
Delaware Register of Regulations

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Volume 19 - Issue 11, Pages 949 - 1035



IN THIS ISSUE:

Regulations:

- Errata
- Emergency
- Proposed
- Final

Calendar of Events &
Hearing Notices



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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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1799 Genetic Counselor Advisory Council..... 19 DE Reg. 725 (Prop.)

1900 Board of Nursing, Sections 2.0, 3.0, 4.0, 5.0 & 9.0..... 19 DE Reg. 125 (Prop.)

19 DE Reg. 432 (Final)

2000 Board of Occupational Therapy Practice..... 19 DE Reg. 276 (Prop.)

2100 Board of Examiners in Optometry..... 19 DE Reg. 26 (Prop.)

19 DE Reg. 204 (Final)

Section 9.0 Telehealth..... 19 DE Reg. 914 (Prop.)

2500 Board of Pharmacy..... 19 DE Reg. 26 (Prop.)

subsection 3.8..... 19 DE Reg. 125 (Prop.)

19 DE Reg. 660 (Final)

2500 Board of Pharmacy, Sections 5.0 and 10.0..... 19 DE Reg. 282 (Prop.)

19 DE Reg. 661 (Final)

2500 Board of Pharmacy, Section 5.0..... 19 DE Reg. 860 (Final)

2700 Board of Registration for Professional Land Surveyors..... 19 DE Reg. 142 (Final)

19 DE Reg. 589 (Prop.)

2925 Real Estate Commission Education Committee..... 19 DE Reg. 727 (Prop.)

2930 Council on Real Estate Appraisers..... 19 DE Reg. 70 (Final)

19 DE Reg. 592 (Prop.)

3000 Board of Professional Counselors of Mental Health and Chemical

Dependency Professionals..... 19 DE Reg. 283 (Prop.)

19 DE Reg. 592 (Prop.)

19 DE Reg. 663 (Final)

19 DE Reg. 932 (Final)

3300 Board of Veterinary Medicine..... 19 DE Reg. 827 (Prop.)

3500 Board of Examiners of Psychologists..... 19 DE Reg. 319 (Final)

3600 Board of Geologists..... 19 DE Reg. 827 (Prop.)

3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid

Dispensers..... 19 DE Reg. 284 (Prop.)

3800 Board of Dietetics/Nutrition..... 19 DE Reg. 27 (Prop.)

3800 Board of Dietetics/Nutrition.....	19 DE Reg. 933 (Final)
4100 Board of Home Inspectors, Sections 4.0, 9.0 and 10.0.....	19 DE Reg. 184 (Prop.)
5200 Board of Examiners of Nursing Home Administrators, Section 5.0, Programs for Continuing Education Credits.....	19 DE Reg. 479 (Prop.)
Uniform Controlled Substances Act Regulations.....	19 DE Reg. 27 (Prop.)
Public Service Commission	
1202 Policies and Procedures Regarding FOIA Requests.....	19 DE Reg. 434 (Final)
3001 Rules for Certification and Regulation of Electric Suppliers (Docket No. 49)	19 DE Reg. 595 (Prop.)
3007 Electric Service Reliability and Quality Standards.....	19 DE Reg. 126 (Prop.)
4002 Regulations Governing Payphone Service Providers in Delaware (Docket No. 12), Repeal of.....	19 DE Reg. 71 (Final)
DEPARTMENT OF TRANSPORTATION	
Division of Maintenance and Operations	
2601 Outdoor Advertising.....	19 DE Reg. 728 (Prop.)
Division of Motor Vehicles	
2222 School Bus Driver Qualifications and Endorsements.....	19 DE Reg. 597 (Prop.)
2225 Delaware Driving Privilege Permit and Driving Privilege Card.....	19 DE Reg. 936 (Final)
2261 Changing of License Plate Numbers and Establishing a Fee for Such Change.....	19 DE Reg. 603 (Prop.)
2266 Vehicle Document Fees.....	19 DE Reg. 937 (Final)
2289 Transportation Network Companies.....	19 DE Reg. 527 (Final)
Division of Planning and Policy	
2309 Development Coordination Manual.....	19 DE Reg. 836 (Prop.)
Division of Transportation Solutions	
2401 Utilities Manual Regulations.....	19 DE Reg. 731 (Prop.)
2402 Delaware Manual in Uniform Traffic Control Devices.....	19 DE Reg. 73 (Final)
2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	19 DE Reg. 322 (Final)
Office of the Secretary	
Pedestrian Accessibility Standards.....	19 DE Reg. 737 (Prop.)
EXECUTIVE DEPARTMENT	
Office of Management and Budget	
Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act.....	19 DE Reg. 938 (Final)
Division of Facilities Management	
4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	19 DE Reg. 207 (Final)
Statewide Benefits Office	
2007 Disability Insurance Program Rules and Regulations.....	19 DE Reg. 78 (Final)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF WATER**

Statutory Authority: 7 Delaware Code, Sections 6003 and 6010 (7 **Del.C.** §§6003 & 6010)
7 **DE Admin. Code** 7301

7301 Regulations Governing the Construction and Use of Wells

* **Please Note:** The Proposed Regulation for *7301 Regulations Governing the Construction and Use of Wells* that was published in the January 1, 2016 issue of the *Delaware Register of Regulations* (19 DE Reg. 587) inadvertently excluded subsection 10.1.9, which was submitted as new text. Subsection 10.1.9 is printed below as an Errata. Since the excluded subsection 10.1.9 was never published by the Registrar as part of the initial proposed regulations in the January 1, 2016 edition of the *Register of Regulations*, the public comment period regarding these proposed regulations will now be re-opened by DNREC for an additional 30 days. Public comment will be accepted by DNREC from May 1, 2016 through close of business on May 31, 2016, at which time the hearing record will once again close regarding public comment. 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. No additional hearing will be held.

**7301 Regulations Governing the Construction and Use of Wells
(Break in Continuity of Sections)****910.0 Well Abandonment Sealing****910.1 General Requirements****(Break in Continuity Within Section)**

10.1.9 A well will not be considered sealed if only the supply line is sealed.

***Please Note:** The full text of the proposed regulation is not being republished. Please see 19 DE Reg. 587 for the proposed amendments to 7301 Regulations Governing the Construction and Use of Wells. A copy of the published regulation is available at:

[http://regulations.delaware.gov/register/january2016/proposed/19 DE Reg 587 01-01-16.htm](http://regulations.delaware.gov/register/january2016/proposed/19%20DE%20Reg%20587%2001-01-16.htm)

Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

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

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

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WATERSHED STEWARDSHIP**

Statutory Authority: 7 Delaware Code, Chapter 40 (7 **Del.C.** Ch.40)
7 **DE Admin. Code** 5101

SECRETARY'S ORDER NO: 2016-WS-0019

Pursuant to 29 Del.C. §10119

5101 Sediment and Stormwater Regulations**AUTHORITY**

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control adopts as an emergency regulation the previously-adopted 2014 Delaware Sediment & Stormwater Regulations, (7 **DE Admin. Code** 5101) and further adopts the April 2016 Technical Document, without prior notice or public hearing, in the interest of public health, safety and welfare, consistent with the authority of 7 **Del.C.** Ch. 40, Erosion and Sedimentation Control. It should be noted that the emergency regulations are intended as interim measures, necessary to avoid harm to the public health, safety, and welfare, and to facilitate the continued process of plan review and approval, pending the formal adoption of regulations pursuant to the Administrative Procedures Act, within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations.

REASON FOR THE EMERGENCY REGULATION ORDER

A ruling by the Delaware Superior Court in *Baker, et al. v. DNREC, et al.* (C. A. No. S13C-08-026 THG) on October 7, 2015 invalidated the 2013 and 2014 version of the Delaware Sediment & Stormwater Regulations on

procedural grounds. The Department appealed this ruling to the Delaware Supreme Court, which on Friday, April 15, 2016 affirmed the judgement of the Superior Court. Circumstances dictate that the Department take action immediately to resolve the regulatory vacuum left by these decisions, pending formal adoption of amended regulations.

The Superior Court decision, adopted by the Supreme Court, is silent as to what version of the regulations should be in place. The Superior Court Order as to the 2013/2014 regulations does not automatically revive any previous version of the regulations. Even if it did revive the previous regulations, the Court's prohibition on the use of the Technical Document in the exercise of regulatory authority effectively bars use of prior regulations, which rely on the same interplay with the Technical Document ruled invalid by the Court, and cannot stand alone. In order to proceed with regulatory actions while respecting the Court Order, the Department must issue an emergency regulation, pending further review, in order to have a valid set of regulations in place to implement the Delaware Sediment & Stormwater Law pursuant to 7 **Del.C.**, Ch. 40, Erosion and Sedimentation Control. Delaware is required by federal law to have a valid erosion and sedimentation program in place for all construction activities, and Delaware's erosion and sedimentation program must have regulations in place to be valid - 7 **Del.C.** Ch. 40, Erosion and Sedimentation Control.

In its decision, the Superior Court ruled that supplementary technical documents that contain guidelines, standards and requirements necessary for compliance must be treated the same as regulations, and must therefore be adopted in accordance with the Administrative Procedures Act (APA). By issuing an emergency regulation re-adopting the 2014 Regulations in conjunction with adoption of the April 2016 Technical Document, pursuant to the APA, the Department cures this defect, and allows plan review and approval to proceed, pending further review within the next 120 days.

Merely reverting to a previous version of the regulations would not cure the procedural defect identified by the Court, but would continue it, due to the interplay between prior regulations and prior versions of the technical support materials. In the absence of an interim regulation, the Department would find itself without a regulatory framework to carry out its statutory authority. A prolonged lapse in regulatory authority would create a situation of imminent peril to the public health, safety and welfare, with respect to the management of both the quantity and quality of stormwater runoff associated with land development, and the inability of any development projects to legally move forward. The importance of this regulatory authority was cited by the General Assembly in enacting Chapter 40 to Title 7, in finding "...that accelerated stormwater runoff increases flood flows and velocities, contributes to erosion, sedimentation, and degradation of water quality, overtaxes the carrying capacity of streams and storm sewers, greatly increases the costs of public facilities in carrying and controlling stormwater, undermines flood plain management and flood control efforts in downstream communities, reduces groundwater recharge, and threatens public health, welfare, and safety."

The threat to the public welfare from lapse or uncertainty in the regulatory climate would be reflected in significant potential economic impacts. As of the date of the Superior Court ruling in October 2015, a total of 311 applications were under review by the Department and its Delegated Agencies. This included two major public school projects in Sussex County, and a great number of DelDOT roadway improvement projects, including portions of the US 301 project. A total of 285 development plans and tax ditch maintenance plans have been approved under the 2013/2014 regulations. The owners and developers of these projects, who have invested millions of dollars in a good faith effort to comply with the regulations in place at the time, could be left in limbo, wondering whether they would need to expend even more money to re-engineer their projects. DelDOT projects are in jeopardy of losing Federal highway funds if the projects are not implemented according to schedule, and public school projects may not meet projected school opening dates, if the plan approval process is delayed by having to redesign. Additionally, the Department has invested a total of 3,905 contact hours to 675 attendees in various training sessions intended to train regulated parties and interested professionals in the application of the 2013/2014 Sediment & Stormwater Regulations. For many of the attendees, these are the only regulations under which they have designed plans.

It is worth noting not all applications that meet the 2014 Regulations would also meet the requirements of the previous regulations from 2006. The 2014 Regulations were more stringent in some respects and less so in others than the previous 2006 regulations, depending upon individual site conditions and watershed position. Therefore, there is no benefit or utility for the regulated community to be gained by merely adopting the 2006 regulations by emergency order.

The 2014 Regulations that are being re-adopted through this emergency order were originally adopted in compliance with the APA. While the March 2013 Technical Document and subsequent updates were not published by the Registrar of Regulations, they did go through public notice and an extensive public comment period, and were posted publicly on the Department's web site. The final document was the result of over 40 Regulatory Advisory Committee and Subcommittee public meetings with ongoing public comment which produced over 700 comments and responses on the Technical Document.

For the reasons cited above, the Department issues the 2014 Sediment & Stormwater Regulations in place at the time of the Superior Court and subsequent Supreme Court ruling, along with the most recent version of the Technical Document, dated April 2016, as a regulation, in accordance with the APA requirements, through this Emergency Regulation Order. The Department requests that the Registrar publish these regulations in the next issue of the Register of Regulations on May 1, 2016.

The Department intends to initiate a formal APA rulemaking process for the 2014 Regulations and current Technical Document, in compliance with all public hearing and notice requirements. Since December 2015 the Department has been meeting monthly with Regulatory Advisory Committee members and interested parties to undertake a comprehensive review of the regulation language and Technical Document, in order to propose improvements to both the procedural and technical elements of the regulations. DNREC will publish the emergency regulations on its webpage and reach out to stakeholders and the Delegated Agencies in order to assure continuity and to facilitate compliance.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect at 12:01 AM on April 16, 2016 and shall apply to all activities subject to these regulations as of April 15, 2016, and shall remain in effect for 120 days; however, at the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3), to allow for meaningful public comment and Department response to such comment.

PETITION FOR RECOMMENDATIONS

Consistent with the requirements of 29 **Del.C.** §10119(4) the Department will receive, consider and respond to petitions by any interested person for the reconsideration or revision of this Order. Petitions should be presented to the Division of Watershed Stewardship, 89 Kings Highway, Dover, Delaware, 19901.

ORDER

It is hereby ordered, the 15th day of April 2016 that the above referenced 2014 Delaware Sediment & Stormwater Regulations with the April 2016 Technical Document, are adopted pursuant to 29 **Del.C.** §10119 and supported by the evidence contained herein. A copy of the 2014 Delaware Sediment & Stormwater Regulations and the April 2016 Technical Document can be viewed at the following link:

<http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

David S. Small, Secretary

5101 Sediment and Stormwater Regulations (Break in Continuity of Sections)

Included by reference herein is the April 2016 Technical Document. Due to the size of the Technical Document it is not being published here. Authenticated PDFs are available at the links below:

[1.0 Article 1 Sediment and Stormwater Program Background EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/Article1.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/Article1.pdf)

[2.0 Article 2 Policies and Procedures EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/Article2.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/Article2.pdf)

[3.0 Article 3 Plan Review and Approval EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/Article3.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/Article3.pdf)

[3.02.1.5 Example Project Application Package EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/Example30215.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/Example30215.pdf)

[3.02.2.7.1 Example Residential Preliminary Plan EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/Example302271.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/Example302271.pdf)

[3.02.2.7.2 Example Commercial Preliminary Plan EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/Example302272.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/Example302272.pdf)

[3.02.2.7.3 Example Institutional Preliminary Plan EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/Example302273.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/Example302273.pdf)

[3.02.2.7.4 Example Redevelopment Preliminary Plan EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/Example302274.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/Example302274.pdf)

[3.06.1 Delaware ESC Handbook EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/ESCHandbook.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/ESCHandbook.pdf)

[3.06.2 Post Construction Stormwater BMP Standards and Specifications EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/PostConstruction.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/PostConstruction.pdf)

[4.0 Article 4 Construction Review and Compliance EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/Article4.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/Article4.pdf)

[5.0 Article 5 Operation and Maintenance EFF APR 2016 \(http://regulations.delaware.gov/register/may2016/emergency/Article5.pdf\)](http://regulations.delaware.gov/register/may2016/emergency/Article5.pdf)

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

5101 Sediment and Stormwater Regulations

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 922

PUBLIC NOTICE**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****922 Children with Disabilities Subpart A, Purposes and Definitions****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions. The regulation is being amended to change the terminology of "Emotional Disturbance" to also be known as "Emotional Disability" as these terms are used interchangeably.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above. This regulation will be out for public comment for 60 days.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to improve student achievement as measured against state achievement standards by ensuring that students with an emotional disability receive the services due to them under the Individuals with Disabilities Act (IDEA).

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

regulation does not address equitable education.

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

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

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

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not an expected cost to implementing this regulation with the amendments.

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 967RFA 05-01-16.pdf>

922 Children with Disabilities Subpart A, Purposes and Definitions

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The italicized portions of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

3.0 Definitions Applicable to Regulations 922 to 929:

(Break in Continuity Within Section)

“Child with a Disability” means a child evaluated in accordance with 14 DE Admin. Code 925.4.0 through 925.12.0 as having intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional ~~disturbance~~ *(referred to in these regulations as “emotional disturbance”)* disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(Break in Continuity Within Section)

“Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. A child who manifests the characteristics of autism after age three (3) could be identified as having autism if the other criteria in this definition are satisfied.

Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional ~~disturbance~~ disability, as defined in this section.

(Break in Continuity Within Section)

“Emotional Disturbance Disability” means a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. Emotional disturbance disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance disability as defined in this section. *The term “emotional disturbance” is sometimes used as a substitute for the term “emotional disability” and shall be considered an equivalent term for purposes of these regulations.*

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

922 Children with Disabilities Subpart A, Purposes and Definitions

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 925

PUBLIC NOTICE

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

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. The regulation is being amended to align the regulation with changes made to 14 Del.C. Ch. 31 which includes progress on transition goals and conduct of Individualized Education Program (IEP) meetings, notice of such meetings and parent input prior to IEP meetings. The amendments also include that the Department of Education (DOE), in conjunction with the Department of Justice, will annually survey a random and representative sample of parents and their children who have Individualized Education Programs (IEP) with respect to their satisfaction with the IEP process. Additionally, it is being amended to change the terminology of "Emotional Disturbance" to also be known as "Emotional Disability" as these terms are often used interchangeably.

This regulation was out for public comment on February 1 and March 1, 2016 respectively. Public comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Councils expressed concern that the "prior notice of meeting" and the "full explanation of procedural safeguards" were not outlined in the regulation per statute. The Department wishes to clarify the difference between **notice of meeting (a.k.a. invitation to meeting)** (925.22) and **prior written notice** (as outlined in 926.3.0). SB 33 addressed procedural safeguards provided with the **prior written notice**. It does not address providing procedural safeguards with the **notice of meeting**. Within the prior written notice document, a summary of the procedural safeguards, as well as a link for the parent to obtain a full copy of their procedural safeguards will be provided. Thus, no change regarding this issue is needed to the regulation. Note, minor grammatical changes are reflected in this republication of the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above. This regulation will be out for a 60 day comment period.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards, by ensuring parent input, IEP meetings are conducted properly, and that student progress on transition goals is provided with the same frequency as academic goals.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments do not change decision making at the local or school levels.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability does not change because of the amendments.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendments are consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing this subject matter.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not an expected cost to implementing this regulation with the amendments.

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 969RFA 05-01-16.pdf>

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

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

1.0 Parental Consent

(Break in Continuity Within Section)

- 1.8 To meet the reasonable efforts requirement of this section, the public agency shall document its attempts to obtain parental consent using the procedures in ~~22.4~~ 22.6.
(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c); 14 Del.C. §3110)

(Break in Continuity of Sections)

6.0 Determination of Eligibility

(Break in Continuity Within Section)

- 6.9 Eligibility Criteria for Emotional ~~Disturbance~~ Disability: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional ~~disturbance~~ disability and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

(Break in Continuity of Sections)

9.0 Determining the Existence of a Specific Learning Disability.

- 9.1 Subject to 6.4 and 6.11, the group described in 6.1 may determine that a child has a specific learning disability if:

(Break in Continuity Within Section)

- 9.1.4 Rule out other conditions: The group determines that its findings under 9.1.1, 9.1.2 and 9.1.3 are not primarily the result of:

- 9.1.4.1 A visual, hearing, or motor disability;
- 9.1.4.2 Intellectual Disability;
- 9.1.4.3 Emotional ~~disturbance~~ disability;
- 9.1.4.4 Cultural factors;
- 9.1.4.5 Environmental or economic disadvantage; or
- 9.1.4.6 Limited English proficiency.

(Break in Continuity of Sections)

11.0 Specific Documentation for the Eligibility Determination

- 11.1 For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in 6.1, shall contain a statement of:

(Break in Continuity Within Section)

- 11.1.6 The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional ~~disturbance~~ disability; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(Break in Continuity of Sections)

20.0 Definition of Individualized Education Program

(Break in Continuity Within Section)

- 20.2 Transition services: *Beginning with the earlier of the first IEP to be in effect when the child turns fourteen (14) or enters the eighth (8th) grade, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include:*

(Break in Continuity Within Section)

- 20.2.2 The transition services *and activities* (including courses of study) needed to assist the child in reaching those goals.

20.2.2.1 The IEP team shall discuss employment options with children and parents consistent with Delaware's Employment First Policy articulated by 19 Del.C. §743.

20.2.2.2 Progress made on activities and services that reasonably enable the child to reach the child's postsecondary goals in transition IEPs shall be reported with the same frequency as academic goals.

(Break in Continuity Within Section)

21.0 IEP Team

(Break in Continuity Within Section)

21.7 *No public agency, or any person acting under the authority of a public agency, shall discriminate or take any adverse employment or contract action against any person based upon statements that the person makes while advocating for a student in connection with an IEP, including statements made in preparation for or at a meeting, review, or conference concerning a child with a disability's free and appropriate public education.*

21.7.1 *Entities or persons who violate this subsection shall be subject to the same sanctions as persons or entities that engage in unlawful employment practices under 19 **Del.C.** Ch. 7.*

22.0 Parent Participation

(Break in Continuity Within Section)

22.2 Information provided to parents: The notice required under 22.1 shall:

(Break in Continuity Within Section)

22.2.2 Inform the parents of the provisions in 21.1.6 and 21.3 (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and 21.6 (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

22.2.2.1 *The IEP Team shall provide notice to the parent, and if appropriate, the child, that they may request the presence of any teacher, paraprofessional, and any additional staff members at an IEP meeting.*

22.2.3 *A full copy of the procedural safeguards under state and federal law and regulations shall be offered to the parents at the IEP meeting.*

22.2.4 *The IEP Team shall provide notice to the parent, and if appropriate, the child, that they may request any data (e.g. classroom assessments, formative assessments, behavior data, related service reports, Response to Intervention data) in the agency's possession relevant to the child's needs or disability prior to the IEP meeting.*

22.3 *The IEP team will ensure parent input through the following:*

22.3.1 *The IEP team shall provide a questionnaire requesting the input of a child's parent, and where appropriate, the input of the child, with respect to the child's progress to date and additional proposed steps that should be taken to adjust the child's goals, curriculum, services, aids, modifications, and/or other elements of the child's IEP.*

22.3.1.1 *The questionnaire shall be sent with or prior to the written meeting notice inviting the parent to attend the IEP meeting.*

22.3.2 *If the IEP Team prepares a draft of the IEP prior to the date of the IEP meeting, the IEP Team shall provide the parent, and if appropriate, the child, with a copy of the draft IEP accompanied by a letter clearly indicating that the document is a draft for discussion purposes only and is therefore subject to revisions.*

22.3.3 *The Department in collaboration with the Governor's Advisory Council for Exceptional Citizens shall create and provide a draft letter and associated guidance to assist public agencies with the content and application of the letter referred to in subsection 22.3.2 in 14 **DE Admin. Code** 925.*

22.2-34 *For a child with a disability beginning with the earlier of the first IEP to be in effect when the child turns fourteen (14) or enters the eighth (8th) grade, or younger if determined appropriate by the IEP Team, the notice shall also indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with 20.2 and that the agency will invite the student; and identify any other agency that will be invited to send a representative. The invitation to the child shall be in writing.*

22.35 Other methods to ensure parent participation: If neither parent can attend an IEP Team meeting, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls, consistent with 28.0 (related to alternative means of meeting participation).

- 22.46 Conducting an IEP Team meeting without a parent in attendance: A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency shall keep a record of its attempts to arrange a mutually agreed on time and place, such as:
- 22.46.1 Detailed records of telephone calls made or attempted and the results of those calls;
 - 22.46.2 Copies of correspondence sent to the parents and any responses received; and
 - 22.46.3 Detailed records of visits made to the parent's home or place of employment and the results of those visits.
 - 22.46.4 Use of interpreters or other action, as appropriate. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- 22.57 Parent copy of child's IEP: The public agency shall give the parent a copy of the child's IEP at no cost to the parent.
(Authority: 20 U.S.C. 1414(d)(1)(B)(i); 14 Del.C. §3110)
- 22.8 The Department of Education, in conjunction with the Department of Justice, shall annually survey a random and representative sample of parents and their children who have Individualized Education Programs with respect to the parents' and children's satisfaction with the IEP process. Information gathered through this survey shall be used by the Department of Education and Department of Justice to conduct follow-up examinations with school districts and charter schools as to their good faith compliance with state and federal laws and regulations.
- 22.8.1 Information gathered through this survey shall also be used by the Department of Education in carrying out monitoring duties as outlined in 14 DE Admin. Code 927 to ensure compliance with state and federal laws and regulations.
- 22.8.2 A summary of the survey results will be made available on the Department of Education's website.

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

925 Children with Disabilities Subpart D

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE

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

1522 Elementary School Counselor

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 1522 Elementary School Counselor. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It was necessary to review and amend this regulation in order to adjust the current course count. This regulation sets forth the requirements for an Elementary School Counselor.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on

Tuesday, May 31, 2016 to Mr. Chris Kenton, 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 addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, 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 certification, 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? The amended regulation will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** §1205 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 is no additional cost to local school boards for compliance with the regulation.

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 973RFA 05-01-16.pdf>

1522 Elementary School Counselor

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

1.0 Content

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

2.0 Definitions

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

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

3.0 Standard Certificate

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

4.0 Additional Requirements

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

- 4.1 Has satisfied at least one of the following additional education requirements:
 - 4.1.1 Graduated from an NCATE ~~or specialty organization recognized~~ CAEP educator preparation ~~program unit~~ or from a state approved educator preparation program, where the state approval body employed the appropriate ~~NASDTEC or NCATE national~~ specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Elementary School Counseling; or
 - 4.1.2 Graduated from a regionally accredited college or university with a Master’s degree in any content area and satisfactorily completed thirty-nine (3039) ~~thirty-nine (3039)~~ credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:
 - 4.1.2.1 ~~Principles and Practices of the School Counseling Program~~ Introduction to School Counseling & Theories (3 credits);
 - 4.1.2.2 ~~Individual Counseling Skills~~ Human Behavior and Child Development (3 credits);
 - 4.1.2.3 ~~Group Counseling Skills~~ Ethical Issues in School Counseling (3 credits);
 - 4.1.2.4 ~~Human Development~~ College & Career Readiness K-12 (3 credits);
 - 4.1.2.5 ~~Developmental Group Guidance~~ Testing, Measurements, and Research in School Counseling (3 credits);
 - 4.1.2.6 ~~Individual and Group Testing for Counselors~~ The Counselor as Consultant (3 credits);

PROPOSED REGULATIONS

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

5.0 Effective Date of Section 4.0

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

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE

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

1545 Secondary School Counselor

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** 1545 Secondary School Counselor. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to consider the current course count. This regulation sets forth the requirements for a Secondary School Counselor.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Tuesday, May 31, 2016 to Mr. Chris Kenton, 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 addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, 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 certification, 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? The amended regulation will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** §1205 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 is no additional cost to local school boards for compliance with the regulation.

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 976RFA 05-01-16.pdf>

1545 Secondary School Counselor

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

1.0 Content

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

2.0 Definitions

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

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

3.0 Standard Certificate

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

4.0 Additional Requirements

- 4.1 ~~An educator must also have met the following:~~
- 4.2 Has satisfied at least one of the following additional education requirements:
- 4.21.1 Graduated from an NCATE ~~specialty organization recognized~~ or CAEP educator preparation program unit or from a state approved educator preparation program, where the state approval body employed the appropriate ~~NASDTEC or NCATE~~ national specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Secondary School Counseling; or
- 4.21.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and satisfactorily completed ~~3039~~ credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:
- 4.21.2.1 ~~Principles and Practices of the School Counseling Program~~ Introduction to School Counseling & Theories (3 credits);
- 4.21.2.2 ~~Individual Counseling Skills~~ Human Behavior and Child Development (3 credits);
- 4.21.2.3 ~~Group Counseling Skills~~ Ethical Issues in School Counseling (3 credits);
- 4.21.2.4 ~~Human Development~~ College & Career Readiness K-12 (3 credits);
- 4.21.2.5 ~~Career Development~~ Testing, Measurements, and Research in School Counseling (3 credits);
- 4.21.2.6 ~~Individual and Group Testing for Counselors~~ The Counselor as Consultant (3 credits);

- 4.21.2.7 ~~Supervised Practicum in Secondary Counseling~~ Special Education Law & the School Counselor's Role (3 credits);
 - 4.21.2.8 Counseling Theory Group Counseling (3 credits);
 - 4.21.2.9 Consultation Individual Counseling Skills & Strategies (36 credits); and
 - 4.21.2.10 ~~Ethical Issues in School Counseling~~ Family Counseling (3 credits).
 - 4.1.2.11 Principles and Practices of a School Counseling Program (6 Credits); and
- 4.3 ~~Has met at least one of the following experience requirements:~~
- 4.3.1 ~~A minimum of three years professional experience in a secondary school setting; or,~~
 - 4.3.2 ~~A minimum of three years of equivalent experience as approved by the Department of Education;~~
~~or,~~
- 4.2 ~~Has completed one of the following:~~
- 4.3.32.1 ~~Educators not holding a Standard Certificate Elementary School Counselor must complete A a supervised school counseling internship clinical experience under the direct supervision of a State Department of Education certified Secondary School Counselor of one (1) full year 700 hours in a secondary school setting which is part of a graduate degree program in Secondary School Counseling or arranged by the Department of Education. The internship may be completed over a two (2) year period on a half time basis.~~
 - 4.2.2 ~~Educators holding Standard Certificate Elementary School Counselor, who are seeking Secondary School Counselor certification, must complete 350 hours of additional clinical experience in a secondary school setting, under the direct supervision of a State Department of Education certified Secondary School Counselor; or~~
 - 4.2.3 ~~Educators seeking initial certification of both a Standard Certificate Elementary School Counselor and a Standard Certificate Secondary School Counselor simultaneously, must complete 350 hours of clinical experience in an elementary school setting under the direct supervision of a State Department of Education certified Elementary School Counselor and 350 hours of clinical experience in a secondary school setting under the direct supervision of a State Department of Education certified Secondary School Counselor.~~

5.0 Effective Date of Section 4.0

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

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE

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

1582 School Nurse

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** 1582 School Nurse. This regulation requires some formatting changes to conform to other Standard Certificates and the updating of certification requirements. This regulation sets forth the requirements for a School Nurse.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on

Tuesday, May 31, 2016 to Mr. Chris Kenton, 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 addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, 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 certification, 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? The amended regulation will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** §1205 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 is no additional cost to local school boards for compliance with the regulation.

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 979RFA 05-01-16.pdf>

1582 School Nurse

1.0 Content

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

2.0 Definitions

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

3.0 Standard Certificate

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

4.0 Additional Requirements

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

5.0 Expiration

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

6.0 Verification of Eligibility and Reporting

- 6.1 Educators holding a School Nurse certificate shall do the following:
- 6.1.1 Notify the Department immediately if they fail to meet the qualifications as a School Nurse.
 - 6.1.2 Annually notify the Department and affirm their continued eligibility for certification and if requested, provide documentation verifying their continued eligibility.
 - 6.1.3 If employed in the public school system, provide documentation to their employer of their current credentials including a valid nursing license, and CPR and AED certification.

PROPOSED REGULATIONS

- 6.1.4 If not employed in the public school system, provide documentation to the Department of their current credentials including a valid nursing license, and CPR and AED certification.
- 6.2 Upon employment of a School Nurse, a district or charter school is responsible for verifying that the School Nurse continues to meet the requirements in subsections 4.1.1 through 4.1.3.
- 6.2.1 The district or charter school must maintain documentation of the verification of initial credentials and maintain documentation of current credentials including a valid nursing license, and CPR and AED certification.
- 6.3 Districts and charter schools shall report information to the Department when they receive information that would result in the expiration of a School Nurse Standard Certificate.

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

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

PUBLIC NOTICE

Financial Institution Accounts – Delaware Achieving a Better Life Experience (ABLE) Accounts

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance is proposing to amend the Delaware Social Services Manual (DSSM) regarding Financial Institution Accounts, specifically, *to add language that exempts Achieving a Better Life Experience (ABLE) accounts from being counted towards the determination of eligibility for state or local assistance programs.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2016. Please identify in the subject line: Financial Institution Accounts – Delaware Achieving a Better Life Experience (ABLE) Accounts

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding Financial Institution Accounts, specifically, *to add language that exempts Achieving a Better Life Experience (ABLE) accounts from being counted towards the determination of eligibility for state or local assistance programs.*

Statutory Authority

- Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014, Pub. L. 113-295, 128 Stat. 4010
- 26 USC §529A, *Qualified ABLE programs*
- §201 of the Social Securities Act, *Federal old-age and survivors insurance trust fund and federal disability insurance trust fund*
- §1602 of the Social Securities Act, *Basic eligibility for SSI benefits*
- 16 Del.C. Ch. 96A §9601A-§9608A, *Delaware Achieving a Better Life Savings Accounts*

Background

The Federal government approved the Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of

2014 in December of 2014. This act amends the federal tax code to allow Section 529 tax-exempt savings accounts, for disability-related expenses. These ABLE accounts can be used to help individuals and families save for qualified disability-related expenses of individuals with disabilities. The funds in these accounts are meant to supplement other benefits provided by State, Federal and private sources such as, but not limited to, Medicaid, Supplemental Security Income, and employment. In addition, the Stephen Beck, Jr., ABLE Act of 2014 specifies that the funds in these accounts, and qualified disability expenses withdrawn from these accounts, are not to be counted towards the determination of eligibility for state or local assistance programs.

An ABLE program can be established and maintained by a State or a State agency directly or by contracting with a private company. An eligible individual can open an ABLE account through the ABLE program in any State. However, an eligible individual can be the designated beneficiary of only one ABLE account, which must be administered by a qualified ABLE program.

26 USC §529A(b)(1) states that, the term "qualified ABLE program" means a program established and maintained by a State, or agency or instrumentality thereof-

- (A) under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account,
- (B) which limits a designated beneficiary to 1 ABLE account for purposes of this section, and
- (C) which meets the other requirements of this section.

Delaware has published legislation addressing the implementation and administration of the Stephen Beck, Jr., ABLE Act of 2014, in Delaware under 16 **Del.C.** Ch. 96A, Delaware Achieving a Better Life Experience Savings Accounts. The purpose of 16 **Del.C.** Ch. 96A is to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life.

Summary of Proposal

Purpose

To add language to the Delaware Social Services Manual (DSSM) that allows for ABLE accounts to be exempt from the 20330.2 Financial Institutions Accounts regulation when determining an individual's resource computation. Also, to add language to the DSSM regarding Delaware Achieving a Better Life Experience (ABLE) Savings Accounts.

Summary of Proposed Changes

If implemented as proposed, the amendment to the DSSM will accomplish the following, effective July 11, 2016:

Provide a provision that allows for ABLE accounts to be exempt from the countable resource computation of financial institutions accounts, as well as provide eligibility policy regarding the administration of Delaware ABLE accounts.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the Delaware Social Services Manual provisions regarding Delaware Achieving a Better Life Experience (ABLE) Savings Accounts. Comments must be received by 4:30 p.m. on May 31, 2016.

Provider Manuals Update

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

Fiscal Impact Statement

DMMA is proposing a revision of existing Long Term Care (LTC) program eligibility policy to address ABLE accounts. The proposed changes provide guidance about how ABLE accounts are viewed in the determination of eligibility for LTC benefits. There is no anticipated fiscal impact to the agency as a result of this proposed change in program eligibility policy.

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 982RFA 05-01-16.pdf>

DMMA PROPOSED REGULATION #16-009a**REVISIONS:****20330.2 Financial Institutions Accounts**

Financial institution accounts which include savings accounts, checking accounts, certificates of deposit, etc., are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can access the funds by looking at how the account is titled.

An exception to this policy would be for Achieving a Better Life Experience (ABLE) Savings Accounts. These accounts are not included in the countable resources computation. Please review 20330.2.1 for policy applicable to ABLE Savings Accounts.

If an individual is designated as sole owner by the account title, all of the funds are that individual's resource unless legal restrictions preclude the owner from using the funds for his or her support and maintenance. We do not provide an opportunity for the owner of an individually-held account to rebut the presumption of 100% ownership.

If the account is in the name of a Medicaid applicant/recipient and another Medicaid applicant/recipient, assume all account funds belong to each individual in equal shares. If the account is in the name of a Medicaid applicant/recipient and another individual who is not applying for Medicaid or who is not a Medicaid recipient, then assume all of the funds belong to the Medicaid applicant/recipient.

If the applicant or recipient disagrees with the ownership presumption on jointly-held accounts, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her. Obtain the individual's statement on a form containing the penalty clause regarding who owns the funds, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent. Inform the individual that he or she must submit the following evidence within 30 days:

A corroborating statement from the other account holder(s). If the other account holder is incompetent or a minor, have the individual submit a corroborating statement from anyone aware of the circumstances surrounding establishment of the account; account records showing deposits, withdrawals and interest paid for the months that ownership is an issue; if the individual owns none of the funds, evidence showing that he or she can no longer withdraw funds from the account; if the individual owns only a portion of the funds, evidence showing removal from the account of the individual's funds or removal of the funds owned by the other account holder(s) and redesignation of the account.

Any funds that the evidence establishes were owned by the other account holder(s) are not and were not the individual's resources. The effect of a successful rebuttal is retroactive as well as prospective.

DMMA PROPOSED REGULATION #16-009b**NEW:****20330.2.1 Delaware Achieving a Better Life Experience (ABLE) Savings Accounts**

Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014,
Pub. L. 113-295, 128 Stat. 4010

The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) of 2014 established a tax-advantaged account that can be used to save funds for the disability-related expenses of the account's designated beneficiary. The designated beneficiary must be blind or disabled by a condition that began prior to the individual's twenty-sixth (26th) birthday.

Eligible individuals can be the designated beneficiary of only one ABLE account. The Delaware Achieving a Better Life Experience (ABLE) Program is administered by the Achieving a Better Life Experience (ABLE) Board as per 16 Delaware Code Ch. 96A.

Funds in qualifying ABLE accounts, and qualified disability expenses withdrawn from these accounts, are not to be counted towards the determination of eligibility for state or local assistance programs.

20330.2.1.1 Definitions

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

"ABLE Program" means a program established and maintained by a State (or agency or instrumentality thereof) through which interested individuals can open ABLE accounts.

"Contributions" means the deposit of funds into an ABLE account. Any person can contribute to an ABLE account. (Note that "person," as defined by the Internal Revenue Code, includes an individual, trust, estate, partnership, association, company, or corporation.) However, the Internal Revenue Service (IRS) limits the total annual contributions any ABLE account can receive from all sources to the amount of the per-donee gift-tax exclusion in effect for a given calendar year.

"Designated beneficiary" means the eligible individual who established and is the owner of the ABLE account.

"Distributions" means the withdrawal or issuance of funds from an ABLE account. The designated beneficiary or the person with signature authority determines when distributions are made. Distributions may be made only to or for the benefit of the designated beneficiary.

"Eligible Individual" means a resident of this State or a contracting state who is:

- Entitled to benefits based on disability or blindness under Title II or XVI of the Social Security Act, and such blindness or disability began before the age of twenty-six (26); or
- An individual with respect to whom a disability certification, meeting the requirements of the Stephen Beck, Jr., ABLE Act of 2014, is filed.

"Person with signature authority" means a person who can establish and control an ABLE account for a designated beneficiary who is a minor child or is otherwise incapable of managing the account. The person with signature authority must be the designated beneficiary's parent, legal guardian, or agent acting under power of attorney. We consider the designated beneficiary to be the owner of an ABLE account, regardless of whether someone else has signature authority over it.

"Qualified disability expense" or "QDE" means an expense related to the blindness or disability of the designated beneficiary and that are for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to, the following types of expenses:

- Education;
- Housing;
- Transportation;
- Employment training and support;
- Assistive technology and related services;
- Health;
- Prevention and wellness;
- Financial management and administrative services;
- Legal fees;
- Expenses for professional ABLE account oversight and monitoring;
- Funeral and burial; and,
- Basic living expenses.

“Qualified disability expense for housing” means expenses for purposes of an ABLÉ account are the same as they are for in-kind support and maintenance purposes, except that they do not include food. QDEs for housing are payments for:

- Mortgage (including property insurance required by the mortgage holder);
- Real property taxes;
- Rent;
- Heating fuel;
- Gas;
- Electricity;
- Water;
- Sewer; and
- Garbage removal.

“Rollover” means the distribution of all or some of the funds from one ABLÉ account to the ABLÉ account of a member of the original, designated beneficiary’s family. For the purposes of a rollover, a member of the designated beneficiary’s family means a sibling, which includes step-siblings and half-siblings, whether by blood or by adoption.

20330.2.1.2 ABLÉ Account Verification

When documenting whether an applicant is the designated beneficiary of an ABLÉ account, obtain evidence that contains the following information:

20330.2.1.2.1 The name of the designated beneficiary;

20330.2.1.2.2 The State ABLÉ program that is administering the account;

20330.2.1.2.3 The name of the person who has signature authority (if different from the designated beneficiary);

20330.2.1.2.4 The unique account number assigned by the State to the ABLÉ account;

20330.2.1.2.5 The account opened date; and

20330.2.1.2.6 The first-of-the-month account balance or information sufficient to derive a first-of-the-month balance.

If the available evidence does not provide this information, contact the appropriate ABLÉ program to obtain it.

20330.2.1.3 ABLÉ Account Contributions

ABLÉ account funds must be excluded from the countable resource computation when determining the designated beneficiary’s eligibility. This includes rollovers from a family member’s ABLÉ account to a recipient’s ABLÉ account.

Contributions made to an ABLÉ account by persons other than the designated beneficiary shall not be excluded from the countable income of the person who makes the contribution. The fact that a person uses their own income to contribute to an ABLÉ account does not mean that income is not countable for Medicaid purposes.

20330.2.1.4 ABLÉ Account Earnings

The funds in an ABLÉ account are invested and can accrue interest, earn dividends, and otherwise appreciate in value. Such earnings increase the account’s balance. Exclude any earnings an ABLÉ account receives from the countable resource computation when determining the designated beneficiary’s eligibility.

20330.2.1.5 ABLÉ Account Balance

Exclude the balance of a designated beneficiary’s ABLÉ account from their countable resource computation when determining the designated beneficiary’s eligibility.

20330.2.1.6 ABLÉ Account Distributions

A distribution from an ABLÉ account is not considered income but rather a conversion of a resource from one form to another. Distributions are evaluated based on the criteria below, to determine if they are to be excluded from the designated beneficiary’s countable resources.

20330.2.1.6.1 Exclusion of Retained Distributions for Non-Housing Qualified Disability Expenses (QDE)

Distributions for QDEs not related to housing should be excluded as a resource if retained beyond the month received. This exclusion applies for as long as:

20330.2.1.6.1.1 The designated beneficiary maintains, makes contributions to, or receives distributions from the ABLÉ account.

20330.2.1.6.1.2 The distribution is unspent; and

20330.2.1.6.1.3 The distribution is identifiable.

(NOTE: Excludable funds commingled with non-excludable funds must be identifiable in order to be excluded.)

20330.2.1.6.2 Retained Distributions for Housing-Related Qualified Disability Expenses (QDE) or Expenses That Are Not QDEs

Distributions from a designated beneficiary's ABLÉ account for housing-related QDEs or for expenses that are not QDEs that are retained into the month following the month of receipt are countable as a resource. If the distribution is spent within the month of receipt it has no effect on eligibility.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Long-Term Care Eligibility; Spousal Impoverishment Undue Hardship

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance is proposing to amend the Delaware Social Services Manual (DSSM) by adding a provision regarding long-term care eligibility, specifically, *to add language that allows the spousal impoverishment regulation to be waived in instances of undue hardship.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2016. Please identify in the subject line: Long-Term Care Eligibility; Spousal Impoverishment Undue Hardship

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

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Background

Section 303 of the Medicare Catastrophic Act contains provisions that significantly change the way in which

income and resources of a couple are calculated when one spouse is institutionalized or likely to be institutionalized for continuous periods in a nursing facility, and who has a spouse residing in the community. The revisions are intended to prevent the spouse who remains in the community from becoming impoverished either before or after the institutionalized spouse becomes eligible for Medicaid.

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

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

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

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

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

Summary of Proposal

Rationale and Justification

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

Purpose

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

Summary of Proposed Regulation

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

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

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the undue hardship provision. Comments must be received by 4:30 p.m. on May 31, 2016.

Provider Manuals Update

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

Fiscal Impact Statement

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

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 987RFA 05-01-16.pdf>

DMMA PROPOSED REGULATION #16-010

NEW

20900.1 Undue Hardship

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

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(u)(1)) (16 Del.C. §122(3)(u)(1))

PUBLIC NOTICE

Cottage Food Regulations

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing new regulations governing Cottage Foods. On May 1, 2016, the Division of Public Health plans to publish as "proposed" Cottage Food Regulations. The regulations will allow for the preparation of a limited type of food products in residential kitchens. Current regulations do not allow for production of food products for sale to consumers in residential kitchens. This program will allow for development of a new business community serving a niche market of customers at farm markets and other outlets throughout Delaware. The regulations establish basic food safety requirements for these operations.

NOTICE OF PUBLIC HEARING

A public hearing will be held on Wednesday, May 25, 2016 at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the May 1, 2016 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Thursday, June 9, 2016, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

***Please Note:**

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

[http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 989RFA 05-01-16.pdf](http://regulations.delaware.gov/register/may2016/proposed/19%20DE%20Reg%20989RFA%2005-01-16.pdf)

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

Cottage Food Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 1902(a) (7 Del.C., §1902(a))
7 DE Admin. Code 7402

**REGISTER NOTICE
SAN #2016-04**

7402 Shellfish Sanitation Regulations

1. TITLE OF THE REGULATIONS:

7402 Shellfish Sanitation Regulations

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

The current classification of the shellfish growing area is Seasonally Approved (December 1st through April 15th) but due to new US Food and Drug Administration Federal Guidance for prohibited zones around wastewater treatment plants, this area is now being classified as prohibited to the harvest of shellfish. Shellfish for the purpose of this regulation are defined as clams, oysters and mussels.

The closure of this shellfish growing area, through the Secretary's Order NO 2016-WS-0013, exceeds the required prohibited area associated with the Rehoboth Wastewater Treatment Plant year-round. The effective date of this closure was on March 21, 2016 and the regulatory process will update the current Shellfish Sanitation Regulations Appendix 3, Rehoboth Bay 1 (Seasonally Approved) to Regulations Appendix 1, Rehoboth Bay and Indian River Bay: 18 (Prohibited).

There are no costs associated with this regulatory change and there is minimal or no impact to commercial clambers because no recent commercial harvest of clams has been reported in the closure area.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for the proposed regulation change.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Administrative Code 7402 *Shellfish Sanitation Regulations*

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

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7402 Shellfish Sanitation Regulations will be open May 1, 2016. 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 June 2, 2016 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Michael Bott
Phone: 302-739-9939
Fax: 302-739-6140
Michael.bott@state.de.us

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 990RFA 05-01-16.pdf>

**7402 Shellfish Sanitation Regulations
(Break in Continuity of Sections)**

2.0 Definitions

NOTE: Those definitions primarily relating to the "Policy To Determine Shellfish Growing Area Classification In And Around Wet Slip Basins And Artificial Lagoons" are contained in Appendix 11.

(Break in Continuity Within Section)

Approved Source of Shellfish: Shellfish meeting all criteria in these Regulations, including the following:

Shellfish which have been handled by certified interstate Shellfish Dealer/Processors whose names appear on the *Interstate Shellfish Shippers Certified List*,² OR shellfish harvested from Delaware waters which have been handled by certified Delaware Intrastate Shellfish Dealer/Processors, and which are available for retail sale to the final customer only in Delaware.¹

Shellfish from Approved waters; OR shellfish from waters classified as other-than-Approved when shellfish harvesting is allowed on a seasonal/conditional basis; OR shellfish subjected to an approved depuration or relay process.

(Break in Continuity of Sections)

3.0 General Regulations, Water Quality and Classification, Harvesting, Tracking, Permitting, Handling and Shipping:

(Break in Continuity Within Section)

3.3 Permitting of Shellfish Dealer/Processors:**3.3.1 Permit Issuance Parameters:**

3.3.1.1 Applications for permits to operate as shellfish dealer/processores shall be made on permit applications provided by DNREC. The following shellfish handlers shall be required to be permitted/certified by DNREC in order to engage in the procurement and sale of shellfish:

-
1. Sales made to the final consumer are not required to be made by certified shellfish dealer/processores. However, all shellfish must at some time be handled by a certified shellfish dealer/processor prior to sale being sold/transferred to the final consumer.

PROPOSED REGULATIONS

(Break in Continuity Within Section)

3.3.1.1.5 Shellfish harvesters, engaged in:

(Break in Continuity Within Section)

3.3.1.1.5.3 Harvesting of shellfish for delivery to a depuration plant and/or for relaying.⁴²

3.3.1.2 Shellfish retailers shall not be required to be permitted/certified unless shellfish are procured from a non-certified source.³¹

(Break in Continuity Within Section)

3.4 Shellfish Handling and Shipping Parameters:

(Break in Continuity Within Section)

3.4.2 Marketing to the Final Consumer:⁴¹

(Break in Continuity of Sections)

APPENDIX 1

This list of ***Prohibited*** shellfish growing areas is recorded at the Delaware Department of Natural Resources and Environmental Control on December 20, 1995. Shellfish harvesting is prohibited in the following areas for any reason at any time:

(Break in Continuity of Sections)

Rehoboth Bay and Indian River Bay:

(Break in Continuity Within Section)

10. The areas north of a line drawn from the tip of White Oak Point in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State Park and south of the Lewes and Rehoboth Canal mouth, thence in an easterly direction to the south submarine observation tower. This area is marked by signs and buoys.
101. Indian River Inlet and Cedar Islands. The western boundary line begins at Burton's Island, running south to a point west of the marsh which lies south of an unnamed gut south of the South Inlet Marina, thence in an easterly direction to said marsh. The eastern boundary begins one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-half mile to the beach. The northern boundary (in the vicinity of Cedar Islands in Rehoboth Bay) begins at an unnamed island north of Savages Ditch running in a southeasterly direction to Burton Island. The area is marked by signs and buoys.
142. White Creek and its tributaries extending south of a line drawn in an east-west direction from the East Shore of White Creek to a point on Big Marsh on the West Shore. This area is marked by signs.

2. Persons harvesting shellfish from waters classified as other-than-Approved for delivery to a depuration plant and persons engaged in relaying shall submit operational specifications for said activities to DNREC prior to commencing operations, and shall have received a permit or written permission from DNREC to harvest shellfish from waters classified as other-than-Approved prior to commencing such operations. Additional permits may be required by the DNREC Division of Fish and Wildlife.
- ~~3. Sales made to the final consumer are not required to be made by certified shellfish dealer/processors. However, all shellfish must at some time be handled by a certified shellfish dealer/processor prior to being sold/transferred to the final consumer.~~
- ~~4. Sales made to the final consumer are not required to be made by certified shellfish dealer/processors. However, all shellfish must at some time be handled by a certified shellfish dealer/processor prior to being sold/transferred to the final consumer.~~

-
- 123. Indian River-proper and its tributaries and an area adjacent to Indian River-proper bounded by a line 650 feet in length in a north-south direction beginning at the eastern bank of the mouth of Emily Gut thence running from the southern terminus of said line in a westerly direction to Highgrass Point. Vines Creek and Pepper Creek-proper and their tributaries beginning at a point south of Rock Point and running in an easterly direction to Grays Point.
 - 134. Herring Creek and its tributaries extending northwest from a line running from Burton Point in a southerly direction to Long Neck. This area is marked by signs.
 - 145. The southwest corner of Beach Cove. This area is marked by signs.
 - 156. The southeast corner of Beach Cove. This area is marked by signs.
 - 167. The northeast corner of Beach Cove. This area is marked by signs.
 - 178. Love Creek - The portion of Love Creek lying in a northwesterly direction from the line formed by a point marked on shore at the southern confluence of Love Creek and Arnell Creek, thence in a southwesterly direction to a point in the marsh identified as being directly south of Boathouse Lane. This area is marked by signs.

Little Assawoman Bay:

- 189. Assawoman Canal. The Canal-proper is not marked. However, the adjacent waters in White Creek in Indian River Bay and Little Assawoman Bay are marked by signs.
- 4920. Miller Creek and its tributaries and the northern reaches of Little Assawoman Bay north of a line running in an east-west direction from Goose Point on the southern bank of Miller Creek at its mouth to an unnamed point on Fenwick Island State Park. This area is marked by signs.
- 201. Dirickson Creek west of a line running from Bennett Point in a southwesterly direction to Conch Point. This area is marked by signs.
- 242. Tubbs Cove south of a line running in an east-west direction from the shoreline north of Treasure Beach Campground to Point Of Ridge. This area is marked by signs.
- 223. The waters adjacent to the Town of Fenwick Island south of a line running from Old Inlet Point in a north-north-easterly direction to an unnamed point on the barrier. This area is marked by signs.

Assawoman Bay:

- 234. That portion of an unnamed bay north of the Delaware / Maryland line adjacent to the Cape Windsor Development. This area is marked by signs.
- 245. Roy Creek and its tributaries north-west of a line running from an unnamed point on Greys Neck north-east across several unnamed islands to a point south of Route 54. This area is marked by signs.

Nanticoke River:

- 256. Nanticoke River and all its tributaries. This area is marked by signs.

Atlantic Ocean:

- 267. The Atlantic Ocean adjacent to Indian River Inlet encompassed within a line beginning one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-half mile to the beach. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.
- 278. The Atlantic Ocean within a radius of one-half mile from the South Coastal Sewage Treatment Plant outfall which is located at north latitude 38°31'34" west longitude 75°01'56".

Applies To All Areas:

- 289. All artificial lagoons. Most of these areas are unmarked.
- 2930. All wet slip basins. Most of these areas are unmarked.

PROPOSED REGULATIONS

(Break in Continuity of Sections)
APPENDIX 3

This list of **Seasonally Approved** shellfish growing areas is recorded at the Delaware Department of Natural Resources and Environmental Control into the public record on December 20, 1995. Shellfish harvesting is allowed in the following areas in accordance with Delaware's fish and game laws from December 1 through April 15:

Rehoboth Bay:

1. ~~The areas north of a line drawn from the tip of White Oak Point in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State Park and south of the Lewes and Rehoboth Canal mouth, thence in an easterly direction to the south submarine observation tower. This area is marked by signs and buoys.~~
2. The area adjacent to West Bay Trailer Park Marina from a point north of the Marina in a southeasterly direction to a point directly north of the eastern-most point of Sally Cove Marsh and directly east of the middle Marina lagoon, thence in a southwesterly direction to a point south of the Marina. This area is marked by signs and buoys.
32. The area adjacent to the mouth of Herring Creek west of a line running from Burton Point on Angola Neck in a southeasterly direction to Nats Cove Point. This area is marked by signs and buoys.
43. Massey's Ditch and Roman T. Pond south of a line running from Bluff Point in a southeasterly direction to an unnamed point on the north bank of the unnamed island east of Massey's Ditch. This area is marked by signs.

Indian River Bay:

54. The area landward of a line running from a point on the south bank of the unnamed island east of Massey's Ditch in a southerly direction to Middle Island, thence in a westerly direction to a point on the Townsend Property east of Emily Gut (the same point marking the beginning of the Prohibited area boundary line). This area is marked by signs and buoys.
65. The area south of an east-west line running from Pasture Point, to Walter Point. This area is marked by signs and buoys.

NOTE: Please consult Delaware Fish and Game Laws for size and creel limits prior to harvesting shellfish.

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

7402 Shellfish Sanitation Regulations

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 BOARD OF CHARITABLE GAMBLING**

Statutory Authority: 28 Delaware Code, Section 1507 (28 Del.C. §1507)
10 DE Admin. Code 101

PUBLIC NOTICE

101 Regulations Governing Bingo

Pursuant to 28 Del.C. §1507, the Delaware Gaming Control Board has proposed revisions to its rules and regulations. The rules pertaining to bingo and instant bingo are modified to provide additional guidance on

allowable games.

A public hearing will be held on May 25, 2016 at 10:00 a.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 on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address by June 9, 2016.

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 994RFA 05-01-16.pdf>

101 Regulations Governing Bingo

1.0 Definitions

(Break in Continuity Within Section)

~~“Cookie Jar Bingo” A game of chance in which players pay a set fee into a cookie jar or other container and receive a number which entitles the player to a chance to win the total funds in the cookie jar or container. At the start of the event, a bingo number shall be drawn which shall serve as the “cookie jar number.” That number shall be posted for all players to see. During the games played on that occasion, if a player achieves bingo when the cookie jar number is drawn, the player shall win the funds in the cookie jar or container. If no one achieves bingo when the cookie jar number is drawn, the funds in the jar shall not be awarded. An organization may not otherwise offer a cookie jar game and may not designate the last game of the night or any other particular game as a cookie jar game at which the funds will be awarded without a person achieving bingo when the cookie jar number is drawn. The fee to play a cookie jar bingo game must be collected separately and such fee may not be included in the fee to play regular bingo games or in any other fee.~~

~~Any amounts in any cookie jar bingo games shall not be included in any prize money limitations contained in these rules. An organization may not have more than two cookie jar bingo pots at any one time. The first jar must be awarded before a third jar can be started. If two cookie jar pots each contain the maximum amount of money allowed by law, the first jar must be awarded at the same event at which the second jar reaches the allowable maximum. If the first jar has not been awarded by the final game of the night, a special final bingo game of “full card” or “black out” bingo using a separate, single card, shall be played and the jar will be won by the first person who covers all spaces on their entire card.~~

~~The fees for cookie jar bingo shall be collected at the beginning of the event and added to the jar or jars before the first number is drawn. If at the beginning of an event when players pay their fee, one jar contains the maximum (up to \$1,000) and the second jar would go over the maximum if the fees are added, the fees shall be held and not placed in the second jar at that time. When the first jar is then won, the second jar shall be filled to a total of the maximum and the remaining fee moneys shall be placed in a new jar.~~

~~The organization conducting the bingo event may choose any amount up to \$1,000 for each cookie jar. The organization shall post the amount available to be won in the cookie jar and also clearly announce to the players the amount available to be won in the cookie jar.~~

(Break in Continuity of Sections)

4.0 Conduct of Bingo

(Break in Continuity Within Section)

- 4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 12:00 p.m. and the operation of a function shall be limited to six hours.

PROPOSED REGULATIONS

~~Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.~~

- 4.3 ~~No person under the age of eighteen (18) may participate in any bingo game. No person under the age of 18 shall be permitted to participate in any instant bingo game.~~ Persons between the ages of 16 through 18 may conduct or assist in conducting the bingo game and persons over the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.

(Break in Continuity Within Section)

- 4.9 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include bingo playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.

(Break in Continuity Within Section)

- 4.18 ~~In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.~~
- 4.198 Within the limits contained in Title 28 of the **Delaware Code**, the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this subsection, it must announce at the beginning of each game the number of people present and the prizes to be awarded.
- 4.2019 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.
- 4.240 Any ~~local~~ house rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.
- 4.221 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.
- 4.232 A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.
- 4.243 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.
- 4.254 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.
- 4.25 The bingo event shall start when the balls are verified. The balls shall be verified before the cookie jar number is selected and called.
- 4.26 In the playing of bingo, all players shall be physically present in the room where the game is actually conducted in order to play the game or claim a prize offered.
- 4.27 A winner shall be determined when the preannounced pattern of squares is covered by a player on a card.
- 4.28 It shall be the player's responsibility to notify a volunteer including the chairperson or caller that the player has a winning bingo combination as announced.
- 4.29 Break Open or Game Event Bingo
- 4.29.1 A break open or game event bingo game shall begin when, in the presence of players attending the bingo occasion, the organization calls and posts, either manually or by use of a flashboard, a predetermined quantity of randomly selected bingo numbers from a selection device or a separate

bingo number container. If a flashboard is used, these numbers shall be posted on a separate board than the regular bingo board unless the regular board is capable of keeping track of these numbers separately. The balls shall then be placed back into the selection pool until the game is played on the program.

4.29.2 Sealed bingo paper sheets for a break open or game event bingo game may be sold throughout the bingo occasion. Additional bingo paper sheets for a break open or game event bingo game shall not be sold after the organization resumes calling letters and numbers when the game is played on the program.

4.29.3 An organization shall list all break open or game event bingo games on the organization's bingo application on the addendum A form and shall include the maximum payout of Bingo event games.

4.30 "U Pick Em" or Player Pick Games. If the charitable organization offers a "U Pick Em" or Player Pick game, the requirements in this section shall apply.

4.30.1 A player shall select numbers between one (1) and seventy-five (75). A player shall not select more than five (5) numbers for each column. The player may allow the machine to select the numbers, if the organization has such a machine available.

4.30.2 Duplicate numbers shall not be played on a purchased face. If duplicate numbers appear on a face, the card shall be void.

4.30.3 Once selected, the numbers shall be printed/written on the card face.

4.30.4 The faces shall conform to the construction and randomization standards set forth in subsection 4.14.

4.30.5 The price of each face and the amount of numbers that will be chosen shall be listed on the bingo program.

4.30.6 An organization shall list all "U Pick Em" or Player Pick Games on the organization's bingo application on the addendum A form and shall include the payout amount for each game.

4.30.7 The numbers shall be daubed as the balls are called when the game is played as listed on the bingo program.

4.30.8 A player shall win if he or she is the first person to cover the numbers.

4.31 "Cookie Jar Bingo" A game of chance in which players pay a set fee into a cookie jar or other container and receive an entry which entitles the player to a chance to win the total funds in the cookie jar or container.

4.31.1 The organization conducting the bingo event may choose any amount up to \$1,000 for each cookie jar. The organization shall post the amount available to be won in the cookie jar and also clearly announce to the players the amount available to be won in the cookie jar.

4.31.2 Any amounts in any cookie jar bingo games shall not be included in any prize money limitations contained in these regulations.

4.31.3 The fee to play a cookie jar bingo game must be collected separately and such fee may not be included in the fee to play regular bingo games or in any other fee.

4.31.4 The fees for cookie jar bingo shall be collected at the beginning of the event and added to the jar or jars before the first number is drawn. If at the beginning of an event when players pay their fee, one jar contains the maximum (up to \$1,000) and the second jar would go over the maximum if the fees are added, the fees shall be held and not placed in the second jar at that time. When the first jar is then won, the second jar shall be filled to a total of the maximum and the remaining fee moneys shall be placed in a new jar.

4.31.5 An organization may not have more than two cookie jar bingo pots at any one time. The first jar must be awarded before a third jar can be started. If two cookie jar pots each contain the maximum amount of money allowed by law, the first jar must be awarded at the same event at which the second jar reaches the allowable maximum. If the first jar has not been awarded by the final game of the night, a special final bingo game of "full card" or "black out" bingo using a separate, single card, shall be played and the jar will be won by the first person who covers all spaces on their entire card.

4.31.6 At the start of the event, a bingo number shall be drawn which shall serve as the "cookie jar number." That number shall be posted for all players to see. During the games played on that occasion, if a player achieves bingo when the cookie jar number is drawn, the player shall win the funds in the cookie jar or container. If no one achieves bingo when the cookie jar number is drawn, the funds in the jar shall not be awarded. An organization may not otherwise offer a cookie jar game and may not designate the last game of the night or any other particular game as a cookie jar game at which the funds will be awarded without a person achieving bingo when the cookie jar number is drawn.

5.0 Conduct of Instant Bingo

- 5.1 "Pull-tab" means a single folded or banded ticket or a multi-ply card with perforated break-open tabs, the face of which is initially covered to conceal one or more numbers or symbols, where one or more of each set of tickets or cards has been designated in advance as a winner.
- 5.2 "Pull-tab dispensing device" means a mechanical device that dispenses paper pull-tabs and has no additional function as an amusement or gambling device. A pull-tab dispensing device may have as a component an auditory or visual enhancement to promote or provide information about a game being dispensed, provided the component does not affect the outcome of a game or display the results of a game or an individual ticket.
- 5.2.1 A pull-tab dispensing device is not required for the sale of Instant Bingo.
- 5.3 No person under the age of 18 shall be permitted to participate in any instant bingo game.
- 5.4 Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.
- 5.4.1 If Instant bingo is played during a permitted bingo event, it must be kept separate from the bingo games conducted and it cannot be incorporated into the bingo event games. The only exception would be Break Open or Game Event Bingo games covered under subsection 4.29. Break Open or Game Event Bingo games are part of the bingo event and are not Instant Bingo games.
- 5.5 A merchandise board or coin collecting board is a variation on pull-tab games. A game board of this type typically comes with a registered package of pull-tab tickets, a signer's card, and a pay-out slip.
- 5.5.1 When a ticket is sold, the player opens the ticket to reveal its hidden numbers. If a number on the ticket matches a number on the game board, the player wins a prize and/or a chance at one or more seal prizes, which are revealed at the end of the game.
- 5.5.2 The game board shall display the prizes available for the game. Some of the winners receive instant cash only, while some of the winning numbers win a chance to win a large prize and may match numbers on coins, wallets, or small panels that are built into the board.
- 5.5.3 If a player wins a chance at a larger prize or a seal prize, that player's name is added to the signer's card or game board. The organization shall be responsible for maintaining contact information for the player that is added to the signer's card or game board.
- 5.5.4 The game is concluded when all of the tickets sell out, or all the prizes are won. The seals on the game board are opened in some fashion to reveal the winning numbers and the winning players shall be contacted.
- 5.6 After occasion reports are not required for Instant Bingo.
- 5.7 Instant Bingo permits shall expire annually on a date determined by the Division of Professional Regulation.

56.0 Reports After the Function

- 56.1 When no game is held on a date a licensee is authorized to hold such game, a report to that effect shall be filed with the Board.
- 56.2 Within 5 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by Title 28 of the **Delaware Code**.

- 56.3 If a licensee fails to timely file a report or if a report is not properly verified, or not fully, accurately, and truthfully completed, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

67.0 Suspension and Revocation of Licenses

- 67.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for a hearing thereon. The Board may stop the operation of a game pending hearing, in which case the hearing must be held within five (5) days after such action.
- 67.2 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision and of the effective date of the suspension or revocation.
- 67.3 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.
- 67.4 Upon finding of the violation of these rules and regulations or the Bingo Statute, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties which may be imposed, declare the violator ineligible to conduct a game of bingo and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

78.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

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

101 Regulations Governing Bingo

DIVISION OF PROFESSIONAL REGULATION 100 BOARD OF CHARITABLE GAMBLING

Statutory Authority: 28 Delaware Code, Section 1507 (28 Del.C. §1507)
10 DE Admin. Code 103

PUBLIC NOTICE

103 Regulations Governing Charitable Gambling Other Than Raffles

Pursuant to 28 Del.C. §1507, the Delaware Gaming Control Board has proposed revisions to its rules and regulations. The Charitable Gaming rules are amended to increase the number of games permitted monthly from 1 to 6.

A public hearing will be held on May 25, 2016 at 10:00 a.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 on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above

address by June 9, 2016.

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 999RFA 05-01-16.pdf>

**103 Regulations Governing Charitable ~~Gambling~~ Gaming Other Than Raffles
(Break in Continuity of Sections)**

8.0 Limitation of Functions

- 8.1 No Sponsoring Organization shall conduct more than ~~one Function~~ six Functions in any single calendar month. Charitable games shall not commence prior to 12:00 p.m. The operation of a Function shall be limited to six (6) consecutive hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the time.

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

103 Regulations Governing Charitable Gambling Other Than Raffles

**DIVISION OF PROFESSIONAL REGULATION
700 BOARD OF CHIROPRACTIC**

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10) (24 **Del.C.** §706(a)(1) and (10))

24 DE Admin. Code 700

PUBLIC NOTICE

700 Board of Chiropractic

The Delaware Board of Chiropractic, pursuant to 24 **Del.C.** §706(a)(1), proposes to revise its regulations. The proposed regulation further refines the practice of chiropractic and provides for student internships.

The Board will hold a public hearing on the rule change on June 2, 2016 at 8:30 a.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, DE 19904.

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 1000RFA 05-01-16.pdf>

700 Board of Chiropractic

1.0 Chiropractic Defined; Limitations of Chiropractic License

(Break in Continuity Within Section)

1.3 Scope of Practice of Chiropractic Students:

1.3.1 Definitions:

"Chiropractic Preceptor" means any person licensed as a doctor of chiropractic in the State of Delaware who is approved by the Board to supervise chiropractic students in the performance of chiropractic at a location other than the premises of the chiropractic college in which the student is enrolled.

"Supervision and direction" means that a duly authorized instructor or chiropractic preceptor shall be within the immediate patient treatment area, the clinic proper, and available to the students at all times.

- 1.3.2 Students enrolled at approved chiropractic colleges may perform chiropractic procedures at a location other than the premises of the chiropractic college at which the student is enrolled provided such students have successfully completed a minimum of two academic years of chiropractic college and have met all of the chiropractic college's requirements concerning its student/preceptor program. The chiropractic procedures performed by the student shall be performed under the supervision and direction of a Chiropractic Preceptor.
- 1.3.3 Students performing chiropractic procedures at a location other than the premises of the chiropractic college at which the student is enrolled and under the supervision and direction of a Chiropractic Preceptor shall be known as "Chiropractic Interns" and shall not represent themselves to the public as licensed Chiropractors or use terms such as "Chiropractor", "Doctor of Chiropractic" or "D.C."
- 1.3.4 The Chiropractic Preceptor must be approved by the Board prior to supervising a chiropractic student. To qualify as a Chiropractic Preceptor, the chiropractor shall:
- 1.3.4.1 Be licensed to practice chiropractic in the State of Delaware for not less than five years.
- 1.3.4.2 Not have had any public or private sanctions against his license to practice chiropractic in Delaware or any other state.
- 1.3.4.3 Sign a sworn statement that he or she has not knowingly violated federal rules or regulations including, but not limited to, those pertaining to the repayment of guaranteed federally funded student loans obtained to finance one's chiropractic education.
- 1.3.4.4 Have the written approval of the chiropractic student's chiropractic college to serve as an adjunct faculty member for the purpose of a student/preceptor program.
- 1.3.5 All chiropractic procedures performed by chiropractic students shall be in compliance with all laws, rules, and regulations regarding the practice of chiropractic in the State of Delaware.
- 1.3.6 The primary responsibility for the evaluation and treatment of the patient by the chiropractic student rests with the Chiropractic Preceptor.
- 1.3.7 Documentation of all evaluation and treatment of the patient and all changes to such evaluation and treatment plans must be reviewed and approved by the Chiropractic Preceptor.

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

700 Board of Chiropractic

**DIVISION OF PROFESSIONAL REGULATION
MIDWIFERY ADVISORY COUNCIL**

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

PUBLIC NOTICE

1795 Midwifery Advisory Council

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

The Council will hold a public hearing on the proposed regulation change on May 25, 2016 at 9:00 a.m., Second Floor, Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Shauna Slaughter, Executive Director of the Delaware Midwifery Advisory Council, Cannon

Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until June 9, 2016 pursuant to 29 **Del.C.** §10118(a).

***Please Note:**

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 1001RFA 05-01-16.pdf>

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

1795 Midwifery Advisory Council

**DIVISION OF PROFESSIONAL REGULATION
3300 BOARD OF VETERINARY MEDICINE**

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 **Del.C.** §3306(a)(1))
24 **DE Admin. Code** 3300

PUBLIC NOTICE

3300 Board of Veterinary Medicine

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on June 14, 2016 at 1:00 p.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 Board of Veterinary Medicine, 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 June 29, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Board will decide whether to adopt the revisions as proposed.

The Board proposes a new Section 2.0 to address euthanasia of animals held in shelter, as set forth in 16 **Del.C.** §3004F. Other Sections are revised accordingly to accommodate the specific legal requirements pertaining to shelter animals. The Board also proposes requiring proof of continuing education hours for individuals who do not apply for licensure within the two-year period following examination. In addition, various Sections are amended to clarify the requirements for license renewal, reinstatement and inactive status. Typographical errors are corrected and the Rules are re-numbered to accommodate the new Section 2.0.

It should be noted that a public hearing on proposed revisions was originally scheduled for April 12, 2016. However, prior to the hearing, the Board decided to revise the rules and regulations further. The Board therefore withdraws the rules and regulations published in the March 1, 2016 *Register of Regulations*, Volume 19, Issue 9.

***Please Note:**

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 1002RFA 05-01-16.pdf>

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

3300 Board of Veterinary Medicine

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

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

PUBLIC NOTICE

3900 Board of Clinical Social Work Examiners

Pursuant to 24 **Del.C.** §3906(a)(1), the Board of Clinical Social Work Examiners ("the Board") has proposed revisions to its regulations. Subsection 9.3.9, pertaining to computer and internet technology, is stricken. A new Section 11.0 is added to implement standards for the practice of clinical social work through telehealth. New Subsections 7.3.4 and 7.3.5 are added to clarify the continuing education audit process, including hearings and disciplinary sanctions. Finally, certain technical revisions address inconsistencies in the regulations.

A public hearing will be held on June 20, 2016 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Board of Clinical Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Sandra Wagner, Administrator for the Board, at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be July 5, 2016. The Board will deliberate on the proposed revisions at its next regularly scheduled meeting.

***Please Note:**

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 1003RFA 05-01-16.pdf>

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

3900 Board of Clinical Social Work Examiners

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

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

PUBLIC NOTICE

Uniform Controlled Substances Act Regulations

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

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

The Secretary has considered both the evidence presented and the Committee's recommendations. Based on that review, the Secretary strikes the version of Section 9.0 published in the *Register of Regulations* on July 1, 2015 and proposes a revised Section 9.0 attached hereto as Exhibit A.

Any person who wishes to present written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments no later than Tuesday, May 31, 2016 to:

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

Nature of the Proceedings

A public hearing was held before the Committee on July 29, 2015 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 proposed amendments to the UCSA rules and regulations. Members of the public were also invited to submit written comments. In accordance with 29 **Del.C.** §10118(a), the written public comment period was held open until August 13, 2015, which was 15 days following the public hearing. The Committee deliberated on the proposed revisions at its regularly scheduled meeting on September 23, 2015.

Summary of the Evidence

At the July 29, 2015 hearing, the following exhibits were made a part of the record:

- Exhibit 1:** July 24, 2015 letter from Cynthia Denemark, Pharmacy Director, Division of Medicaid and Medical Assistance, suggesting that proposed Section 9.0 address prescribing of conflicting drugs at the same time, in particular benzodiazepines.
- Exhibit 2:** July 28, 2015 letter from Dr. Karyl Rattay, Director, Division of Public Health.
- Exhibit 3:** *News Journal* Affidavit of Publication.
- Exhibit 4:** *Delaware State News* Affidavit of Publication.

Testimony was presented by Dr. Karyl Rattay, the Director of the Division of Public Health, and by Mr. Mark Thompson from the Medical Society of Delaware.

Dr. Rattay commended the Committee for its work on Section 9.0. She noted that for a number of years she has been alarmed by the prescription drug epidemic. Dr. Rattay provided the Committee with statistical information, as set forth in Exhibit 2, concerning opioid addiction and overdose deaths. She also offered the following suggestions: for acute pain patients, the prescriber should discuss with the patient the risks posed by opioids, and, for chronic pain patients, Delaware's Prescription Monitoring Program database ("PMP") should be queried every six months and every three months for high risk patients. Dr. Rattay noted that a Florida study showed that an increased use of the PMP in that state lead to a decreased level of Oxycodone use.

Mr. Thompson stated that the Medical Society of Delaware shares the Committee's concern with opioid abuse and has joined with Public Health in a collaborative effort to address the problem. The Medical Society supports Section 9.0 with certain revisions. Mr. Thompson stated that he would submit these specific suggestions in a separate letter. He recommended in particular modification of the "chronic care" and "chronic pain" definitions. With respect to the use of assessment tools, Mr. Thompson suggested a revision to give the practitioner more discretion.

During the 15-day window for submission of additional written comments, as required by 29 **Del.C.** §10118(a), the Committee received the following documents, which were marked as Exhibits on September 23, 2015:

- Exhibit 1:** August 5, 2015 letter from Delaware Attorney General Matthew Denn.
- Exhibit 2:** August 7, 2015 letter from Bob Twillman, Executive Director, American Academy of Pain Management.
- Exhibit 3:** August 13, 2015 letter from Nancy Fan, President, Medical Society of Delaware.

Attorney General Denn offered several revisions to Section 9.0. First, he commented that the proposed language provides no specific oversight for the prescription of opioids for acute pain. For acute pain patients, he suggested the following requirements for prescribers: query the PMP prior to prescribing a new drug; obtain a

sufficient personal history from the patient to determine whether the prescription of opioids is contra-indicated; and use informed consent and treatment agreement documents. For chronic pain treatment, Attorney General Denn suggested a more careful analysis prior to prescribing opioids, such as a physical examination, a documented discussion concerning patient history and the risks of opioids, a check of the PMP and a urine drug screen.

Mr. Twillman presented revisions of definitions included in Section 9.0 to afford greater clarity. He also suggested that practitioners query the PMP when the initial prescription is issued and periodically thereafter, but no less frequently than every 6 months. Mr. Twillman urged that cancer patients should not be exempted from Section 9.0's requirements.

Ms. Fan supplemented Mr. Thompson's testimony at the July hearing by offering a number of technical suggestions. For example, she stated that the requirement of a practitioner-patient relationship is too restrictive. Practitioners should be able to prescribe opioids when seeing the patient in lieu of the prescribing practitioner. Ms. Fan also recommended amending the language pertaining to treatment plans to ensure that a patient isn't abruptly discharged from care upon the first breach of the treatment plan.

Secretary of State's Findings and Conclusions

Pursuant to 16 Del.C. §4731(a), the Secretary has the statutory authority to promulgate rules and regulations relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this State. Based on review of the evidence and the Committee's recommendations, the Secretary has determined that the Committee's recommendations do not go far enough in protecting pain patients and the general public, and significant revisions of Section 9.0 are required to ensure that reasonable limits are placed on the prescribing of opioids. The Secretary proposes incorporation of most of the suggestions from the stakeholders who provided input. In particular, the new proposed Section 9.0 incorporates those suggestions pertaining to the need for additional patient assessment prior to prescribing opioids. Therefore, new requirements have been added with respect to patient counseling, physical examination, determination of contra-indications, PMP queries and urine drug screens. These changes serve to add enhanced protection of the patient and greater safeguards with respect to diversion.

Therefore, the proposed Section 9.0 published on July 1, 2015 is stricken and the Secretary proposes the revised Section 9.0 attached hereto as Exhibit A.

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

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 1003aRFA 05-01-16.pdf>

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

9.0 Safe Prescribing of Opioid Analgesics

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

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

9.3 Definitions:

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

"Acute Pain" means the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. It is

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generally time limited. For the purpose of this Regulation, Acute Pain is less than three months in duration.

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

"Addiction" means a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

"Chronic Care" means the treatment of Chronic Pain, as defined in this subsection.

"Chronic Pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years. For the purpose of this Regulation, Chronic Pain means pain more than three months in duration.

"Opioid Analgesic" means a drug that is used to alleviate moderate to severe pain that is either an opiate (derived from the opium poppy) or opiate-like (synthetic drugs). Examples include: morphine, codeine, fentanyl, meperidine, and methadone. For purposes of this regulation, it does not include, unless specifically designated as controlled under 16 Del.C. §4711, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"PMP" means the Delaware Prescription Monitoring Program.

"Practitioner" means a physician, dentist, podiatrist, nurse practitioner, physician assistant or other individual, licensed, registered, or otherwise permitted, by the United States or the State of Delaware to prescribe, dispense, or store a controlled substance in the course of professional practice but does not include a veterinarian, a pharmacist, a pharmacy, or an institutional practitioner.

"Risk Assessment" means utilizing a tool, such as the Screener and Opioid Assessment for Patients with Pain ("SOAPP"), Opioid Risk Tool ("ORT"), or Screening, Brief Intervention and Referral to Treatment ("SBIRT"), which are designed for predicting the likelihood that a patient will abuse or misuse a prescribed controlled substance based on past behavior, genetic predispositions, social or environmental factors, or other risks.

"Substance Abuse" means using a controlled substance without a legitimate medical need, for the purpose of altering one's emotional experience.

"Substance Misuse" means using a controlled substance in a way that is not prescribed.

"Treatment Agreement" means a written agreement, signed by the practitioner and the patient (or the patient's proxy), which shall become part of the patient's medical record. The Treatment Agreement may include, at the practitioner's discretion:

- The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills;
- Reasons for which medication therapy may be re-evaluated, tapered or discontinued, including but not limited to, violation of the Treatment Agreement or lack of effectiveness;
- The requirement that all chronic pain management prescriptions are provided by a single practitioner or a limited agreed upon group of practitioners;
- The patient's agreement to not abuse alcohol or use other medically unauthorized substances or medications;
- Acknowledgment that a violation of the agreement may result in action as deemed appropriate by the prescribing practitioner such as a change in the treatment plan, a referral to a pain specialist, or referral to an addiction treatment program; and
- The requirement that toxicology screens be performed at random intervals at the practitioner's discretion, but not less than every six months.

-
- 9.4 Practitioner-patient relationship: A practitioner may not prescribe opioid analgesics unless a practitioner-patient relationship has been established, or the practitioner is seeing the patient in lieu of the patient's prescribing practitioner on a limited basis and on the practitioner's request or behalf.
- 9.5 First time, outpatient prescription for Acute Pain; maximum seven-day supply.
- 9.5.1 When issuing a prescription for an opioid analgesic to an adult patient for outpatient use for the first time, for an Acute Pain Episode, a practitioner may not issue a prescription for more than a seven-day supply.
- 9.5.2 A practitioner may not issue a prescription for an opioid analgesic to a minor for more than a seven-day supply at any time and shall discuss with the parent or guardian of the minor the risks associated with opioid use and the reasons why the prescription is necessary.
- 9.5.3 Notwithstanding subsections 9.5.1 and 9.5.2, if, in the professional medical judgment of a practitioner, more than a seven-day supply of an opiate is required to treat the adult or minor patient's acute medical condition, then the practitioner may issue a prescription for the quantity needed to treat such acute medical condition. The condition triggering the prescription of an opiate for more than a seven-day supply shall be documented in the patient's medical record and the practitioner shall indicate that a non-opiate alternative was not appropriate to address the medical condition and comply with subsections 9.6.4 and 9.6.5.
- 9.6 Subsequent prescriptions. After the first time, outpatient prescription, prior to issuing a subsequent prescription for an opioid analgesic for Acute Pain, the practitioner must perform an appropriate evaluation of the patient's medical history and condition, including the following:
- 9.6.1 Query the PMP to obtain a prescription history;
- 9.6.2 Administer a urine drug screen, at the discretion of the practitioner;
- 9.6.3 Conduct a physical examination which must include a documented discussion between the practitioner and patient to elicit relevant history and explain the risks and benefits of opioid analgesics and possible alternatives to the use of opioid analgesics and document whether opioid analgesics are contra-indicated;
- 9.6.4 Obtain an Informed Consent form, signed by the patient (or the patient's proxy), that must include information regarding the drug's potential for addiction, abuse, and misuse; and the risks associated with the drug of life-threatening respiratory depression; overdose as a result of accidental exposure potentially fatal, especially in children; neonatal opioid withdrawal symptoms; and potentially fatal overdose when interacting with alcohol; and other potentially fatal drug/drug interactions, such as benzodiazepines; and
- 9.6.5 Schedule and undertake periodic follow-up visits and evaluations of the patient to monitor and assess progress toward goals in the treatment plan and modify the treatment plan, as necessary. The practitioner must determine whether to continue the treatment of pain with an opioid analgesic, whether there is an available alternative, whether to refer the patient for a pain management or substance abuse consultation.
- 9.7 Chronic Pain patients. In addition to the requirements of subsection 9.6, the practitioner must adhere to the following additional requirements for Chronic Pain patients:
- 9.7.1 Query the PMP at least every six months, more frequently if clinically indicated, or whenever the patient is also being prescribed a benzodiazepine;
- 9.7.2 Query the PMP whenever the patient is assessed to potentially be at risk for substance abuse or demonstrates such things as loss of prescription(s), requests for early refills or similar behavior;
- 9.7.3 Administer urine drug screens at least once every six months;
- 9.7.4 Obtain a signed Treatment Agreement, pursuant to subsection 9.3;
- 9.7.5 Advise the patient that a violation of the Treatment Agreement will result in a re-assessment of the patient's treatment plan and alteration or institution of controls over medication prescribing and dispensing, which may include tapering or discontinuing the prescription;
- 9.7.6 Conduct a Risk Assessment as defined in subsection 9.3;

- 9.7.7 Document in the patient's medical record each alternative treatment option that has been tried by the patient, including non-pharmacological treatments, and their adequacy with respect to providing sufficient management of pain;
- 9.7.8 Make efforts to address psychiatric and medical comorbidities concurrently, rather than sequentially, when concurrent treatment is clinically feasible; and
- 9.7.9 At the practitioner's discretion, seek a case review and consult with, or otherwise refer the patient to, a state-licensed physician who holds a subspecialty board certification in addiction psychiatry from the American Board of Psychiatry and Neurology or an addiction certification from the American Board of Addiction Medicine if any of the following occur:
- 9.7.9.1 Adulterated drug tests;
 - 9.7.9.2 Diversion of prescribed medications; or
 - 9.7.9.3 The patient has obtained controlled substances elsewhere without disclosure to the physician, as evidenced by PMP data.
- 9.8 Medical Records: The practitioner must keep accurate and complete records in compliance with state and federal law. Records must remain current and be maintained in an accessible manner and readily available for review. Each practitioner must include documentation appropriate for each visit's level of care, in compliance with state and federal law.

910.0 Procedures for Adoption of Regulations

- 910.1 Notice. Prior to the adoption, amendment or repeal of any of these controlled substances regulations, the Secretary of State/Committee will give at least twenty (20) days notice of the intended action.
- 910.1.1 The notice will include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, or the time when, and the place where to present their views thereon. The notice will be mailed to persons who have made timely request of the Office of Controlled Substances for advance notice of such rule-making proceedings and shall be published in two newspapers of general circulation in this State.
- 910.2 Hearing. The Secretary of State shall designate the Committee to preside over hearings. The Committee will afford all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing.
- 910.3 Emergency Regulations. If the Secretary of State, upon the recommendation of the Committee, finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than twenty (20) days notice and states in writing his/her reasons for that finding, the Secretary of State may proceed without prior notice or hearing or upon any abbreviated notice and hearing he/she finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not precluded.
- 910.4 Finding and Availability. The Secretary of State will maintain on file any adoption, amendment or repeal of these regulations. In addition, copies of these regulations will be available for public inspection at the Office of Controlled Substances.

101.0 Severability

- 101.1 If any provision of these regulations is held invalid the invalidity does not affect other provisions of the regulations which can be given effect without the invalid provisions or application, and to this end the provisions of the regulation are severable.
- 101.2 Pursuant to 16 Del.C. §4718(f) and 16 Del.C. §4720(c) the Secretary of State finds that the compounds, mixtures or preparations listed in 21 CFR 1301.21, 21 CFR 1308.24 contain one or more active medical ingredients not having a stimulant or depressant effect on the central nervous system and that the admixtures included therein are in combinations, quantities, proportions, or concentrations that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system, and therefore:

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

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

[Uniform Controlled Substances Act Regulations](#)

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
THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 DE Admin. Code 1001

ORDER**1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission ("Commission") issues this Order to take effect ten (10) days after the publication of this Order in the Delaware *Register of Regulations*:

1. Pursuant to its statutory authority, the Commission proposed for adoption revisions to the Commission's Regulations that amend rules 10.9.4 and 14.18 relating to whipping of horses; amend rule 3.4.1.15 relating to fines and suspensions; amend rule 8.11.4 and 8.13 relating to rider weight and attire for jockeys; adopt new rule 8.15 relating to safety items for jockeys; amend rule 10.1.1 relating to registration certificates for horses; adopt new rule 13.2.3 relating to voiding of claims upon death of a horse and to correct the spelling of the term "pari-mutuel" in rule 1.0 definition of Mutual Entry, rule 3.4.1.15, rule 14.10.2 and rule 16.2. Other regulations issued by the Thoroughbred Racing Commission are not affected by this Order.

2. A copy of the proposed regulations with respect to the amendment of rules 10.9.4 and 14.18 relating to whipping of horses was published in the December 1, 2015 edition of the Delaware *Register of Regulations* and a copy of the proposed regulations with respect to rule 3.4.1.15 relating to fines and suspensions; rule 8.11.4 and 8.13 relating to rider weight and attire for jockeys; new rule 8.15 relating to safety items for jockeys; rule 10.1.1 relating to registration certificates for horses; new rule 13.2.3 relating to voiding of claims upon death of a horse and to correct the spelling of the term "pari-mutuel" in rule 1.0 definition of Mutual Entry, rule 3.4.1.15, rule 14.10.2 and rule 16.2 was published in the March 1, 2016 edition of the Delaware *Register of Regulations* and have been available for inspection in the office of the Commission at 777 Delaware Park Boulevard, Wilmington, Delaware 19804 during regular office hours.

3. The Commission did not receive any written comments on the proposed regulations during the 30 day

periods following publication of the proposed regulations on December 1, 2015 and March 1, 2016.

4. THEREFORE, IT IS ORDERED, that the proposed regulations are adopted and shall become effective May 11, 2016, after publication of the final regulation in the Delaware *Register of Regulations*:

1001 Thoroughbred Racing Rules and Regulations (Break in Continuity of Sections)

3.0 Stewards

(Break in Continuity Within Section)

3.4 Duties and Responsibilities of Stewards:

- 3.4.1 In addition to the duties and responsibilities necessary and pertinent to the general supervision, control and regulation of race meetings, and without limiting the authority of the Stewards to perform the same and other duties enumerated in these Rules, the Stewards shall have the following specific duties and responsibilities:

(Break in Continuity Within Section)

- 3.4.1.15 To impose fines upon any corporation, association or person participating in any Thoroughbred horse race meet at which pari-mutuel pari-mutuel wagering is conducted, other than as a patron, and whether licensed or not by the Commission, for a violation of any provision of 3 Del.C. Ch. 101 or these Rules and Regulations. In the event that a fine has not been paid within 48 hours when] a suspension is imposed together with a fine, and the fine is not paid within 48 hours, the term of] the suspension shall not begin to run until the fine has been paid will be increased by the number of days taken to pay the fine after the first 48 hours].

*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2015 issue of the *Register* at page 454 (19 DE Reg. 454) and the March 2016 issue of the *Register* at page 802 (19 DE Reg. 802). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1001 Thoroughbred Racing Rules and Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 106A

REGULATORY IMPLEMENTING ORDER

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The regulation is being amended to clarify policy and procedures for credentialing and re-credentialing of those who utilize the statewide teacher evaluation system. The regulation is also being amended to reduce the number of surveys educators received for the evaluation of the teacher appraisal system by setting the requirement to biennial instead of annual.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 1, 2016, in the form hereto attached as Exhibit "A". No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to clarify policy and procedures for credentialing and re-credentialing of those who utilize the statewide teacher evaluation system. The regulation is also being amended to reduce the number of surveys educators received for the evaluation of the teacher appraisal system by setting the requirement to biennial instead of annual.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 21, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of April 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 21st day of April 2016

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan (not present)

Barbara B. Rutt (not present)

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Nina L. Bunting

***Please note that no changes were made to the regulation as originally proposed and published in the March 2016 issue of the *Register* at page 805 (19 DE Reg. 805). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 107A

REGULATORY IMPLEMENTING ORDER

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The regulation is being amended to clarify policy and procedures for credentialing and re-credentialing of those who utilize the statewide specialist evaluation system. The regulation is also being amended to reduce the number of surveys educators received for the evaluation of the specialist appraisal system by setting the requirement to biennial instead of annual.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 1, 2016, in the form hereto attached as Exhibit "A". No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to clarify policy and procedures for credentialing and re-credentialing of those who utilize the statewide specialist evaluation system. The regulation is also being amended to reduce the number of surveys educators received for the evaluation of the specialist appraisal system by setting the requirement to biennial instead of annual.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 21, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of April 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 21st day of April 2016.**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan (not present)

Barbara B. Rutt (not present)

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Nina L. Bunting

*Please note that no changes were made to the regulation as originally proposed and published in the March 2016 issue of the *Register* at page 807 (19 DE Reg. 807). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 621

REGULATORY IMPLEMENTING ORDER**621 District and School Emergency Preparedness Policy****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education seeks to repeal 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy. The regulation is being repealed to eliminate confusion for districts and charter schools in terms of policy to follow with regard to emergency preparedness. These entities are to comply with 29 **Del.C.** §8237, otherwise known as the Omnibus School Safety Act (OSSA) and therefore this regulation is no longer needed.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 1, 2016, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities in support of the regulation being repealed.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy in order to eliminate confusion for districts and charter schools in terms of policy to follow with regard to emergency preparedness. These entities are to comply with 29 **Del.C.** §8237, otherwise known as the Omnibus School Safety Act (OSSA) and therefore this regulation is no longer needed.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy attached hereto as Exhibit "B" is hereby repealed. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy hereby repealed shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy repealed hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 21, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of April 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

***Please note that no changes were made to the regulation as originally proposed and published in the March 2016 issue of the *Register* at page 810 (19 DE Reg. 810). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

621 District and School Emergency Preparedness Policy

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 923

REGULATORY IMPLEMENTING ORDER

923 Children with Disabilities Subpart B, General Duties and Eligibility of Agencies

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. This regulation is being amended to align the regulation with 14 **Del.C.** §3125 related to the establishment and procedures for the creation and maintenance of a parent council for the parents of students with disabilities. Preliminary input regarding amendment to this regulation was received from the Governor's Advisory Council for Exceptional Citizens.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 1 and March 1, 2016 respectively, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities related to: (1) clarifying the term "child with a disability" to "child with disabilities." The Department agrees the language should mirror 14 **DE Admin. Code** 922.3.0 and has changed it within the regulation, (2) substituting "in September of each year" for "on an annual basis." The Department disagrees with this change as Senate Bill 33 does not specify a timeframe, and thus schools should have the flexibility to establish Parent Councils through the year as best suits their individual needs, and (3) the inclusion of various supports to be used by schools resulting in the rewording of Section 25.3. The Department does not agree with this change in wording, as the Department provides best practices to schools and allows them to utilize supports to fit their individual needs.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies as requested by the Governor's Advisory Council for Exceptional Citizens in regard to align the regulation with 14 **Del.C.** §3125 related to the establishment and procedures for the

creation and maintenance of a parent council for the parents of students with disabilities.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies.

Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 21, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of April 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 21st day of April 2016

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan (not present)

Barbara B. Rutt (not present)

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Nina L. Bunting

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

25.0 Parent Councils

25.1 *Each school district and charter school enrolling any child with ~~disabilities~~ a disability] shall, on an annual basis, contact the parents of each such child to attempt to facilitate the creation and maintenance of a Parent Council for the parents of students with disabilities.*

*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2016 issue of the *Register* at page 714 (19 DE Reg. 714). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

923 Children with Disabilities Subpart B, General Duties and Eligibility of Agencies

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 924

REGULATORY IMPLEMENTING ORDER

924 Children with Disabilities Subpart C Local Educational Agency Eligibility

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 924 Children with Disabilities Subpart C Local Educational Agency (LEA) Eligibility. This regulation is being amended to align the regulation with changes made to 14 **Del.C.** §1325A regarding training in the legal responsibility of preparing Individualized Education Programs for students with disabilities who attend charter schools.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 1 and March 1, 2016 respectively, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities related to the timeline for implementation and training as noted in the regulation. Training was provided by the Department to charter schools in September and October 2015 and as recently as January 2016.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 924 Children with Disabilities Subpart C Local Educational Agency (LEA) Eligibility in order to align the regulation with changes made to 14 **Del.C.** §1325A regarding training in the legal responsibility of preparing Individualized Education Programs for students with disabilities who attend charter schools.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 924 Children with Disabilities Subpart C Local Educational Agency (LEA) Eligibility.

Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 924 Children with Disabilities Subpart C Local Educational Agency (LEA) Eligibility attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 924 Children with Disabilities Subpart C Local Educational Agency (LEA) Eligibility hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 924 Children with Disabilities Subpart C Local Educational Agency (LEA) Eligibility amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 924 Children with Disabilities Subpart C Local Educational Agency (LEA) Eligibility in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 21, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED the 21st day of April 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 21st day of April 2016

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan (not present)

Barbara B. Rutt (not present)

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Nina L. Bunting

***Please note that no changes were made to the regulation as originally proposed and published in the February 2016 issue of the *Register* at page 716 (19 DE Reg. 716). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

924 Children with Disabilities Subpart C Local Educational Agency Eligibility

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 926

REGULATORY IMPLEMENTING ORDER**926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children. This regulation is being amended to align the regulation with changes made to 14 **Del.C.** §3131(b) regarding the provision of meeting minutes and prior written notice for proposed changes to the IEP.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 1 and March 1, 2016 respectively, in the form hereto attached as Exhibit "A". Comments were received from the Attorney General's Office, Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities related to: (1) under inclusive and inconsistent language in §1.5. The Department disagrees as the language is consistent with provisions of procedural safeguards under IDEA. The language is appropriate regarding minutes taken at meetings, reviews or conferences. §1.5 of the regulation does not address child study team meetings as the Council is referring to, thus no change was made, (2) indicating that a "free" digital copy of the meeting minutes be made available by the initiating public agency. The Department agrees the word "free" should be added for clarification, (3) the inclusion of a summary which explains the procedural safeguards instead of stating one is "available." The Department wishes to clarify the difference between **notice of meeting (a.k.a. invitation to meeting)** (925.22) and **prior written notice** (926.3.0). SB 33 addressed procedural safeguards provided with the **prior written notice**. It does not address providing procedural safeguards with the **notice of meeting**. Within the prior written notice document, a summary of the procedural safeguards, as well as a link for the parent to obtain a full copy of their procedural safeguards will be provided. Thus, no change is needed

to the regulation, (4) substituting the word "agency" for "IEP team" in §3.2.6. The Department disagrees with this change as the placement decision is made by the IEP team and not the agency, (5) the suggested amendment to the "authority" section to include 14 **Del.C.** §§3130, 3133, 3134. The Department agreed and added those code citations to the regulation, and (6) the procedural safeguards available in alternate formats. The Department notes they are available in Spanish and staff are available if additional explanation is necessary. (7) the meeting minute format. The Department notes that a free digital copy will be provided if the LEA records the meeting minutes using a recording device.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children in order to align the regulation with changes made to 14 **Del.C.** §3131(b) regarding Individualized Education Programs (IEP) meeting minutes being digitally provided by the public agency if initiated, as well as prior written notice for proposed changes.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children.

Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 21, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of April 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 21st day of April 2016

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan (not present)

Barbara B. Rutt (not present)

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Nina L. Bunting

926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

1.0 General Procedural Safeguards and Opportunity to Examine Records and Educational Programs
(Break in Continuity Within Section)

- 1.5 *Minutes of Meetings. A parent, a parent's authorized representative, or any public agency conducting a meeting, review or conference may take minutes of the meeting, review or conference concerning a child with a disability's free and appropriate public education. Minutes may be taken by a disclosed recording device or by a stenographer. The cost of recording the minutes is the responsibility of the person or agency electing to take minutes. Once taken, public agency minutes shall be maintained subject to the confidentiality requirements of these regulations and any other applicable Delaware or federal law. If initiated by the public agency, parents must be offered a [free] digital copy.*
 (Authority: 20 U.S.C. 1414(e), 1415(b)(1); 14 Del. C. §§3110, 3130 and 3131)

(Break in Continuity of Sections)

3.0 Prior Notice by the Public Agency: Content of Notice

(Break in Continuity Within Section)

- 3.4 If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure that:

(Break in Continuity Within Section)

- 3.4.3 There is written evidence that the requirements in 3.4.1 and 3.4.2 have been met.
 (Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1));14 Del.C. §3110)[, 14 Del.C. §3130, 14 Del.C. §3133, 14 Del.C. §3134]

*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2016 issue of the *Register* at page 721 (19 DE Reg. 721). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 17 (18 Del.C. §311 & Ch. 17)
 18 DE Admin. Code 602

ORDER

Docket No. 2803

602 Motor Vehicle Physical Damage Appraisers

Proposed Amended Regulation 602 relating to Motor Vehicle Physical Damage Appraisers [Formerly Regulation 8] was initially published in the Delaware *Register of Regulations* on January 1, 2016, and re-published on March 1, 2016. The initial comment period remained open until February 1, 2016, and the second comment period remained opened until March 31, 2016. There was no public hearing on proposed amended Regulation 602. Public notices of the proposed amended Regulation 602 were published in the *Register of Regulations* in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received on the proposed amended Regulation 602 from:

1. Deana Lykins, Regional Director and Legislative Counsel – CSAA Insurance Group, a AAA Insurer
2. Eric M. Goldberg, Vice President – American Insurance Association (provided comments for both public comment periods);
3. Diane Klund, Director of Regulatory Affairs – AudaExplore (provided comments for both public comment periods);
4. L. Noel Patterson, Regional Counsel – Allstate Insurance Company;
5. Oyango A. Snell, State Government Relations Counsel (DE, GA, MD, NC, SC) – Property Casualty Insurers Association of America;
6. Lars B. Kristiansen, Senior Government Relations Director – Nationwide Insurance;
7. Rebecca Kidner, Esquire – Property Casualty Insurers Association of America;
8. Jordan Hendler, Executive Director – Washington Metropolitan Auto Body Association;
9. Catherine A. Rankin, Counsel – State Farm Insurance Companies; and
10. Aaron Schulenburg, Executive Director – Society of Collision Repair Specialists.

Following the initial publication on January 1, 2016, the Department modified Section 4.1 in response to certain of the comments, and re-published the proposed regulation on March 1, 2016, as modified. The Department has received and considered additional comments, favorable and otherwise, that were submitted regarding the proposed regulation as modified. The Department has determined that no further modifications will be made to the proposed regulation.

FINDINGS OF FACT

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 **Del.C.** §311 and Ch. 17 require a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed amended Regulation 602 best serve the interests of the public and of insurers and comply with Delaware law, and are not likely to impose additional costs or burdens upon individuals and/or small businesses.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §311 and Ch. 17; and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 602 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

TEXT AND CITATION

The text of proposed amended Regulation 602 last appeared in the *Register of Regulations* Vol. 19, Issue 9, pages 788-866.

IT IS SO ORDERED this 1st day of May, 2016.
Karen Weldin Stewart, CIR-ML
Insurance Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the March 2016 issue of the *Register* at page 817 (19 DE Reg. 817). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

602 Motor Vehicle Physical Damage Appraisers

FINAL REGULATIONS

**DEPARTMENT OF LABOR
DIVISION OF UNEMPLOYMENT INSURANCE**

Statutory Authority: 19 Delaware Code, Sections 105(a)(8) and 3314(6) (19 **Del.C.** §§105(a)(8) and 3314(6))
19 **DE Admin. Code** 1202

ORDER**1202 Unemployment Insurance Regulations**

In accordance with 29 **Del.C.** §10118, and for the reasons set forth herein, the Delaware Department of Labor, Division of Unemployment Insurance (hereinafter "the Division") enters this Order adopting the Division of Unemployment Insurance Revised Regulation 17.0 on Disqualification for Benefits.

NATURE OF THE PROCEEDINGS

Pursuant to its authority under 19 **Del.C.** §§105(a)(8) and 3314(6), the Division proposes to adopt a revised regulation to establish procedures for notice to claimants and an opportunity for claimants to provide responsive information prior to the Division taking adverse action against the claimant, when the Division discovers that a claimant failed to report wages that the Division believes should have been reported.

The Division gave notice of its intent to adopt the proposed revised regulation by publication in the March 1, 2016 issue of the Delaware *Register of Regulations*. At that same time, the Division submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del.C.** Ch. 104. The Division solicited written comments from the public concerning the proposed revised regulation allowing the period of time for such submissions to remain open for the thirty (30) days mandated by 29 **Del.C.** §10118(a).

The Division received no written comments from the public in response to the notice of intention to adopt the proposed revised regulation. Therefore, no evaluation or summarization of comments is presented in the "Summary of Evidence" section herein.

SUMMARY OF EVIDENCE

In accordance with Delaware law, public notice regarding the proposed revised regulation was published in the Delaware *Register of Regulations*. A Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. The public comment period was open from March 1, 2016 through March 31, 2016.

The Division received no written comments in response to the notice of intention to adopt the proposed revised regulation during the public comment period.

FINDINGS OF FACT

The public was given the required notice of the Division's intention to adopt the proposed revised regulation and was given ample opportunity to provide the Division with comments opposing the Division's adoption of the proposed revised regulation. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. No public comments were received. Thus, the Division finds that the proposed revised regulation, as set forth in the attached copy, which adds section 17.2 and subsection 17.2.1, should be adopted as in the best interest of the general public of the State of Delaware.

TEXT AND CITATION

The text of the proposed revised regulation 17.0 remains as published in the Delaware *Register of Regulations*, Volume 19, Issue 9 on March 1, 2016, and is attached hereto as Exhibit A.

THEREFORE, IT IS SO ORDERED, this 7th day of April, 2016, that the proposed Division of Unemployment Insurance Revised Regulation 17.0 on Disqualification for Benefits is adopted and shall become effective ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(e) and (g).

Thomas H. Ellis, Director
Division of Unemployment Insurance

***Please note that no changes were made to the regulation as originally proposed and published in the March 2016 issue of the *Register* at page 820 (19 DE Reg. 820). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

1202 Unemployment Insurance Regulations

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

ORDER

301 Criminal History Record Checks for Child Care Persons

NATURE OF PROCEEDINGS

The Department of Services for Children, Youth and Their Families ("DSCYF") initiated proceedings to adopt State of Delaware DELACARE Regulations - Background Checks for Child-Serving Entities to comply with changes in Delaware and Federal Code. On March 1, 2016 the proposed changes were published in the Delaware *Register of Regulations*. Written comments were accepted until March 31, 2016. Several regulations were revised based on the comments received. The results of the evaluation of the comments received are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware law, the Office of Child Care Licensing (OCCL) published in the Delaware *Register of Regulations* DELACARE Regulations - Background Checks for Child-Serving Entities in March 2016. The period of public comment ended March 31, 2016. Comments were provided by the following:

- Dafne Carnwright, Autism Delaware
- Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities
- Robert Overmiller, The Governor's Advisory Council for Exceptional Citizens (GACEC)

Comments included here are those that pertain directly to the proposed regulations. Those that did not address the actual regulations have not been incorporated. In some cases, it was necessary to summarize comments. The agency appreciates and acknowledges the comments.

Dafne Carnwright, Autism Delaware

We recommend the addition of a regulation which would clearly describe how often camps should background check returning employees.

Agency Response: The agency revised regulation 4.7.1 to include language that "Such checks shall be valid

for a 5 year period."

As the intent of 4.7.2 and 5.1.2.1 seems to be that camps have an option to do other checks instead of fingerprinting, we would suggest clarifying in each section of 5.0 the differences for youth camps not using the fingerprinting process. This will enable youth camps to clearly understand what is expected.

Agency Response: Regulations 4.7.2 and 5.1.2.1 explain that youth camps not receiving Federal Child Care Development Block Grant Funds are permitted to opt out of fingerprinting. The "opting out" is not mentioned in the other regulations under 5.0 because those regulations define other child-serving entities and the process they must follow for fingerprinting. The regulations under 5.0 will remain unchanged.

We would also recommend revising the way the information in 4.7.2 is presented. Many specific requirements are included in the one long sentence that makes up 4.7.2.

Agency Response: The agency added regulations 4.7.2.1, 4.7.2.2 and 4.7.2.3 to help clarify all of the name-based checks required whenever a youth camp elects not to go through the fingerprinting process.

Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities and Robert Overmiller, The Governor's Advisory Council for Exceptional Citizens (GACEC)

While the definition of "employee" covers a long list of persons, many regulatory sections refer to employees as distinct from volunteers, foster parents, etc. Compare, e.g., §3.0, definition of "child-serving entity", §4.6.1.1, §4.7.1, and §5.1.1.

Agency Response: The agency revised regulation 3.0 "Child-serving entity" by removing volunteers. The agency also revised regulations 4.6.1.1 and 4.7.1 by removing applicants, substitutes and volunteers. The revision of all three regulations removes the distinction of employee types from the definition of "employee." Regulation 5.1.1 will remain unchanged because a distinction of employee types is necessary to explain when fingerprinting is needed for each type of employee.

The regulation sometimes refers to "employment" as distinct from volunteering or serving as a respite, foster parent, or adoptive parent. Compare §§4.2, 4.4, 4.6.1.1, 4.7.1, 7.1, 7.1.1.1.

Agency Response: The agency revised these regulations to remove employee types such as volunteer, respite and adoptive parent which are already covered under the definition of "employee."

The title to the regulation still refers to "child care persons" which was the term used in the prior regulation (§4.1). This term is preferable to "employee" since a variety of persons can be listed under this definition without the term being counterintuitive and confusing.

Agency Response: The term "child care persons" is no longer used in the law. The title to the revised regulations is Background Checks for Child-Serving Entities. The agency agrees that the definition of "employee" is used in different ways, but it is understood to mean those people who work (for money) in a child-serving entity or those who work (not for money) in a child serving entity, as well as any others who would have regular direct access to children, therefore no change was made to this definition.

FINDINGS OF FACT

The public was given the required notice of the Department's intention to adopt the proposed revised regulations and was given ample opportunity to provide the Department with comments opposing the Department's adoption of the proposed revised regulations. The required Regulatory Flexibility Analysis and Impact Statement for the proposed revised regulations was submitted. Public comments were received and considered, as discussed in the summary of evidence. The Department finds that the proposed revised regulations, as set forth in the attached copy, should be adopted as in the best interest of the children in the State of Delaware.

THEREFORE, IT IS SO ORDERED, this 14th day of April, 2016, that the proposed Department of Services for Children, Youth and Their Families DELACARE Regulations - Background Checks for Child-Serving Entities is adopted and shall become effective ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(e) and (g).

Carla Benson-Green
Secretary, Department of Services for Children, Youth and Their Families

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

301 Criminal History Record Checks for Child Care Persons

**DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING
CRIMINAL HISTORY UNIT**

Statutory Authority: 11 Delaware Code, Section 8563 and 31 Delaware Code, Section 309 (11 Del.C. §8563 and 31 Del.C. §309)
9 DE Admin. Code 302

ORDER

302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons

NATURE OF PROCEEDINGS

The Department of Services for Children, Youth and Their Families ("DSCYF") initiated proceedings to adopt State of Delaware DELACARE Regulations - Child Protection Registry Checks for Health Care Facilities, Public Schools, Private Schools and Youth Camps to comply with changes in Delaware Code. On March 1, 2016 the proposed changes were published in the Delaware *Register of Regulations*. Written comments were accepted until March 31, 2016. Several regulations were revised based on the comments received. The results of the evaluation of the comments received are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware law, the Office of Child Care Licensing (OCCL) published in the Delaware *Register of Regulations* DELACARE Regulations - Child Protection Registry Checks for Health Care Facilities, Public Schools, Private Schools and Youth Camps in March 2016. The period of public comment ended March 31, 2016. Comments were provided by the following:

- Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities
- Robert Overmiller, The Governor's Advisory Council for Exceptional Citizens (GACEC)

Comments included here are those that pertain directly to the proposed regulations. Those that did not address the actual regulations have not been incorporated. In some cases, it was necessary to summarize comments. The agency appreciates and acknowledges the comments.

Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities and Robert Overmiller, The Governor's Advisory Council for Exceptional Citizens (GACEC)

The regulation appears to omit provisions related to student teachers implementing 31 Del.C. §309(e)(1). That statute contemplates submission of registry information to the student teacher's college/university while the regulation only envisions submission of the information to an employer (which does not include a college/university).

Agency Response: The agency revised two definitions under regulation 3.0 "Employer" to include higher education institutions and "Person seeking employment" to include student teachers. These revisions make it clear that registry checks will be conducted on student teachers and the results will be provided to the higher education institution.

Second, §6.4 suggests that the employer is only "requested" to provide a copy of the results to an applicant for

employment. The statute envisions DSCYF providing the summary to the individual.

Agency Response: The agency revised regulation 6.4 to include "and person seeking employment is notified of the results."

Third, in §3.0, the definition of "person seeking employment" and §4.0 are inconsistent. The former includes volunteers and contractors within the scope of "person seeking employment" while the latter establishes a separate subpart (§4.2) for such persons.

Agency Response: The agency deleted regulation 4.2 to eliminate the inconsistency.

FINDINGS OF FACT

The public was given the required notice of the Department's intention to adopt the proposed revised regulations and was given ample opportunity to provide the Department with comments opposing the Department's adoption of the proposed revised regulations. The required Regulatory Flexibility Analysis and Impact Statement for the proposed revised regulations was submitted. Public comments were received and considered, as discussed in the summary of evidence. The Department finds that the proposed revised regulations, as set forth in the attached copy, should be adopted as being in the best interest of the vulnerable persons of the State of Delaware.

THEREFORE, IT IS SO ORDERED, this 14th day of April, 2016, that the proposed Department of Services for Children, Youth and Their Families DELACARE Regulations - Child Protection Registry Checks for Health Care Facilities, Public Schools, Private Schools and Youth Camps is adopted and shall become effective ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(e) and (g).

Carla Benson-Green
Secretary, Department of Services for Children, Youth and Their Families

~~**302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons**~~
~~*(The current regulation is being repealed in its entirety; the new regulation is printed below:)*~~

302 Child Protection Registry Checks for Persons Working in Health Care Facilities, Public Schools, Private Schools, and Youth Camps
(Break in Continuity of Sections)

2.0 Purpose

The overall purpose of these regulations is to protect the "vulnerable" population in health care facilities[,], public schools, private schools, and youth camps. Therefore, persons seeking employment in a health care facility, public school, or youth camp shall submit to a child protection registry check. People seeking employment in a private school may voluntarily submit to a child protection registry check. A child protection registry search will be conducted to determine if the person is active on the registry as a perpetrator in any substantiated cases of child abuse or neglect.

3.0 Definitions

"Active on the child protection registry" means substantiated by the Division of Family Services for abuse or neglect at level II, III[,], or IV and reportable to employers.

"Child protection registry" means a central registry of information about [people persons] the Division of Family Services has found cause to believe or a court has substantiated through court adjudication as having committed child abuse or neglect since August 1, 1994. [The Each] substantiated incident shall be designated at one of three levels: II, III, IV.

"Child protection registry check" means a computer search of the child protection registry to determine if a person is active on the registry as a perpetrator in any substantiated case[s] of child abuse or neglect.

"Criminal History Unit" means the [Department] unit[,] located in the Division of Family Services that is responsible for completing child protection registry checks.

"Department" means the Department of Services for Children, Youth and Their Families.

"Direct access" means the opportunity to have personal contact with people receiving care or education during the course of one's assigned duties.

"Division of Family Services" means the division that maintains the child protection registry.

"Employer" means any health care facility, [higher education institution,] public school, private school, or youth camp as defined.

"Health care facility" means any custodial or residential facility where health, nutritional, or personal care is provided for people including nursing homes, hospitals, home health care facilities, and adult day care facilities.

["Higher education institution" means a Delaware college or university that has a teacher preparation program that places candidates into student teaching placements in a Delaware public school.]

"Person seeking employment" means any person applying for employment in a public school or public school district, 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, or any person applying for employment in a health care facility or at a youth camp. This definition also includes volunteers[, student teachers,] and substitute teachers.

(Break in Continuity Within Section)

4.0 Persons Subject to the Law

[4.1] Persons seeking employment in a health care facility, public school, or youth camp who have direct access to people receiving care or education are subject to the child protection registry check.

[4.2] ~~Persons seeking to volunteer or work as a contractor in a public school or youth camp who have direct access to people receiving care or education are subject to the child protection registry check.~~

(Break in Continuity of Sections)

6.0 Child Protection Registry Check Process

6.1 The person seeking employment completes and signs a release form in order for a child protection registry check to be conducted.

6.2 After ~~[receiving the employer obtains]~~ the signed release and payment ~~[is received]~~ from the applicant[, or employer,] the Criminal History Unit conducts a child protection registry check to find out if the person is active on the registry as a perpetrator in any substantiated cases of child abuse or neglect.

6.3 When the person is not listed in the child protection registry as a perpetrator of child abuse or neglect, the employer is notified of the results.

6.4 When the person is listed in the child protection registry as a perpetrator of child abuse or neglect, the employer ~~[and person seeking employment is are]~~ notified of the results ~~[with a request to provide a copy of the results to the person seeking employment].~~

7.0 Criteria for Ineligibility

No employer who operates a health care facility or youth camp and no public school may hire any person seeking employment if the person is ~~[currently active]~~ on the child protection registry at child protection Level III or IV as provided in 16 Del.C. §923.

(Break in Continuity of Sections)

9.0 Voluntary Child Protection Registry Checks

Any private school[, ~~or~~] youth camp operated by a private school[, or any person or organization whose primary concern is that of child welfare and care] may voluntarily submit to having a child protection registry check conducted at such person's or organization's expense according to the Department of Services for Children, Youth and Their Families' procedures.

10.0 Confidentiality

The Department shall ensure that confidentiality regarding case file reviews and ~~that~~ the dissemination of] information is only given out according to Department policy.

*Please note that no additional changes were made to the regulation as originally proposed and published in the March 2016 issue of the *Register* at page 822 (19 DE Reg. 822). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons

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

ORDER

2925 Real Estate Commission Education Committee

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 10, 2016 at a scheduled meeting of the Delaware Real Estate Commission ("the Commission") to receive comments regarding proposed amendments to the Commission's Education Guidelines ("Guidelines"). The Commission proposed a new Section 4.0 which provides that prelicensing education, for both salespeople and brokers, and continuing education, may be accomplished through distance education. Section 4.0 establishes standards for distance education to ensure that applicants and licensees receive appropriate training.

The proposed changes to the Guidelines were published in the *Register of Regulations*, Volume 19, Issue 8, on February 1, 2016. Notice of the March 10, 2016 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was March 25, 2016, 15 days following the public hearing. The Commission deliberated on the proposed revisions at its regularly scheduled meeting on April 14, 2016.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

There was no verbal testimony given at the public hearing on March 10, 2016. Further, no written comments were received by the Commission.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony on the proposed amendments to the Commission's Guidelines. There were no public comments provided to the Board either in writing or during the public hearing.

Pursuant to 24 **Del.C.** §2906(a)(1), the Commission has the statutory authority to promulgate rules and regulations.

The Commission proposed a new Section 4.0 of the Guidelines in order to address distance education. Section

4.0 provides that prelicensing education, for both salespeople and brokers, and continuing education, may be accomplished through distance education. The new section establishes standards for distance education courses, providers and instructors to ensure that applicants and licensees receive appropriate training. Other sections are revised to accommodate the new Section 4.0.

Having received no public comments, the Board finds no reason to amend the regulations as proposed.

Decision and Effective Date

The Commission hereby adopts the changes to Guidelines as proposed, to be effective 10 days following publication of this order in the *Register of Regulations*. The new Guidelines are attached hereto as Exhibit A.

IT IS SO ORDERED this 14th day of April, 2016.

DELAWARE REAL ESTATE COMMISSION

Justin Healy, Professional Member, Chairperson

Jason Giles, Professional Member, Vice Chairperson
(absent)

Lynette Scott, Professional Member, Secretary

Andrew Staton, Professional Member (absent)

Michael Harrington, Sr., Professional Member

Lynn Rogers, Public Member

Joseph F. McCann, Public Member

Curtis Rogers, Public Member (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the February 2016 issue of the *Register* at page 727 (19 DE Reg. 727). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

2925 Real Estate Commission Education Committee

DEPARTMENT OF TRANSPORTATION

DIVISION OF MAINTENANCE AND OPERATIONS

Statutory Authority: 17 Delaware Code, Section 1103 (17 Del.C. §1103)
2 DE Admin. Code 2601

REGULATORY IMPLEMENTING ORDER

2601 Outdoor Advertising

Summary of the Evidence and Information Submitted

The Department of Transportation sought to revise its existing regulations regarding outdoor advertising. Notice for public comment was properly noticed in 19 DE Reg. 728, February 1, 2016. There were no questions or comments during the public comment period.

Findings of Fact

The Secretary finds that it is appropriate to amend the existing Outdoor Advertising regulation as proposed to incorporate appropriate changes to the Outdoor Advertising regulations since the original regulations were adopted.

Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the Outdoor Advertising regulations as described herein.

FINAL REGULATIONS

Text and Citation

The text of 2 **DE Admin. Code** 2601 shall be in the form attached as Exhibit "A".

Effective Date of Order

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

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

Jennifer L. Cohan, Secretary
Department of Transportation

***Please note that no changes were made to the regulation as originally proposed and published in the February 2016 issue of the *Register* at page 728 (19 DE Reg. 728). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

2601 Outdoor Advertising

DIVISION OF MOTOR VEHICLES

Statutory Authority: 30 Delaware Code, Section 3003; 29 Delaware Code, Section 8404
(30 **Del.C.** §3003; 29 **Del.C.** §8404)
2 **DE Admin. Code** 2266

ORDER

2266 Vehicle Document Fees

Administrative Code 2266 would authorize the DMV to not impose collecting the document fee when the vehicle is a gift from a family member to another family member if there is a lien on the vehicle. The regulation would allow dealers that title a vehicle that is intended for resale to be exempt from the document fee if there is a lien entered on the vehicle as part of a manufacturer's warranty program.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

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

Decision of Effective Date

Based on the provisions of 30 **Del.C.** §3003; 29 **Del.C.** §8404, I hereby adopt Administrative Code 2266 as set forth in the version attached hereto, to be effective on May 11, 2016.

IT IS SO ORDERED THIS 12th day of April 2016.

Jennifer Cohan, Secretary of Transportation

***Please note that no changes were made to the regulation as originally proposed and published in the March 2016 issue of the *Register* at page 836 (19 DE Reg. 836). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

2266 Vehicle Document Fees

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing on Wednesday, May 11, 2016 beginning at 1:30 p.m. A business meeting will be held the following month on Wednesday, June 15, 2016 beginning at 10:30 a.m. The hearing and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203 and pamela.bush@drbc.nj.gov.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, May 19, 2016 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Financial Institution Accounts – Delaware Achieving a Better Life Experience (ABLE) Accounts**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance is proposing to amend the Delaware Social Services Manual (DSSM) regarding Financial Institution Accounts, specifically, *to add language that exempts Achieving a Better Life Experience (ABLE) accounts from being counted towards the determination of eligibility for state or local assistance programs.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2016. Please identify in the subject line: Financial Institution Accounts – Delaware Achieving a Better Life Experience (ABLE) Accounts

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**PUBLIC NOTICE****Long-Term Care Eligibility; Spousal Impoverishment Undue Hardship**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance is proposing to amend the Delaware Social Services Manual (DSSM) by adding a provision regarding long-term care eligibility, specifically, *to add language that allows the spousal impoverishment regulation to be waived in instances of undue hardship.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2016. Please identify in the subject line: Long-Term Care

Eligibility; Spousal Impoverishment Undue Hardship

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

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
Cottage Food Regulations

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing new regulations governing Cottage Foods. On May 1, 2016, the Division of Public Health plans to publish as "proposed" Cottage Food Regulations. The regulations will allow for the preparation of a limited type of food products in residential kitchens. Current regulations do not allow for production of food products for sale to consumers in residential kitchens. This program will allow for development of a new business community serving a niche market of customers at farm markets and other outlets throughout Delaware. The regulations establish basic food safety requirements for these operations.

A public hearing will be held on Wednesday, May 25, 2016 at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the May 1, 2016 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Thursday, June 9, 2016, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**
DIVISION OF WATERSHED STEWARDSHIP
PUBLIC NOTICE
7402 Shellfish Sanitation Regulations

The current classification of the shellfish growing area is Seasonally Approved (December 1st through April 15th) but due to new US Food and Drug Administration Federal Guidance for prohibited zones around wastewater treatment plants, this area is now being classified as prohibited to the harvest of shellfish. Shellfish for the purpose of this regulation are defined as clams, oysters and mussels.

The closure of this shellfish growing area, through the Secretary's Order NO 2016-WS-0013, exceeds the required prohibited area associated with the Rehoboth Wastewater Treatment Plant year-round. The effective date of this closure was on March 21, 2016 and the regulatory process will update the current Shellfish Sanitation Regulations Appendix 3, Rehoboth Bay 1 (Seasonally Approved) to Regulations Appendix 1, Rehoboth Bay and Indian River Bay: 18 (Prohibited).

There are no costs associated with this regulatory change and there is minimal or no impact to commercial clambers because no recent commercial harvest of clams has been reported in the closure area.

The hearing record on the proposed changes to 7402 Shellfish Sanitation Regulations will be open May 1, 2016. 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 June 2, 2016 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 BOARD OF CHARITABLE GAMBLING
PUBLIC NOTICE
101 Regulations Governing Bingo

Pursuant to 28 **Del.C.** §1507, the Delaware Gaming Control Board has proposed revisions to its rules and regulations. The rules pertaining to bingo and instant bingo are modified to provide additional guidance on allowable games.

A public hearing will be held on May 25, 2016 at 10:00 a.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 on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address by June 9, 2016.

DIVISION OF PROFESSIONAL REGULATION
100 BOARD OF CHARITABLE GAMBLING
PUBLIC NOTICE
103 Regulations Governing Charitable Gambling Other Than Raffles

Pursuant to 28 **Del. C.** §1507, the Delaware Gaming Control Board has proposed revisions to its rules and regulations. The Charitable Gaming rules are amended to increase the number of games permitted monthly from 1 to 6.

A public hearing will be held on May 25, 2016 at 10:00 a.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 on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address by June 9, 2016.

DIVISION OF PROFESSIONAL REGULATION
700 BOARD OF CHIROPRACTIC
PUBLIC NOTICE
700 Board of Chiropractic

The Delaware Board of Chiropractic, pursuant to 24 **Del.C.** §706(a)(1), proposes to revise its regulations. The proposed regulation further refines the practice of chiropractic and provides for student internships.

The Board will hold a public hearing on the rule change on June 2, 2016 at 8:30 a.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION
1795 MIDWIFERY ADVISORY COUNCIL
PUBLIC NOTICE

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

The Council will hold a public hearing on the proposed regulation change on May 25, 2016 at 9:00 a.m., Second Floor, Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Shauna Slaughter, Executive Director of the Delaware Midwifery Advisory Council, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until June 9, 2016 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
2100 BOARD OF EXAMINERS IN OPTOMETRY
PUBLIC NOTICE

2100 Board of Examiners in Optometry

The Delaware Board of Examiners in Optometry, pursuant to 24 **Del.C.** §2104(a)(1), proposes to revise its regulations. The proposed regulations seek to clarify and provide more detailed information regarding the use of telehealth services for the provision of optometry services.

The Board originally scheduled a hearing on this matter for April 28, 2016 at 4:30 p.m. but was unable to hold the hearing due to insufficient notice of the hearing under the Delaware Administrative Procedures Act. The Board will now hold a public hearing on the proposed rule change on May 26, 2016 at 4:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Lisa Smith, Administrator of the Delaware Board of Examiners in Optometry, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until June 10, 2016.

NOTE: Please see the April 2016 issue of the *Register of Regulations* for the text of the proposed regulation.

DIVISION OF PROFESSIONAL REGULATION
3300 BOARD OF VETERINARY MEDICINE
PUBLIC NOTICE

3300 Board of Veterinary Medicine

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on June 14, 2016 at 1:00 p.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 Board of Veterinary Medicine, 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 June 29, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Board will decide whether to adopt the revisions as proposed.

The Board proposes a new Section 2.0 to address euthanasia of animals held in shelter, as set forth in 16 **Del.C.** §3004F. Other Sections are revised accordingly to accommodate the specific legal requirements pertaining to shelter animals. The Board also proposes requiring proof of continuing education hours for individuals who do not apply for licensure within the two-year period following examination. In addition, various Sections are amended to clarify the requirements for license renewal, reinstatement and inactive status. Typographical errors are corrected and the Rules are re-numbered to accommodate the new Section 2.0.

It should be noted that a public hearing on proposed revisions was originally scheduled for April 12, 2016. However, prior to the hearing, the Board decided to revise the rules and regulations further. The Board therefore withdraws the rules and regulations published in the March 1, 2016 *Register of Regulations*, Volume 19, Issue 9.

DIVISION OF PROFESSIONAL REGULATION
3900 BOARD OF CLINICAL SOCIAL WORK EXAMINERS
PUBLIC NOTICE
3900 Board of Clinical Social Work Examiners

Pursuant to 24 **Del.C.** §3906(a)(1), the Board of Clinical Social Work Examiners ("the Board") has proposed revisions to its regulations. Subsection 9.3.9, pertaining to computer and internet technology, is stricken. A new Section 11.0 is added to implement standards for the practice of clinical social work through telehealth. New Subsections 7.3.4 and 7.3.5 are added to clarify the continuing education audit process, including hearings and disciplinary sanctions. Finally, certain technical revisions address inconsistencies in the regulations.

A public hearing will be held on June 20, 2016 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Board of Clinical Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Sandra Wagner, Administrator for the Board, at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be July 5, 2016. The Board will deliberate on the proposed revisions at its next regularly scheduled meeting.

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

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

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

The Secretary has considered both the evidence presented and the Committee's recommendations. Based on that review, the Secretary strikes the version of Section 9.0 published in the *Register of Regulations* on July 1, 2015 and proposes a revised Section 9.0 attached hereto as Exhibit A.

Any person who wishes to present written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments no later than Tuesday, May 31, 2016 to:

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