used in §§1.0, 5.2, 7.2, 9.1, 9.2, and 10.1. The term “facility” is used in §§1.0, 4.1.1, 4.3, 6.1.1, 6.1.3, 6.2, and 6.3.1. The Delaware Manual for Drafting Regulations issued by the *Register of Regulations* offers the following guidance:

6.2.2. Strive for consistency in terminology, expression and arrangement. Avoid using the same word or term in more than one sense. Conversely, avoid using different words to denote the same idea. ...

The GACEC recommends using the term “facility”.

Agency Response: The Agency appreciates and acknowledges these comments. We have made the terminology consistent and have replaced “institution” with “facility” throughout the regulations.

Fourth, in §2.0, definition of “hematologic disorder”, the term “result” should be “results”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has changed “result” to “results.”

Fifth, the structure of §4.0 merits overhaul. Both §§4.1 and 4.3 purport to establish a sequence of responsibility for assuring collection and submission of results. Both sections contemplate parental responsibility. Council queries whether a parent of a child born in a hospital should be made responsible for collection and submission of results if “overlooked” by the hospital. Section 4.1 covers hospitals and non-hospitals. Section 4.3 overlaps, covering non-hospitals. An undefined “primary care provider” is made responsible before a parent or guardian. Thus, a grandparent providing most general care for an infant would be responsible for ensuring the screening before a parent or legal guardian. The Council suspects the Division intended to refer to “primary health care provider”. Compare §8.3.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has added “health” to read “primary health care provider.”

Sixth, §6.1.1 refers to “no later than 3 days after birth...” The strikeout of “3” results in a confusing reference.

Agency Response: The Agency appreciates and acknowledges these comments. The word “three” has been added for clarification.

Seventh, in §7.1, some words are ostensibly missing from the following sentence: “The sample must be taken

from every newborn who one or more of the following categories:..."

Agency Response: The Agency appreciates and acknowledges these comments. This section has been reworded for clarification.

Eighth, in §7.1 and §7.2, - 'hospital/institution of birth hospital – one of the 'hospitals' is redundant.

Agency Response: The Agency appreciates and acknowledges these comments. The redundant language has been removed.

Ninth, in §7.1.2, there is a typographical error on the second line, "~~designated~~ unsatisfactory" by the laboratory. The quotation marks should be around "unsatisfactory". The hyphen before 'by' may be the continuation of a strikethrough and should be clarified.

Agency Response: The Agency appreciates and acknowledges these comments. This section has been removed.

Tenth, §11.0 refers only to "Hereditary Disorders". This may not be co-extensive with "metabolic, hematologic, endocrinologic, and certain structural disorders". It is unclear if abnormalities in any of these contexts could be non-hereditary (e.g. induced by oxygen deprivation during birth). If so, the reference to "Hereditary Disorders" may be too narrow.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has removed the terminology "hereditary disorders" so that the language refers to newborn screening, in general.

The public comment period was open from February 1, 2013 through March 4, 2013.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders are adopted and shall become effective May 11, 2013, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

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

1.0 Authority and Purpose

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

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

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

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

2.0 Definitions

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

“Certain Structural Disorders” includes critical ~~[cardiac congenital]~~ heart defects and other structural disorders.

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

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

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

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

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

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

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

[“Pulse Oximetry Screening” is non-evasive test allowing for determination of the oxygen saturation of a patient’s hemoglobin to screen for a critical congenital heart defect.]

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

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

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

3.0 Determination of Required Screens

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

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

- 4.1 The person or ~~[institution facility]~~ responsible for assuring that a satisfactory blood spot specimen and pulse oximetry results ~~is are~~ submitted for ~~testing screening~~ newborns for metabolic, hematologic, ~~and endocrinologic and certain structural~~ disorders shall be, in order of responsibility:
- 4.1.1 the hospital, birthing facility or other licensed health care facility in which the newborn is born,
- 4.1.2 the newborn's primary **[health]** care provider; or, if no provider is identified;
- 4.1.3 the parent or legal guardian.
- 4.2 In cases of newborns entering a health care facility before 48 hours of age as result of transfer from another facility or of an infant not born in a hospital or other licensed health care facility, the receiving facility shall be responsible for the timely collection of the blood spot specimen and pulse oximetry screening results.
- 4.3 In cases of newborns not born in a hospital or other licensed health care facility, and not transferred to a health care facility, the timely collection of the blood spot specimen and pulse oximetry screening results shall be the responsibility of the following, in order of responsibility:
- 4.3.1 the attending **[delivering]** physician, or midwife, or in the absence of such a person;
- 4.3.2 the newborn's primary **[health]** care provider; or, if no provider is identified;
- 4.3.3 the parent or legal guardian.

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

- 5.1 All dried blood spot specimens submitted to the designated laboratory for testing shall be collected using kits available from the Newborn Screening Program office and/or designated laboratory.
- 5.2 Blood spot specimens collected for ~~testing screening~~ shall be forwarded from the ~~[institution collecting facility]~~ at which the specimen is collected to the designated laboratory within 24 hours of collection, either by the designated Division of Public Health courier or by mail.
- 5.3 Pulse oximetry screening results shall be forwarded to the Division of Public Health electronically by the 15th of each month for births occurring in the previous calendar month.

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

- 6.1 A blood spot specimen for screening for metabolic, hematologic, and endocrinologic disorders shall be collected prior to hospital discharge, but ~~in no event later than 3~~ three days after birth ~~from every newborn infant~~ as follows:
- 6.1.1 For infants born inside or outside of a hospital or other health care facility, or infants born outside of a hospital or other health care facility and transferred to the hospital where they will remain for the next 24 hours, a specimen shall be collected ~~not sooner than~~ 24 hours after the onset of milk feeding, but no later than 3 days after birth, preferably between 36 and 72 hours of birth. A second specimen is to be collected between 7 seven and 28 days of age.
- 5.1.2 ~~For infants who are born in a hospital or health care facility or who are born outside and transferred into the hospital and who will remain in the hospital for 24 hours of milk feedings or more a blood spot specimen shall be collected not sooner than 24 hours after the onset of milk feeding, but no later than 3 days after birth, preferably between 36 and 72 hours after birth. A second blood spot specimen is to be collected between 7 and 28 days of age.~~
- 6.1.32 ~~For pre term or sick newborns, the initial blood spot specimen [may be collected as late as 3 three days of age and must be collected but no later than 3 days regardless of birth weight, illness or nutritional status] shall be collected between 24 hours and 48 hours after birth, if possible]. The second dried blood spot specimen on preterm or sick newborns is to be done must be completed at hospital discharge ~~[or 28 days of life which ever comes first or transfer if within seven days from birth, or otherwise at 8 – 10 days. A third specimen on pre-term or sick newborns shall be collected between 21-24 days or at discharge, whichever comes first.]~~~~

- 6.1.43 When an infant is discharged from a hospital or other health care facility before 24 hours of milk feedings a blood spot specimen shall be obtained immediately prior to discharge from the facility and a second dried blood spot specimen shall be obtained after 3 days of age and before 14 days of age.
- 6.2 Birth facilities or care providers responsible for screening newborns shall adopt protocols consistent with the scientific statement regarding the role of pulse oximetry from the American Heart Association and American Academy of Pediatrics (Pediatrics, Vol. 124, No. 2, August 1, 2009, pp. 823-836).
- 6.3 The data elements to be reported for pulse oximetry screening of newborns to the Division of Public Health are:
- 6.3.1 The number of births in a birthing facility each month
 - 6.3.2 The number of pulse oximetry screenings on newborn infants performed each month
 - 6.3.3 The number of positive and negative screens recorded
 - 6.3.4 For those infants who do not receive a screen, a reason for not being screened
 - 6.3.5 The identity of the infants who fail the screen including their diagnostic evaluation and disposition
- 7.0 Procedures for Follow Up of Dried Blood Spot Specimens ~~that were obtained prior to 24 Hours Of Milk Feeding (Imf) and for those whose Results are Designated as Abnormal or Suspicious~~**
- 7.1 ~~The hospital or institution of birth or the hospital to which a newborn is transferred~~ The hospital/ [institution facility] of birth/[hospital] to which a newborn is transferred shall develop adequate procedures to insure ~~that a satisfactory blood spot specimen is collected by the time each newborn is 2 weeks old~~ three days of age. The sample must be taken from each every newborn. [who is described by one or more of the following categories:
- 7.1.1 ~~a newborn that is discharged from the institution prior to within 24 hours of milk feedings (IMF).~~
 - 7.1.2 ~~a newborn on which the blood spot specimen is reported by the laboratory as “designated unsatisfactory” by the laboratory.]~~
- 7.2 ~~The hospital/[institution facility] of birth/[hospital] or institution of birth, the hospital to which a newborn is transferred and the primary [health] care provider of the newborn shall cooperate with the Newborn Screening Program in completing follow up of newborns whose blood spot specimen result is designated as “abnormal” or “suspicious.” This cooperation shall include:~~
- 7.2.1 ~~providing appropriate demographic information to the Newborn Screening Program as requested on each baby whose blood spot specimen result is designated as “abnormal” or “suspicious,”~~
 - 7.2.2 ~~providing the Newborn Screening Program with clinical information on each newborn as necessary for interpretation of the results of the testing screening of the blood spot specimen.~~
- 8.0 Reporting of Results of Newborn Screening Tests**
- 8.1 The designated laboratory shall report the results to the Newborn Screening Program as designated in the contract.
 - 8.2 The Newborn Screening Program shall contact with abnormal results the parent or legal guardian and primary health care provider in writing and/or by telephone.
 - 8.3 A copy of the Newborn Screening laboratory report shall be available to the parent or legal guardian upon request made to the birth hospital medical record department or their primary health care provider.
- 9.0 Confidentiality of Records**
- 9.1 The Newborn Screening Program shall maintain and treat as confidential all newborn screening communications with ~~[institutions facilities]~~, families and health care providers. The Newborn Screening Program shall maintain and treat as confidential a record of every newborn in whom a diagnosis of one or more of the various metabolic, hematologic, or endocrinologic disorders is confirmed.

- 9.2 Information may be disclosed by the Newborn Screening Program in summary forms, which do not identify individuals. Individuals or institutions requesting summary data must submit a proposal to the Newborn Screening Program and to the Institutional Review Board of the Division of Public Health.
- 9.3 Dried blood-spots will be retained for a period of three years under appropriate conditions. The stored specimens will only be used for activities to improve the screening program and/or develop new screening tests.

10.0 Fees for Newborn Screening Tests Performed in the Designated Laboratory

- 10.1 The Division of Public Health Newborn Screening Program shall bill the **[institution facility]** or individual for services provided ~~to the institution or individual~~ for each newborn screened under these regulations including but not limited to, the cost of the kits for collection of specimens, the laboratory fee for analysis, and administrative costs. The fee will be determined annually (in July) based on cost of the program.
- 10.2 No Delaware newborn shall be denied testing for hereditary disorders because of inability of the newborn's parent or legal guardian to pay the fee. A "Statement of Fee Exemption" form will be provided to the practitioner or parent requesting exemption from fees. This form must be completed and submitted to the Newborn Screening Program Office within 30 days of birth.

11.0 Religious Exemption from ~~Testing~~ Screening

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

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

SWORN TO AND SUBSCRIBED before me, a registered Notary Public, this ____ day of _____, 200__.

(Seal)
Notary Public
My Commission Expires:

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

12.0 Penalty for Non-compliance

Under the Authority granted to the Department of Health and Social Services, Division of Public Health under 16 Del.C §107, "whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the

Division shall be fined not less than \$100 and not more than \$1,000, together with costs, unless otherwise provided by law."

DIVISION OF SOCIAL SERVICES

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

ORDER

1000 Definitions

1001 Reserved

1002 Treating Clients With Courtesy

1003 Keeping Client Information Confidential

1004 Safeguarding Case Records

1005 Compiling And Saving Case Record Contents

1006 Guaranteeing Civil Rights And Non-discrimination

1007 Making Civil Rights Complaints

1008 Providing Policy Information

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Case Administration, including, *Definitions; Treating Clients with Courtesy; Keeping Client Information Confidential; Safeguarding Case Records; Compiling and Saving Case Record Contents; Guaranteeing Civil Rights and Non-Discrimination; Making Civil Rights Complaints; and, Providing Policy Information*. 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 March 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

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

Statutory Authority

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

- Title VI of the Civil Rights Act of 1964

Background

The Department of Health and Social Services is the agency designated by the State as responsible for Delaware's public assistance programs. Within the Department, the Division of Social Services (DSS) is responsible for administering the following programs in an accurate and timely fashion while treating clients with respect and dignity: Temporary Assistance for Needy Families (TANF), General Assistance Program, Food Supplement Program, Refugee Resettlement Program, Child Care Subsidy Program, Emergency Assistance Program, and Employment and Training Services.

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

Summary of Proposed Changes

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

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

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

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

DSSM 1000, ~~*Responsibility for the Administration of Delaware's Assistance Programs*~~ *Definitions*

DSSM 1001, ~~*Purpose of Delaware's Financial Assistance Program*~~ *RESERVED*

DSSM 1002, ~~*Courteous Treatment of Clients*~~ *Treating Clients With Courtesy*

DSSM 1003, ~~*Confidentiality*~~ *Keeping Client Information Confidential*

DSSM 1003.1, ~~*Procedures to Maintain Confidentiality*~~ *RESERVED*

DSSM 1003.2, ~~*Information to Law Enforcement Agencies*~~ *Releasing Confidential TANF Recipient Information*

DSSM 1003.2.1, ~~*Releasing Confidential FSP Recipient Information*~~

DSSM 1003.3, ~~*Child Abuse, Neglect and Exploitation*~~ *Reporting Child Abuse and Neglect*

DSSM 1003.4, ~~*Court Appointed Special Advocate (CASA or guardian ad litem)*~~ *Releasing Confidential Information to Court Appointed Special Advocates*

DSSM 1003.5, ~~*Disclosure of Information for Other Reasons*~~ *Other Reasons for Releasing Confidential Information*

DSSM 1004, ~~*Records To Be Kept In Locked Files*~~ *Safeguarding Case Records*

DSSM 1005, ~~*Case Record Maintenance and Retention*~~ *Compiling and Saving Case Record Contents*

DSSM 1006, ~~*Civil Rights and Non-Discrimination*~~ *Guaranteeing Civil Rights and Non-Discrimination*

DSSM 1006.1, ~~*Non-Discrimination and Administrative Practices*~~ *Ensuring Non-Discrimination in the Provision of Services*

DSSM 1006.2, ~~*Administration of the Civil Rights Program*~~ *RESERVED*

DSSM 1006.3, ~~*Civil Rights Information to Clients and Participants*~~ *Providing Civil Rights Information*

DSSM 1006.4, ~~*Assurance of Civil Rights Program Compliance in Regional Operations*~~ *Assuring Compliance in Area Operations*

DSSM 1006.5, ~~*Reports of Civil Rights Program*~~ *Reporting Civil Rights Program Activities*

DSSM 1006.6, ~~*Civil Rights Program and Public Relations*~~ *Publicizing the Civil Rights Program*

DSSM 1006.7, ~~Staff Development and the Civil Rights Program~~ RESERVED
DSSM 1007, ~~Complaint Procedures~~ Making Civil Rights Complaints
DSSM 1007.1, ~~Right to File Complaint~~ RESERVED
DSSM 1007.2, ~~Methods of Filing Complaints~~ RESERVED
DSSM 1007.3, ~~Methods of Handling Complaints~~ Routing Civil Rights Complaints
DSSM 1007.4, ~~Records of Complaints~~ Keeping Records of Civil Rights Complaints
DSSM 1007.5, ~~Confidentiality of Complaints~~ Keeping the Identity of Complaints Confidential
DSSM 1007.6, ~~Other Complaint Procedures~~ Making Complaints
DSSM 1008, ~~Availability of Program Manuals~~ Providing Policy Information

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) have reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to revise a variety of sections in its DSS Manual in the context of Case Administration. The changes cover many forms of public assistance and amends sections dealing with discrimination, access to records, and complaints. GACEC and SCPD have the following observations.

First, §1003.4 authorizes agency staff to release records to a court-appointed guardian ad litem "relating to the child and his or her family or guardian". This may be "overbroad". The relevant statute, 29 Del.C. §9007A, confers a right "to inspect and copy any records relating to the child and parents involved in the case of appointment". This access right would not ostensibly extend to the entire "family", including siblings, aunts and uncles, etc.

Agency Response: The policy is amended to clearly indicate it applies only to the child and the parents/guardians of that child.

Second, §1003.5 authorizes release of confidential information in connection with "civil proceedings". This is also "overbroad" and could result in disclosure of information unauthorized by law. Section 1003.5 is based on 45 C.F.R. 205.50(a) and 7 C.F.R. 272.1(c). The latter regulation does not authorize disclosure in connection with "civil proceedings". The former regulation (§205.50) authorizes release based on "any investigation, prosecution, or criminal or civil proceedings conducted in connection with the administration of any such plans or programs." Thus, if the State instituted a civil action to recover the value of benefits fraudulently obtained, access to records would be authorized. Section 1003.5, Par. 1, on the other hand, literally authorizes release of information in connection with any civil proceedings (e.g. child custody; creditor-debtor litigation; landlord-tenant litigation) which are not "connected" to the administration of the DHSS plans or programs. The references should preferably be modified to incorporate this limitation.

Agency Response: Section 1003.5 is amended to clarify that Food Supplement Program information will not be released for reasons of civil proceedings. The amendment also stipulates that the release of information is made in connection with the administration of DHSS programs or plans.

Third, §1004 authorizes "sending" of records only via Division employee or Department mail. The Division may wish to consider addressing electronic forwarding of records (e.g. by encrypted or non-encrypted email). The Division may also wish to include some standards concerning safeguarding of electronic case records.

Agency Response: DSS is in the process of converting DSS records and DMMA Family and Community Medicaid records to an electronic form within a secure system which eliminates the need to transfer records between offices. DMMA LTC Medicaid records are transferred between offices in the custody of a Division employee or by Department mail.

Fourth, §1005, Pars. 3 and 5 contain some inconsistent standards.

A. Par. 3.A. establishes a 5 year record retention period for records but Par. 3.D. refers to retention "beyond the three-year period".

B. Par. 3.A. establishes a 5 year record retention period but Par. 5 authorizes files to be purged after 4 years.

Agency Response: The section is corrected to be consistent.

Fifth, §1006.1, Par. 2, states that “(n)either the Division nor its contractors will not discriminate...” The word “not” should be deleted so the statement would recite that neither the Division nor its contractors will discriminate...”

Agency Response: The word is deleted.

Sixth, §1008 only contemplates access to policy manuals at physical sites (e.g. public libraries; State Offices). DSS should review Title 29 **Del.C.** §10003 which contemplates that each agency will maintain a web portal through which FOIA requests can be made. Requests for access to records can also be made via email or fax. Section 1008 is ostensibly outdated insofar as it only describes access to information by visiting “bricks and mortar” sites. The above statute also contains specific photocopying fees information, including copying the first 20 pages for free. In contrast, §1008, Par. 3.B states that all pages are charged at a set rate.

Agency Response:

The DSS and DMMA policy manuals are available on the internet at <http://regulations.delaware.gov/AdminCode/title16/>. Section 1008 does not address FOIA. However, those wishing to make a FOIA request may do so electronically at the Department of Health and Social Services website at http://dhss.delaware.gov/main/mailforms/dhss_foiaform.aspx.

Section 1008 is amended to include the web address to access policy information.

Title 29 **Del.C.** §10003 references copying of public records.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Case Administration, including, *Definitions; Treating Clients with Courtesy; Keeping Client Information Confidential; Safeguarding Case Records; Compiling and Saving Case Record Contents; Guaranteeing Civil Rights and Non-Discrimination; Making Civil Rights Complaints; and, Providing Policy Information* is adopted and shall be final effective May 10, 2013.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #13-17

REVISIONS:

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

Case Administration Provisions - DSSM 1001 - 1008

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Gaming Control Board

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

ORDER

101 Regulations Governing Bingo

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on Thursday, April 4, 2013, at a scheduled meeting of the Delaware Board of Charitable Gaming, to receive comments and to review written comments submitted by the public, if any, regarding proposed amendments to the Board's Rules.

There are two proposed amendments. The first would amend 10 **DE Admin. Code** 101, Rule 3.10 and would state that when an organization purchases from a third party a prize to be awarded, the organization must maintain a copy of the receipt for its purchase, and the price paid shall serve as the value for that prize. If a prize is donated to the organization at no cost to it, the prize may be awarded only if the donor had provided proof of the retail value of the prize, and that value shall be used by the organization as the value of the prize.

The second proposed amendment would amend 10 **DE Admin. Code** 101, Rule 4.11 and would state that when an awarded prize is a monetary prize, if there are multiple winners, the prize is to be evenly divided among the winners. If the prize is not a monetary prize, but rather a product of some kind, a single winner may be determined in accordance with the organization's own house rules. The other persons who qualified to win the prize may be given a chance to win a later game or drawing with the winner receiving whatever prize is offered in that later game or drawing. The value of the prize in that later game or drawing shall be counted toward the maximum allowable prizes for the entire event.

The proposed amendments were published in the *Register of Regulations*, Volume 16, Issue 9, on March 1, 2013.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

DECISION AND EFFECTIVE DATE

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

TEXT AND CITATION

The text of the revised rules shall be as published in the *Register of Regulations* in September, 2011, as attached hereto as Exhibit A.

SO ORDERED this 4th day of April, 2013.

DELAWARE BOARD OF CHARITABLE GAMING

Scott Angelucci, Chair

Francis Gant, Member

Sharon McDowell, Member

Janet Williams-Coger, Member

Tim Winstead, Member

***Please note that no changes were made to the regulation as originally proposed and published in the March 2013 issue of the *Register* at page 944 (16 DE Reg. 944). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

101 Regulations Governing Bingo

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 506(a)(1) (24 **Del.C.** §506(a)(1))
24 **DE Admin. Code** 500

ORDER

500 Board of Podiatry

Pursuant to 29 **Del.C.** §10118 and 24 **Del.C.** §506(a)(1), the Delaware Board of Podiatry issues this Order adopting proposed amendments to the Board's Rules 5.0 and 6.0. Following notice and a public hearing on March 20, 2013 the Board makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the January 1, 2013 *Register of Regulations* and for two consecutive weeks in the *News Journal* and *Delaware State News*. The Board's proposed changes The proposed revisions to the rules are an attempt to clarify the timing of when the Podiatric Medical Licensing Exam for States (PM Lexis) exam needs to be satisfactorily completed for licensure in the State of Delaware. The proposed revisions also clarify that licensees must complete their continuing education credits for licensure renewal on or before June 30 of even numbered years.
2. Board Exhibit 1 consisted of an affidavit of publication from the *News Journal* and the *Delaware State News* indicating publication of the notice.
3. The Board received no written comments during the first public comment period. The Board held a public hearing on March 20, 2013 and received no public comment. The Board then reopened the public comment period for fifteen days following the public hearing and received no public comment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendment to the Board's Rules.
5. Having received no public comment, the Board finds there is no reason to change the regulations as proposed. The regulations are attached to this order in red-line version, additions are shown in underline, deletions are shown in strike-through.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations*.

IT IS SO ORDERED THIS 18th DAY OF April, 2013:

BY THE BOARD OF PODIATRY:

Raymond V. Feehery, Jr., D.P.M., President
James D. Bray, D.P.M.
Luis Garcia, D.P.M.
Philip Mandel
Amy Kratz

***Please note that no changes were made to the regulation as originally proposed and published in the January 2013 issue of the *Register* at page 733 (16 DE Reg. 733). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

500 Board of Podiatry

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 **Del.C.** §2706(a)(1))
24 **DE Admin. Code** 2700

ORDER

2700 Board of Registration for Professional Land Surveyors

Pursuant to 29 **Del.C.** §10113(b)(4) and 24 **Del.C.** §2706(a)(1), the Delaware Board of Professional Land

Surveyors issues this Order adopting the below amendment to the Board's Rules. Specifically, pursuant to 29 Del.C. §10113(b)(4), regulations of the Board of Professional Land Surveyors must be changed without prior publication as the American Congress on Surveying and Mapping has changed its name to the National Society of Professional Surveyors, creating error in the Board of Professional Land Surveyors' current regulations that must be changed. These are non-substantive changes that do not alter the regulations in any way other than correcting the name of the referenced organization.

SUMMARY OF THE EVIDENCE

1. Rule 2.0 now states: "Definitions under Section 2 will be listed in the current "Definitions of Surveying and Associated Terms," published by the American Congress on Surveying and Mapping, except as otherwise provided by Delaware law."

2. The Board makes the following change to its regulations (additions are underlined, removals are stricken through):

2.0 Definitions under Section 2 will be listed in the current "Definitions of Surveying and Associated Terms," published by the National Society of Professional Surveyors ~~American Congress on Surveying and Mapping~~, except as otherwise provided by Delaware law.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on May 1, 2013.

IT IS SO ORDERED this 18th day of April, 2013.

James Bielicki, Jr.
Franco R. Bellafante
Mark Rosenthal
Thomas M. Plummer
Charles Adams
Kenneth Monroe

2700 Board of Registration for Professional Land Surveyors

(*Break in Continuity of Sections*)

2.0 Definitions

Definitions under Section 2 will be listed in the current "Definitions of Surveying and Associated Terms," published by the ~~American Congress on Surveying and Mapping~~ National Society of Professional Surveyors, except as otherwise provided by Delaware law.

"Combined Office and Field Experience" - is defined as being multi-faceted experience in responsible charge of land surveying projects, performed under the direct supervision of a professional land surveyor in the active practice of land surveying. The office aspect of this experience shall include the technology relevant to civil drafting, mathematical calculations necessary for subdivision, boundary and right-of-way determinations, road, stormwater, sediment and erosion control, and sewer design as well as the interpolation of field-run topographical data and the like. Office experience should also include applied familiarity with land development submittal and approval processes.

Field experience shall include time spent on site in responsible charge of inspection, evaluation, and gathering of relevant survey information. On-site supervision of and responsibility for field crew personnel while in communication and coordination with a professional land surveyor and office staff shall qualify as field experience.

"Direct Supervision" - applies to one duly licensed as a Professional Land Surveyor (PLS) and only a licensee may provide direct supervision. The physical presence of a PLS on every type of surveying project is not required. There are, however, times when a site visit is necessary to make important decisions involving boundary retracements, property line disputes, etc.

Direct supervision of field crew personnel requires daily contact to determine the need for the presence of a PLS on site. This need would be based upon the type of work to be performed and the professional judgment of the PLS in charge. Should it be determined that a site visit is not warranted,

the PLS, at a minimum, should instruct the field crew personnel as to the procedures to be used, the data to be gathered, the maps or plats to be relied upon and the scope of the work to be performed. The PLS shall follow the same minimum requirements when instructing survey office personnel. All assignments performed by survey personnel, both field and office, shall be reviewed and checked by the PLS providing direct supervision.

While it has been argued that a survey crew does not always have to be under the direct supervision of a PLS, only a PLS has the ability to make that determination. It is therefore necessary for the field crew to have daily contact with the PLS so that this decision can be made properly, in order to protect the public.

“Related Science Curriculum” – are those courses of study for which one-third of the required core courses are the same or similar as those required for a Baccalaureate Degree Program in Surveying. These core courses may include but are not limited to Algebra, Trigonometry, Analytical Geometry, Calculus, General Physics and Computer Programming.

Degrees in related fields of study may include but not be limited to Civil Engineering, Mathematics, Physics, Agricultural Engineering, Actuarial Studies, Statistics, Geology and Forestry.

Because requirements for graduation differ from institution to institution, when considering these Related Science Curriculums attention will be given to the specific coursework completed. This examination of completed coursework may allow for greater flexibility of this definition. Section 2708(a).

“Surveying Curriculum” - For the purpose of these regulations, the term "Surveying Curriculum" will mean any approved curriculum for a Baccalaureate Degree in Surveying as it is accepted by the institution bestowing the said degree. This curriculum shall necessarily include but not be limited to courses in Surveying, Advanced Surveying, Legal Principles of Surveying, Data Adjustment, Subdivision Planning and Layout, Route and Construction Surveying, Engineering and Geodetic Astronomy, Topographic Surveying and Cartography and/or those other studies required by the institution where the degree is earned.

Independent study course work (which includes all correspondence, internet and distance-learning study) shall be considered only if those courses have been accepted by an Accreditation Board for Engineering and Technology (ABET) as part of the approved curriculum. Section 2708(a).

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

2700 Board of Registration for Professional Land Surveyors

DIVISION OF PROFESSIONAL REGULATION

CONTROLLED SUBSTANCE ADVISORY COMMITTEE

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

ORDER

Uniform Controlled Substances Act Regulations

Pursuant to 29 Del.C. §10118, the Secretary of State issues this Order adopting proposed amendments to the Delaware Controlled Substance Advisory Committee's Rules and Regulations. Following notice and a public hearing on September 26, 2012, the Secretary of State makes the following findings and conclusions:

Nature of the Proceedings

On September 1, 2012, the Delaware Controlled Substance Advisory Committee (the "Committee") published proposed revisions to its Rules and Regulations in the *Register of Regulations*, Volume 16, Issue 3. The proposed revisions to the Rules and Regulations address the ban on dispensing filled prescriptions for

Schedule II drugs at drive through windows, and will now permit such dispensing when the drive through window has a security system that is approved by the Office of Controlled Substances.

The Committee held a public hearing on September 26, 2012 at the Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720 where members of the public were invited to offer comments on the amendments to the Rules and Regulations. Members of the public were also invited to submit written comments. The Committee deliberated on the proposed revisions at its regularly scheduled meeting on December 5, 2012.

Summary of the Evidence The following exhibits were made a part of the record:

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

Committee Exhibit 2: *Delaware State News* Affidavit of Publication. The Committee received no written or verbal comment.

Findings of Fact and Conclusions of Law

The public was given notice and an opportunity to provide the Committee with comments in writing and by testimony at the public hearing on the proposed amendments to the Rules and Regulations.

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

The Committee found that the proposed revisions will lift the ban on dispensing filled prescriptions for Schedule II drugs through drive through windows, while placing controls on the process to ensure protection of the public. The Committee, therefore, recommends that the Rules and Regulations be accepted as proposed.

Decision and Order Concerning the Regulations

The Secretary of State hereby accepts the changes to the Rules and Regulations as set forth in the *Delaware Register of Regulations* on September 1, 2012. These Rules and Regulations will become effective ten days after their publication in the *Delaware Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

IT IS SO ORDERED this 4th day of April 2013.

Jeffrey Bullock, Secretary of State

*Please note that no changes were made to the regulation as originally proposed and published in the January 2012 issue of the *Register* at page 956 (15 DE Reg. 956). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

Uniform Controlled Substances Act Regulations

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 132, 137 and 149; 29 Delaware Code, Section 8404 (17 **Del.C.** §§132, 137 & 149; 29 **Del.C.** §8404)
2 DE Admin. Code 2309

ORDER DELAYING IMPLEMENTATION DATE

2309 Standards and Regulations for Subdivision Streets and State Highway Access

In the April 2013 *Delaware Register*, 16 Del.Reg. 1087, the Delaware Department of Transportation formally adopted amendments to its existing regulations regarding subdivision streets and state highway access, with respect to the provisions concerning Traffic Impact Studies and Traffic Operational Analyses, as well as

Transportation Improvement Districts.

In the same Order the Department adopted Implementation Guidance with respect to these regulations and the regulations they replaced.

The Department decided to impose an additional short delay in the effective date of these regulations and the Implementation Guidance issued with them, to provide additional time to meet with and advise local governments and others in preparation for the operation of the new regulations.

Therefore, these new regulations shall not take effect until May 10, 2013.

In addition, the Implementation Guidance previously issued shall be delayed by one month. References to "adoption" appearing in the Implementation Guidance shall therefore mean "May 10, 2013."

For the convenience of the reader, this Guidance is repeated below:

1. Changes to when a Traffic Impact Study (TIS) or Traffic Operational Analysis (TOA) may or shall be required, will be effective ten days from adoption for any development for which DeIDOT has not received a Request for Service Level Evaluation, a Support Facilities Report Request or held a Pre-Submittal Meeting.

2. Changes to the required content of a TIS or TOA will be effective immediately on adoption for any such effort for which a scoping meeting has not been held or a scope of work issued.

3. Changes relating to mitigation measures will be effective immediately on adoption for any such effort for which a scoping meeting has not been held or a scope of work issued.

4. Changes relating to Transportation Improvement Districts (TIDs) will be effective immediately on adoption.

5. Changes relating to the Traffic Signal Revolving Fund will be effective immediately on adoption for any development for which DeIDOT has not specified a contribution to be paid with regard to the Fund.

IT IS SO ORDERED this 18th day of April, 2013.

Shailen Bhatt, Secretary

Delaware Department of Transportation

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

[2309 Standards and Regulations for Subdivision Streets and State Highway Access](#)

GOVERNOR'S APPOINTMENTS

1201

Name	Board Name	Appointment	Reappointment
Major John R. Evans	Advisory Council to the Division of Substance Abuse and Mental Health	02/06/2013	
Ms. Rita Hughes	Animal Welfare Taskforce	03/08/2013	
Mr. Leonard Sophrin		03/08/2013	
Robert M. Thompson, VMD		03/11/2013	
Ms. Marlaine White		03/08/2013	
The Honorable Kimberly A. Williams		02/04/2013	
Mr. Roy W. Miller	Atlantic States Marine Fisheries Commission	06/17/2009	3/27/2013
Frances S. Esposito, M.D.	Authority on Radiation Protection	03/31/1994	2/6/2013
Mr. William L. Holden, III		07/01/2000	2/6/2013
Mr. Ivan M. Turner		02/06/2013	
Ms. Lauren A. Mosely	Board of Cosmetology & Barbering	02/18/2013	
Ms. Kathleen S. Sherwin		02/18/2013	
Ms. Domonique C. Vicks		02/18/2013	
Dr. John F. Glenn	Board of Directors of the DE Institute of Medical Education & Research	01/24/2013	
Mr. Chuan S. Lee		01/18/2013	
Mr. S. Keith Parsell	Board of Funeral Services	01/09/2013	
Georges A. Dahr, M.D.	Board of Medical Licensure and Discipline	03/27/2013	
Mr. Stephen J. McGuiness	Board of Pilot Commissioners	01/09/2013	
Harold N. Gruber, DPM	Board of Podiatry	02/27/2013	
Colonel Robert M. Coupe	Cabinet Members	03/19/2013	
Ms. Jennifer B. Ranji		03/25/2013	
Gerard Gallucci, MD	Child Death, Near Death and Stillbirth Review Commission	01/25/2013	
Amanda J. Kay, MD		03/18/2013	
Ms. Carolyn D. Walker	Child Placement Review Board - New Castle	01/04/2013	
Ms. Carolyn D. Walker	Child Placement Review Board Executive Committee	01/04/2013	
Captain Robert A. McLucas	Child Protection Accountability Commission	02/18/2013	
Colonel Nathaniel McQueen, Jr.		01/31/2013	
The Honorable Margaret Rose Henry	Civil Mental Health Law Study Group	02/06/2013	
The Honorable Eugene S. Dvornick, Jr.	Clean Water Advisory Council	04/02/2009	3/27/2013
Mr. Joseph G. Farrell	Community Involvement Advisory Council	02/18/2013	
Anthony J. Julis, Ph.D.		06/12/2006	3/26/2013
Mr. Marvin P. Thomas	Community Involvement Advisory Council	01/08/2002	2/18/2013

GOVERNOR'S APPOINTMENTS

Mr. Cleon L. Cauley, Sr.	Council on Development Finance	03/27/2013	
Mr. Richard D. Rowland		03/27/2013	
Richard C. Arnold	Council on Manufactured Housing	03/18/2013	
Mr. Lynn I. Baker	Council on Real Estate Appraisers	02/22/2013	
Ms. Jan D. Jenkins		02/22/2013	
Mr. Douglas L. Nickel		02/21/2013	
The Honorable Carl C. Danberg	Court of Common Pleas	02/15/2013	
The Honorable Robert H. Surles		01/18/2013	
The Honorable Charles W. Welch, III		11/16/2000	1/11/2013
Mr. Francis W. Gant	Delaware Board of Charitable Gaming	03/27/2013	
Mr. John F. Hampton	Delaware Commission of Veterans' Affairs	02/22/2013	
The Honorable Richard A. DiLiberto, Jr.	Delaware Commission on Italian Heritage and Culture	12/28/2006	1/24/2013
The Honorable Melanie L. George Smith	Delaware Economic and Financial Advisory Council	01/04/2013	
Mr. Guy F. Marcozzi		01/16/2013	
Glen H. Tinkoff, M.D.	Delaware Emergency Medical Services Oversight Council	02/15/2013	
Mr. Jack Berberian	Delaware Harness Racing Commission	03/13/2013	
Stephanie I. Liguori		03/27/2013	
Jeffrey E. Hawtof, M.D.	Delaware Health Information Network	01/17/2013	
Thomas E. Brown, Ph.D.	Delaware Heritage Commission	01/29/2013	
Ms. Rosario Calvachi-Mateyko		01/29/2013	
Mr. Richard B. Carter		01/29/2013	
Mr. E. Michael DiPaolo		01/29/2013	
Ms. Janice A. Durham		01/29/2013	
Ms. Maureen M. Hayburn		03/18/2013	
Reba R. Hollingsworth, Ph.D.		01/29/2013	
Mr. Francis A. Ianni		01/29/2013	
Mr. J. Everett Moore, Jr.		01/29/2013	
Mr. Harvey B. Rubenstein		01/29/2013	
Jonathan S. Russ, Ph.D.		03/18/2013	
Bradley Skelcher, Ph.D.		01/29/2013	
Sarah B. Williams		01/29/2013	
Mr. Terrence Wright		01/29/2013	
Mr. George W. Sweeney	Delaware Homeland Security Advisory Council	02/18/2013	
Mr. Curtis Bedford	Delaware Interscholastic Athletic Association	06/29/2009	3/27/2013
Ms. Susan E. Coffing		01/28/2009	3/27/2013

GOVERNOR'S APPOINTMENTS

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Mr. Arthur G. Uhlich		03/27/2013	
Ms. Elisabeth A. Furber	Delaware Nursing Home Residents Quality Assurance Commission	09/04/2008	2/18/2013
Vicki Lee Givens		06/13/2002	2/18/2013
Mrs. Patricia D. Lewis		02/18/2013	
Brian L. Posey		05/12/2003	2/18/2013
Mr. James D. Wilson, Jr., Ed.D.	Delaware Sentencing Accountability Commission	01/24/2013	
The Honorable Michael N. Castle	Delaware State University Board of Trustees	01/31/2013	
Ms. Frederika S. Jenner	Delaware STEM Education Council	01/25/2013	
Mr. Norman D. Griffiths	Delaware Technical & Community College Board of Trustees	07/15/1997	3/13/2013
Ms. Audrey Van Luven		03/19/2008	3/13/2013
Mr. Henry J. Decker	Delaware Thoroughbred Racing Commission	09/22/1998	3/27/2013
Mr. Richard A. Levine		03/13/2013	
Mr. W. Duncan Patterson		10/26/1990	3/27/2013
The Honorable Matthew P. Denn	Delaware Workforce Investment Board	01/17/2013	
Mr. Gerard L. Esposito		01/17/2013	
Mitchell F. Magee		01/17/2013	
R. Chadwick Moore		01/17/2013	
The Honorable Terry L. Pepper	Dover/Kent County Metropolitan Planning Organization Council	02/26/2013	
Victoria J. Kelly, Psy.D.	Early Childhood Council	02/06/2013	
Louis E. Bartoshesky, M.D.	Early Hearing Detection and Intervention Advisory Board	01/23/2013	
Carlos Duran, M.D.		01/23/2013	
Ms. Cynthia M. Farrell		01/30/2013	
Ms. Rosanne I. Griff-Cabelli		01/23/2013	
Ms. Angela S. Miller		01/23/2013	
Robert O. O'Reilly, M.D.		01/28/2013	
Ms. Nancy W. Oyerly		01/23/2013	
Ms. Amy B Powell		01/23/2013	
Kathleen J. Riley, AuD		01/23/2013	
Pamela JP Robinson, AuD		01/23/2013	
Mrs. Verna D. Thompson		01/28/2013	
Ms. Bhavana P. Viswanathan	Early Hearing Detection and Intervention Advisory Board	01/23/2013	
Mr. Mark A. Grubb	Enhanced 911 Emergency Reporting System Service Board	01/09/2013	
Ms. Karen E. McGloughlin	Governor's Advisory Council for Exceptional Citizens	02/06/2013	

GOVERNOR'S APPOINTMENTS

Josette P. Covington, M.D.	Health Care Advisory Panel	04/04/2007	3/27/2013
Mr. Matthew J. Eppley, M.D.		04/04/2007	3/27/2013
Mr. Harry Gravell, Jr.		04/04/2007	3/27/2013
Mr. George B. Heckler, Jr.		04/04/2007	3/27/2013
The Honorable Bethany Hall-Long, Ph.D.	Healthy Mother and Infant Consortium	01/25/2013	
The Honorable Deborah H. Hudson		01/30/2013	
Victoria J. Kelly, Psy.D.		01/29/2013	
The Honorable Pamela A. Darling	Justice of the Peace Court	06/25/2002	3/15/2013
The Honorable Debora Foor		01/08/2002	3/20/2013
The Honorable Kathy S. Gravell		04/13/2008	3/19/2013
Ms. Cheryl McCabe-Stroman		03/18/2013	
The Honorable Deborah A. McNesby		10/25/2002	3/22/2013
The Honorable Cheryl S. Stallmann		06/25/2002	3/20/2013
The Honorable William S. Young, III		07/21/2008	3/20/2013
Mr. Dean S. Pierson	Manufactured Home Installation Board	02/15/2011	3/5/2013
Ms. Martha K. Austin	Merit Employee Relations Board	03/15/2007	3/27/2013
Mr. Paul R. Houck		03/27/2001	3/27/2013
Mr. John F. Schmutz		07/15/1997	3/27/2013
Ms. Donna L. Shand	Newark Housing Authority	01/17/2013	
M. Dean Betts, Ed.D.	Organ and Tissue Donor Awareness Board	11/19/2009	2/18/2013
Ms. Sharon L. Gillespie		07/15/1999	2/18/2013
Ms. Janet M. Hammond		02/18/2013	
Har Ming Lau, M.D.		01/08/2007	2/18/2013
Mr. James T. Quirk		04/28/2003	2/18/2013
Sidney J. Swanson, III, M.D.		08/25/2006	2/18/2013
Ms. Samtra K. Devard	Professional Standards Board	06/12/2008	3/27/2013
Ms. Stephanie K. DeWitt		06/16/2010	3/27/2013
Cristy L. Greaves, Ed.D.		06/25/2008	3/27/2013
Mr. David S. Kohan		06/12/2008	3/27/2013
Mr. Byron G. Murphy		03/27/2013	
Stephanie L. Smith, Ed.D.		03/27/2013	
Ms Jaqueline Wisnauskas	Professional Standards Board	06/16/2010	3/27/2013
Mr. Paul R. Bickhart	Recycling Public Advisory Council	07/22/2010	2/20/2013
Ms. Julie Miro Wenger		07/22/2010	2/19/2013
Mr. Robert A. Ziegler		02/18/2013	
Ms. Marcia P. Dewitt	Sewell C. Biggs Trust	03/11/2013	

GOVERNOR'S APPOINTMENTS

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Robert L. Paretta, Ph.D.	State Board of Accountancy	09/17/2009	1/16/2013
Mr. Michael W. Travers, Sr.	State Board of Electrical Examiners	02/20/2013	
Bryan K. Sterling, O.D.	State Board of Examiners in Optometry	12/16/2009	1/22/2013
Ms. Kelly M Richardson	State Board of Occupational Therapy Practice	02/18/2013	
Mr. David L. Wright	State Employee Benefits Advisory Council	01/25/2013	
Ms. Whittona R. Burrell	State Human Relations Commission	03/23/2006	2/6/2013
Ms. Erika R. Caesar		01/26/2012	2/6/2013
Ms. Gail E. Launay		06/28/1996	2/6/2013
The Honorable Vivian Rapposelli	Superior Court	02/05/2013	
The Honorable Paul R. Wallace		01/25/2013	
Mr. Jack Berberian	Unemployment Compensation Advisory Council	03/12/2013	
Mr. Robert L. Byrd		02/10/1987	3/12/2013
Mr. Harry Gravell, Jr.		10/14/2005	3/12/2013
Mr. Samuel E. Lathem		03/21/1997	3/12/2013
Mr. Gregory S. Gyarmati	Welfare Employment Committee	02/13/2013	
Ms. Katherine A. Suter		02/13/2013	
Barry L. Bakst, D.O.	Workers' Compensation Task Force	02/01/2013	
Mr. Edward J. Capodanno		02/01/2013	
Mr. John J. Casey, Jr.		02/01/2013	
Mr. Todd V. Clark		02/01/2013	
The Honorable Matthew P. Denn		01/29/2013	
Mr. Harry Gravell, Jr.		02/01/2013	
Mr. George B. Heckler, Jr.		02/01/2013	
Mr. A. Richard Heffron		02/01/2013	
The Honorable Gerald W. Hocker		02/01/2013	
Mr. Samuel E. Lathem		02/06/2013	
The Honorable John J. McMahon, Jr.		02/01/2013	
Mr. Gene Reed		02/01/2013	
Mr. Joseph J. Rhoades		02/01/2013	
Bruce J. Rudin, M.D.		02/01/2013	
The Honorable Wayne A. Smith	Workers' Compensation Task Force	02/01/2013	
Ms. Yrene E. Waldron		02/01/2013	
Mr. Tim Wisecarver		02/04/2013	

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing on Tuesday, May 7, 2013 beginning at 12:00 p.m. A business meeting will be held on the following day, Wednesday, May 8, 2013 beginning at 12:15 p.m. Both the hearing and the meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania 18977. Without exception, however, photo identification will be required for admission. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF AGRICULTURE**HARNESS RACING COMMISSION****Delaware Standardbred Breeders' Fund****502 Delaware Standardbred Breeders' Fund Regulations****PUBLIC NOTICE**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulation under 1.2 expands eligibility to participate in Fund-sponsored races to foals of Delaware sires regardless of the out of state residence of the owner/ lessee of the foal and reduces paperwork. Under Proposed Regulation 2.0 Definitions, the terms "Delaware sire" and "stand" are more clearly articulated and the penalty for racing out of state before the end of Delaware's breeding season has been moved to Regulation 10.2. Proposed Regulation 10.0 Responsibilities of Owners or Lessees of Standardbred Stallions, changes the heading to conform with the new terminology of proposed Regulations 1.2 and 2.0 while proposed amended Regulation 10.2 elaborates the responsibilities of owners and lessees of Delaware sires and provides a one-year disqualification for violating the out-of-state racing limitation.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by June 1, 2013.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, May 16, 2013 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE**OFFICE OF THE STATE LOTTERY****203 Video Lottery and Table Game Regulations****PUBLIC NOTICE**

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

The proposed amendments are to Rule 4.3, Rule 4.6.1, Rule 4.6.2 and Rule 20.2 in 10 **DE Admin. Code** 203.

The first amendment is to Rule 4.3 and would change the amount of business that must be transacted before a non-gaming vendor must file a vendor registration form (VRF) from \$10,000 to \$50,000 per year.

The second proposed amendment is to Rule 4.6.1 and would provide that a non-gaming vendor shall be deemed to be transacting regular and continuing business if the total dollar amount of transactions with a single video lottery agent is at least \$750,000 in any twelve-(12) month period, rather than \$400,000.

The third amendment is to Rule 4.6.2 and would provide that a non-gaming vendor shall be deemed to be transacting regular and continuing business if the total dollar amount of transactions with all video lottery agents is at least \$1,500,000 in any twelve-(12) month period, rather than \$750,000.

The fourth amendment is to Rule 20.2 and would provide that the table game drop may be performed by at least two persons, one of whom shall be a table games supervisor, rather than a shift supervisor.

Persons wishing to present their views regarding this matter may do so by submitting written comments by the close of business on or before May 31, 2013 at the offices of the Delaware State Lottery at 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Delaware State Lottery office at the same address.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

3102 Long Term Care Transfer, Discharge and Readmission Procedures

PUBLIC NOTICE

The Division of Long Term Care Residents Protection (DLTCRP) is proposing a complete revision of Regulation 3102, Long Term Care Discharge and Impartial Hearing 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 Mary Peterson, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 by Monday June 3, 2013.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Diamond State Health Plan Plus 1115 Demonstration Waiver

PUBLIC NOTICE

In accordance with the public notice requirements of 42 U.S.C. §1315(d) and 42 CFR Part 431, Subpart G, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA) gives notice of its intent to file an application with the Centers for Medicare and Medicaid Services (CMS) to request a three-year extension of the Diamond State Health Plan 1115 Demonstration Waiver, which is scheduled to expire on December 31, 2013.

Under a waiver of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Using savings achieved under managed care, Delaware expanded Medicaid health coverage to additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Goals of the DSHP are to improve and expand access to healthcare to more adults and children throughout the State, create and maintain a managed care delivery system emphasizing primary care, and to strive to control the growth of healthcare expenditures for the Medicaid population.

In order for the Diamond State Health Plan 1115 Demonstration Waiver to continue past the expiration date, the State must request an extension no later than June 30, 2013. The duration of the extension being requested is January 1, 2014 through December 31, 2016.

Under the Diamond State Health Plan (DSHP) renewal, Delaware seeks to build on the successes of the existing waiver while integrating the waiver's programs and benefits to deliver better health outcomes more efficiently and to align the waiver with the Affordable Care Act's new requirements. Delaware plans on the following specific proposed waiver renewal initiatives:

- To expand Medicaid eligibility to individuals with income at or below 133% of the Federal Poverty Level (FPL) beginning January 1, 2014;
- To incorporate the new simplified Medicaid eligibility methodology called “modified adjusted gross income” (MAGI) to the extent required by the ACA;
- To follow MAGI eligibility groups once federal regulations are finalized; and,
- To ensure enrollment without interruption in coverage to the maximum extent possible for individuals who are not categorically eligible for Medicaid, the State also plans to implement a transition plan consistent with the provisions of the ACA.

A draft of Delaware’s waiver renewal application is currently available on the Division of Medicaid and Medical Assistance (DMMA) website at: <http://dhss.delaware.gov/dhss/dmma/>.

Hard copies are available for review at the Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, Holloway Campus, Lewis Building, Conference Room 198, New Castle, Delaware 19720 from 8:00 a.m. – 4:30 p.m.

The public is invited to review and comment on the State’s proposed waiver renewal request. Written comments may be sent to: Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or via fax to 302-255-4425. For consideration, written comments must be received by 4:30 p.m. on June 12, 2013. Please identify in the subject line: Proposed Diamond State Health Plan 1115 Waiver Renewal.

As required by 42 CFR Part 431, Subpart G, the State agency is providing the following opportunities to the public to comment on the proposed waiver renewal application in person. Two (2) public hearings are scheduled. The detailed information for each public hearing is shown below.

1. NEW CASTLE COUNTY

Wednesday, May 22, 2013, 1:00-3:00 pm
 Delaware State Police, Troop 2,
 Robert Paris Community Room
 100 Lagrange Avenue
 Newark, DE 19702

2. KENT COUNTY

Thursday, May 23, 2013, 1:00-3:00 pm
 DNREC
 Richardson and Robbins Building
 DNREC Auditorium
 89 Kings Highway
 Dover, DE 19901

The State will take verbal and written comments at the public hearings. The outcome of this process and the input provided will be summarized for CMS upon submission of the final application for a waiver renewal extension.

If you are unable to attend the public hearing in person, you may participate by teleconference. To participate via teleconference, on the date and time of the public hearing, call 1-877-366-0711 and enter passcode 95099070#.

If you require special assistance or auxiliary aids and/or services to participate in the public hearing (e.g., sign language or wheelchair accessibility), please call the following contact at least five (5) days prior to the hearing for arrangements:

Latoya Wright at (302) 255-9561

The prompt submission of requests helps to ensure the availability of qualified individuals and appropriate accommodations in advance.

DIVISION OF SOCIAL SERVICES

Food Supplement Program

Time Limit for Able-bodied Adults

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and

Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, ~~Time Limit for Able-bodied Adults Maintaining and Regaining ABAWD Eligibility~~.

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

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

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

House Bill 311 Regulations

6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 51, Delaware Health and Social Services (DHSS) / Division of Substance Abuse and Mental Health is proposing regulations for credentialing mental health screeners and paying for voluntary admissions to privately operated psychiatric hospitals.

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 Dara Schumaier, Division of Substance Abuse and Mental Health, 1901 North DuPont Highway, New Castle, Delaware 19720 or by fax to (302) 255-4428 by May 31, 2012.

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

1003 Credit for Reinsurance

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 1003 relating to Credit for Reinsurance [Formerly Regulation 79]. The docket number for this proposed regulation is 2202.

The proposed regulation supports the Credit for Reinsurance Act (18 **Del.C.** §§910-916) and reinsurance collateral reforms by establishing requirements for regulating qualified reinsurers, reinsurance risk diversification and notice requirements for ceding insurers. The Delaware Code authority for the change is 18 **Del.C.** §311 and §915; and 29 **Del.C.**, Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, May 31, 2013. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379

Fax: (302) 739-5566

Email: rhonda.west@state.de.us**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF FISH AND WILDLIFE****3581 Spiny Dogfish****PUBLIC NOTICE**

The purpose of this action is to amend the spiny dogfish (*Squalus acanthias*) regulation with modification to the daily commercial "take, land or possess" limit. The Department was requested to consider an increase in the "daily take, land or possess" limit from 3,000 pounds to 10,000 pounds at a recent Advisory Council on Tidal Finfisheries meeting. This request was subsequently endorsed by the Council.

The Northeast Fisheries Science Center's most recent update on the status of spiny dogfish found that the population is not overfished and overfishing is not occurring. Spawning stock biomass has exceeded target levels for the past five years. In response, the Atlantic States Marine Fisheries Commission (ASMFC) roughly doubled the annual quota for Delaware with the adoption of Addendum III to the Interstate Fishery Management Plan for Spiny Dogfish. Addendum III allows states from New York through North Carolina to set possession limits as best meets their needs.

In 2011, 30,670 pounds (17%) of Delaware's 179,200 pound quota were harvested. Spiny dogfish have a low market value and the current 3,000 pound daily limit makes it economically unfeasible for commercial harvesters to target the species. Further, spiny dogfish often occur in tremendous schools and allowing a higher daily limit would minimize discard losses and improve harvest efficiency in the gill net fishery. In recent years, the high biomass of spiny dogfish has been implicated in the decline of several ecologically and economically important species, including weakfish and herrings.

The spiny dogfish quota is monitored using mandatory catch reports and a federal dealer reporting system, making it unlikely that Delaware would exceed its quota allocation.

The hearing record on the proposed changes to §3581 Spiny Dogfish will be open May 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on May 23, 2013 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR
FAMILIES****DIVISION OF FAMILY SERVICES****301 Criminal History Record Checks for Child Care Persons****PUBLIC NOTICE**

The Office of Child Care Licensing proposes to amend Criminal History Record Checks for Child Care Persons in order to clarify and streamline regulations and to comply with changes to Delaware and Federal Code.

A copy of the proposed regulations is being published in the May 1, 2013 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on May 31, 2013.

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

DIVISION OF FAMILY SERVICES**302 Child Abuse Registry Checks for Child Care and Health Care Persons****PUBLIC NOTICE**

The Office of Child Care Licensing proposes to amend Child Abuse Registry Checks for Child Care and Health Care Persons in order to clarify and streamline regulations and to comply with changes to Delaware Code.

A copy of the proposed regulations is being published in the May 1, 2013 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on May 31, 2013.

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

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****2900 Real Estate Commission****PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations.

A public hearing will be held on June 13, 2013 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be June 28, 2013, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on July 11, 2013 at 9:30 a.m., at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed an addition to Rule 13.0 to permit licensees to obtain continuing education credit for completion of a broker's licensing course. In addition, there is a typographical correction to Rule 13.1.

DIVISION OF PROFESSIONAL REGULATION**2925 Real Estate Commission Education Committee****PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to the Real Estate Commission Education Guidelines (the "Guidelines").

A public hearing will be held on June 13, 2013 at 9:15 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 rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be June 28, 2013, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on July 11, 2013 at 9:15 a.m., at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed revisions to Rule 3.0, pertaining to the composition of the Education Committee. These revisions will facilitate the appointment and retention of Education Committee members and ensure that their meetings have a quorum. In addition, Rule 6.7 is added to permit licensees to obtain continuing education credit for completion of a broker's licensing course.

DIVISION OF PROFESSIONAL REGULATION
5300 Board of Massage and Bodywork
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §5306(a)(1), the Delaware Board of Massage and Bodywork has proposed revisions to its rules and regulations.

A public hearing will be held on June 20, 2013 at 1:45 p.m. in the second floor conference room B 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 rules and regulations may obtain a copy from the Delaware Board of Massage and Bodywork, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be July 5, 2013, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting on August 15, 2013, at 1:45 p.m., at which time the Board will decide whether to adopt the revisions as proposed.

The Board has proposed extensive revisions to the rules and regulations. Certain revisions implement amendments to the Board's licensing law, Chapter 53 of Title 24 of the Delaware Code. In particular, all certified massage technicians shall be required to provide clients with client disclosure forms stating that services will be provided by a certified massage technician and not by a licensed massage therapist. This disclosure form will further advise clients that certified massage technicians are not authorized to treat medically diagnosed conditions. The revisions also add Standards of Professional Conduct for licensees and fines for unlicensed practice. The rules and regulations pertaining to continuing education have been revised to specify that, effective the 2014 – 2016 renewal period, all licensees must complete 24 hours of continuing education. Finally, the rules and regulations are updated for clarity and consistency.

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

Pursuant to 16 **Del.C.** §4731, the Delaware Controlled Substance Advisory Committee has proposed revisions to its rules and regulations. The rules and regulations are re-organized for greater clarity and expanded to incorporate pertinent provisions from Chapter 47 of Title 16. The rules pertaining to security in dispensing, now set forth in Rule 7.0, are amended for greater public protection. Rule 8.0 is added to address dispensing by practitioners.

A public hearing will be held on May 29, 2013 at 9:30 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Committee at the above address. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be June 13, 2013, which is 15 days following the public hearing.