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# Delaware Register of Regulations

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Issue Date: NOVEMBER 1, 2016

Volume 20 - Issue 5, Pages 330 - 385

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



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

*"Fall at Fifer Orchards"*

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 17	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.

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## Symbol Key

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

## Proposed Regulations

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

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

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

## PUBLIC NOTICE

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

### 255 Definitions of Public School, Private School and Nonpublic School

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

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

This regulation was originally published in July 2016. Due to comments received which resulted in substantive changes to the definitions of Charter School, Reorganized School District and Vocational Technical School District, the regulation is being republished at this time.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 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 online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

#### C. IMPACT CRITERIA

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

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

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

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

<http://regulations.delaware.gov/register/november2016/proposed/20 DE Reg 338RFA 11-01-16.pdf>

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

### **1.0 ~~Public School Purpose~~**

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

### **2.0 ~~Private School Definitions~~**

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

The following words and terms are applicable unless a specific regulation, statute or the context in which they are used clearly indicates otherwise:

"**Charter School**" means a non-home-based public school including two or more of grade kindergarten through twelve, operating in an approved physical plant for the personal physical attendance of all students and is managed by a board of directors. It exists under a charter granted by a public school district or the Delaware Department of Education, with the approval of the State Board of Education, pursuant to 14 **Del.C.** Ch. 5.

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

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

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

# PROPOSED REGULATIONS

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

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

"Reorganized School District" means a clearly defined geographic subdivision of the state organized for the purposes of administering public education in that area.

"School District" means either a Reorganized School District or a Vocational-Technical School District or both depending upon the context in which the term is used.

"Vocational-Technical School District" means a subdivision of the state, the boundaries of which are co-extensive with the boundaries of the county in which it is located, organized for the purposes of administering vocational and technical education in that area.

## ~~3.0 Nonpublic School~~

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

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

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

### PUBLIC NOTICE

#### Patient Pay Calculation for Division of Developmental Disabilities Services (DDDS) Waiver Recipients

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend, to revise and update, specifically, *to the Delaware Social Services Manual (DSSM)*.

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

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 Patient Pay Calculations, specifically, *to change the entity responsible for the collection of the patient pay amount for Division of Developmental Disabilities Services (DDDS) waiver recipients.*

#### Statutory Authority

- Social Security Act §1915(c), *Home and community-based services*
- 42 CFR §435.217, *Individuals receiving home and community-based services*
- 42 CFR §435.726(a) and (b), *Post-eligibility treatment of income of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.*

## Background

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in 1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The Centers for Medicare & Medicaid Services (CMS) recognizes that the design and operational features of a waiver program will vary depending on the specific needs of the target population, the resources available to the State, service delivery system structure, State goals and objectives, and other factors. A State has the latitude to design a waiver program that is cost-effective and employs a variety of service delivery approaches, including participant direction of services.

The Delaware Division of Medicaid and Medical Assistance (DMMA), in partnership with the Division of Developmental Disabilities Services (DDDS) has operated the DDDS waiver since 1987. This waiver is targeted to individuals with intellectual disabilities (including brain injury) and autism spectrum disorder who can no longer live independently or with their family. The waiver includes an array of services and supports designed to enable the individual to live safely in the community and to respect and support their desire to work or engage in other productive activities.

## Summary of Proposal

### *Purpose*

The purpose of this policy amendment is to change the entity responsible for the collection of the patient pay amount for Division of Developmental Disabilities Services (DDDS) waiver recipients so as to be compliant with federal regulation.

### *Summary of Proposed Changes*

If implemented as proposed, this regulation will accomplish the following, effective January 11, 2017:

Change Delaware Social Services Manual, 20720, to list the entity responsible for the collection of the patient pay amount for Division of Developmental Disabilities Services (DDDS) waiver recipients from DDS to the provider of Residential Habilitation.

### *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 Patient Pay Calculation proposed regulation. Comments must be received by 4:30 p.m. on December 1, 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

The proposed regulation is clarifying rules of practice and procedure by the agency and has no fiscal impact.

**\*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/november2016/proposed/20 DE Reg 340RFA 11-01-16.pdf>

**DMMA PROPOSED REGULATION APA 16-024  
REVISION:****20720 Patient Pay Calculation**

This policy applies to all individuals receiving Medicaid through the Division of Developmental Disabilities Services (DDDS) Waiver and the Long Term Care Community Services Program.

1. The Medicaid recipient's total income will be used in the post eligibility treatment of income. This includes income that is counted for eligibility and income that is excluded for eligibility.
2. Allowable deductions are given based on an individual's circumstances. Not all deductions will apply to all individuals.
3. Any amount of income remaining after allowable deductions is the patient pay amount. This amount must be paid on a monthly basis as indicated below:
  - ~~For DDDS Waiver recipients, the patient pay amount is paid to the Division of Developmental Disabilities. Individuals receiving Residential Habilitation funded by the DDDS waiver will submit their patient pay amount directly to the provider of Residential Habilitation.~~
  - "Individuals residing in an Assisted Living Facility will submit their patient pay amount directly to the Assisted Living Facility.

The following deductions from the Medicaid recipient's total gross income should be taken in the following order:

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**PUBLIC NOTICE****Pharmaceutical Services – Reimbursement of Covered Outpatient Drugs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Pharmaceutical Services, specifically, *to clarify reimbursement methodology for covered outpatient drugs.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Kimberly.Xavier@state.de.us, or by fax to 302-255-4425 by December 1, 2016. Please identify in the subject line: Pharmaceutical Services - Reimbursement of Covered Out-Patient Drugs

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

**SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Pharmaceutical Services, specifically, *to clarify reimbursement methodology for covered outpatient drugs.*

**Statutory Authority**

- 1927 of the Social Security Act, *Payment for Covered Outpatient Drugs*
- 42 CFR §447.512, *Drugs: Aggregate upper limits of payment*
- 42 CFR §447.201, *State plan requirements*

- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

**Background**

Under the Medicaid program, States may provide coverage of outpatient drugs as an optional service under section 1905(a)(12) of the Social Security Act (the Act). Section 1903(a) of the Act provides for Federal financial participation (FFP) in State expenditures for these drugs. States generally reimburse pharmacies for prescribed covered outpatient drugs dispensed to Medicaid beneficiaries based on a two-part formula consisting of the ingredient cost of a drug and a professional dispensing fee. States have flexibility to determine reimbursement amounts, consistent with applicable statutory and regulatory requirements. These reimbursement amounts are subject to review and approval by the Centers for Medicare & Medicaid Services (CMS) through the State Plan Approval (SPA) process.

On February 1, 2016 CMS published the Covered Outpatient Drug Rule. This rule became final on April 1, 2016 and implements provisions of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act) pertaining to Medicaid reimbursement for covered outpatient drugs (CODs). The regulations direct the Medicaid programs to reimburse all outpatient covered drugs based on the actual acquisition cost of the medication and the professional dispensing fee if applicable.

The Division of Medicaid & Medical Assistance (DMMA) has been applying an Actual Acquisition Cost (AAC) plus a professional dispensing fee since April 1, 2016 for all dispensed products, as well as for medications that are administered in a clinical setting. Medications can be purchased through different avenues depending on the type of entity purchasing the drugs. Prices can be published using multiple methods. DMMA will no longer be using the drug file that list Average Wholesale Prices. The new drug file will contain the Wholesale Acquisition Cost. Additionally, CMS has requested that all possible sources of drugs have a corresponding definition for reimbursement. Drugs reimbursed when administered either in a clinic or physician's office are submitted using a procedure code. These codes have been manually reviewed to establish an acquisition cost for any provider. The SPA is documenting the steps that are taken to develop those reimbursement levels.

**Summary of Proposal***Purpose*

To add language to the Medicaid State plan to clarify the reimbursement methodology for covered outpatient drugs.

*Summary of Proposed Changes*

Effective for services provided on and after January 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 4.19-B Page 14 and Page 14a to clarify the reimbursement methodology for all outpatient medications for the DMMA beneficiaries, by defining the Actual Acquisition Cost Methodology used.

*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 to the methods and standards governing payment methodology for pharmaceutical services. Comments must be received by 4:30 p.m. on December 1, 2016.

*CMS Review and Approval*

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

## *Provider Manual Update*

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

## **Fiscal Impact**

The proposed amendment is being implemented to clarify current practices attested to by DMAP pharmacy providers. Therefore, there is no impact on the General Fund.

**\*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/november2016/proposed/20 DE Reg 342RFA 11-01-16.pdf>

## **DMMA PROPOSED REGULATION #16-023a REVISED**

ATTACHMENT 4.19-B  
Page 14

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

STATE: DELAWARE

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

REIMBURSEMENT FOR PHARMACEUTICALS

## Overview

The Delaware Medical Assistance Program (DMAP) will reimburse pharmaceuticals using the lower of:

- The usual and customary (U & C) charge to the general public for the product,
- National Average Drug Acquisition Cost (NADAC), or if a NADAC is not available the Average Wholesale Price (AWP) minus 19%;
- ~~A State specific maximum allowable cost (DMAC) when the purchase price is not appropriately represented by either the NADAC or the Average Wholesale Price (AWP) minus 19%;~~
- ~~The Federal Upper Limit (FUL) will not be used since the NADAC reflects the actual acquisition cost.~~
- Wholesale Acquisition Cost (WAC),
  - WAC for legend
  - WAC minus 2% for non-legend
- Delaware Maximum Allowable Cost (DMAC), or
- Actual Acquisition Cost (AAC).

Methodology for establishing AAC is provided in the table on page Attachment 4.19-B Page 14a.

~~Entities that qualify for special purchasing under Section 602 of the Veterans Health Care Act of 1992, and entities exempt from the Robinson Patman Price Discrimination Act of 1936 must charge the DMAP no more than their actual acquisition cost (AAC) plus a professional dispensing fee. The AAC must be supported by invoice and payment documentation.~~

Entities that purchase Section 340B of the Public Health Service Act products must request to use these drugs for all DMAP patients, including Medicaid fee-for-service patients and for patients whose care is covered by Medicaid Managed Care Organizations.

## Professional Dispensing Fee

~~The professional dispensing fee rate is ten dollars (\$10.00).~~ There is one-time professional fee per thirty (30)-day period unless the class of drugs is routinely prescribed for a limited number of days.

## Definitions

Delaware Maximum Allowable Cost (DMAC) - a maximum price set for reimbursement:

- When a single source product has Average Selling Prices provided by the manufacturer that indicates the ~~AWP~~ WAC is exaggerated,
- When the NADAC does not reflect the most current cost of a multiple source drug, or
- If a single provider agrees to a special price.

Any willing provider can dispense the product.

## **DMMA PROPOSED REGULATION #16-023b REVISED**

ATTACHMENT 4.19-B  
Page 14a

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

STATE: DELAWARE

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

#### REIMBURSEMENT FOR PHARMACEUTICALS

~~**Federal Upper Limit (FUL)** – The FUL is a federally defined price and constitutes the upper limit of reimbursement where a DMAC limit does not exist.~~

~~**Non-Traditional Pharmacy** – long term care and specialty pharmacies.~~

~~**Traditional Pharmacy** – retail independent and retail chain pharmacies.~~

## Reimbursement Policy:

- Medicaid reimbursement is limited to only those drugs supplied from manufacturers that have a signed national agreement or approved existing agreement under Section 1927(a) of the Social Security Act. Restrictions in drug coverage are listed on Page 5 Addendum of Attachment 3.1-A of this Plan.
- The Actual Acquisition Cost (AAC) for Drug Reimbursement is derived using the methodology in the table below.

# PROPOSED REGULATIONS

<u>Category</u>	<u>Ingredient Cost</u>	<u>Professional Dispensing Fee</u>
<u>Brand Drug</u>	<u>NADAC</u>	<u>\$10</u>
<u>Generic Drug</u>	<u>NADAC</u>	<u>\$10</u>
<u>Drugs Without NADAC</u>	<u>WAC for legend and WAC-2% for non-legend; or a Delaware Maximum Allowable Cost, whichever is lower.</u>	<u>\$10</u>
<u>340B Purchased Drug</u>	<u>AAC for dispensed and physician administered drugs.</u>	<u>\$10</u>
<u>Contract 340B Pharmacy</u>	<u>Drugs acquired through the Federal 340B Drug Pricing Program and dispensed by 340B contract pharmacies are not covered.</u>	<u>N/A</u>
<u>Drugs purchased by 340B entities enrolled with DMMA as utilizing public health service products, which based on specific conditions, must purchase drugs outside of the 340B inventory when that drug is not available or eligible for 340B purchase.</u>	<u>NADAC</u>	<u>\$10</u>
<u>Indian Health Service</u>	<u>N/A</u>	<u>N/A</u>
<u>Federal Supply Schedule</u>	<u>AAC</u>	<u>\$10</u>
<u>Drugs Acquired at Nominal Price</u>	<u>AAC</u>	<u>\$10</u>
<u>Specialty Drugs-Mailed</u>	<u>AAC (Invoice price)</u>	<u>\$27</u>
<u>Drug Not Dispensed by Retail Pharmacy</u>	<u>NADAC or WAC, whichever is lower.</u>	<u>\$10</u>
<u>Physician Administered Drugs</u>	<u>AAC</u>	<u>N/A</u>
<u>Clotting Factor</u>	<u>AAC</u>	<u>\$27</u>
<u>Investigational Drugs (when prior authorized; as a general rule not covered products)</u>	<u>AAC</u>	<u>\$10</u>

Exceptions:

- ~~Exceptions of the reimbursement of FUL and DMAC can be made if a physician certifies in their own handwriting that a specific brand is medically necessary. The medical necessity must be documented on a FDA Med Watch form based on the client experiencing an adverse reaction.~~
- ~~Other Exceptions will be made if documentation provided demonstrates that the product can only be obtained at a higher rate.~~

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 **Delaware Code**, Section 3103 (16 **Del.C.** §3103)  
16 **DE Admin. Code** 4205

### PUBLIC NOTICE

#### 4205 Vital Statistics

Office of Vital Statistics (OVS), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Vital Statistics (4205). The regulations are being revised to accommodate changes to the gender listed on an individual's birth certificate. On November 1, 2016, OVS plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the November 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 Monday, December 12, 2016, at:

Jamie Mack  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [jamie.mack@state.de.us](mailto: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/november2016/proposed/20 DE Reg 346RFA 11-01-16.pdf>

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

[4205 Vital Statistics](#)

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**DELAWARE HEALTH CARE COMMISSION  
DELAWARE HEALTH RESOURCES BOARD**

Statutory Authority: 16 Delaware Code, Section 9303 (16 Del.C. §9303)

**PUBLIC NOTICE**

**Delaware Health Resources Management Plan**

The Delaware Health Resources Board (DHRB) pursuant to Title 16 Chapter 93 of the Delaware Code proposes to revise its Health Resources Management Plan (HRMP) regulation 16 Del.C. §9303(d)(1). The purpose of the plan is to establish the core set of common review considerations for use in reviewing Certificate of Public Review (CPR) applications. The proposed amendment seeks to clarify detail and fully update the edition of the HRMP to promote alignment with Delaware's existing statewide policy aimed at improving health outcomes, health care quality and patient experience, lowering growth in per capital health care costs and enhancing provider satisfaction. As per recommendations of Joint Sunset Committee in 2012, this is the first full document revision of the HRMP.

The board will hold a public hearing on the proposed HRMP amendment on December 5, 2016 at 1:00 p.m. at Delaware Technical Community College Terry Campus, Corporate Training Center, Rooms 400 A and B, 100 Campus Drive, Dover DE. Written comments should be sent to Latoya Wright, Staff to the DHRB at Delaware Health Care Commission, 410 Federal Street, Suite 7, Margaret O'Neill Building, Third Floor, Dover, DE 19901. Written comments will be accepted until January 5, 2017.

**\*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/november2016/proposed/20 DE Reg 347RFA 11-01-16.pdf>

(2) Due to the size and formatting of the proposed regulation, it is not being published here. A link to a PDF version of the proposed regulation is provided below:

[Health Resources Management Plan](#)

([Delaware Health Resources Management Plan](#))

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# PROPOSED REGULATIONS

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## DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION DIVISION INVESTOR PROTECTION UNIT

Statutory Authority: 6 Delaware Code, Section 73-102(b) (6 Del.C. §73-102(b))

### PUBLIC NOTICE

#### Rules Pursuant to the Delaware Securities Act

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and section 73-102(b) of Title 6 of the Delaware Code, the Investor Protection Unit of the Delaware Department of Justice ("the Unit") hereby publishes notice of a proposed revision to the Rules Pursuant to the Delaware Securities Act.

Persons wishing to comment on the proposed revision may submit their comments in writing to:

Gregory C. Strong  
Investor Protection Director  
Department of Justice, Investor Protection Unit  
State Office Building, 5th Floor  
820 N. French Street  
Wilmington, DE 19801

The comment period on the proposed revision will be held open for a period of thirty days from the date of the publication of this notice in the Delaware *Register of Regulations*.

### SUMMARY OF THE PROPOSED REVISION

The proposed revision amends several existing Rules and creates several new Rules as follows:

The proposed revision includes an amendment of Rule 401 relating to registration of securities offerings by qualification. This amendment includes a provision that permits issuers offering securities pursuant to Regulation A Tier 1 to file a copy of Form 1-A with our office, in lieu of a registration statement, when registering their offering. Section 73-102(b) and section 73-204(f) of the Delaware Securities Act (the "Act") authorize the Investor Protection Director (the "Director") to make such an amendment.

The proposed revision adds new Rule 402 which provides an alternative uniform process by which small corporate issuers may register by qualification. The registration process in Rule 402 is commonly known as Small Corporate Offering Registration ("SCOR"). Specifically, SCOR provides certain issuers a uniform treatment of offerings that are exempt from federal registration under Regulation A, as well as Rule 504 of Regulation D. The previous SCOR rule also included offerings relying on Section 3(a)(11) of the 1933 Act, but references to those offerings have been stricken from this re-proposed version because they are now covered by the new intrastate crowdfunding exemption from registration. Other than that, new Rule 402 largely reinstates old Rule 402, which was previously repealed. Section 73-102(b) and section 73-204(f) of the Act authorize the Director to make such a Rule.

Rule 404, pertaining to fees, is amended to require a fee for notice filings of Regulation A - Tier 2 Offerings. The proposed fee is identical to the current fee for notice filing by Form D. Sections 73-102(b) and 73-208(c) of the Act authorize the Director to require a fee for such filings. Rule 404 is also amended to require a fee for notice filings of intrastate crowdfunding offerings. Sections 73-102(b) and 73-207(b)(15) (effective November 8, 2016) of the Act authorize the Director to require a fee for such filings.

Rule 406, pertaining to notice filing of Form D, is amended consistent with a December 9, 2014 Order Adopting The Electronic Filing Depository as a Permissible Means of Filing Form D. The amendment also mandates the use of Electronic Filing Depository for such notice filings as of June 1, 2017. Section 73-102 of the Act authorizes the Director to make such an amendment.

The proposed revision adds new Rule 407 to the Rules. Rule 407 requires issuers of securities relying on the exemption from registration in Section 3(b)(2) of the Securities Act of 1933 and Rule 251(a)(2) pursuant to the Securities Act of 1933, known as Regulation A Tier 2 offerings, to file notice with the Director. Sections 703-102(b)

and 73-208(c) of the Act authorize the Director to require such filings. This new Rule is based on a NASAA model rule and will promote uniformity with other states that also choose to adopt the model rule to cover notice filings for Regulation A Tier 2 offerings.

The proposed revision adds new Rule 408 to the Rules. Rule 408 pertains to the new intrastate crowdfunding exemption and provides detail regarding the notice filing issuers relying on this exemption are required to file as well as detail regarding the registration requirements for Internet Site Operators involved in intrastate crowdfunding offerings. Sections 73-102(b) and 73-207(b)(15) (effective November 8, 2016) of the Act authorize the Director to make such a Rule.

Rule 508, pertaining to the Manual Exemption, is amended to strike an out of print manual from the list and to add two new manuals published by OTC Markets. Sections 73-102 and 73-207(b)(2)d. of the Act authorize the Director to make such an amendment.

**\*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/november2016/proposed/20 DE Reg 348RFA 11-01-16.pdf>

**Rules Pursuant to the Delaware Securities Act**  
*(Break in Continuity of Sections)*  
**Part D. Securities Registration and Notice Filings**  
*(Break in Continuity of Sections)*

**401 Registration by Qualification**

- (a) Any security may be registered by qualification. A person who seeks to register a security by qualification shall file with the Unit the following documents and information:

*(Break in Continuity Within Section)*

- (3) One copy of an executed registration statement which complies with SEC Form S-1, together with all exhibits, which shall include all information required under Sections 73-204(b)(1)-(16) and 73-205(b) of the Act. For securities offerings pursuant to Tier 1 of Regulation A for which Form 1-A has been filed with the SEC, filing a copy of Form 1-A with the Unit will satisfy the registration statement filing requirement.

*(Break in Continuity Within Section)*

**402 ~~Repealed~~ Small company offering registrations**

- (a) Availability of Small Company Offering Registration ("SCOR").
- (1) An issuer may register securities by qualification under Section 73-204 of the Act by using the Form U-7 (Small Company Offerings Registration Form) if the conditions set forth in this regulation and in the instructions to Form U-7 are satisfied.
- (2) In general, a company may do a SCOR offering if it is relying upon an exemption from registration with the SEC under the Federal Securities Act of 1933 provided by SEC Regulation A Tier 1 (17 C.F.R. §§230.251-263) or Rule 504 of SEC Regulation D (17 C.F.R. §230.504).
- (3) Under SEC Regulation A, the aggregate amount of a Tier 1 offering cannot exceed \$20,000,000.00. Under Rule 504 of SEC Regulation D, the aggregate offering amount cannot be more than \$1,000,000.00.
- (b) Prospectus. A completed Form U-7 that has been declared effective by the Commissioner shall serve as the prospectus for an offering registered under this regulation.
- (c) Eligibility of Issuer. To be eligible to register securities under this regulation, the issuer must satisfy the following conditions:
- (1) The issuer is a corporation or centrally managed limited liability company organized under the law of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia and have its principal place of business in one of the foregoing;

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**PROPOSED REGULATIONS**

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- (2) The issuer is not subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§78m, 78o(d);
  - (3) The issuer is not an investment company registered or required to be registered under the Investment Company Act of 1940, 15 U.S.C. §§80a-1 to 80a-52;
  - (4) The issuer is not engaged in and does not propose to be engaged in petroleum exploration and production, mining, or other extractive industries;
  - (5) The issuer is not a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person; and
  - (6) The issuer is not disqualified under subsection (i) of this regulation.
- (d) Minimum price. The offering price for common stock or common ownership interests (hereinafter, collectively referred to as common stock), the exercise price for options, warrants, or rights to common stock, or the conversion price for securities convertible into common stock, must be greater or equal to \$1.00 per share or unit of interest. The issuer must agree with the administrator that it will not split its common stock, or declare a stock dividend for two years after the effective date of the registration if such action has the effect of lowering the price below \$1.00.
- (e) Commissions, fees or other remuneration for soliciting any prospective purchaser in connection with the offering in the state are only paid to persons who, if required to be registered or licensed, the issuer believes, and has reason to believe, are appropriately registered or licensed in the state.
- (f) Financial statements shall be prepared in accordance with either U.S. or Canadian generally accepted accounting principles. If appropriate, a reconciliation note should be provided. If the company has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants; provided, however, that if each of the following four conditions are met, such financial statements in lieu of being audited may be reviewed by independent certified public accountants in accordance with the Accounting and Review Service Standards promulgated by the American Institute of Certified Public Accountants or the Canadian equivalent:
- (1) the company shall not have previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailing, public meetings, "cold call" telephone solicitation, or any other method directed toward the public;
  - (2) the company has not been previously required under federal, state, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities;
  - (3) the aggregate amount of all previous sales of securities by the company (exclusive of debt financing with banks and similar commercial lenders) shall not exceed \$1,000,000.00; and
  - (4) the amount of the present offering does not exceed \$1,000,000.00.
- (g) The offering shall be made in compliance with Rule 504 of Regulation D or Regulation A.
- (h) Filing Requirements and Fees. The issuer shall file an executed Form U-1, Form U-2, Form U-2A, Form U-7 with exhibits, and shall include the fee required by Rule 404. In addition, if the offering is made pursuant to Rule 504 of Regulation D, the issuer shall file a copy of its Form D as part of its SCOR application; if the offering is made pursuant to Regulation A, the issuer shall file a copy of its Form 1-A as part of its SCOR application. That filing shall be made with the Commissioner at the same time it is filed with the SEC.
- (i) Disqualification. Unless the Commissioner determines that it is not necessary under the circumstances that the disqualification under this section be applied, application for registrations under this regulation shall be denied if the issuer, any of its officers, directors, ten percent or greater stockholders, promoters, or selling agents, or, any officer, director or partner of any selling agent:
- (1) has filed an application for registration which is subject to a currently effective stop order entered pursuant to any state or provincial securities laws within ten years prior to the filing of the registration statement;

- (2) has been convicted, within ten years prior to the filing of the current application for registration, of any felony or misdemeanor in connection with the offer, purchase, or sale of securities, or of any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;
  - (3) is currently subject to any state or provincial administrative enforcement order or judgment entered by that state's or province's securities administrator within ten years prior to the filing of the current application for registration;
  - (4) is subject to any state or provincial administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found, and the order or judgment was entered within ten years prior to the filing of the current application for registration;
  - (5) is subject to any state or provincial administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities;
  - (6) is currently subject to any order, judgment, or decree of any court of competent jurisdiction that temporarily, preliminarily, or permanently restrains or enjoins such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, or involving the making of any false filing with the state, entered within ten years prior to the filing of the current application for registration; or
  - (7) has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking or, within the past ten years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser or investment adviser representative, or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a foreign jurisdiction suspending or expelling such person from membership in such exchange or self-regulatory organization.
- (j) Waiver of disqualifications. Any of the disqualifications listed in subsection (i) of this Regulation may be waived if the Commissioner in the exercise of his discretion should find good cause for such waiver.

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

**404 Fees**

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

- (d) The fee for notice filings for covered securities under Section 18(b)(3) of the Securities Act of 1933 pursuant to Section 73-208(c) of the Act shall be one half of one percent of the maximum aggregate offering price of securities to be offered in Delaware during the initial registration period, but not less than \$200.00 or more than \$1,000.00.
- (e) The fee for notice filings for offerings pursuant to the Intrastate Crowdfunding exemption in Section 73-207(b)(15) and Rule 408 shall be \$300.00.
- (ef) All filing fees are due at the time of the initial application. No application fee is refundable even though an application may be withdrawn or denied.
- (eg) Any filing fee required by these Rules that is not paid when due shall be doubled, unless the Director waives the late payment, but in no case shall the total fee be more than the relevant statutory maximum amount.

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

**406 Notice Filings For Covered Securities Under Section 18(b)(4)(DE) of the U.S. Securities Act of 1933**

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

- (c) Form D notice filings and related fees may be filed electronically with and transmitted to the Electronic Filing Depository ("EFD"), an internet based filing service operated and developed by the North

# PROPOSED REGULATIONS

American Securities Administrators Association. Effective June 1, 2017, all such notice filings shall be submitted electronically through EFD.

- (1) Any documents or fees required to be filed with the Director that are not permitted to be filed with, or cannot be accepted by, EFD shall be filed directly with the Director.
- (2) A duly authorized person of the issuer shall affix his or her electronic signature to the Form D filing by typing his or her name in the appropriate fields and submitting the filing to the Electronic Data Gathering, Analysis and Retrieval System ("EDGAR"). Submission of a filing shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing.

## **407 Notice Filings for SEC Tier 2 Regulation A Filings**

- (a) Initial filing. An issuer planning to offer or sell securities in Delaware exempt from registration under Tier 2 of Regulation A, Rule 251(a)(2) and Section 18(b)(3) of the Securities Act of 1933, shall submit the following prior to the initial offer and/or sale:
  - (1) A completed Regulation A - Tier 2 notice filing form or copies of all documents filed with the Securities and Exchange Commission;
  - (2) A consent to service of process on Form U-2 if not filing on the Regulation A - Tier 2 notice filing form; and
  - (3) The filing fee prescribed by Section 73-208(c) and Rule 404(d).
- (b) Effective period. The initial notice filing is effective for twelve months.

## **408 Intrastate Crowdfunding**

- (a) Each issuer of securities relying on the intrastate crowdfunding exemption found in 6 Del.C. §73-207(b)(15) shall file a notice with the Investor Protection Unit pursuant to 6 Del.C. §73-207(b)(15)(h) on Form DCF. The notice must include all documentation required by Form DCF and shall be filed with the Investor Protection Unit no later than ten days prior to the first offer of securities in reliance on the exemption. Incomplete filings will be rejected. The filing fee required by Section 73-207(b)(15)(o) and Rule 404(e) shall be submitted with the filing.
- (b) Each internet site operator participating in a securities offering pursuant to the intrastate crowdfunding exemption found in 6 Del.C. §73-207(b)(15) shall register with the Investor Protection Unit by filing Form DIO, unless exempted from registration by 6 Del.C. §73-207(b)(15)(k)(2). Registrations must be received and approved prior to the internet site operator participating in a securities offering. Incomplete registrations will be rejected.

## **Part E. Exemptions from Registration (Break in Continuity of Sections)**

## **508 Recognized Securities Manuals**

- (a) Each of the following manuals shall be deemed a "Recognized Securities Manual" for the purposes of Section 73-207(b)(2) of the Act:
  - (1) Mergent's Industrial Manual
  - (2) Mergent's Transportation Manual
  - (3) Mergent's Public Utility Manual
  - (4) Mergent's Bank and Finance Manual
  - ~~(5) S&P Capital IQ Standard Corporation Descriptions~~
  - ~~(6)~~ Fitch's Individual Stock Bulletin
  - ~~(7)~~ Mergent's OTC Industrial Manual
  - (7) OTCQB Market
  - (8) OTCQX Market

- (b) The term "manual" for purposes of this rule includes all commonly recognized formats of publications, including electronically stored media and electronic dissemination over the internet.

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

**Rules Pursuant to the Delaware Securities Act**

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C. Ch. 60)  
7 DE Admin. Code 1305

**REGISTER NOTICE  
SAN # 2016-03**

**1305 Universal Recycling Regulations**

**1. TITLE OF THE REGULATIONS:**

Universal Recycling Regulations

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

The purposes of the proposed regulations are to ensure: the proper programs and collection services for recyclable materials are implemented, maintained, and consistent with the law; the collected recycled materials are diverted from landfill disposal or incineration; the recyclable materials are otherwise properly processed and enter the marketplace; recycling in Delaware can be effectively measured; and that waste diversion is maximized through the reduction of solid waste deposited in our landfills.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

No sunset date for the proposed regulations.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

Title 7 Conservation Natural Resources Chapter 60. Environmental Control Subchapter III. Solid Waste Recycling.

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

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed Universal Recycling Regulations will be open on November 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Robert.Haynes@state.de.us or via the USPS to Robert Haynes, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE. 19901, (302)739-9921. A public hearing on the proposed regulations will be held on November 21, 2016 beginning at 4:00 PM in the DNREC Auditorium, located in the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901, (302)739-9003.

**7. PREPARED BY:**

Don Long; Donald.long@state.de.us; (302) 739-9403 (x8)

\*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/november2016/proposed/20 DE Reg 353RFA 11-01-16.pdf>

### 1305 Universal Recycling Regulations

#### **1.0 Declaration of Intent**

1.1 The purposes of these regulations are to ensure the following:

1.1.1 The proper collection services for recyclable materials are implemented, maintained, and consistent with 7 Del.C. Ch. 60 Subchapter III.

1.1.2 Recyclables enter the marketplace.

1.1.3 Every residence has access to, and the commercial sector participates in, recycling programs that are both convenient and cost effective, through a comprehensive statewide system of resource recovery in which recycling is maximized and the necessary economies of scale are realized.

#### **2.0 Scope and Applicability**

2.1 Authority

2.1.1 These regulations are enacted pursuant to 7 Del.C. §6010(a).

2.1.2 These regulations shall be known as "Universal Recycling Regulations."

2.2 Applicability

2.2.1 These regulations apply to:

2.2.1.1 All persons providing municipal solid waste collection services in the State of Delaware;

2.2.1.2 All persons engaged in the collection, aggregation, transportation, processing, or marketing of source-separated recyclable materials. This includes but is not limited to all contractors, subcontractors, and those who contract for service;

2.2.1.3 Commercial sector entities required by 7 Del.C. §6053(4) to participate in comprehensive recycling; and

2.2.1.4 All property managers that are waste services providers in the single and multi-family residential and the commercial sectors.

2.3 These regulations exist in addition to Universal Recycling requirements and definitions specified in 7 Del.C. §§6051-6059.

#### **3.0 Definitions**

Notwithstanding any definitions in Chapter 60 or 64 of Title 7 or any other regulatory definitions found in the Delaware Regulations Governing Solid Waste to the contrary, the following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise.

"Commercial sector" means any for-profit or not-for-profit retail or wholesale stores, offices, food service establishments, hospitality, utility, warehouses, and other manufacturing, industrial or processing activities, and institutions such as social, charitable, educational, health care, professional and government services.

"Marketplace" means a person or persons that utilize the majority, if not all, of the recyclable materials it receives to produce a marketable product. Incinerators, landfills, and other methods of disposal are disqualified as an acceptable marketplace.

"Property manager" means the person or persons responsible for supervision, management or administration of the physical maintenance or the financial matters of real property. This includes but is not limited to the owner of the property.

"Waste services provider" means the person or persons engaged in providing solid waste collection service to the consumer. This applies to the persons or entities that arrange or contract for the service and the persons or entities that provide that service. The meaning shall be the same for 'Provider of waste service'.

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## 4.0 **General Provisions**

- 4.1 Waste services providers shall:
  - 4.1.1 Not commingle source-separated recyclables with other solid waste;
  - 4.1.2 At a minimum, provide annual notification to their customers that single stream recycling services will be provided, with instructions on participation; and<sup>1</sup>
  - 4.1.3 Provide multi-family residential customers with single stream recyclables collection containers that are located adjacent, or as close as possible, to the complex's waste disposal containers, so that recycling access is at least as convenient as waste disposal.
- 4.2 Property managers:
  - 4.2.1 In the single or multi-family residential sectors shall ensure that single stream recycling services are available for tenants in accordance with 7 Del.C. §6053;
  - 4.2.2 In the commercial sector shall ensure that single stream recycling services are available for tenants in a manner that is convenient and cost effective;
  - 4.2.3 At a minimum, provide annual notification to their tenants that single stream recycling services will be provided with instructions on participation; and<sup>1</sup>
  - 4.2.4 Are not precluded from requiring tenants to source-separate their single stream recyclable materials and place them in the appropriate recycling collection containers.
- 4.3 The commercial sector shall participate in a comprehensive recycling program. To accomplish this, all commercial sector persons shall:
  - 4.3.1 Perform an annual review of the solid waste generated and maintain records of the review for three years;
  - 4.3.2 Identify recyclables in the solid waste;
  - 4.3.3 Subsequently keep recyclables separate from the solid waste stream; and
  - 4.3.4 Ensure the recyclables enter the marketplace or are collected for recycling.
- 4.4 If a commercial sector entity has no recycling program or if they regularly have a significant portion of recyclables in their waste stream that are not source separated, they are not participating in a comprehensive recycling program and are subject to enforcement and penalties per Title 7 Chapter 60.
- 4.5 The exemption for persons who transport solid waste and recyclables from their own property as described in 7 Del.C. §6053(5) shall not include persons who act as a waste services provider to residences or tenants on their own property.

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### **DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

Statutory Authority: 7 Delaware Code, Chapter 74A; (7 Del.C. Ch. 74A)

**7 DE Admin. Code 1352**

#### **REGISTER NOTICE**

**SAN#: 2016-14**

#### **1352 Aboveground Storage Tanks**

#### **1. TITLE OF THE REGULATIONS:**

Administrative Code Section 1352, Regulations Governing Aboveground Storage Tanks

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- 1. In those instances where the property manager and the waste service provider are one and the same, only one annual notice shall be required.

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# PROPOSED REGULATIONS

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

The proposed regulations reflect changes to definitions needed to clarify technical requirements applicable to aboveground storage tank systems. The changes also clarify which version of industry-based reference standards, published by the American Petroleum Institute and other trade organizations, are applicable to aboveground storage tanks that are subject to regulation. Also proposed are minimum distances for locating new aboveground storage tanks near private and public wells that mirror those contained in the Department's Well Permitting Regulations. Lastly, the proposed changes address technical requirements associated with release reporting and corrective action needed when releases from aboveground storage tanks occur.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

There is not a sunset date related to the proposed regulations.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

The statutory basis for these regulations is Title 7 Delaware Code Chapter 74A, Section 7407A.

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

None.

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed amendments to 7 **DE Admin Code** Section 1352 Regulations Governing Aboveground Storage Tanks will be open November 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto: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 amendments will be held on December 6, 2016 beginning at 6:00 PM at the DNREC New Castle Office, 391 Lukens Drive, New Castle, DE 19720.

**7. PREPARED BY:**

Name/Phone: Alex Rittberg, 302-395-2500

Email: [Alex.Rittberg@state.de.us](mailto:Alex.Rittberg@state.de.us)

**\*Please Note:**

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

[http://regulations.delaware.gov/register/november2016/proposed/20 DE Reg 355RFA 11-01-16.pdf](http://regulations.delaware.gov/register/november2016/proposed/20%20DE%20Reg%20355RFA%2011-01-16.pdf)

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

[1352 Aboveground Storage Tanks](#)

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## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

### 1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Statutory Authority: 24 Delaware Code, Sections 1713(a)(12) and 1769D (24 **Del.C.**

§§1713(a)(12) & 1769D)

24 **DE Admin. Code** 1700

#### PUBLIC NOTICE

#### [1700 Board of Medical Licensure and Discipline](#)

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 **Del.C.** §§1713(a)(12) & 1769D,

proposes to revise its regulations adding a new regulation clarifying the language in the Medical Practice Act pertaining to telemedicine and telehealth. The Board will hold a public hearing on the proposed regulation change on January 3, 2017 at 3:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Devashree Brittingham, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 18, 2017 pursuant to 29 **Del.C.** §10118(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/november2016/proposed/20 DE Reg 356RFA 11-01-16.pdf>

**1700 Board of Medical Licensure and Discipline  
(Break in Continuity of Sections)**

**19.0 Telemedicine**

- 19.1 A remote, audio-only examination is not an "appropriate in-person examination" as that term is used in 24 Del.C. §1769D(h)(1).
- 19.2 A remote, audio-only interaction does not meet the standards of establishing a patient-physician relationship pursuant to 24 Del.C. §1769D(h)(4).
- 19.3 No opioid prescribing is permitted via telemedicine. All other controlled substance prescribing utilizing telemedicine is held to the same standards of care and requisite practice as prescribing for in-person visits.
- 19.4 For diagnosis using audio and visual communications, the audio and visual communications must be live, real-time communications.

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

**1700 Board of Medical Licensure and Discipline**

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**DIVISION OF PROFESSIONAL REGULATION  
2900 REAL ESTATE COMMISSION**

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))  
24 **DE Admin. Code** 2900

**PUBLIC NOTICE**

**2900 Real Estate Commission**

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

A public hearing will be held on December 8, 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 rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Nicole Williams, administrative specialist for the Commission, at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be December 23, 2016, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting, at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed revisions to provide that licensees are required to update their addresses with

the Division of Professional Regulation, and a licensee's failure to provide an updated address will not excuse that licensee from discipline for continuing education violations. Section 15.0 has been amended to remove crimes not related to the practice of real estate and thereby eliminate unjustified obstacles to licensure. Certain changes have been proposed in the interests of clarity.

**\*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/november2016/proposed/20 DE Reg 357RFA 11-01-16.pdf>

## 1.0 Introduction

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

- 1.5 Change of address. A Licensee shall notify the Commission of any change of address from that registered with the Commission. Such notice shall be sent to the Commission by certified mail not later than 30 days following the change of address. A Licensee's failure to notify the Commission of a change in address will not excuse the Licensee from continuing education audit requirements, including possible sanctions for non-compliance.

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

## 12.0 Reinstatement of Licenses [24 Del.C. §2910]

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

- 12.3 Subsection 12.2 does not apply to a Licensee whose license has been permanently revoked.

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

- 13.1 ~~Effective as of the license renewal period beginning May 1, 2012,~~ Licensees shall meet the following CE requirements:

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

- 13.3 At the time of renewal, the Licensee shall attest to completion of the required CE. Attestation shall be completed electronically.

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

- 13.3.9 A Licensee's failure to notify the Commission of a change in address, as required by subsection 1.5, will not excuse the Licensee from continuing education audit requirements, including possible sanctions for non-compliance.

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

## 15.0 Crimes Substantially Related to the Practice of Real Estate Services [24 Del.C. §2906(c)]

- 15.1 Conviction of any of the following crimes, or conviction of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of Real Estate Services in the State of Delaware without regard to the place of conviction:

- 15.1.1 ~~Aggravated menacing. 11 Del.C. §602(b)~~
- 15.1.2 ~~Reckless endangering in the first degree. 11 Del.C. §604~~
- 15.1.3 ~~Abuse of a pregnant female in the second degree. 11 Del.C. §605~~
- 15.1.4 ~~Abuse of a pregnant female in the first degree. 11 Del.C. §606~~
- 15.1.5 ~~Assault in the second degree. 11 Del.C. §612~~
- 15.1.6 ~~Assault in the first degree. 11 Del.C. §613.~~
- 15.1.7 ~~Assault by abuse or neglect. 11 Del.C. §615~~
- 15.1.8 ~~Gang participation. 11 Del.C. §616~~
- 15.1.9 ~~Terroristic threatening; felony. 11 Del.C. §621(a) and (b)~~

- ~~15.1.10 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626~~
- 15.1.1416 Murder by abuse or neglect in the second degree; class B felony. 11 Del.C. §633
- 15.1.1427 Murder by abuse or neglect in the first degree; class A felony. 11 Del.C. §634
- 15.1.1438 Murder in the second degree; class A felony. 11 Del.C. §635
- 15.1.1449 Murder in the first degree; class A felony. 11 Del.C. §636
- ~~15.1.15 Unlawful sexual contact in the third degree; class A misdemeanor. 11 Del.C. §767~~
- ~~15.1.16 Unlawful sexual contact in the second degree; class G felony. 11 Del.C. §768~~
- 15.1.170 Unlawful sexual contact in the first degree; class F D felony. 11 Del.C. §769
- 15.1.181 Rape in the fourth degree; class C felony. 11 Del.C. §770
- 15.1.192 Rape in the third degree; class B felony. 11 Del.C. §771
- 15.1.2013 Rape in the second degree; class B felony. 11 Del.C. §772
- 15.1.2414 Rape in the first degree; class A felony. 11 Del.C. §773
- ~~15.1.22 Sexual extortion. 11 Del.C. §776~~
- 15.1.2315 Continuous sexual abuse of a child; class B felony. 11 Del.C. §778
- 15.1.2416 Dangerous crime against a child; class B felony. 11 Del.C. §779
- ~~15.1.25 Unlawful imprisonment in the first degree. 11 Del.C. §782~~
- ~~15.1.26 Kidnapping in the second degree; class C felony. 11 Del.C. §783~~
- 15.1.217 Kidnapping in the first degree; class B felony. 11 Del.C. §783A
- ~~15.1.28 Arson in the third degree; class G felony. 11 Del.C. §801~~
- 15.1.2918 Arson in the second degree; class D felony. 11 Del.C. §802
- 15.1.3019 Arson in the first degree; class C felony. 11 Del.C. §803
- ~~15.1.31 Criminal mischief. 11 Del.C. §811~~
- ~~15.1.32 Trespassing with intent to peep or peer. 11 Del.C. §820~~
- ~~15.1.33 Burglary in the third degree. 11 Del.C. §824~~
- 15.1.3420 Burglary in the second degree; class D felony. 11 Del.C. §825
- 15.1.3521 Burglary in the first degree; class C felony; class B felony. 11 Del.C. §826
- 15.1.22 Home invasion; class B felony. 11 Del.C. §826A.
- ~~15.1.36 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828~~
- ~~15.1.37 Robbery in the second degree; class E felony. 11 Del.C. §831~~
- 15.1.3823 Robbery in the first degree; class B. 11 Del.C. §832
- 15.1.3924 Carjacking in the second degree. 11 Del.C. §835
- 15.1.4025 Carjacking in the first degree; class C felony; class B felony. 11 Del.C. §836
- ~~15.1.41 Shoplifting; felony. 11 Del.C. §840~~
- 15.1.4226 Theft; class D or B felony. 11 Del.C. §841
- 15.1.4327 Theft; lost or mislaid property; mistaken delivery. 11 Del.C. §842
- 15.1.4428 Theft; false pretense. 11 Del.C. §843
- 15.1.4529 Theft; false promise. 11 Del.C. §844
- 15.1.4630 Theft of services. 11 Del.C. §845
- 15.1.4731 Extortion; class E felony. 11 Del.C. §846
- 15.1.4832 Misapplication of property; class G felony. 11 Del.C. §848
- ~~15.1.49 Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices; felony. 11 Del.C. §850~~
- 15.1.5033 Receiving stolen property. 11 Del.C. §851
- 15.1.5434 Theft of rented property; class G felony. 11 Del.C. §849
- 15.1.5235 Identity theft; class E felony; class D felony. 11 Del.C. §854

# PROPOSED REGULATIONS

- 15.1.5336 Forgery; class F felony; class G felony. 11 **Del.C.** §861
- ~~15.1.54 Possession of forgery devices; class G felony. 11 **Del.C.** §862~~
- 15.1.5537 Falsifying business records. 11 **Del.C.** §871
- 15.1.5638 Tampering with public records in the first degree; class E felony. 11 **Del.C.** §876
- 15.1.5739 Offering a false instrument for filing. 11 **Del.C.** §877
- 15.1.5840 Issuing a false certificate; class G felony. 11 **Del.C.** §878
- 15.1.5941 Defrauding secured creditors. 11 **Del.C.** §891
- 15.1.6042 Fraud in insolvency. 11 **Del.C.** §892
- 15.1.6443 Interference with levied-upon property. 11 **Del.C.** §893
- 15.1.6244 Issuing a bad check; felony. 11 **Del.C.** §900
- 15.1.6345 Unlawful use of credit card; felony. 11 **Del.C.** §903
- 15.1.6446 Reencoder and scanning devices. 11 **Del.C.** §903A
- 15.1.6547 Deceptive business practices. 11 **Del.C.** §906
- ~~15.1.66 Criminal impersonation. 11 **Del.C.** §907~~
- ~~15.1.67 Criminal impersonation, accident related. 11 **Del.C.** §907A~~
- ~~15.1.68 Criminal impersonation of a police officer. 11 **Del.C.** §907B~~
- ~~15.1.69 Unlawfully concealing a will. 11 **Del.C.** §908~~
- 15.1.7048 Securing execution of documents by deception. 11 **Del.C.** §909
- 15.1.7449 Debt adjusting. 11 **Del.C.** §910
- 15.1.7250 Fraudulent conveyance of public lands; class G felony. 11 **Del.C.** §911
- 15.1.7351 Fraudulent receipt of public lands; class G felony. 11 **Del.C.** §912
- 15.1.7452 Insurance fraud; class G felony. 11 **Del.C.** §913
- ~~15.1.75 Health care fraud. 11 **Del.C.** §913A~~
- 15.1.7653 Home improvement fraud; class G felony. 11 **Del.C.** §916
- 15.1.7754 New home construction fraud; class C felony, class F felony, class G felony. 11 **Del.C.** §917
- ~~15.1.78 Unauthorized access. 11 **Del.C.** §932~~
- ~~15.1.79 Theft of computer services. 11 **Del.C.** §933~~
- ~~15.1.80 Interruption of computer services. 11 **Del.C.** §934~~
- ~~15.1.81 Misuse of computer system information. 11 **Del.C.** §935~~
- ~~15.1.82 Destruction of computer equipment. 11 **Del.C.** §936~~
- ~~15.1.83 Unrequested or unauthorized electronic mail or use of network or software to cause same. 11 **Del.C.** §937~~
- ~~15.1.84 Failure to promptly cease electronic communication upon request. 11 **Del.C.** §938~~
- 15.1.855 Dealing in children; class E felony. 11 **Del.C.** §1100
- 15.1.856 Endangering the welfare of a child; class E or G felony. 11 **Del.C.** §1100
- 15.1.857 Sexual exploitation of a child; class B felony. 11 **Del.C.** §1108.
- 15.1.858 Unlawfully dealing in child pornography; class D felony. 11 **Del.C.** §1109
- 15.1.859 Possession of child pornography; class F felony. 11 **Del.C.** §1111
- 15.1.960 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
- 15.1.961 Sexual solicitation of a child; class C felony. 11 **Del.C.** §1112A
- ~~15.1.92 Bribery; class E felony. 11 **Del.C.** §1201~~
- ~~15.1.93 Receiving a bribe; class E felony. 11 **Del.C.** §1203~~
- ~~15.1.94 Giving unlawful gratuities. 11 **Del.C.** §1205~~
- ~~15.1.95 Receiving unlawful gratuities. 11 **Del.C.** §1206~~
- ~~15.1.96 Improper influence. 11 **Del.C.** §1207~~
- ~~15.1.97 Official misconduct. 11 **Del.C.** §1211~~

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- 15.1.98 ~~Profiteering.~~ 11 ~~Del.C.~~ §1212
- 15.1.9962 Perjury in the second degree; class F felony. 11 **Del.C.** § 1222
- 15.1.40063 Perjury in the first degree; class D felony. 11 **Del.C.** §1223
- 15.1.40164 Making a false written statement. 11 **Del.C.** §1233
- 15.1.102 ~~Terroristic threatening of public officials or public servants; felony.~~ 11 ~~Del.C.~~ §1240
- 15.1.103 ~~Hindering prosecution; felony.~~ 11 ~~Del.C.~~ §1244
- 15.1.104 ~~Falsely reporting an incident; felony.~~ 11 ~~Del.C.~~ §1245
- 15.1.105 ~~Escape in the second degree.~~ 11 ~~Del.C.~~ §1252
- 15.1.106 ~~Escape after conviction.~~ 11 ~~Del.C.~~ §1253
- 15.1.107 ~~Promoting prison contraband; felony.~~ 11 ~~Del.C.~~ §1256
- 15.1.108 ~~Bribing a witness.~~ 11 ~~Del.C.~~ §1261
- 15.1.109 ~~Bribe receiving by a witness.~~ 11 ~~Del.C.~~ §1262
- 15.1.110 ~~Tampering with a witness.~~ 11 ~~Del.C.~~ §1263
- 15.1.111 ~~Interfering with child witness.~~ 11 ~~Del.C.~~ §1263A
- 15.1.112 ~~Bribing a juror.~~ 11 ~~Del.C.~~ §1264
- 15.1.113 ~~Bribe receiving by a juror.~~ 11 ~~Del.C.~~ §1265
- 15.1.114 ~~Tampering with a juror.~~ 11 ~~Del.C.~~ §1266
- 15.1.115 ~~Misconduct by a juror.~~ 11 ~~Del.C.~~ §1267
- 15.1.116 ~~Tampering with physical evidence; class C felony.~~ 11 ~~Del.C.~~ §1269
- 15.1.117 ~~Unlawful grand jury disclosure.~~ 11 ~~Del.C.~~ §1273
- 15.1.44865 Hate crimes; class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony. 11 **Del.C.** §1304
- 15.1.119 ~~Stalking; felony.~~ 11 ~~Del.C.~~ §1312A
- 15.1.120 ~~Violation of privacy; felony.~~ 11 ~~Del.C.~~ §1335
- 15.1.42466 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338
- 15.1.42267 Carrying a concealed deadly weapon. 11 **Del.C.** §1442
- 15.1.42368 Possessing a destructive weapon. 11 **Del.C.** §1444
- 15.1.42469 Unlawfully dealing with a dangerous weapon; felony. 11 **Del.C.** §1445
- 15.1.42570 Possession of a deadly weapon during commission of a felony; class B felony. 11 **Del.C.** §1447
- 15.1.42671 Possession of a firearm during commission of a felony; class B felony. 11 **Del.C.** §1447A
- 15.1.127 ~~Possession and purchase of deadly weapons by persons prohibited.~~ 11 ~~Del.C.~~ §1448.
- 15.1.128 ~~Giving a firearm to person prohibited.~~ 11 ~~Del.C.~~ §1454
- 15.1.129 ~~Engaging in a firearms transaction on behalf of another.~~ 11 ~~Del.C.~~ §1455
- 15.1.43072 Removing a firearm from the possession of a law enforcement officer; class C felony. 11 **Del.C.** §1458
- 15.1.43473 Organized Crime and Racketeering, Class B Felony. 11 **Del.C.** §1504
- 15.1.132 ~~Victim or Witness Intimidation~~ 11 ~~Del.C.~~ §3532 and 3533
- 15.1.133 ~~Abuse of patient or resident in nursing home; Class D felony; Class G felony; Class A felony.~~ 16 ~~Del.C.~~ §1136(a)
- 15.1.4374 Abuse of patient or resident in nursing home; Class D felony; Class G felony; Class A felony. 16 **Del.C.** §1136(a)
- 15.1.4375 Financial exploitation of residents or patients; felony. 16 **Del.C.** §1136(b)
- 15.1.4376 Drug dealing - aggravated possession; class B felony. 16 **Del.C.** §4752
- 15.1.4377 Drug dealing - aggravated possession; class C felony. 16 **Del.C.** §4753

# PROPOSED REGULATIONS

- 15.1.4378 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 ~~Del.C. §4753A~~
- 15.1.4379 Any offense under the Uniform Controlled Substances Act, Title 16 of the Delaware Code, in violation of the aggravating factors in 16 ~~Del.C. §4751A~~
- 15.1.140 Drug paraphernalia; felony. 16 ~~Del.C. §4771 (b) and (c) [manufacture and sale, delivery to a minor]~~
- 15.1.4480 Third or more conviction for driving a vehicle while under the influence or with a prohibited alcohol or drug content; felony. 21 ~~Del.C. §4177(a)~~; 21 ~~Del.C. §4177(d)(3)-(7)~~
- 15.1.44281 Attempt to evade or defeat tax. 30 ~~Del.C. §571~~
- 15.1.44382 Failure to collect or pay over tax. 30 ~~Del.C. §572~~
- 15.1.44483 Failure to file return, supply information or pay tax. 30 ~~Del.C. §573~~
- 15.1.44584 Fraud and false statements. 30 ~~Del.C. §574~~
- 15.1.146 Misdemeanors [tax related]. 30 ~~Del.C. §576~~
- 15.1.147 Obtaining benefit under false representation; felony. 31 ~~Del.C. §1003~~
- 15.1.148 Reports, statements and documents; felony. 31 ~~Del.C. §1004~~
- 15.1.149 Kickback schemes and solicitations. 31 ~~Del.C. §1005~~
- 15.1.150 Conversion of payment. 31 ~~Del.C. §1006~~
- 15.1.45185 Violations of the Securities Act. 6 ~~Del.C. §7322~~ Ch. 73
- 15.1.152 Attempt to Intimidate. 11 ~~Del.C. §3534~~
- 15.1.153 Alteration, Theft or Destruction of Will. 12 ~~Del.C. §210~~
- 15.1.45486 Financial exploitation of infirm adult; felony. 31 ~~Del.C. §3913~~
- 15.1.45587 Prohibited trade practices against infirm or elderly. 6 ~~Del.C. §2581~~
- 15.1.45688 Prohibition of intimidation [under the Fair Housing Act]; felony. 6 ~~Del.C. 9~~
- 15.1.45789 Knowing or reckless abuse of an infirm adult; Class D felony; Class E felony; Class G felony; Class A felony. 31 ~~Del.C. §3913~~
- 15.2 Crimes substantially related to the practice of Real Estate Services shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this Rule.

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

**2900 Real Estate Commission**

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## EXECUTIVE DEPARTMENT

### DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

Statutory Authority: 29 Delaware Code, Section 5053(k), (29 ~~Del.C. §5053(k)~~)  
1 DE Admin. Code 401

#### PUBLIC NOTICE

### 401 Procedures Regarding Non-State Guaranteed Bonds

The Delaware Economic Development Authority gives notice of a proposed amendment to the Procedures Governing Non-State Guaranteed Bonds. The purpose of this amendment is to provide guidelines for the review of Non-State Guaranteed bond offerings to protect the financial integrity of the State's authority to issue non-guaranteed and general obligation financing. This amendment is particularly focused on non-rated or below investment grade Non-State Guaranteed Bond offerings. The amendment will require the Secretary to consult a

qualified independent investment advisor to assess the financial viability of applications for bonds. The Chairperson will have the discretion to waive this requirement if the proposed bond offering is projected or rated above BBB- by a nationally recognized rating agency, or a bank is underwriting the offering.

The Authority does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Economic Development Office's website at: <http://dedo.delaware.gov>. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amended regulation. Any written submission in response to this notice and relevant to the proposed amended regulation must be received by the Authority no later than December 1, 2016. Any such requests should be directed to:

Amber Mudri  
Delaware Economic Development Authority  
99 King's Highway  
Dover, DE 19901  
Phone: (302) 672-6818  
Fax: (302) 739-5749  
Email: [amber.mudri@state.de.us](mailto:amber.mudri@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/november2016/proposed/20 DE Reg 362RFA 11-01-16.pdf>

## 401 Procedures Regarding Non-State Guaranteed Bonds (*Break in Continuity of Sections*)

### 4.0 Application Procedures

- 4.1 An application to the Authority for the approval of the issuance of a Bond shall be made on the application form provided by the Authority and must be completed according to the requirements stated therein. One (1) original and nine (9) copies of the completed application should be submitted to the Authority on or before the first (1st) day of the month preceding the month during which the council on Development Finance ("Council") will be asked to review an application. For example, for an application to be eligible for review by the Council at a May meeting, it should be submitted to the Authority on or before April 1.
- 4.2 The Authority shall consult a qualified independent financial advisor to assess the financial viability of Non-State Guaranteed Bond applications prior to the application being forwarded to the Council. In the event that the proposed Non-State Guaranteed Bond offering is projected or rated above BBB- by a nationally recognized rating agency, or a bank is underwriting the offering, the Chairperson may waive this requirement.

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

[401 Procedures Regarding Non-State Guaranteed Bonds](#)

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# PROPOSED REGULATIONS

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## DELAWARE ECONOMIC DEVELOPMENT OFFICE

Statutory Authority: 29 Delaware Code, Section 5053(k), (29 Del.C. §5053(k))  
1 DE Admin. Code 476, 477, & 478

### PUBLIC NOTICE

**476 Energy Alternatives Program Regulation**  
**477 Information Technology Training Grant Program Regulation**  
**478 Neighborhood Assistance Act Tax Credit Program Regulation**

The Delaware Economic Development Office (DEDO) conducted public hearings in Kent, New Castle and Sussex counties as part of the Governor's Executive Order designed to re-assess the need for the agency's regulations. Based on the public hearings and internal agency review of its regulations, DEDO proposes that Section 476 (Energy Alternatives Program Regulation); Section 477 (Information Technology Training Grant Program); and, Section 478 (Neighborhood Assistance Act Tax Credit Program) should be deleted from the administrative code because the programs do not exist or the authorizing statute has been repealed.

DEDO does not plan to hold a public hearing on the proposed amendments to be eliminated. The proposed amendments to be eliminated appear below and can also be viewed at the Delaware Economic Development Office's website at: <http://dedo.delaware.gov>. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amended regulations. Any written submission in response to this notice and relevant to the proposed amended regulations must be received by DEDO no later than December 1, 2016. Any such requests should be directed to:

Amber Mudri  
Delaware Economic Development Authority  
99 King's Highway  
Dover, DE 19901  
Phone: (302) 672-6818  
Fax: (302) 739-5749  
Email: [amber.mudri@state.de.us](mailto:amber.mudri@state.de.us)

**\*Please Note:**

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

[http://regulations.delaware.gov/register/november2016/proposed/20 DE Reg 364RFA 11-01-16.pdf](http://regulations.delaware.gov/register/november2016/proposed/20%20DE%20Reg%20364RFA%2011-01-16.pdf)

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

**476 Energy Alternatives Program Regulation**  
**477 Information Technology Training Grant Program Regulation**  
**478 Neighborhood Assistance Act Tax Credit Program Regulation**

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## 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.

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

### REGULATORY IMPLEMENTING ORDER

#### **1105 Standards for School Buses Placed in Production on or after January 1, 2017**

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

The Secretary of Education intends to create 14 **DE Admin. Code** 1105 Standards for School Buses Placed in Production on or after January 1, 2017. This regulation is being created to establish new standards for buses built after January 2017, specifically as it relates to current equipment, production and safety features.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 1, 2016, in the form hereto attached as Exhibit "A". One comment was received from Geoffrey Wolk, a sales representative of Wolfington Body (bus) Company. He suggested that the regulation allow for stainless steel mirror supports instead of the standard black metal mirror supports as these can rust as the bus ages. The Department considered the written comments and decided not to make any changes at this time. The Department believes that the proposed requirement that mirror supports be painted is more appropriate for safety reasons. Painted mirror supports reduce the chance of glare from any reflective part of the bus, and thus may be safer than stainless steel.

#### **II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 1105 Standards for School Buses Placed in Production on or after January 1, 2017 in order to establish new standards for buses built after January 2017, specifically as it relates to current equipment, production and safety features.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 1105 Standards for School Buses Placed in Production on or after January 1, 2017. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1105 Standards for School Buses Placed in Production on or after January 1, 2017 attached hereto as Exhibit "B" is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1105 Standards for School Buses Placed in Production on or after January 1, 2017 hereby created shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1105 Standards for School Buses Placed in Production on or after January 1, 2017 created hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1105 Standards for School Buses Placed in Production on or after January 1, 2017 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 October 13, 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 14<sup>th</sup> day of October 2016.

### Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 14<sup>th</sup> day of October 2016

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2016 issue of the *Register* at page 141 (20 DE Reg. 141). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1105 Standards for School Buses Placed in Production on or after January 1, 2017**

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### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))  
14 **DE Admin. Code** 1562

## REGULATORY IMPLEMENTING ORDER

### 1562 English to Speakers of Other Languages (ESOL) Teacher

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1562 Teacher of English Learners. The proposed regulation adds a non-regulatory note concerning the passage of an examination of content knowledge, amends the title to accord with current terminology used in the education field, clarifies the additional requirements to obtain the certificate under section 4.0, and adds section 5.0, which recognizes a Standard Certificate English to Speakers of Other Languages (ESOL) issued before January 1, 2017.

Notice of the proposed regulation was published in the *Register of Regulations* on September 1, 2016 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation

were invited to do so in writing by October 3, 2016. The Professional Standards Board did not receive written comments. On October 6, 2016, the Professional Standards Board made non-substantive changes to the title to accord with current terminology used by the United States Department of Education and to clarify the proposed amendments to section 4.0. The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

On October 6, 2016, the Professional Standards Board signed an order, in the form attached hereto as Exhibit "B", proposing to amend 14 **DE Admin. Code** 1562 Teacher of English Learners subject to the approval of the State Board of Education.

## II. FINDINGS OF FACT

The Professional Standards Board finds that it is appropriate to amend 14 **DE Admin. Code** 1562 Teacher of English Learners to add a non-regulatory note concerning the passage of an examination of content knowledge, amend the title to accord with current terminology used by the United States Department of Education, clarify the additional requirements to obtain the certificate under subsection 4.0, and add subsection 5.0, which recognizes a Standard Certificate English to Speakers of Other Languages (ESOL) issued before January 1, 2017.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1562 Teacher of English Learners.

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

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1562 Teacher of English Learners amended hereby shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1562 Teacher of English Learners in the Administrative Code.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Professional Standards Board pursuant to 14 **Del.C.** §1203 on October 6, 2016 and by the State Board of Education on October 13, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 6<sup>th</sup> day of October, 2016 by the Professional Standards Board.

Byron Murphy, Chairman

Diane Albanese (absent)

Amber Augustus

Gerald Allen

Jennifer Burton

Stephanie DeWitt

Nelia Dolan

Dr. Laura Glass

David Kohan, Vice Chairman

Dr. Darren T. Guido

Rosaria Macera

Darlene O'Neill

Mary Pinkston

Dr. Stephanie Smith (absent)

Sue Smith

**IT IS SO ORDERED** the 13<sup>th</sup> day of October, 2016.

**Department of Education**

Steven H. Godowsky, Secretary of Education

Approved this 13<sup>th</sup> day of October, 2016 by the State Board of Education.

Teri Quinn Gray, Ph.D., President

G. Patrick Heffernan

Nina L. Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

**1562 ~~English to Speakers of Other Languages (ESOL) Teacher~~ Teacher of English [Language] Learners**

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 it is required by the Professional Standards Board, in consultation with the Department, and with the approval of the State Board of Education. See the Department of Education's 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 ~~English to Speakers of Other Languages (ESOL) Teacher~~ Teacher of English [Language] Learners. This certification is required for grades K to 12.
- 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[s] and term[s], when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
 

~~"Nationally recognized equivalent examination" means a standardized test which measures knowledge in a specific content area that is nationally recognized as having at a minimum the same rigor and reliability as a Praxis II examination.~~

"**Passing score**" means a minimum score as established by the Standards Board, in consultation with the Department and with the ~~concurrence~~ approval of the State Board.

**3.0 Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an ~~English to Speakers of Other Languages (ESOL) Teacher~~ Teacher of English [Language] Learners 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**

An educator must also have met the following:

- 4.1 ~~Demonstrated oral and written proficiency in English by having completed the following:~~
  - 4.1.1 ~~Achieved a passing score on an oral proficiency examination in English; and~~
  - 4.1.2 ~~Achieved a passing score on a written proficiency examination in English; and~~
  - 4.1.3 ~~The written proficiency and oral proficiency examinations required may be a Praxis II examination if applicable and available or as specified in section 4.2.~~

- 4.2 ~~If an examination of content knowledge such as Praxis II is not applicable and available for the Standard Certificate requested, an educator must also meet the following:~~
- 4.2.1 ~~Where no PRAXIS II examination is applicable and available, nationally recognized equivalent examinations may be substituted. The applicant shall achieve a passing score on the examination as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board.~~
  - 4.2.2 ~~For the purposes of this regulation, the following test shall be accepted as a nationally recognized equivalent examination: the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview and the ACTFL Writing proficient test.~~
    - 4.2.2.1 ~~For purposes of this regulation the following shall be considered a passing score:~~
      - 4.2.2.1.1 ~~For tests of English, candidates are required to achieve as a minimum score an Advanced Low level of the oral skills and an Advanced Low level on the writing skills based on the ACTFL Proficiency Guidelines.~~
- 4.3 ~~If the educator is applying for their first Standard certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5.1 the required 15 credits or their equivalent in professional development required in 14 **DE Admin. Code** 3.1.5.1 that must be satisfactory completed for this standard certificate must at a minimum include the following areas;~~
- 4.3.1 ~~Methods of Teaching English as a Second Language (3 credits);~~
  - 4.3.2 ~~Second Language Acquisition (3 credits);~~
  - 4.3.3 ~~Teaching Literacy for English Language Learners (3 credits);~~
  - 4.3.4 ~~Second Language Testing (3 credits);~~
  - 4.3.5 ~~Structure of the English Language (3 credits);~~
- 4.4 ~~If the educator is applying for their second standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the areas of;~~
- 4.4.1 ~~Methods of Teaching English as a Second Language (3 credits);~~
  - 4.4.2 ~~Second Language Acquisition (3 credits);~~
  - 4.4.3 ~~Teaching Literacy for English Language Learners (3 credits);~~
  - 4.4.4 ~~Second Language Testing (3 credits);~~
  - 4.4.5 ~~Structure of the English Language (3 credits);~~
- 4.1 An educator shall also have satisfied each of the following requirements:
- 4.1.1 Demonstrated oral and written proficiency in English by [either]:
    - 4.1.1.1 Completion of a bachelor's, master's, or doctoral degree from a regionally accredited college or university that is located in the United States or in a permanently inhabited territory of the United States; or
    - 4.1.1.2 Achieving a minimum level of Advanced Mid based on the American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines on the ACTFL Oral Proficiency Interview (OPI) in English and the ACTFL Writing Proficiency Test (WPT) in English; and
  - ~~4.1.2 Holding a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent in Teaching English Language Learners from a program approved or recognized as provided in subsection 4.1.2.1; or~~
    - ~~4.1.2.1 Required Program Approval or Recognition~~
      - ~~4.1.2.1.1 National Council for the Accreditation of Teacher Education (NCATE) recognized educator preparation program; or~~
      - ~~4.1.2.1.2 The Council for the Accreditation of Educator Preparation (CAEP) specialty organization recognized educator preparation program; or~~
      - ~~4.1.2.1.3 State approved educator preparation program where the State approval body employed the appropriate standards.~~

# FINAL REGULATIONS

**~~4.1.3 Completion of a minimum of fifteen (15) credits or the equivalent thereof in professional development as approved by the Department, with a focus in students who are English Language Learners in the following content areas:~~**

~~4.1.3.1 Methods of Teaching English as a Second Language (3 credits);~~

~~4.1.3.2 Second Language Acquisition (3 credits);~~

~~4.1.3.3 Teaching Literacy for English Language Learners (3 credits);~~

~~4.1.3.4 Second Language Testing (3 credits); and~~

~~4.1.3.5 Structure of the English Language (3 credits).~~

**4.1.2 Completion of either:**

**4.1.2.1** A bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent in Teaching English Learners from an educator preparation program approved or recognized by National Council for the Accreditation of Teacher Education (NCATE), the Council for Accreditation of Educator Preparation (CAEP), or a state where a state approval body employed the appropriate standards; or

**4.1.2.2** A minimum of fifteen (15) credits or the equivalent thereof in professional development as approved by the Department in the following content areas:

**4.1.2.2.1** Methods of Teaching English as a Second Language (3 credits);

**4.1.2.2.2** Second Language Acquisition (3 credits);

**4.1.2.2.3** Teaching Literacy for English Learners (3 credits);

**4.1.2.2.4** Second Language Testing (3 credits); and

**4.1.2.2.5** Structure of the English Language (3 credits).]

**5.0 Past Certification Recognized**

The Department shall recognize a Standard Certificate English to Speakers of Other Languages (ESOL) Teacher issued before January 1, 2017. A teacher holding such a Standard Certificate issued by the Department before January 1, 2017 shall be considered certified as ~~[an English to Speakers of Other Languages (ESOL) Teacher a Teacher of English Learners]~~.

**6.0 Effective Date**

This regulation shall be effective on January 1, 2017.

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

Statutory Authority: 29 Delaware Code, Sections 4805(a) and 10003 (29 **Del.C.** §§4805(a) and 10003)  
10 **DE Admin. Code** 202

**ORDER**

**202 Delaware Lottery Rules and Regulations**

**Policies and Procedures Regarding FOIA Requests**

AND NOW, this 1st day of November, 2016, in accordance with 29 **Del. C.** §§4805(a) and 10003, and for the reasons stated below, this ORDER is adopted to amend Section 28 of the Office of the State Lottery's regulations on the policies and procedures regarding Delaware Freedom of Information (FOIA) requests as set forth in its existing regulations, 10 **DE Admin. Code** 202-28.0.

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## NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, which directed each executive branch agency to implement and promulgate uniform Freedom of Information Act policies that are substantially compliant with the form attached to the Executive Order. On December 1, 2011, the Secretary of the Department of Finance issued a final order which promulgated regulations setting forth the policies and procedures regarding FOIA requests. Under 29 **Del.C.** §4802, the State Lottery Office exists as part of the Department of Finance. Hence, the regulations issued by the Department of Finance provide the FOIA policies and procedures for the Office of the State Lottery.

Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

In order to comply with 29 **Del. C.** §10003, and based on the authority of the Director of the Office of the State Lottery to make non-substantive changes to regulations to make them consistent with changes in law, the Director is adopting final changes to its regulations governing the policies and procedures regarding FOIA requests. Pursuant to 29 **Del.C.** §10113(b)(5), such changes are exempt from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

The Office of the State Lottery follows the FOIA policy and procedures set forth in 8 **DE Admin. Code** 500. Hence, Section 28 of 10 **DE Admin. Code** 202 is hereby amended to rescind and remove Section 28 in its entirety.

## DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Office of the State Lottery does hereby ORDER that the regulations be, and that they hereby are, amended as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Vernon A. Kirk, Director  
Office of the State Lottery

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

**202 Delaware Lottery Rules and Regulations**

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 519 and 520 (18 **Del.C.** §§311, 519 & 520)  
18 **DE Admin. Code** 304

### ORDER

#### **304 Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition**

Proposed amended Regulation 304 relating to Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition [Formerly Regulation 70] was published in the Delaware *Register of Regulations* on September 1, 2016. The comment period remained open until October 3, 2016. There was no public hearing on proposed amended Regulation 304. Public notice of the proposed amended Regulation 304 was published in the *Register of Regulations* in conformity with Delaware law.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were not received on the proposed amended Regulation 304. No changes were made to the

proposed amended Regulation 304.

#### 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, 519, 520, 5901 and 5905 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 304 best serve the interests of the public and of insurers and comply with Delaware law.

#### DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §§311, 519, 520, 5901 and 5905; and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 304 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 304 last appeared in the *Register of Regulations* Vol. 20, Issue 3, pages 146-149.

IT IS SO ORDERED this 1<sup>st</sup> day of November, 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 September 2016 issue of the *Register* at page 146 (20 DE Reg. 146). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**304 Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition**

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#### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 333, 3371, and 3571S (18 **Del.C.** §§311, 333, 3371 & 3571S)  
18 DE Admin. Code 1313

#### ORDER

#### 1313 Arbitration of Health Insurance Disputes Between Carriers and Providers

Proposed amended Regulation 1313 relating to Arbitration of Health Insurance Disputes Between Carriers and Providers was published in the Delaware *Register of Regulations* on September 1, 2016. The comment period remained open until October 3, 2016. There was no public hearing on proposed amended Regulation 1313. Public notice of the proposed amended Regulation 1313 was 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 1313 from:

- Letter received from Peter J. Shanley, Esquire, on behalf of his clients Emergency Medicine Coalition of Delaware (EMCODE) and the Delaware Chapter of the American College of Emergency Physicians (Delaware ACEP).

The collective comments were reviewed and considered, with an additional amendment being suggested. Changes were made to the proposed amended Regulation 1313 by adding a new subsection 9.1.3 that clarifies arbitrations involving emergency care services are already governed by Administrative Code 1316; and those changes are not substantive.

## 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, 333, 3371 and 3571S 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 1313 best serve the interests of the public and of insurers and comply with Delaware law.

## DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §§311, 333, 3371 and 3571S; and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 1313 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 1313 last appeared in the *Register of Regulations* Vol. 20, Issue 3, pages 150-154.

IT IS SO ORDERED this 1<sup>st</sup> day of November, 2016.

Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

### 1313 Arbitration of Health Insurance Disputes Between Carriers and Providers (*Break in Continuity of Sections*)

#### **9.0 Additional Provisions for Arbitrations Conducted Pursuant to 18 Del.C. §§3371 and 3571S**

**9.1** Arbitrations conducted pursuant to 18 **Del.C.** §§3371 and 3571S shall reflect the objectives of those statutory provisions of protecting consumers from surprise bills and not creating incentives for providers to be out-of-network.

**9.1.1** In addition to any other documentation required by this regulation, the parties to these arbitrations may present documentation or arguments during arbitration regarding how a particular award or request for reimbursement may incentivize providers to become out-of-network providers, and the Arbitrator shall consider such documentation and/or arguments in rendering a final decision.

**9.1.2** Notwithstanding anything herein to the contrary, an arbitration award in favor of a provider that exceeds the opposing carrier's in-network reimbursement rate shall not be considered prima facie evidence of an incentive for providers to be out-of-network.

**[9.1.3** **The provisions of this Regulation 1313 shall not apply to arbitration which is subject to Regulation 1316 as authorized in 18 Del.C. §3349(b) and 18 Del.C. §3565(b).]**

\*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2016 issue of the *Register* at page 150 (20 DE Reg. 150). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1313 Arbitration of Health Insurance Disputes Between Carriers and Providers**

# FINAL REGULATIONS

## 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

Secretary's Order No.: 2016-W-0042

### 7301 Regulations Governing the Construction and Use of Wells

Date of Issuance: October 17, 2016

Effective Date of the Amendment: November 11, 2016

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 29 **Del.C.** §10113(b)(4), DNREC has revised Section 7301 of Title 7 of the Delaware Administrative Code to correct the technical errors found after the final adoption of this regulation (as set forth previously in Secretary's Order No. 2016-W-0033).

#### Findings of Fact

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

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

#### Decision and Order Concerning the Regulation

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, the Secretary of the Delaware Department of Natural Resources and Environmental Control does hereby ORDER that the revisions to 7 **DE Admin. Code** §7301: *Regulations Governing the Construction and Use of Wells*, be adopted and promulgated as follows, to wit:

1. Section 3.4 shall be corrected to reflect the proper reference to Section "3.1" instead of "3.1.2"; and
2. Section 5.8.3 shall be corrected to add the word "within" immediately following the word "grouted", so that the section reads: "All wells shall be grouted within 24 hours after the casing has been set."

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

David S. Small, Secretary

### 7301 Regulations Governing the Construction and Use of Wells (Break in Continuity of Sections)

#### 3.0 General Permitting Requirements And Procedures

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

- 3.4 Permit Preparers. All well permit applications shall be prepared and submitted by a Delaware licensed well driller or driver pursuant to subsection ~~3.4.2~~ 3.1.

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

#### 5.0 Well Construction Standards

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

- 5.8 Well Grouting

*(Break in Continuity Within Section)*

5.8.3 All wells shall be grouted within 24 hours after the casing has been set.

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

**7301 Regulations Governing the Construction and Use of Wells**

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**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION  
300 BOARD OF ARCHITECTS**

Statutory Authority: 24 Delaware Code, Section 306(a)(1) (24 **Del.C.** §306(a)(1))  
24 **DE Admin. Code** 300

**ORDER**

**300 Board of Architects**

The Delaware Board of Architects pursuant to 24 **Del.C.** §306(a)(1), proposed to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with current law and remove outdated and inconsistent provisions.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Following publication in the Delaware *Register of Regulations* on June 1, 2016 a public hearing was held on July 6, 2016. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*.

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

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

**Board Exhibit 2** – Affidavit of publication of the public hearing notice in the *Delaware State News*;

There was no verbal testimony given at the public hearing on July 6, 2016. No written comments were received by the Board during the initial thirty-day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

**FINDINGS OF FACT AND CONCLUSIONS**

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

2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.

3. Pursuant to 24 **Del.C.** §306(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The proposed changes seek to bring the regulations into conformity with current law and remove outdated and inconsistent provisions. For example, the proposed changes eliminate unnecessary definitions; update the regulations pertaining to reciprocity and training in order to be consistent with recent changes in the statute pertaining to the same; changes the date of renewal from July 31st to January 31st; updates the language on the seal; and adds several drug crimes to the list of crimes related to the practice of architecture.

5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.

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

# FINAL REGULATIONS

## DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* on November 1, 2016.

**IT IS SO ORDERED** this 7<sup>th</sup> day of September, 2016 by the Delaware Board of Architects.

Kevin W. Wilson, President	Paul Guggenberger, RA, Secretary (absent)
Daniel Ridgely, RA	Donnell McNair, Public Member (absent)
Robert Maffia, RA	Todd Breck, RA
Elizabeth Happoldt, Public Member (absent)	Rosemarie Vanderhoogt, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2016 issue of the *Register* at page 1067 (19 DE Reg. 1067). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**300 Board of Architects**

### DIVISION OF PROFESSIONAL REGULATION

### 3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

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

### ORDER

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

### NATURE AND STAGE OF THE PROCEEDINGS

On July 1, 2016, the Delaware Board of Mental Health and Chemical Dependency Professionals published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 20, Issue 1. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on August 24, 2016 at a regularly scheduled meeting of the Delaware Board of Mental Health and Chemical Dependency Professionals to receive verbal comments regarding the Board's proposed amendments to its regulations.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

**Board Exhibit 1** - Affidavit of publication of the public hearing notice in the *News Journal*; and  
**Board Exhibit 2** - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on August 24, 2016. No written comments were received by the Board during the initial thirty-day public comment period; one public comment was submitted following the hearing in support of the proposed regulations during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

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## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the first written public comment period, or the public hearing. There was one public comment submitted following the hearing that supported the regulations as proposed.
3. Pursuant to 24 **Del.C.** §3006(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes seek to eliminate confusing provisions related to acceptable continuing education credits and amend the list of crimes substantially related to the practice of counseling.
5. The Board finds no reason to amend the regulations as proposed.

## DECISION AND EFFECTIVE DATE

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A.

**SO ORDERED** this 28<sup>th</sup> day of September, 2016.

**BY THE DELAWARE BOARD OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS**

Dr. Gregg Drevno, LPCMH (President)	Irvin Bowers, Public Member (Vice President)
Dr. Rosemary Madl-Young, LCDP, (Secretary)	Daniel Cooper, LPCMH
James Elder, LCDP	Ruth Banta, Public Member
Dr. Julius Mullen, LPCMH	Elizabeth Vassas, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the July 2016 issue of the *Register* at page 25 (20 DE Reg. 25). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**Proposed Amendment to the DDDS HCBS Waiver to Create the Lifespan Waiver****HOME AND COMMUNITY-BASED SERVICES WAIVER AMENDMENT**

In accordance with the public notice requirements of 42 CFR 441.304(e) and (f) and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives notice related to an amendment to the DDDS HCBS Medicaid Waiver authorized under section 1915(c) of the Social Security Act.

**Purpose**

The purpose of this posting is to provide public notice and elicit public input regarding Delaware's proposed amendment to its current HCBS Waiver that serves individuals with intellectual and developmental disabilities (IDD) to create the Lifespan Waiver.

**Overview and Summary of Proposed Lifespan Waiver Amendment**

Delaware proposes to amend the 1915(c) DDDS Waiver to change the criteria for prioritizing entry into the waiver and to increase the waiver enrollment limits to include people with IDD living at home with their family. The amended waiver will be called the "Lifespan Waiver." Delaware also proposes to add new family support services designed to meet the needs of individuals living with their family to the current menu of waiver services. New services to be added to current waiver are:

- community living support (includes respite and other types of personal care) which includes a self-directed option
- home and vehicle modifications
- assistive technology
- specialized equipment and supplies

All the services Delaware proposes adding to the current waiver are compliant with the CMS HCBS Rule. The current waiver services are covered under Delaware Statewide Transition Plan for the CMS Settings Rule that recently received initial approval from CMS. Delaware renames the "DDDS Waiver" to the "DDDS Lifespan Waiver" to reflect the continuum of waiver enrollment across the lifespan of the recipients.

The source of funds for the state share of the cost of this amendment will be state funds that are already appropriated to DDDS and to DMMA and that are currently being spent on services for this population. There will be no additional cost to the general fund for this amendment if it is approved by CMS.

**Background**

The Epilogue of the FY15 and 16 Budget Acts directed DDDS to plan for a "Family Support Waiver". During the planning phase, DDDS determined that it would be more efficient to amend the current DDDS HCBS Waiver to increase the enrollment cap and to add services targeted to individuals living in the family home rather than to create a new stand-alone waiver application.

**Public Comment Submission Process**

As required by 42 CFR Part 441.304, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the waiver. Per Del. Code, Title 29, Ch. 101 §10118 (a), 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*. The opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing when 1 or more public hearings are held on the proposal. The public is invited to review and

comment on the proposed Lifespan Waiver Amendment. Comments must be received by 4:30 p.m. on December 19, 2016. Comments may be submitted in the following ways:

This public notice, the Amendment, and a summary of the Amendment are posted online at:

<http://www.dhss.delaware.gov/dhss/dmma/>

and

<http://dhss.delaware.gov/dhss/ddds/index.html>

The DDDS website will indicate the locations at which the hardcopy can be viewed.

Individuals may submit written comments using one or all of the following methods:

By email: **DMMA\_PublicHearing@state.de.us**

(Please identify in the subject line: *DDDS Lifespan Waiver Amendment*)

By fax: 302-255-4481 to the attention of Glyne Williams

By written comments sent to:

DDDS Lifespan Waiver Amendment

Division of Medicaid and Medical Assistance

Planning, Policy & Quality Unit

1901 North DuPont Highway

P.O. Box 906

New Castle, Delaware 19720-0906

The hardcopy waiver amendment will be available at the following locations from November 1 - December 19, 2016:

- DDDS Fox Run Office at: 2540 Wrangle Hill Road, Suite 200, Bear, DE 19701
- Thomas Collins Building at: 540 South Dupont Hwy, 1<sup>st</sup> Floor, Dover, DE 19901
- At the Woodbrook Office at: 1056 S. Governors Ave, Dover, DE 19904
- On the Stockley Center campus at: 26351 Patriots Way, Georgetown, DE 19947 - 101 Lloyd Lane and 101 Boyd Blvd.

## Public Hearings

**Notice will be published regarding the amendment in the November 1, 2016 Delaware Register of Regulations. The comment period begins on November 1, 2016 and ends on December 19, 2016.**

This timeframe allows an additional period of 15 days for the public to comment after the last public meeting.

The public will have the opportunity to comment using the process described in the *Register* notice.

Following the comment period, the State reviews, considers, and responds to all comments received.

## Dates and Locations for Public Meetings for the Lifespan Waiver Amendment

### 1. **NEW CASTLE COUNTY**

**Monday, November 28, 2016, 6-7PM**

Fox Run Large Training Conference Room 2nd floor

2540 Wrangle Hill road

Suite 200

Bear, DE 19701

### 2. **Sussex County**

**Tuesday November 29, 2016, 1-2 pm**

Thurman Adams State Service Center Conference Room 100

544 South Bedford Street  
Georgetown, DE 19947

3. **KENT COUNTY**

**Wednesday, November 30, 2016, 3-4 pm**  
Dover Public Library Multi-Purpose Room A  
15 Loockerman Plaza  
Dover, DE 19901

Any public feedback received will be summarized including any changes that will be made as a result of the public comment to the proposed Lifespan Waiver Amendment that will be submitted to CMS.

If you require special assistance or auxiliary aids and/or services to participate in the public hearing (e.g., sign language or wheelchair accessibility), please call or e-mail the following contact at least ten (10) days prior to the hearing for arrangements: Lauren Gunton at (302) 255-9561; [lauren.gunton@state.de.us](mailto:lauren.gunton@state.de.us)

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

Stephen M. Groff, Director  
Division of Medicaid and Medical Assistance  
10/5/2016

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**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing on **Wednesday, November 9, 2016** beginning at **1:30 p.m.** A business meeting will be held the following month on **Wednesday, December 14, 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](http://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](mailto:pamela.bush@drbc.nj.gov).

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**DEPARTMENT OF EDUCATION****PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, November 17, 2016 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Patient Pay Calculation for Division of Developmental Disabilities Services (DDDS) Waiver Recipients**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend, to revise and update, specifically, *to the Delaware Social Services Manual (DSSM)*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Kimberly.xavier@state.de.us](mailto:Kimberly.xavier@state.de.us), or by fax to 302-255-4425 by December 1, 2016. Please identify in the subject line: DDDS Waiver - Patient Pay.

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

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Pharmaceutical Services – Reimbursement of Covered Outpatient Drugs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Pharmaceutical Services, specifically, *to clarify reimbursement methodology for covered outpatient drugs*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Kimberly.Xavier@state.de.us](mailto:Kimberly.Xavier@state.de.us), or by fax to 302-255-4425 by December 1, 2016. Please identify in the subject line: Pharmaceutical Services - Reimbursement of Covered Out-Patient Drugs

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

by other interested persons.

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**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE**  
**4205 Vital Statistics**

Office of Vital Statistics (OVS), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Vital Statistics (4205). The regulations are being revised to accommodate changes to the gender listed on an individual's birth certificate. On November 1, 2016, OVS plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the November 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 Monday, December 12, 2016, at:

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

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**DELAWARE HEALTH CARE COMMISSION**  
**DELAWARE HEALTH RESOURCES BOARD**  
**PUBLIC NOTICE**  
**Delaware Health Resources Management Plan**

The Delaware Health Resources Board (DHRB) pursuant to Title 16 Chapter 93 of the Delaware Code proposes to revise its Health Resources Management Plan (HRMP) regulation 16 **Del.C.** §9303(d)(1). The purpose of the plan is to establish the core set of common review considerations for use in reviewing Certificate of Public Review (CPR) applications. The proposed amendment seeks to clarify detail and fully update the edition of the HRMP to promote alignment with Delaware's existing statewide policy aimed at improving health outcomes, health care quality and patient experience, lowering growth in per capital health care costs and enhancing provider satisfaction. As per recommendations of Joint Sunset Committee in 2012, this is the first full document revision of the HRMP.

The board will hold a public hearing on the proposed HRMP amendment on December 5, 2016 at 1:00 p.m. at Delaware Technical Community College Terry Campus, Corporate Training Center, Rooms 400 A and B, 100 Campus Drive, Dover DE. Written comments should be sent to Latoya Wright, Staff to the DHRB at Delaware Health Care Commission, 410 Federal Street, Suite 7, Margaret O'Neill Building, Third Floor, Dover, DE 19901. Written comments will be accepted until January 5, 2017.

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**DEPARTMENT OF JUSTICE**  
**FRAUD AND CONSUMER PROTECTION DIVISION**  
**INVESTOR PROTECTION UNIT**  
**PUBLIC NOTICE**  
**Rules Pursuant to the Delaware Securities Act**

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and section 73-102(b) of Title 6 of the Delaware Code, the Investor Protection Unit of the Delaware Department of Justice ("the Unit") hereby publishes notice of a proposed revision to the Rules Pursuant to the

Delaware Securities Act.

Persons wishing to comment on the proposed revision may submit their comments in writing to:

Gregory C. Strong  
Investor Protection Director  
Department of Justice, Investor Protection Unit  
State Office Building, 5th Floor  
820 N. French Street  
Wilmington, DE 19801

The comment period on the proposed revision will be held open for a period of thirty days from the date of the publication of this notice in the Delaware *Register of Regulations*.

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

#### **PUBLIC NOTICE**

#### **1305 Universal Recycling Regulations**

The purposes of the proposed regulations are to ensure: the proper programs and collection services for recyclable materials are implemented, maintained, and consistent with the law; the collected recycled materials are diverted from landfill disposal or incineration; the recyclable materials are otherwise properly processed and enter the marketplace; recycling in Delaware can be effectively measured; and that waste diversion is maximized through the reduction of solid waste deposited in our landfills.

The hearing record on the proposed Universal Recycling Regulations will be open on November 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to [Robert.Haynes@state.de.us](mailto:Robert.Haynes@state.de.us) or via the USPS to Robert Haynes, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE. 19901, (302)739-9921. A public hearing on the proposed regulations will be held on November 21, 2016 beginning at 4:00 PM in the DNREC Auditorium, located in the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901, (302)739-9003.

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### **DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

#### **PUBLIC NOTICE**

#### **1352 Aboveground Storage Tanks**

The proposed regulations reflect changes to definitions needed to clarify technical requirements applicable to aboveground storage tank systems. The changes also clarify which version of industry-based reference standards, published by the American Petroleum Institute and other trade organizations, are applicable to aboveground storage tanks that are subject to regulation. Also proposed are minimum distances for locating new aboveground storage tanks near private and public wells that mirror those contained in the Department's Well Permitting Regulations. Lastly, the proposed changes address technical requirements associated with release reporting and corrective action needed when releases from aboveground storage tanks occur.

The hearing record on the proposed amendments to 7 **DE Admin Code** Section 1352 Regulations Governing Aboveground Storage Tanks will be open November 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto: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 amendments will be held on December 6, 2016 beginning at 6:00 PM at the DNREC New Castle Office, 391 Lukens Drive, New Castle, DE 19720.

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**CALENDAR OF EVENTS/HEARING NOTICES**

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE**  
**PUBLIC NOTICE**

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 **Del.C.** §§1713(a)(12) & 1769D, proposes to revise its regulations adding a new regulation clarifying the language in the Medical Practice Act pertaining to telemedicine and telehealth. The Board will hold a public hearing on the proposed regulation change on January 3, 2017 at 3:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Devashree Brittingham, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 18, 2017 pursuant to 29 **Del.C.** §10118(a).

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**DIVISION OF PROFESSIONAL REGULATION**  
**2900 REAL ESTATE COMMISSION**  
**PUBLIC NOTICE**

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

A public hearing will be held on December 8, 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 rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Nicole Williams, administrative specialist for the Commission, at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be December 23, 2016, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting, at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed revisions to provide that licensees are required to update their addresses with the Division of Professional Regulation, and a licensee's failure to provide an updated address will not excuse that licensee from discipline for continuing education violations. Section 15.0 has been amended to remove crimes not related to the practice of real estate and thereby eliminate unjustified obstacles to licensure. Certain changes have been proposed in the interests of clarity.

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**EXECUTIVE DEPARTMENT**  
**DELAWARE ECONOMIC DEVELOPMENT AUTHORITY**  
**PUBLIC NOTICE**

**401 Procedures Regarding Non-State Guaranteed Bonds**

The Delaware Economic Development Authority gives notice of a proposed amendment to the Procedures Governing Non-State Guaranteed Bonds. The purpose of this amendment is to provide guidelines for the review of Non-State Guaranteed bond offerings to protect the financial integrity of the State's authority to issue non-guaranteed and general obligation financing. This amendment is particularly focused on non-rated or below investment grade Non-State Guaranteed Bond offerings. The amendment will require the Secretary to consult a qualified independent investment advisor to assess the financial viability of applications for bonds. The Chairperson will have the discretion to waive this requirement if the proposed bond offering is projected or rated above BBB- by a nationally recognized rating agency, or a bank is underwriting the offering.

The Authority does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Economic Development Office's website at: <http://dedo.delaware.gov>. Any person can file written comments, suggestions, briefs, and compilations

of data or other materials concerning the proposed amended regulation. Any written submission in response to this notice and relevant to the proposed amended regulation must be received by the Authority no later than December 1, 2016. Any such requests should be directed to:

Amber Mudri  
Delaware Economic Development Authority  
99 King's Highway  
Dover, DE 19901  
Phone: (302) 672-6818  
Fax: (302) 739-5749  
Email: amber.mudri@state.de.us

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**DELAWARE ECONOMIC DEVELOPMENT OFFICE****PUBLIC NOTICE****476 Energy Alternatives Program Regulation  
477 Information Technology Training Grant Program Regulation  
478 Neighborhood Assistance Act Tax Credit Program Regulation**

The Delaware Economic Development Office (DEDO) conducted public hearings in Kent, New Castle and Sussex counties as part of the Governor's Executive Order designed to re-assess the need for the agency's regulations. Based on the public hearings and internal agency review of its regulations, DEDO proposes that Section 476 (Energy Alternatives Program Regulation); Section 477 (Information Technology Training Grant Program); and, Section 478 (Neighborhood Assistance Act Tax Credit Program) should be deleted from the administrative code because the programs do not exist or the authorizing statute has been repealed.

DEDO does not plan to hold a public hearing on the proposed amendments to be eliminated. The proposed amendments to be eliminated appear below and can also be viewed at the Delaware Economic Development Office's website at: <http://dedo.delaware.gov>. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amended regulations. Any written submission in response to this notice and relevant to the proposed amended regulations must be received by DEDO no later than December 1, 2016. Any such requests should be directed to:

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Dover, DE 19901  
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