

---

# Delaware Register of Regulations

---

Issue Date: November 1, 2018

Volume 22 - Issue 5, Pages 318 - 423

---



## IN THIS ISSUE:

Regulations:  
Emergency  
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, 2018.

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

319

## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

## CITATION TO THE DELAWARE REGISTER

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

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

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

---

## SUBSCRIPTION INFORMATION

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

---

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

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

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

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

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

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

---

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

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

---

## DIVISION OF RESEARCH STAFF

**Lori Christiansen**, Director; **Mark J. Cutrona**, Deputy Director; **Bethany Fiske**, Assistant Registrar of Regulations; **Deborah Gottschalk**, Legislative Attorney; **Robert Lupo**, Graphics and Printing Technician IV; **Colinda Marker**, Executive Secretary; **Kathleen Morris**, Human Resources/Financial Manager; **Nathan Poore**, Graphics and Print Technician; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Print Shop Supervisor; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Wagner**, Legislative Attorney; **Natalie White**, Administrative Specialist II; **Sara Zimmerman**, Legislative Librarian.

---

# TABLE OF CONTENTS

321

---

Cumulative Tables.....	323
------------------------	-----

---

## EMERGENCY

<b>DEPARTMENT OF INSURANCE, Office of the Commissioner</b>	
1320 Minimum Standards for Short-Term, Limited Duration Health Insurance Plans.....	326

---

## PROPOSED

<b>DEPARTMENT OF EDUCATION, Office of the Secretary</b>	
290 Approval of Educator Preparation Programs.....	333
505 High School Graduation Requirements and Diplomas.....	335
616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings.....	337
915 James H. Groves High School.....	338
1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program.....	344

<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES, Division of Medicaid and Medical Assistance</b>	
Physician Assistants.....	347
Prescription Assistance.....	354
MAGI Methodology.....	361

<b>DEPARTMENT OF INSURANCE, Office of the Commissioner</b>	
610 Automobile Premium Consumer Comparison.....	364
1319 Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers.....	366
1320 Minimum Standards for Short-Term, Limited Duration Health Insurance Plans.....	371

<b>DEPARTMENT OF JUSTICE, Fraud and Consumer Protection Division</b>	
Rules Pursuant to the Delaware Securities Act.....	377

<b>DEPARTMENT OF SAFETY AND HOMELAND SECURITY, Division of State Police</b>	
2400 Board of Examiners of Constables.....	378

<b>DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES</b>	
<b>Division of Family Services</b>	
101 DELACARE: Regulations for Early Care and Education and School-Age Centers.....	379
103 Regulations for Family and Large Family Child Care Homes.....	380

<b>DEPARTMENT OF STATE, Public Service Commission</b>	
1010 Regulations Governing the Administration of the Electric and Natural Gas Utility Distribution System Improvement Charge ("DSIC").....	381

<b>DEPARTMENT OF TRANSPORTATION, Division of Transportation Solutions</b>	
2403 Special Events Policies and Procedures - Traffic Management.....	387

---

## FINAL

<b>DEPARTMENT OF EDUCATION, Office of the Secretary</b>	
1008 DIAA Junior High and Middle School Interscholastic Athletics.....	395
1009 DIAA High School Interscholastic Athletics.....	398

---

# TABLE OF CONTENTS

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**Division of Medicaid and Medical Assistance**

Home Health Services..... 400

**Division of Public Health**

4465 Delaware Radiation Control Regulations..... 401

**DEPARTMENT OF LABOR, Division of Industrial Affairs**

1322 Prevailing Wage Regulations..... 403

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**Division of Air Quality**

1134 Emission Banking and Trading Program..... 405

**Division of Climate, Coastal and Energy**

108 Delaware Coastal Management Program Federal Consistency Policies and Procedures..... 407

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY, Division of State Police**

1300 Board of Examiners of Private Investigators & Private Security Agencies..... 407

**DEPARTMENT OF STATE**

**Division of Historical and Cultural Affairs**

901 Historic Preservation Tax Credit Program..... 409

**Division of Professional Regulation**

300 Board of Architects..... 412

---

## GENERAL NOTICES

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**Division of Air Quality**

Delaware’s State Implementation Plan (“SIP”): Revision to Address Section 110 Infrastructure Requirements of the Clean Air Act for the 2015 National Ambient Air Quality Standards (“NAAQS”) for Ground-Level Ozone ..... 414

---

## CALENDAR OF EVENTS/HEARING NOTICES

Delaware River Basin Commission, Notice of Public Hearing and Business Meeting.....	416
Dept. of Education, Notice of Monthly Meeting.....	416
Dept. of Health and Social Services, Div. of Medicaid and Medical Assistance, Notices of Public Comment Periods.....	416 - 417
Dept. of Insurance, Office of the Commissioner, Notices of Public Comment Periods.....	417 - 419
Dept. of Justice, Fraud and Consumer Protection Division, Notice of Public Comment Period.....	420
Dept. of Safety and Homeland Security, Div. of State Police, Notice of Public Comment Period.....	420
Dept. of Services for Children, Youth and Their Families, Div. of Family Services, Notices of Public Comment Periods.....	420 - 421
Dept. of State, Public Service Commission, Notice of Public Comment Period.....	422
Dept. of Transportation, Div. of Transportation Solutions, Notice of Public Comment Period.....	422

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

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

**DELAWARE HEALTH INFORMATION NETWORK**

103 Delaware Health Care Claims Database Data Collection Regulation..... 22 **DE Reg.** 251 (Prop.)

**DEPARTMENT OF AGRICULTURE**

**Food Products Inspection**

302 Produce Safety Regulations..... 22 **DE Reg.** 83 (Prop.)

**Harness Racing Commission**

501 Harness Racing Rules and Regulations..... 22 **DE Reg.** 47 (Final)  
 22 **DE Reg.** 48 (Final)  
 22 **DE Reg.** 253 (Prop.)

**Thoroughbred Racing Commission**

1001 Thoroughbred Racing Rules and Regulations..... 22 **DE Reg.** 255 (Prop.)  
 22 **DE Reg.** 295 (Final)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised..... 22 **DE Reg.** 49 (Final)

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised..... 22 **DE Reg.** 51 (Final)

290 Approval of Educator Preparation Programs..... 22 **DE Reg.** 11 (Prop.)

415 Voluntary School Assessment..... 22 **DE Reg.** 219 (Final)

415 Voluntary School Assessments..... 22 **DE Reg.** 109 (Prop.)

601 Schools and Law Enforcement Agencies..... 22 **DE Reg.** 296 (Final)

601 Schools and Law Enforcement Agencies..... 22 **DE Reg.** 52 (Final)

601 Schools and Law Enforcement Agencies..... 22 **DE Reg.** 100(Emer.)

601 Schools and Law Enforcement Agencies..... 22 **DE Reg.** 161 (Final)

608 Unsafe School Choice Option Policy..... 22 **DE Reg.** 297 (Final)

610 Limitations on Use of Seclusion and Restraint..... 22 **DE Reg.** 55 (Final)

1006 Delaware Interscholastic Athletic Association (DIAA)..... 22 **DE Reg.** 56 (Final)

1007 DIAA Sportsmanship..... 22 **DE Reg.** 162 (Final)

1008 DIAA Junior High and Middle School Interscholastic Athletics..... 22 **DE Reg.** 60 (Final)

1008 DIAA Junior High and Middle School Interscholastic Athletics..... 22 **DE Reg.** 186 (Prop.)

1009 DIAA High School Interscholastic Athletics..... 22 **DE Reg.** 61 (Final)

1009 DIAA High School Interscholastic Athletics..... 22 **DE Reg.** 187 (Prop.)

1204 High Needs Educator Student Loan Payment Program..... 22 **DE Reg.** 256 (Prop.)

**Professional Standards Board**

1510 Issuance of Initial License..... 22 **DE Reg.** 13 (Prop.)

1510 Issuance of Initial License..... 22 **DE Reg.** 221 (Final)

1511 Issuance and Renewal of Continuing License..... 22 **DE Reg.** 63 (Final)

1517 Paraeducator Permit..... 22 **DE Reg.** 13 (Prop.)

1517 Paraeducator Permit..... 22 **DE Reg.** 259 (Prop.)

1565 World Language Teacher..... 22 **DE Reg.** 64 (Final)

**DEPARTMENT OF FINANCE**

**Office of the State Lottery**

202 Delaware Lottery Rules and Regulations..... 22 **DE Reg.** 261 (Prop.)

203 Video Lottery and Table Game Regulations..... 22 **DE Reg.** 261 (Prop.)

205 Charitable Video Lottery Rules and Regulations.....	22 DE Reg. 163 (Final)
<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES</b>	
<b>Division of Medicaid and Medical Assistance</b>	
Asset Verification Program.....	22 DE Reg. 127 (Prop.) 22 DE Reg. 301 (Final)
CHIP Premium Requirements.....	22 DE Reg. 122 (Prop.) 22 DE Reg. 299 (Final)
Health Home Services.....	22 DE Reg. 262 (Prop.)
Home Health Services.....	22 DE Reg. 194 (Prop.)
Long Term Care Medicaid: DSSM 20101, 20103, 20103.1.2 and 14100.3.....	22 DE Reg. 66 (Final)
Medicaid Recovery Audit Contractors Program.....	22 DE Reg. 15 (Prop.) 22 DE Reg. 222 (Final)
Reimbursement Methodology for FQHCs.....	22 DE Reg. 6 (Errata)
<b>Division of Public Health</b>	
4502 Regulations for Certification of Animal Welfare Officers.....	22 DE Reg. 197 (Prop.)
4471 Massage and Bodywork Facilities.....	22 DE Reg. 132 (Prop.)
<b>Division of Social Services</b>	
Child Care Eligibility.....	22 DE Reg. 264 (Prop.)
Purchase of Care Plus.....	22 DE Reg. 138 (Prop.)
Temporary Assistance for Needy Families.....	22 DE Reg. 20 (Prop.)
<b>DEPARTMENT OF INSURANCE</b>	
<b>Office of the Commissioner</b>	
1318 Compensation for Chiropractic Services.....	22 DE Reg. 164 (Final)
1405 Filing Requirements for Multiple Employer Welfare Arrangements.....	22 DE Reg. 180 (Emer.) 22 DE Reg. 202 (Prop.)
<b>DEPARTMENT OF LABOR</b>	
<b>Division of Industrial Affairs</b>	
1322 Prevailing Wage Regulations.....	22 DE Reg. 203 (Prop.)
<b>DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL</b>	
<b>Division of Air Quality</b>	
1147 CO <sub>2</sub> Budget Trading Program.....	22 DE Reg. 141 (Prop.)
<b>Division of Climate, Coastal &amp; Energy</b>	
2105 Evaluation, Measurement and Verification Procedures and Standards....	22 DE Reg. 210 (Prop.)
<b>Division of Fish and Wildlife</b>	
3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.....	22 DE Reg. 267 (Prop.)
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.....	22 DE Reg. 21 (Prop.) 22 DE Reg. 227 (Final)
3511 Summer Flounder Size Limits; Possession Limits; Season.....	22 DE Reg. 24 (Prop.) 22 DE Reg. 101 (Emer.) 22 DE Reg. 304 (Final)
3531 Tautog; Size Limits, Creel Limits and Seasons.....	22 DE Reg. 103 (Emer.) 22 DE Reg. 142 (Prop.)
<b>Division of Waste and Hazardous Substances</b>	
1302 Regulations Governing Hazardous Waste.....	22 DE Reg. 270 (Prop.)
<b>Division of Water</b>	
7102 Regulations Governing Underground Injection Control.....	22 DE Reg. 10 (Errata)
<b>Division of Watershed Stewardship</b>	
5101 Sediment and Stormwater Regulations.....	22 DE Reg. 211 (Prop.)

<b>Office of the Secretary</b>	
109 Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection.....	22 DE Reg. 99 (Errata)
<b>DEPARTMENT OF SAFETY AND HOMELAND SECURITY</b>	
<b>Delaware Council on Police Training</b>	
801 Regulations of the Delaware Council on Police Training.....	22 DE Reg. 26 (Prop.) 22 DE Reg. 230 (Final)
<b>Division of State Police</b>	
1300 Board of Examiners of Private Investigators & Private Security Agencies	22 DE Reg. 69 (Final) 22 DE Reg. 212 (Prop.)
2400 Board of Examiners of Constables.....	22 DE Reg. 70 (Final)
5500 Bail Enforcement Agents.....	22 DE Reg. 214 (Prop.) 22 DE Reg. 306 (Final)
<b>Office of the Secretary</b>	
102 Regulations Governing the Destructive Weapon Compensation Program (DWCP).....	22 DE Reg. 105 (Emer.) 22 DE Reg. 145 (Prop.) 22 DE Reg. 307 (Final)
<b>Sex Offender Management Board</b>	
1100 Delaware Sex Offender Management Board.....	22 DE Reg. 271 (Prop.)
<b>DEPARTMENT OF STATE</b>	
<b>Division of Corporations</b>	
Registered Agent Customer Entity Verification Requirements.....	22 DE Reg. 215 (Prop.)
<b>Division of Historical and Cultural Affairs</b>	
901 Historic Preservation Tax Credit Program.....	22 DE Reg. 147 (Prop.)
902 Curation Fee For Archaeological Collections.....	22 DE Reg. 72 (Final)
<b>Division of Professional Regulation</b>	
300 Board of Architects.....	22 DE Reg. 27 (Prop.)
1770 Respiratory Care Practice Advisory Council.....	22 DE Reg. 232 (Final)
1795 Midwifery Advisory Council.....	22 DE Reg. 234 (Final)
1900 Board of Nursing.....	22 DE Reg. 272 (Prop.)
2000 Board of Occupational Therapy Practice.....	22 DE Reg. 153 (Prop.)
2925 Real Estate Commission Education Committee.....	22 DE Reg. 275 (Prop.)
2930 Council on Real Estate Appraisers.....	22 DE Reg. 280 (Prop.)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	22 DE Reg. 78 (Final)
3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.....	22 DE Reg. 30 (Prop.)
Uniform Controlled Substance Act Regulations.....	22 DE Reg. 79 (Final)
<b>Public Service Commission</b>	
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005).....	22 DE Reg. 37 (Prop.)
3011 Rules for Certification of Electric Transmission Suppliers.....	22 DE Reg. 80 (Final)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Delaware Transit Corporation</b>	
2287 Public Carrier Regulations.....	22 DE Reg. 287 (Prop.)
2289 Transportation Network Companies.....	22 DE Reg. 288 (Prop.)
<b>Division of Transportation Solutions</b>	
2406 Policies and Procedures for Acquisition of Certain Real Property.....	22 DE Reg. 289 (Prop.)



## Symbol Key

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

## Emergency Regulations

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

**§ 10119. Emergency regulations.**

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

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

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

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

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

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

---

**DEPARTMENT OF INSURANCE**

**OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Sections 311 and 1720; 18 Delaware Code Chapters 33, 35 and 36; 29 Delaware Code, Section 10119, and in response to 26 CFR 54.9833-1, 29 CFR 2590.736, 45 CFR 146.125 and 45 CFR 148.120

(18 **Del.C.** §§311 & 1720; 18 **Del.C.** Chs. 33, 35 & 36; 29 **Del.C.** §10119 & in response to 26 CFR 54.9833-1, 29 CFR 2590.736, 45 CFR 146.125 and 45 CFR 148.120)

**ORDER**

**1320 Minimum Standards for Short-Term, Limited Duration Health Insurance Plans**

Pursuant to 29 **Del.C.** §10119, it is necessary to adopt new Regulation 1320, Minimum Standards for Short-Term, Limited Duration Health Insurance Plans.

**REASONS FOR EMERGENCY ORDER**

A. Short-term, limited duration (STLD) health insurance has long been offered to individuals through the non-group market and through associations. The product was originally designed for people who experience a temporary gap in health insurance coverage. Unlike other products that are considered "limited benefit" or "excepted benefit" policies (cancer-only or hospital indemnity that pay a fixed dollar benefit per inpatient stay), STLD health insurance policies are sometimes advertised as providing "major medical" coverage.

B. STLD policies are distinguishable from other comprehensive major medical policies in that they only provide coverage for a limited term, typically less than 365 days, and, as the name implies, are not renewable. Thus, an individual who bought an STLD and then becomes seriously ill has historically been unable to renew coverage when the policy ends.

C. STLD policies also have other significant limitations, including the types of services covered, and caps on the maximum claims-paid amounts. Additionally, pursuant to an exemption in the federal Affordable Care Act

(ACA), STLD policies are exempt from the market rules that apply to most major medical health insurance policies sold to individuals in the non-group market, including rules that prohibit medical underwriting, pre-existing condition exclusions, and lifetime and annual limits. They are also exempt from the ACA's minimum coverage standards.

D. In 2017, Congress reduced the ACA's individual mandate tax penalty, (the requirement that individuals have minimum essential health coverage or face a tax penalty) to \$0, beginning in 2019. It is possible that this change could lead more consumers to contemplate purchasing STLD policies.

E. On August 3, 2018, the federal government issued a rule that will apply to STLD health insurance policies sold on or after October 2, 2018. See 83 Fed. Reg. 38212 (the Final Rule). The Final Rule would extend the period during which plans can be sold from three to 12 months and would allow for consecutive renewal of short-term policies. The relaxation in renewal requirements allows consumers to enroll in the policies for a period arguably longer than "short term" and may re-enroll in the policies for an indefinite period of time.

F. Although the intent of the Final Rule is to grant consumers more affordable coverage alternatives than are offered through state health insurance marketplaces, the more "affordable" coverage comes with less actual coverage. Specifically, consumers who purchase these plans may face limited benefit offerings, significant out-of-pocket costs, the risk of plan cancellation due to pre-existing conditions, and possible deceptive advertising practices. A producer's duty of competence includes ensuring that consumers considering these policies are fully advised of the terms, benefits, and limitations of the coverage.

G. The Final Rule expressly describes short-term coverage as "a type of health insurance coverage that was primarily designed to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another plan or coverage (emphasis added)." *Id.* at 38213.

H. STLD health insurance policies are not considered minimum essential coverage for purposes of satisfying the ACA individual mandate. *Id.* at 38213 and 38225.

I. Increased sales of these plans to younger, healthy people is expected to draw thousands of healthy consumers out of Delaware's Health Insurance Marketplace (HIM) risk pool, leading to an unhealthy risk mix and subsequent increases in marketplace health insurance premiums.

J. The sale of these plans can begin on October 1, 2018, which is 60 days after the Final Rule was issued. Therefore, states, including Delaware, have a short window within which to implement consumer protections, as the sale of these short-term policies could begin later this year.

K. The Final Rule specifically states that "states generally remain free to adopt . . . other standards as they see fit." *Id.* at 38225.

L. The Department is not able to complete the process of proposing new regulations, including the requirement to meet the publication and public notice provisions of the Delaware Administrative Procedures Act, by December 1, 2018, which is the date by which carriers may begin to offer STLD health insurance plans under the Final Rule.

M. Emergency rule-making is therefore necessary to ensure that carriers offering STLD health insurance plans comply with minimum consumer protection and notification standards so as to partially prevent the erosion of the stability of Delaware's HIM and to protect Delaware consumers from being potentially misled into purchasing a STLD health insurance plan without being fully informed of its coverage limits or applicability.

N. The Department has completed the work necessary to submit the proposed new regulations for public comment and by issuing this emergency order will permit a timely transition for the regulatory oversight of STLD health insurance plans during the time required for public comment on the proposed new regulation that is identical to the emergency regulation that is the subject of this order and that is published elsewhere in this edition of the *Register of Regulations*.

#### DECISION AND ORDER

1. For the reasons stated above, Regulation 1320, a copy of which is hereby attached, is codified as a new emergency regulation effective December 1, 2018.

2. This order shall be effective for 120 days (until March 31, 2019), or until the proposed new Regulation 1320 published elsewhere in this edition of the *Register of Regulations* is adopted pursuant to the Delaware Administrative Procedures Act, whichever shall first occur. See 29 **Del.C.** § 10119(3).

3. The Department will receive, consider and respond to petitions by any interested person for the reconsideration or revision of the emergency regulation through the publication of a concurrent proposal elsewhere in this edition of the *Register of Regulations*.

IT IS SO ORDERED this 15<sup>th</sup> day of October, 2018.

Trinidad Navarro  
Insurance Commissioner

### **1320 Minimum Standards for Short-Term, Limited Duration Health Insurance Plans**

#### **1.0 Purpose**

1.1 The purpose of this regulation is to:

- 1.1.1 Ensure that any short-term, limited duration health insurance policy that is offered in this state complies with certain minimum requirements;
- 1.1.2 Set forth the requirements on producers and agents who offer short-term health insurance policies to this State's consumers; and
- 1.1.3 Provide for full disclosure and notice in the sale of short-term, limited duration health insurance policies, as defined in this regulation.

#### **2.0 Authority**

This regulation is issued pursuant to the authority vested in the Commissioner pursuant to 18 Del.C. §311, 18 Del.C. §1720, 18 Del.C. Chs. 33, 35 and 36, 29 Del.C. Ch. 101 and in response to 26 CFR 54.9833-1, 29 CFR 2590.736, 45 CFR 146.125 and 45 CFR 148.120.

#### **3.0 Applicability and Scope**

- 3.1 This regulation shall apply to short-term, limited-duration health insurance coverage offered for sale in this state. The requirements contained in this regulation shall be in addition to any other applicable regulations previously adopted.
- 3.2 This regulation shall not apply to:
  - 3.2.1 Medicare supplement policies subject to 18 Del.C. Ch. 34; or
  - 3.2.2 Long-term care insurance policies subject to 18 Del.C. Ch. 71.

#### **4.0 Definitions**

The following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Carrier" means any entity that provides health insurance in this State. Carrier includes an insurance company, health service corporation, managed care organization and any other entity providing a plan of health insurance or health benefits subject to State insurance regulation. Carrier also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health insurance.

"Certificate" means a statement of the coverage and provisions of a policy of either individual or group accident and sickness insurance, which has been delivered or issued for delivery in this state and includes riders, endorsements and enrollment forms, if attached to the policy.

"Commissioner" means the Delaware Insurance Commissioner.

"Direct response solicitation" means a communication through a sponsoring or endorsing entity or individually through mail, telephone, the internet or other mass communication media.

"Health care services" means any services or supplies included in the furnishing to any individual of medical care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as

the furnishing to any individual of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury, disability or disease.

"Short-term, limited duration health insurance" means health insurance coverage provided pursuant to a contract with a health carrier that has an expiration date specified in the contract that is less than or equal to 3 months after the original effective date of the contract and has a duration of no longer than 3 months in total.

## **5.0 Minimum Policy Standards**

- 5.1 No carrier shall advertise, sell or otherwise offer for sale or cause to be offered for sale a policy that it purports to be a short-term, limited duration health insurance policy, unless that policy meets the definition of short-term, limited duration health insurance policy as defined in Section 4.0 of this regulation and the policy meets the following minimum standards:
  - 5.1.1 The policy may not be issued for a period longer than three months;
  - 5.1.2 The three-month policy term limit set in subsection 5.1.1 is a single occurrence limit and may not be effectively extended by issuing the same policy for successive back-to-back terms or by issuing a different short-term, limited duration policy to the same policy holder more than once in any given year;
  - 5.1.3 The carrier shall apply the same underwriting standards to all applicants, regardless of whether they have previously been covered by short-term, limited duration health insurance;
  - 5.1.4 The policy contains the notice required in federal law as dictated in Section 6.0 of this regulation; and
  - 5.1.5 The policy shall be offered at a rate that has an actuarially expected loss ratio of at least 60 percent.
- 5.2 Every carrier who offers a short-term, limited duration health insurance policy shall obtain the approval of the terms and conditions of that policy from the Commissioner before such policy may be offered for sale in this state.
- 5.3 The Commissioner reserves the right to reject for approval a short-term, limited duration health insurance policy that, in the opinion of the Commissioner, is unjust, unfair, or unfairly discriminatory to the policyholder, a person insured under the policy, or to a beneficiary of the policy.

## **6.0 Disclosure and Notice Requirements**

- 6.1 Except as provided in subsection 6.2, a carrier shall, at time of sale, enclose with every short-term, limited duration health insurance policy an outline of coverage of such policy delivered or issued for delivery in this state, in accordance with the following:
  - 6.1.1 If the sale of a policy occurs through an agent, the outline of coverage shall be delivered to the applicant at the time of application or to the certificate holder at the time of enrollment;
  - 6.1.2 If the sale of a policy occurs through direct response solicitation, the outline of coverage shall be delivered no later than in conjunction with the issuance of the policy or delivery of the certificate;
  - 6.1.3 If the outline of coverage required in this section is not delivered at the time of application or enrollment, the advertising materials delivered to the applicant or enrollee shall contain all the information required in subsection 6.1;
  - 6.1.4 If the outline of coverage is delivered to the applicant or enrollee at the time of application or enrollment, the carrier shall collect an acknowledgment of receipt or certificate of delivery of the outline of coverage and the carrier shall maintain evidence of the delivery; and
  - 6.1.5 If coverage is issued on a basis other than as applied for, an outline of coverage properly describing the coverage or contract actually issued shall be delivered with the policy or certificate to the applicant or enrollee.
- 6.2 An outline of coverage for short-term, limited duration health insurance shall not be required to be delivered by the carrier if the certificate contains a brief description of:
  - 6.2.1 Benefits;

6.2.2 Provisions that exclude, eliminate, restrict, limit, delay or in any other manner operate to qualify payment of the benefits;

6.2.3 Non-renewability provisions; and

6.2.4 The notice requirements as provided in subsection 6.5.

6.3 Coverage outlines provided pursuant to subsection 6.1 shall include:

6.3.1 A statement identifying the applicable category or categories of coverage;

6.3.2 A description of the principal benefits and coverage provided;

6.3.3 A statement of the exceptions, reductions and limitations;

6.3.4 A statement that the policy is not renewable; and

6.3.5 A statement that the outline is a summary of the policy or certificate issued or applied for and that the policy or certificate should be consulted to determine governing policy provisions.

6.4 With respect to a policy having a coverage start date before January 1, 2019, a carrier shall display prominently in the application materials provided in connection with enrollment a notice, in at least 14 point type, that includes the following language in the following format:

- This coverage is **NOT** required to comply with certain federal market requirements for health insurance, principally those contained in the **AFFORDABLE CARE ACT**.
- Be sure to check your policy carefully to make sure you are aware of any **EXCLUSIONS** or **LIMITATIONS** regarding coverage of **PREEXISTING CONDITIONS** or **HEALTH BENEFITS** (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services).
- Be sure to check your policy carefully to make sure you are aware of any **LIFETIME** and/or **ANNUAL DOLLAR LIMITS** on health benefits.
- If this coverage expires or you lose eligibility for this coverage, **YOU MIGHT HAVE TO WAIT** until an open enrollment period to get other health insurance coverage.
- This coverage is **NOT "MINIMUM ESSENTIAL COVERAGE."** If you don't have minimum essential coverage for any month in 2018, you may have to make a payment when you file your tax return unless you qualify for an exemption from the requirement that you have health coverage for that month.

6.5 With respect to policies having a coverage start date on or after January 1, 2019, a carrier shall display prominently in the application materials provided in connection with enrollment a notice, in at least 14 point bolded type, that includes the following language:

- This coverage is **NOT** required to comply with certain federal market requirements for health insurance, principally those contained in the **AFFORDABLE CARE ACT**.
- Be sure to check your policy carefully to make sure you are aware of any **EXCLUSIONS** or **LIMITATIONS** regarding coverage of **PREEXISTING CONDITIONS** or **HEALTH BENEFITS** (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services).
- Be sure to check your policy carefully to make sure you are aware of any **LIFETIME** and/or **ANNUAL DOLLAR LIMITS** on health benefits.
- If this coverage expires or you lose eligibility for this coverage, **YOU MIGHT HAVE TO WAIT** until an open enrollment period to get other health insurance coverage.
- This coverage is **NOT "MINIMUM ESSENTIAL COVERAGE."** If you don't have minimum essential coverage for any month in 2019 or thereafter and the penalty for not having minimum essential coverage is more than the 2018 amount of \$0, you may have to make a payment when you file your tax return unless you qualify for an exemption from the requirement that you have health coverage for that month.

## **7.0 Requirements for Replacement**

7.1 Application forms shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and sickness insurance presently in force. A

supplementary application or other form to be signed by the applicant containing such a question may be used.

**7.2** Upon determining that a sale will involve replacement, a carrier, other than a direct response carrier, or its agent, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in subsection 7.3. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the carrier. A direct response carrier shall deliver to the applicant upon issuance of the policy, the notice described in subsection 7.4. In no event, however, will such a notice be required in the solicitation of the following types of policies: accident only and single premium nonrenewable policies.

**7.3** The notice required by subsection 7.2 for a carrier, other than a direct response carrier, shall provide, in substantially the following form:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (insert Company Name) Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under the policy you are replacing with this policy.

(2) You may wish to secure the advice of your present carrier or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, re-read it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

**7.4** The notice required by subsection 7.2 for a direct response carrier shall be as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (insert Company Name) Insurance Company. Your new policy provides 10 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for

benefits under the new policy, whereas a similar claim might have been payable under the policy you are replacing with this policy.

(2) You may wish to secure the advice of your present carrier or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert Company Name and Address) within 10 days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)

#### **8.0 Severability**

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

#### **9.0 Effective Date**

This regulation shall take effect on December 1, 2018 and shall remain effective for 120 days, until March 31, 2019, or until readopted pursuant to the Administrative Procedures Act.

---

**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, Sections 122(b)(22), 1266, and 1280(a) (14 **Del.C.** §§122(b)(22), 1266, & 1280(a))  
14 **DE Admin. Code** 290

**PUBLIC NOTICE****Education Impact Analysis Pursuant To 14 Del.C. §122(d)****290 Approval of Educator Preparation Programs****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

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

Pursuant to 14 **Del.C.** §§122(b)(22), 1266 and 1280(a), the Secretary of Education intends to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs. The regulation is being amended to align with changes made by House Bill 433 of the 149<sup>th</sup> General Assembly regarding the criteria for the alternative routes for teacher licensure and certification program.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 5, 2018 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, located at the address listed above.

**C. IMPACT CRITERIA**

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



2. Will the amended regulation help ensure that all students receive an equitable education? The regulation helps to ensure students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation does not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation does not address students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the regulation.
8. Will the 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 regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the amended 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 amended regulation? There is no expected cost to implementing this regulation.

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

<http://regulations.delaware.gov/register/november2018/proposed/22 DE Reg 333RFA 11-01-18.pdf>

## 290 Approval of Educator Preparation Programs (Break in Continuity of Sections)

### 2.0 Definitions

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

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

**“High Quality Cooperating Teacher”** means an educator employed by a Local Education Agency or private school, collaboratively selected by the employer and the Educator Preparation Program, who oversees the Candidates’ Capstone Clinical Residency and who has:

- At a minimum received a Satisfactory rating on all five components of the DPAS-II educator evaluation system or has an equivalent rating on a state, LEA- or private-school approved educator evaluation system in his or her most recent summative evaluation; and
- Satisfactorily completed training in teacher mentoring or supervision.

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

**“Professional Development”** means ~~Professional Development as defined in 14 DE Admin. Code 4544~~ a combination of focused, in-depth learning, practice feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and perspectives and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

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

### 8.0 Alternative Routes for Teacher Licensure and Certification Programs

- 8.1 Notwithstanding any other provision of this regulation to the contrary, any individual, public or private educational association, corporation or institution, which, pursuant to ~~the provisions of 14 DE Admin.~~

~~Code 1507 14 Del.C. §1260(a)~~ and subsection 8.2 below, is approved by the Secretary of Education to operate an Alternative Routes to Teacher Licensure and Certification Program shall be deemed to be an approved ARTC Program.

- 8.2 Any individual, public or private educational association, corporation or institution, which is approved by the Secretary of Education to operate an Alternative Routes to Teacher Licensure and Certification Program as set forth in subsection 8.1 above, shall ~~in addition to the provisions of 14 DE Admin. Code 1507 and any applicable statute,~~ comply with the following requirements:

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

- 8.2.4 ~~The Department shall evaluate approved ARTC Programs based upon the terms and conditions of the program approval and the applicant's agreement with the Department. ARTC Programs shall provide a period of intensive on-the-job supervision.~~

8.2.4.1 Teachers who are hired as a teacher of record prior to March 1 of any school year shall:

8.2.4.1.1 Be observed by a certified evaluator using the state approved evaluation system, and receive a formal written progress report before the end of a 10-week period beginning on the first day the teacher assumes full responsibility of the classroom.

8.2.4.1.2 In addition to the first formal observation, be observed formally and evaluated by certified evaluators using a state approved system. No more than two months shall pass without a formal observation. Opportunities shall be provided for the teacher to observe the teaching of experienced colleagues.

8.2.4.2 Teachers who are hired as a teacher of record after March 1 of any school year shall:

8.2.4.2.1 Be observed by a certified evaluator in accordance with guidelines published by the Department.

- 8.2.5 ARTC programs shall provide a period of professional development prior to the teacher assuming full responsibility of the classroom.

8.2.5.1 The program shall offer a summer institute of no less than one hundred and twenty (120) instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and curriculum of the employing school district or charter school, instructional strategies and classroom management and child or adolescent development.

8.2.5.2 Candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching.

- 8.3 The Department shall evaluate approved ARTC Programs based upon the terms and conditions of the program approval process.

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

**290 Approval of Educator Preparation Programs**

---

**OFFICE OF THE SECRETARY**

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

14 DE Admin. Code 505

**PUBLIC NOTICE**

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

**505 High School Graduation Requirements and Diplomas**

**A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

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

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 5, 2018 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOERegulations.comment@doe.k12.de.us](mailto:DOERegulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by incorporating computer science standards language.

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

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

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

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

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

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

(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/november2018/proposed/22 DE Reg 335RFA 11-01-18.pdf](http://regulations.delaware.gov/register/november2018/proposed/22%20DE%20Reg%20335RFA%2011-01-18.pdf)

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

[505 High School Graduation Requirements and Diplomas](#)

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 4130 and 122(b) and (14 Del.C. §§4130 & 122(b))  
14 DE Admin. Code 616

### PUBLIC NOTICE

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

#### 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings

##### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

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

Pursuant to 14 Del.C. §§4130 and 122(b), the Secretary of Education intends to amend 14 DE Admin. Code 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings. This regulation is being amended to align with changes made by House Bill 402 of the 149<sup>th</sup> General Assembly which eliminated the requirement for a school superintendent to notify the Division of Motor Vehicles when a student was expelled from a public school for the purposes of suspending or refusing to issue or renew an expelled student's driver's license.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 5, 2018 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

##### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address improvement in 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 is intended to continue to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the 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.

# PROPOSED REGULATIONS

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/november2018/proposed/22 DE Reg 337RFA 11-01-18.pdf>

## 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings (Break in Continuity of Sections)

### 2.0 Terms and Definitions

In this regulation, the following terms and words shall have the following meaning unless the context clearly indicates otherwise:

#### (Break in Continuity Within Section)

"**Disciplinary Action**" means the student identified for Short or Long-Term Suspension, Expulsion, or Alternative Placement who may be excluded from all school activities, including but not limited to, extracurricular sports/programs, field trips, and ceremonies; is not allowed on School Property unless placed in an Alternative Placement on School Property; and, if applicable, will have his driver's license suspended in accordance with 14 ~~Del.C.~~ §4130(e).

#### (Break in Continuity of Sections)

### 10.0 Procedures for the Expulsion of Students

#### (Break in Continuity Within Section)

#### 10.6 Notification of Expulsion to Division of Motor Vehicle

10.6.1 ~~The Delaware Division of Motor Vehicle shall be notified of the beginning and ending date of Expulsion for students who are expelled from the School district/charter school as a request for suspension of driving privileges in accordance with 14 Del.C. §4130(e)(1).~~

10.6.2 ~~A copy of the Delaware Division of Motor Vehicle form shall be forwarded to the Delaware Department of Education's Office of School Climate & Discipline.~~

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

[616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings](#)

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 4139 and 122(b) (14 **Del.C.** §§4139 & 122(b))  
14 **DE Admin. Code** 915

### PUBLIC NOTICE

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

**915 James H. Groves High School**

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

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

Pursuant to 14 **Del.C.** §§4139 and 122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 915 James H. Groves High School. This regulation is being amended to

align with changes made from House Bill 15 with Senate Amendment 1 of the 149<sup>th</sup> General Assembly related to computer science standards. It is also being amended to reflect the current grading system being used. Other minor changes are being made to clarify the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 5, 2018 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

## C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by ensuring students completing the James H. Groves Program also meet computer science standards.

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

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

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

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

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the 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/november2018/proposed/22 DE Reg 338RFA 11-01-18.pdf>

### 915 James H. Groves High School

#### 1.0 Definitions

**"Certificate of Educational Attainment (CEA3)"** means that the holder of the certificate has passed the designated assessments with the required scores in each sub test area and has written an approved Groves content area research paper.

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

**"Groves Leadership Team"** means an advisory group composed of the Groves Center administrators, the State Director of Adult Education, a representative from the Groves student association and prison education teacher supervisor(s). The Associate Secretary, Adult Education and Work Force

Development Adult and Prison Education Resources shall be an ex officio member of the leadership team.

“**James H Groves Center**” or “**Center(s)**” means the specific location in a school district, agency or organization where instruction is provided for the James H. Groves High School program.

“**James H. Groves High School**” or “**Groves**” means an adult high school established by the State of Delaware to provide the opportunity for adults and out of school youth to earn and obtain a high school diploma. The James H. Groves High School is a single school with multiple centers established and operated through a proposal application process. The James H. Groves High School is administered by the Delaware Department of Education.

“**Sex Offender**” means an offender convicted of offenses specified in 11 **Del.C.** §4121(a)(4).

## 2.0 Admission Criteria and Process

The following individuals may enroll in the James H. Groves High School:

- 2.1 An adult 18 years of age and older, who resides in the State of Delaware or is a resident of another state and is currently employed in Delaware and has been so employed for a minimum of six months prior to enrollment.
  - 2.1.1 The applicant shall:
    - 2.1.1.1 Submit an application on forms approved by the Department;
    - 2.1.1.2 Qualify as meeting secondary level skills, as determined by the Department, on a standardized assessment.
- 2.2 Out of school youth 16 to 17 years of age, who have officially withdrawn from a day school and who have not been expelled or have an expulsion pending shall enroll under a waiver process.
  - 2.2.1 To apply for an age waiver, the prospective student shall submit to the Groves Center administrator the following.
    - 2.2.1.1 A letter of request for admission with the rationale for granting a waiver;
    - 2.2.1.2 A letter of recommendation from the high school of record;
    - 2.2.1.3 Proof of exit from high school; and
    - 2.2.1.4 Proof of age.
  - 2.2.2 The prospective student seeking the age waiver shall be subject to subsection 2.1.1.
  - 2.2.3 The decision regarding admission shall be made by the Center administrator.
  - 2.2.4 The names of all students receiving an age waiver shall be forwarded within five (5) working days of approval by the Center administrator or designee to the Department’s Director of Adult and Prison Education Resources for reporting purposes.
- 2.3 High school students who are at least 16 years of age and enrolled for at least one credit in their high school of record may earn an unrestricted number of credits in the Groves In School Credit Program and still graduate from their high school of record.
  - 2.3.1 To enroll in this program, students shall have the permission of their high school of record, their parent(s), guardian(s) or Relative Caregiver and the Groves High School principal or designee.
  - 2.3.2 All students enrolled in the Groves In School Credit Program shall be included in the September 30th unit count of their high school of record.
  - 2.3.3 Students who withdraw from their high school of record and transfer to the Groves High School shall no longer be considered a student in the Groves In School Credit Program and shall be assessed the materials fee for that semester.
  - 2.3.4 Students in the Groves In School Credit program shall not receive instruction during the school’s regularly scheduled school day.
- 2.4 Individuals expelled or pending expulsion from a local school district or charter school shall not be enrolled in Groves High School during the period of expulsion or pending expulsion without a waiver from the Department. Individuals who enroll without a waiver shall lose credits earned during the expulsion period.

- 
- 2.4.1 An applicant for an expulsion or pending expulsion waiver shall meet the following requirements:
- 2.4.1.1 Be 16 or 17 years of age;
  - 2.4.1.2 Intend to graduate from the James H Groves High School;
  - 2.4.1.3 Be expelled or be pending expulsion for a nonviolent reason and not be a security threat;
  - 2.4.1.4 Submit a letter of recommendation signed by the principal or designee of their high school of record;
  - 2.4.1.5 Meet with the Department's Director of Adult and Prison Education Resources or designee to orally present his or her case for entry into Groves. The decision regarding admission shall be made by the Director or designee; and
  - 2.4.1.6 Meet the requirements in subsection 2.1.1.
- 2.5 An adult 18 years of age and older who is a registered Sex Offender and who resides in the State of Delaware or is a resident of another state and is currently employed in Delaware and has been continuously employed in Delaware for a minimum of six months prior to enrollment shall:
- 2.5.1 Present a letter to the Groves Center administrator from a licensed counselor, psychologist or physician including a summary of past behavior and a statement that the individual does not pose a safety threat to students or staff. The letter shall be dated within two months prior to enrollment in the Groves Center.
  - 2.5.2 An adult 18 years of age and older who is a registered Sex Offender may be enrolled in the Diploma-At-A-Distance without the letter described in subsection 2.5.1.
  - 2.5.3 The names of all students that are registered Sex Offenders and enrolled in the James H. Groves Adult High School shall be reported to the State Director within five (5) working days.

**3.0 Acceptable Methods for Offering Units of Credit and Granting Units of Credit for the James H. Groves High School Diploma**

- 3.1 The Groves School is authorized to offer credit for the following methods or any combination of the following methods of accruing credit that were used prior to enrollment as well as while enrolled in the Groves program:
- 3.1.1 High school classroom courses;
  - 3.1.2 Summer school courses offered through a district or charter school;
  - 3.1.3 Groves classroom courses;
  - 3.1.4 Distance learning courses;
  - 3.1.5 Independent study courses;
  - 3.1.6 Correspondence courses;
  - 3.1.7 Courses completed through schools in foreign countries and evaluated in terms of content equivalent to the State's high school graduation requirements;
  - 3.1.8 Career technical courses and apprenticeship courses;
  - 3.1.9 Higher education courses;
  - 3.1.10 Internships designed to provide practical real life experiences and based on the skills gained and the length of time of the experience;
  - 3.1.11 Military Experience based on military training and experience;
  - 3.1.12 Employment or training experience based on the length of employment, the level of job responsibility and the scope of work;
  - 3.1.13 Community Service that recognizes the community life experiences of the student and encourages the student to assume civic responsibility. The emphasis is upon volunteer service within a non-profit or governmental agency given freely for the betterment of the community and other persons and is based on verification of length of service;
  - 3.1.14 The knowledge assessments ~~created by the Groves curriculum committees~~ approved by the Groves Leadership Team for students to demonstrate their knowledge of course content; and



3.1.15 The Certificate of Educational Attainment (CEA3) that may provide up to 10 units of credit toward graduation.

## 4.0 Attendance, Grading and Graduation Criteria

- 4.1 A graduation plan shall be developed for each student enrolled in the James H. Groves High School by the Groves Administrator or his or her designee.
- 4.2 Students enrolled in James H. Groves High School courses which have an attendance requirement, shall attend a minimum of 85% of the course hours in order to receive a unit of credit. No provision is made for excused absences.
- 4.3 The grading system for the James H. Groves High School shall be based on a ~~400~~ 10 point numeric scale. An alpha conversion chart to determine level of performance shall be:
- 4.3.1 Students receiving a grade of "A" (~~93~~ 90 to 100) demonstrate superior understanding of the content and have demonstrated knowledge and competence at the highest level.
- 4.3.2 Students receiving a grade of "B" (~~85 to 92~~ 80-89) demonstrate better than average understanding of the content and have demonstrated above average knowledge and competence.
- 4.3.3 Students receiving a grade of "C" (~~75 to 84~~ 70-79) demonstrate satisfactory average understanding of the content and have demonstrated knowledge and competence.
- 4.3.4 Students receiving a grade of "D" (60-69) demonstrate satisfactory understanding of the content and have demonstrated knowledge and competence.
- ~~4.3.4~~ 4.3.5 No credit is awarded for grades less than ~~75~~ 60.
- 4.4 Groves High School students shall be eligible to receive a State of Delaware diploma when they have met the State graduation requirements, pursuant to 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas, in effect at the time of their graduation, except as noted below.
- 4.4.1 Physical education is waived in lieu of another credit.
- 4.4.2 Students who were or would have been a first time 9<sup>th</sup> grader in the 2011-2012 school year or after shall be subject to ~~505.3.0 or 505.4.0, whichever is applicable~~ 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas.
- 4.4.3 Students who were or would have been a first time 9<sup>th</sup> grader in the 2010-2011 school year or prior shall be subject to ~~505.2.0~~ 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas.
- 4.4.4 All course content shall be based on the State Content Standards. Notwithstanding the above, students enrolled in the James H. Groves High School shall successfully complete and receive credit for a minimum of one Groves course in order to receive a State of Delaware diploma.
- 4.4.5 The James H. Groves High School must offer at least one (1) computer science course pursuant to 14 Del.C. §4139 and 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas.

## 5.0 Fees

All fees for the James H. Groves High School shall be set by the Delaware Secretary of Education.

## 6.0 Students Rights and Responsibilities

Students enrolled in each Center shall have such rights and be subject to such responsibilities as set forth in the *James H. Groves Student Rights and Responsibilities* document, and as such may be amended from time to time by the Department.

## 7.0 Establishing a Center

- 7.1 A school district, agency or organization may seek to establish a James H. Groves Center for service delivery by following the process outlined below. No district, agency or organization shall have more than one Groves Center.

- 7.1.1 An affiliation shall be established with an existing Groves Center as a satellite site or obtain approval from the Groves Leadership Team to establish a pilot Center.
- 7.1.2 After a two year affiliation as a satellite Center of an existing Groves Center or two year success as a pilot Center, the Department may grant full Center status to the satellite site or the pilot Center.
  - 7.1.2.1 A formal request for full Center status shall be made to the Department at the end of year one as a satellite or pilot Center. The request shall include:
    - 7.1.2.1.1 A needs assessment documenting program need for services in the district's adult community, potential population to be served, impact on existing Centers, and rationale for requesting a Groves Center;
    - 7.1.2.1.2 A description of the district, agency or organization's experience and success in adult program delivery;
    - 7.1.2.1.3 An explanation of the commitment to the Groves adult education program and assurances;
    - 7.1.2.1.4 Budget requirements including in kind contributions;
    - 7.1.2.1.5 Submission of an annual performance report; and
    - 7.1.2.1.6 Submission of the State Evaluation Report completed in the tenth month of the first year.
- 7.1.3 The district agency or organization representatives shall meet with the Groves Leadership Team to review the Center request.
- 7.1.4 The Groves Leadership Team shall make a recommendation for Center status through the Department's Director for Adult Education to the Secretary of Education.
- 7.1.5 Approval or denial shall be communicated to the district, agency or organization by the Department within 60 days of the Center status application.
- 7.1.6 If approved, the Department shall apply for Center funding in the upcoming State budget cycle. If State funding is allocated for the additional Center, full Center status shall be given to the program provided the annual performance report and State Evaluation Report are satisfactory.
- 7.1.7 Appeal Process: In the event Center status is denied by the Department a hearing may be requested by the district, agency or organization. The hearing shall be conducted by the Secretary of Education or his or her designee.

## **8.0 Closing a Center**

- 8.1 Voluntary Closing: A school district, agency or organization shall close a James H. Groves Center in their service delivery area by following the process outlined below. For a voluntary closing, a school district, agency or organization shall announce by November its intention to discontinue service at the end of the fiscal year. The following steps shall be followed:
  - 8.1.1 Within two months of closing, the district, agency or organization shall:
    - 8.1.1.1 Notify all current students of the Center closing and provide them with information to transfer to another Center. Records of active students shall be sent to the new Center;
    - 8.1.1.2 Provide all current and past student and administrative records to the Department;
    - 8.1.1.3 Send all equipment purchased for the Center to the Department or to the designated Centers for redistribution; and
    - 8.1.1.4 Return unspent funds to the Department.
  - 8.1.2 District, agency or organization representatives shall meet with the Groves Leadership Team at the monthly meetings to implement a smooth closing.

## **9.0 Non Voluntary Closing**

- 9.1 A non voluntary closing shall be made by the Secretary of Education when:
  - 9.1.1 There is insufficient enrollment or graduates to sustain a Center; or

# PROPOSED REGULATIONS

- 9.1.2 The Center does not follow the policies, procedures, rules, regulations or instructional program set forth for the James H. Groves High School; or
- 9.1.3 The Secretary of Education determines the Center is not providing a quality instructional program to the students at that Center.
- 9.2 The Secretary of Education shall provide notice to the school district, agency or organization of the closing by November giving eight months to close the Center.
- 9.2.1 Within two months of closing, the district, agency or organization shall:
- 9.2.1.1 Notify all current students of the Center closing and provide them with information to transfer to another Center.
- 9.2.1.2 Provide all current and past student and administrative records to the Department;
- 9.2.1.3 Send all equipment purchased for the Center to the Department or to the designated Centers for redistribution; and
- 9.2.1.4 Return unspent funds to the Department.
- 9.3 The District, agency or organization representatives shall meet with the James H. Groves Leadership Team at the monthly meetings to implement a smooth closing.

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 3423 and 122(a) (14 Del.C. §§3423 & 122(a))

### PUBLIC NOTICE

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

#### 1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program

#### A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

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

Pursuant to 14 Del.C. §3423 and 122(a), the Secretary of Education intends to create 14 DE Admin. Code 1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program. The regulation is being created to provide eligibility criteria per House Bill 34 of the 149<sup>th</sup> General Assembly and to delineate the process for applying for the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 5, 2018 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, located at the address listed above.

#### C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards? The regulation does not address student achievement as measured against state achievement standards.
2. Will the regulation help ensure that all students receive an equitable education? The regulation does not address students receiving an equitable education.
3. Will the regulation help to ensure that all students' health and safety are adequately protected? The regulation does not address students' health and safety.
4. Will the regulation help to ensure that all students' legal rights are respected? The regulation continues to ensure that all student's legal rights are respected.
5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation does not change the decision making at the local board and school level.
6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision

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

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

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

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

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

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

<http://regulations.delaware.gov/register/november2018/proposed/22 DE Reg 344RFA 11-01-18.pdf>

## **1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program**

### **1.0 Purpose**

- 1.1 Pursuant to 14 Del.C. §3423, the purpose of this regulation is to provide eligibility criteria and to delineate the process for applying for the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program.
- 1.2 The Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program encourages and enables academically talented Delawareans to pursue careers as Librarians and Archivists in Delaware.

### **2.0 Definitions**

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

"**Academic Record**" means the applicant's unofficial transcript from high school, college, or graduate school for the most recent academic year.

"**Archivist**" means a person employed by a Delaware archive facility in a position deemed eligible by the State Librarian or their designee.

"**Delaware Higher Education Office**" or "**DHEO**" is the Department of Education's office which administers specific programs related to higher education, including, but not limited to, scholarship and loan programs.

"**Direct Educational Expenses**" means tuition, mandatory fees, room, board, books, and supplies.

"**Expected Family Contribution**" or "**EFC**" means a number that is calculated using the financial information an applicant provides on his or her Free Application for Federal Student Aid (FAFSA) to determine an applicant's eligibility for federal student aid.

"**Free Application for Federal Student Aid (FAFSA)**" or "**FAFSA**" means the data supplied in connection with the federal government's application for federal financial aid which DHEO uses to determine an applicant's eligibility for a scholarship or loan forgiveness program.

"**Full-Time Student**" means an undergraduate student enrolled in 12 or more college credit hours or a graduate student enrolled in 9 or more credit hours.

"**Grade Point Average**" or "**GPA**" means the number representing the average value of the accumulated final grades earned in courses over time.

"**Graduate Student**" means a full-time student enrolled in a post-baccalaureate program.

---

# PROPOSED REGULATIONS

---

"Institution" means a post-secondary institution or institution of higher education that is accredited by a nationally recognized accrediting agency.

"Librarian" means a person employed by a Delaware public library, county department library, public school library, state agency library, a member library of the Delaware Library Consortium, or archive in a position deemed eligible by the State Librarian or their designee.

"Nationally Recognized Accrediting Agency" means a nationally recognized accrediting agency or association that appears on the list published by the U.S. Secretary of Education.

"Part-Time Student" means a student enrolled in an undergraduate program that is more than six and less than eleven college credit hours per term or a student enrolled in a graduate program that is at least five and less than nine credit hours per term.

"Resident of the State" means an applicant who meets the definition of residency as defined in 14 Del.C. §3402(f).

"Semester" means a half-year term in a school or college, typically lasting 15 to 18 weeks.

"Student Account Access Site" means the webpage on the DHEO's website where students can access scholarship and loan forgiveness opportunities.

"Undergraduate Student" means a full-time student at a regionally accredited college or university who has not yet earned a bachelor's or equivalent degree.

## **3.0 Application Acceptance and Submission Period**

3.1 The application acceptance and submission period for the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program shall be posted on the DHEO's website by April 1 each calendar year.

3.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.

3.1.2 Incomplete applications shall not be accepted or processed.

3.2 In order for an application to be considered complete, an applicant must:

3.2.1 Complete the FAFSA for the school year in which the scholarship or loan forgiveness award is sought by the state deadline for Delaware that is posted online at [FAFSA.ed.gov](http://FAFSA.ed.gov).

3.2.2 Submit the applicant's Academic Record to DHEO by mail, fax, or email by the last date of the application acceptance period.

3.2.3 Complete an application through the Student Account Access Site by the last date of the application acceptance period. Application must include:

3.2.3.1 The applicant's major and the name of the institution in which the applicant will be enrolled for the school year in which the loan forgiveness award will be awarded.

3.2.3.2 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.

3.2.3.3 A first time applicant must establish an account and provide his or her valid email address and permanent mailing address before being permitted to submit the information required in subsection 3.2.3 of this regulation.

## **4.0 Eligibility for Awards**

4.1 Applicants must meet the following requirements to be eligible for the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program:

4.1.1 Be a Resident of the State; and

4.1.2 Be a Full-Time or Part-Time Student enrolled in either:

4.1.2.1 A bachelors or doctoral degree program at an institution that is accredited by a Nationally Recognized Accrediting Agency; and

4.1.2.1.1 Be a current employee or worked for at least two years before the date of application at a Delaware library as described in subsection 4.2 below; or

4.1.2.2 A master's degree program in a library science or similar program approved by the American Library Association.

4.2 Preference will be given to persons currently employed by a Delaware public library, county department library, public school library, state agency library, a member library of the Delaware Library Consortium, or archive.

## **5.0 Awards**

5.1 DHEO determines the number and amount of awards to be given annually. The number and amount of awards each year will vary and is based on and subject to DHEO receiving funds appropriated for the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program.

5.2 DHEO shall grant awards on the basis of financial need, community service, GPA, current employment, and academic merit.

5.2.1 To determine an applicant's financial need, DHEO will consider:

5.2.1.1 The applicant's EFC;

5.2.1.2 The expense of attending the college or university in which the applicant is enrolled; and

5.2.1.3 The applicant's eligibility for Pell grants and other federal, state, or private grant assistance.

5.3 An award shall be used for, and not in excess of, Direct Educational Expenses.

5.4 An award may be renewable. Students must submit an annual Academic Record and updated enrollment information in order to be eligible for renewal.

5.4.1 Students in bachelors and doctoral programs shall continue to be employed in an eligible library in order to be eligible for renewal of the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program.

## **6.0 Award Payment**

6.1 DHEO shall contact a recipient's college or university to verify the recipient's academic, financial, and enrollment status each Semester prior to the awarded funds being disbursed.

6.1.1 A signed promissory note must be executed before disbursement of funds.

6.2 All payments shall be disbursed directly to the eligible recipient's college or university only.

6.3 If a recipient withdraws from school or otherwise does not qualify for full payment at the end of the add/drop period for a Semester, DHEO will apply the refund policy set forth in 14 Del.C. §3402(k).

---

## **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**

### **Physician Assistants**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 3, 2018. Please identify in the subject line: Physician Assistant.

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

### **SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Physician Assistant (PA), specifically, to update current policy.

#### **Statutory Authority**

- 42 CFR 440.60

#### **Background**

PAs deliver medical and surgical care in teams with physicians, who provide medical supervision and delegate tasks to the PA. DMMA would like to evaluate the services provided by PAs, under the supervision of licensed physicians enrolled in DMAP. To gather that data, it is necessary first step, to facilitate, where appropriate, the inclusion of the Physician Assistant's name on claims as the rendering provider. In preparation, DMMA policy will need to be updated to bring the PAs in line with those who provide similar services.

#### **Summary of Proposal**

##### *Purpose*

The purpose of this proposed regulation is to update policy and add the Physician Assistant (PA) as a licensed practitioner where omitted.

##### *Summary of Proposed Changes*

Effective for services provided on and after January 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachments 3.1-A Page 3.1 Addendum and 3.1 Pages 4b Addendum, 6m, 6o, 6r and 6w of Title XIX Medicaid State Plan regarding Physician Assistants (PA), specifically, to update current policy.

##### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 3, 2018.

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

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

##### *Provider Manuals and Communications Update*

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

## Fiscal Impact

The proposed regulation imposes no increase in costs 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/november2018/proposed/22 DE Reg 347RFA 11-01-18.pdf>

Attachment 3.1-A  
Page 3.1 Addendum

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE/TERRITORY: DELAWARE

### LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

#### 6.d. 2. Licensed Behavioral Health Practitioner Continued:

Services which exceed the initial pass-through authorization must be approved for re-authorization prior to service delivery. In addition to individual provider licensure, *service* providers employed by addiction treatment services and co-occurring treatment services agencies must work in a program licensed by the Delaware Division of Substance Abuse and Mental Health (DSAMH) and comply with all relevant licensing regulations. Licensed Psychologists may supervise up to seven (7) unlicensed assistants or post-doctoral professionals in supervision for the purpose of those individuals obtaining licensure and billing for services rendered. Services by unlicensed assistants or post- doctoral professionals under supervision may not be billed under this section of the State Plan. Instead, those unlicensed professionals must qualify under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program or rehabilitation sections of the State Plan or provide services under Home and Community-based authorities.

Inpatient hospital visits are limited to those ordered by the beneficiary's physician. Visits to a nursing facility are allowed for LBHPs if a Preadmission Screening and Resident Review (PASRR) indicates it is a medically necessary specialized service in accordance with PASRR requirements. Visits to Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) are non-covered. All LBHP services provided while a person is a resident of an Institute for Mental Disease (IMD) such as a free standing psychiatric hospital or psychiatric residential treatment facility are part of the institutional service and not otherwise reimbursable by Medicaid. Evidence-based Practices require prior approval and fidelity reviews on an ongoing basis as determined necessary by Delaware Health and Social Services (DHSS) and/or its designee. A unit of service is defined according to the Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) approved code set consistent with the National Correct Coding Initiative unless otherwise specified.

#### 6.d. Other Practitioners' Services

3. Physician assistants must be licensed under state law and provide services under the supervision, control, and direction of one or more physicians. The scope of physician assistants' services is defined by state law. Physician assistants' services must be authorized by state law (or otherwise approved by the state medical board) and within the scope of practice of the physician assistant's supervising physician.

TN No. SPA <u>#13-0018</u>	Approval Date <u>September 18, 2014</u>
Supersedes	
TN No. SPA <u>NEW</u>	Effective Date <u>July 1, 2014</u>



AMENDED

Attachment 3.1-A  
Page 4b Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

Health care professionals that provide the above services at the SBWCs include: physicians, nurse practitioners, licensed clinical social workers, certified and licensed drug and alcohol counselors, certified sexual assault counselors, and registered dietitians and Physician Assistants. Licensure requirements for each practitioner type are specified in the Title 24 of the Delaware Code, Professions and Occupations and in the Delaware Administrative Code.

10. Dental Clinic Services are only available as ESPDT services to children under age 21.

TN No. SPA <u>#18-003</u>	Approval Date
Supersedes	
TN No. SPA <u>#10-004</u>	Effective Date <u>July 1, 2018</u>

Attachment 3.1-A  
Page 6m

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

**13.d. Rehabilitative Services: 42 CFR 440.130(d) Continued:**

***3. Crisis Intervention (CI) Services for Adults with Mental Illness, Alcoholism Or Drug Dependence Continued:***

A beneficiary in crisis may be represented by a family member or other collateral contact who has knowledge of the beneficiary's capabilities functioning. Beneficiaries in crisis who require this service may be using substance during the crisis. Substance use should be recognized and addressed in an integrated fashion as it may add to the risk increasing the need for engagement in care. The assessment of risk, mental status, and medical stability must be completed by a credentialed mental health screener, Licensed Behavioral Health Practitioner (LBHP), advanced practice nurse (APN), nurse practitioner (NP), Physician Assistant (PA), or physician with experience regarding this specialized mental health service, practicing within the scope of their professional license or certification. The crisis plan developed from this assessment and all services delivered during a crisis must be by qualified staff provided under a certified program. Crisis services cannot be denied based upon substance use. The CI specialist must receive regularly scheduled clinical supervision from a person meeting the qualifications of a LBHP, APN, NP, or physician with experience regarding this specialized mental health service. The beneficiary's chart must reflect resolution of the crisis which marks the end of the current episode. If the beneficiary has another crisis within twenty-four (24) hours of a previous episode, it shall be considered part of the previous episode and a new episode will not be allowed.

A unit of service is defined according to the Healthcare Common Procedure Coding System (HCPCS) approved

---

code set unless otherwise specified.

TN No. SPA <u>#18-003</u>	Approval Date
Supersedes	
TN No. SPA <u>#13-0018</u>	Effective Date <u>July 1, 2018</u>

Attachment 3.1-A  
Page 60

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

**13.d. Rehabilitative Services: 42 CFR 440.130(d) Continued:**

***3. Crisis Intervention (CI) Services for Adults with Mental Illness, Alcoholism Or Drug Dependence Continued:***

- A Certified Peer on a CI team is an individual who has self-identified as a beneficiary or survivor of mental health and/or substance use disorder (SUD) services, is at least 21 years of age, and meets the qualifications set by the state including specialized peer specialist training, certification and registration. The training provided/contracted by the Delaware Division of Substance Abuse and Mental Health (DSAMH) shall be focused on the principles and concepts of peer support and how it differs from clinical support. The training will also provide practical tools for promoting wellness and recovery, knowledge about beneficiary rights and advocacy, as well as approaches to care that incorporate creativity. A Certified Peer must have at minimum a high school education or GED, (preferably with some college background) and be currently employed as a peer supporter in Delaware. Delaware state-approved standardized peer specialist training includes academic information as well as practical knowledge and creative activities. Each crisis program including certified peer staff is supervised by a licensed practitioner of the healing arts who is acting within the scope of his/her professional license and applicable state law.

A Crisis Intervention Specialist is an unlicensed mental health professional with a bachelors or master's degree in a mental health related field. The CI specialist must receive training and regularly scheduled clinical supervision from a person meeting the qualifications of a LBHP, APN, NP, or physician with experience regarding this specialized mental health service.

Provider Qualifications Continued:

Programs shall be certified by Medicaid and/or its designee. Each crisis program, is supervised by licensed practitioner of the healing arts who is acting within the scope of his/her professional license and applicable state law. A licensed practitioner of the healing arts who is acting within the scope of his/her professional license and applicable state law (e.g., Licensed Behavioral Health Practitioner (LBHP), physician, nurse practitioner (NP), or advanced practice nurse (APN), or a Physician Assistant (PA) is available for consultation and able to recommend treatment twenty-four (24) hours a day, seven (7) days a week to the CI program.

# PROPOSED REGULATIONS

TN No. SPA <u>#18-003</u>	Approval Date
Supersedes	
TN No. SPA <u>#13-0018</u>	Effective Date <u>July 1, 2018</u>

Attachment 3.1-A  
Page 6r

## LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

### **13.d Rehabilitative Services: 42 CFR 440.130(d) Continued:**

#### **1. *Substance Use Disorder (SUD) Treatment Services***

##### 4A. Outpatient Addiction Services Continued

Outpatient activities are delivered on an individual or group basis in a wide variety of settings including site-based facility, in the community or in the beneficiary's place of residence. These services may be provided on site or on a mobile basis as defined by Delaware Health and Social Services (DHSS) or its designee. The setting will be determined by the goal which is identified to be achieved in the beneficiary's written treatment plan.

Outpatient services may be indicated as an initial modality of care for a beneficiary whose severity of illness warrants this level of treatment, or when a beneficiary's progress warrants a less intensive modality of service than they are currently receiving. The intensity of the services will be driven by medical necessity. Medication Assisted Therapies (MAT) should only be utilized when a beneficiary has an established SUD (e.g., opiate or alcohol dependence condition) that is clinically appropriate for MAT.

Provider qualifications: Outpatient addiction services are provided by licensed and unlicensed professional staff, who are at least eighteen (18) years of age with a high school or equivalent diploma, according to their areas of competence as determined by degree, required levels of experience as defined by state law and regulations and approved program guidelines and certifications approved by DHSS or its designee. All outpatient substance use disorder (SUD) programs are licensed or certified under state law. Licensed practitioners under Delaware state regulation are licensed by Delaware and include Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), nurse practitioners (NPs), advanced practice nurses (APNs), Physician Assistants (PAs), medical doctors (MD and DO), Licensed Chemical Dependency Professionals (LCDPs), and psychologists.

TN No. SPA <u>#18-003</u>	Approval Date
Supersedes	
TN No. SPA <u>#16-005</u>	Effective Date <u>July 1, 2018</u>

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: DELAWARELIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY**13.d Rehabilitative Services: 42 CFR 440.130(d) Continued:****4. Substance Use Disorder (SUD) Treatment Services**4B. Residential Addiction Services Continued

Provider qualifications: Services are provided by licensed and unlicensed professional staff, who are at least eighteen (18) years of age with a high school or equivalent diploma, according to their areas of competence as determined by degree, required levels of experience as defined by state law and regulations and departmentally approved program guidelines and certifications. All residential programs are licensed or certified under state law per Delaware Administrative Code Title 16.6001. The licensure applies to all programs providing services to beneficiaries in need of programs and services for diagnosed substance use and/or mental disorders. The licensure at a minimum requires: documentation of all insurance coverage required in regulation; the maximum client capacity requested; and a copy of the agency's Delaware business license and home state license, when applicable. The licensure or certification also requires a description of the services to be provided by the program, including a statement of the program philosophy, goals and objectives, and a description of the methodology for each service element; and organization charts of showing incumbent names, positions, degrees and credentials (e.g., license, certification); all vacant positions; and illustrating direct and indirect reporting and supervisory relationships.

Licensed practitioners under Delaware State regulation are licensed by Delaware and include Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), nurse practitioners (NPs), advanced practice nurses (APNs), Physician Assistants (PAs), medical doctors (MD and DO), Licensed Chemical Dependency Professionals (LCDPs), and psychologists. Any staff who is unlicensed and providing addiction services must be credentialed by DHSS or its designee and/or the credentialing board or, if a Recovery Coach or Credentialed Behavioral Health Technician, be under the supervision of a qualified health professional (QHP) or Clinical Supervisor.

TN No. SPA #18-003

Approval Date

Supersedes

TN No. SPA #16-005Effective Date July 1, 2018

---

# PROPOSED REGULATIONS

---

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Prescription Assistance

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 Delaware Social Services Manual (DSSM) regarding Prescription Assistance, specifically, *to restore the Delaware Prescription Drug Payment Assistance Program*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 3, 2018. Please identify in the subject line: Prescription Assistance.

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 Delaware Social Services Manual (DSSM) regarding Prescription Assistance, specifically, *to restore the Delaware Prescription Drug Payment Assistance Program*

#### Statutory Authority

29 Del.C. §6502 Annual estimates of expenditures

#### Background

The Delaware Prescription Assistance Program (DPAP) was established by the Delaware General Assembly on January 14, 2000, when Senate Bill 6 was passed during the 1999 Legislative Session. DPAP was funded by the Delaware Health Fund and provided prescription and over-the-counter drug coverage to qualified Delaware citizens. In 2007 the Bill was amended to allow the program to pay for the members' Medicare Part D premium. By paying for the premium, clients had access to all of the Medicare drug benefits.

The program was eliminated by the Fiscal Year 2018 Annual Appropriations Act and in July 2018, Senate Bill 228 restored the Delaware Prescription Drug Payment Assistance Program.

#### Summary of Proposal

##### *Purpose*

The purpose of this proposed regulation is to restore the Delaware Prescription Drug Payment Assistance Program.

##### *Summary of Proposed Changes*

Effective for services provided on and after January 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 30000 of Delaware Social Services Manual (DSSM) regarding Prescription Assistance, specifically, to restore the Delaware Prescription Drug Payment Assistance Program.

##### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social

---

Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 3, 2018.

### *Provider Manuals and Communications Update*

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

### **Fiscal Impact**

	State Fiscal Year 2019	State Fiscal Year 2020
General (State) funds	\$2,000,000	\$2,000,000
Federal funds	\$-0-	\$-0-

**\*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/november2018/proposed/22 DE Reg 354RFA 11-01-18.pdf>

### **30000 Delaware Prescription Assistance Program**

Revised July 2018

The 149<sup>th</sup> General Assembly amended Title 16, Delaware Code, by reinstating Chapter 30B to restore the Delaware Prescription Drug Payment Assistance Program. The purpose of this act is to provide payment assistance for prescription drugs and certain Medicare Part D costs to low-income seniors and individuals with disabilities who are ineligible for, or do not have, prescription drug benefits or coverage through federal, (excluding Medicare Part D coverage, state, or private sources).

The program is administered by the Fiscal Agent under contract with the Delaware Department of Health and Social Services.

The rules in this section set forth the eligibility requirements for coverage under the Delaware Prescription Assistance Program (DPAP). The DPAP is reinstated as of January 1, 2019, with benefits beginning January 14, 2019.

### **30100 Definitions**

Revised July 2018

Contractor: The agent who is under contract with the State to administer the DPAP.

Department: The Department of Health and Social Services or DHSS

Division: The Division of Medicaid & Medical Assistance or DMMA

Low Income Subsidy (LIS): Assistance provided by the Centers for Medicare and Medicaid Services to pay Medicare Part D costs for individuals with limited income and resources. The LIS will provide payment assistance with the monthly premium, the yearly deductible, and the coverage gap. The LIS will also provide payment assistance for co-payments after an individual with income below 135% of the Federal Poverty Level reaches a total of \$5100 in drug expenses.

Medicare Part D: The Medicare Prescription Drug Program established by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

Medicare Part D costs: Monthly premiums, yearly deductible, and drug costs that fall into the Part D coverage gap.

Prescription drugs: Drugs that are self-administered or administered by a lay person that have been approved as safe and effective by the Federal Food and Drug Administration or are otherwise legally marketed in the United States. Medications administered only by a clinically trained person are not covered under this program.

**30200 General Application Information**

Revised July 2018

The application for DPAP must be made in writing on the prescribed form. This request for assistance can be made by the applicant, guardian, or other individual acting for the applicant with the applicant's knowledge and consent. The application filing date is the date the application is received in either the Contractor's office or a DHSS office.

DPAP will consider an application without regard to race, color, age, sex, sexual orientation, gender identity, disability, religion, national origin, limited English proficiency (LEP) or political belief as per Title VI of the Civil Rights Act of 1964.

Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

**30201 Disposition of Applications**

Revised July 2018

The Contractor must include in each applicant's case record facts to support the Contractor's decision on his application. The Contractor must dispose of each application by a finding of eligibility or ineligibility, unless:

- a. There is an entry in the case record that the applicant voluntarily withdrew the application, and that the Contractor sent a notice confirming the applicant's decision; or
- b. There is a supporting entry in the case record that the applicant has died; or
- c. There is a supporting entry in the case record that the applicant cannot be located; or
- d. All verification requested is not received by the due date given to the applicant. If all verification requested is not received by the due date, an eligibility determination cannot be made. This will result in denial of the application. Verification that is received and/or provided may reveal a new eligibility issue not previously realized that requires additional verification. If the additional verification requested is not received by the due date given, this will result in denial of the application.

All applicants will receive a notice of acceptance or denial.

**30202 Timely Determination of Eligibility**

Revised July 2018

A time standard of 45 days will apply. This standard equals the period from the application filing date to the date that the notice of decision is mailed. The standard must be met except in unusual circumstances, such as:

- A decision cannot be made because the applicant or his representative delays or fails to take a required action.
- There is an administrative or other emergency beyond the Contractor's control.

**30203 Reporting Changes in Circumstances**

Revised July 2018

At time of application and redetermination, each individual must be informed that he is responsible for notifying the Contractor of all changes in the applicant's circumstances, which could potentially affect the applicant's eligibility for DPAP.

**30300 Technical Eligibility**

Revised July 2018

The following requirements are factors of eligibility specific to DPAP.

**30301 Citizenship and Alienage**

Revised July 2018

---

The individual must be a U.S. citizen or a lawfully admitted alien.

### **30302 State Residency**

Revised July 2018

The individual must be living in the State of Delaware.

### **30303 Social Security Number**

Revised July 2018

Each individual applying for DPAP must furnish his or her Social Security number.

### **30304 Aged or Disabled Requirement**

Revised July 2018

The individual must meet one of the following requirements:

- a. Be age 65 or over; or
- b. Be an individual between the ages of 19 and 64 who is receiving disability benefits under Title II of the Social Security Act. An individual is considered to meet the "receiving disability benefits" requirement if the individual is a former recipient of either Social Security Disability Insurance benefits or Supplemental Security Income benefits and was required by the Social Security Administration to accept Social Security Survivors benefits.

### **30305 Requirement to Enroll in Medicare Part D**

Revised July 2018

An individual who is entitled to receive Medicare benefits under Part A or Part B must enroll in Part D in order to be eligible for DPAP. The individual must provide proof of Medicare Part D enrollment.

### **30306 Requirement to Apply for Low Income Subsidy (LIS)**

Revised July 2018

An individual must apply for the LIS if potentially eligible. The individual must provide a copy of the LIS denial or approval notice.

### **30307 No Other Prescription Drug Coverage**

Revised July 2018

The individual must not have or must be ineligible for, prescription drug benefits or coverage through federal (excluding Medicare Part D coverage), state, or private sources regardless of any annual limitations to the benefits.

The individual must not have or must be ineligible for:

- a. Medicaid prescription benefits; and/or
- b. Prescription drug benefits through a third party payer.

#### **30307.1 Exceptions to No Other Prescription Drug Coverage**

Revised July 2018

Individuals who are eligible for the following drug benefits will not be excluded from eligibility for DPAP:

- a. Individuals covered under a specific disease state insurance program, for example a policy that pays only for cancer drugs
- b. Individuals who are members of a discount drug program in which the policy does not actually pay for the drugs, for example American Association of Retired Persons (AARP)
- c. Individuals eligible for drug coverage through the Division of Vocational Rehabilitation



- d. Individuals eligible for drug coverage through the Division of Substance Abuse and Mental Health; and
- e. Individuals covered under Medicare Part D.

**30308 Inmate of a Public Institution**

Revised July 2018

An individual who is an inmate of a public institution is not eligible for DPAP.

An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. An individual awaiting trial in a detention center is considered an inmate of a public institution.

**30400 Financial Eligibility**

Revised July 2018

Income is any type of money payment that is of gain or benefit to an individual. Income is either counted or excluded for the eligibility determination.

**30401 Countable Income**

Revised July 2018

Countable income includes but is not limited to:

1. Social Security benefits - as paid after deduction for Medicare premium;
2. Pension - as paid;
3. Veterans Administration Pension - as paid;
4. U.S. Railroad Retirement Benefits - as paid;
5. Wages - net amount after deductions for taxes and FICA;
6. Senior Community Service Employment - net amount after deductions for taxes and FICA;
7. Interest/Dividends - gross amount;
8. Capital Gains - gross amount from capital gains on stocks, mutual funds, bonds.;
9. Credit Life or Credit Disability Insurance Payments - as paid;
10. Alimony - as paid;
11. Rental Income from entire dwelling - gross rent paid minus standard deduction of 20% for expenses;
12. Roomer/Boarder Income - gross room/board paid minus standard deduction of 10% for expenses;
13. Self Employment - countable income as reported to Internal Revenue Service (IRS); and
14. Unemployment Compensation - as paid.

**30402 Excluded Income**

Revised July 2018

Excluded income includes but is not limited to:

1. Annuity payments;
2. Individual Retirement Account (IRA) distributions;
3. Payments from reverse mortgages;
4. Capital gains from the sale of principal place of residence;
5. Conversion or sale of a resource (i.e. cashing a certificate of deposit);
6. Income tax refunds;
7. Earned Income Tax Credit (EITC);
8. Vendor payments (bills paid directly to a third party on behalf of the individual);
9. Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance);
10. Loan payments received by individual;
11. Proceeds of a loan;
12. Foster care payments made on behalf of foster children living in the home;
13. Retired Senior Volunteer Program (RSVP);

- 14. Veterans Administration Aid and Attendance payments;
- 15. Victim Compensation payments;
- 16. German reparation payments;
- 17. Radiation Exposure Compensation Trust Fund payments;
- 18. Japanese-American, Japanese-Canadian, and Aleutian restitution payments; and/or
- 19. Payments from long term care insurance or for inpatient care paid directly to the individual.

## **30403 Eligibility Determination**

Revised July 2018

To be eligible for DPAP:

- a. The individual must have countable income that is less than 200% of the Federal Poverty Level (FPL);  
or
- b. The individual has countable income that is equal to or greater than 200% of the FPL and the individual has prescription drug expenses that exceed 40% of the individual's countable income.

The Federal Poverty Level (FPL) is published annually. The income eligibility standard based on the FPL will be issued within 10 business days after the FPL is published. The revised income eligibility standard will be used to determine eligibility for the month following the month in which the standard is issued.

## **30404 Effective Date of Coverage**

Revised July 2018

Coverage begins on the first day of the month following the month that eligibility is determined. There is no retroactive coverage. Eligible individuals will receive an identification card for DPAP.

## **30405 Annual Renewal of Eligibility**

Revised July 2018

The eligibility of DPAP beneficiaries must be renewed once every twelve (12) months. The contractor will redetermine eligibility for DPAP without requiring information from the recipient. The Contractor will notify DPAP recipients of the following:

- a. The eligibility determination; and
- b. The recipient's responsibility to inform the Contractor of any changes in circumstances which could potentially affect the recipient's eligibility for DPAP.

DPAP coverage will be terminated when the Contractor or DSS DHSS is notified by the recipient that he or she no longer wants coverage.

## **30500 Benefits**

Revised July 2018

Prescription drugs covered under DPAP are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. Policy and guidelines will follow the existing Delaware Medical Assistance Program limitations. Services covered include generic and brand name prescription drugs that have been approved as safe and effective by the Federal Food and Drug Administration as well as cost effective over-the-counter drugs prescribed by a practitioner. Necessary diabetic supplies not covered by Medicare will also be covered. Medications that are covered by Medicare are not covered under DPAP.

### **30500.1 Benefits for Individuals with Medicare Part D Coverage**

Revised July 2018

DPAP will provide payment assistance for Medicare Part D monthly premiums, yearly deductible, those drug costs that fall into the Part D coverage gap, and drugs that are excluded from Medicare Part D.

Medicare Part D coverage will be primary to payment assistance under DPAP.

**30501 Limitations on Benefits**Revised July 2018

Payment assistance to each eligible individual shall not exceed \$3,000.00 per benefit year. Individuals will receive a notice when 75% of the \$3,000.00 cap has been expended.

**30502 Co-payment Requirement**Revised July 2018

There is a co-payment of \$5.00 or 25% of the cost of the prescription (whichever is greater) during the Part D deductible and coverage gap and for drugs that are excluded from Part D. DPAP will not provide payment assistance for Medicare Part D co-payments. When the individual receives a prescription drug that is covered under Medicare Part D, the individual is responsible for the Medicare Part D co-payment.

**30600 Confidentiality**Revised July 2018

DPAP will provide safeguards that restrict the use or disclosure of information about applicants and recipients to purposes directly connected with the administration of the DPAP.

Purposes directly related to administration of the DPAP include establishing eligibility, providing services for recipients, determining the amount of medical assistance, and conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the program.

At a minimum, the types of information about applicants and recipients that must be safeguarded and not released without consent include:

1. Names and addresses;
2. Medical services provided;
3. Social and economic conditions or circumstances;
4. Contractor evaluation of personal information;
5. Medical data, including diagnosis and past history of disease or disability;
6. Information received for verifying income eligibility and amount of medical assistance payments; and
7. Information about third party liability.

**30601 Release of Information to DPAP Providers**Revised July 2018

DPAP providers have a contractual obligation to safeguard information about recipients. Providers may have access to certain eligibility information if they can provide:

- a. A DPAP identification number; or
- b. Two of the following identifying factors: individual's full name, date of birth, Social Security number; AND the date of service.

Providers who supply the above identifying factors may be given the following information:

- a. Correct spelling of the recipient's name;
- b. DPAP number;
- c. Date of birth;
- d. An indication whether the individual is eligible for the date of service given or for a range of dates given. Providers may not be given all periods of eligibility.

**30602 Release of Information to Others**Revised July 2018

At the time of application, individuals are informed that all eligibility information is confidential and disclosure without written permission of the individual is limited. DPAP has the authority to responsibly share information

---

concerning applicants and recipients with:

- a. DHSS employees;
- b. Federal or federally assisted programs that provide assistance to individuals on the basis of need (SSI, HUD); and/or
- c. Contracted service providers.

Information may also be released to comply with a subpoena or other valid court order.

DPAP must obtain specific written permission from the individual before releasing information to any other persons or sources.

## **30700 Fair Hearings**

Revised July 2018

A fair hearing is an administrative hearing held in accordance with the principles of due process. An opportunity for a fair hearing will be provided, subject to the provisions in policy at DSSM 5000 - 5607.

---

### **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

16 **DE Admin. Code** 16000

#### **PUBLIC NOTICE**

#### **MAGI Methodology**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding MAGI Methodology, specifically, to clarify policy related to special income counting rules for children and dependents.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 3, 2018. Please identify in the subject line: MAGI Methodology.

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 MAGI Methodology, specifically, *to clarify policy related to special income counting rules for children and dependents.*

#### **Statutory Authority**

- 42 CFR 435.603 Application of Modified Adjusted Gross Income

#### **Background**

On September 1, 2016, the Centers for Medicare and Medicaid Services (CMS) provided clarification of the modified adjusted gross income (MAGI) methodologies rules. MAGI Methodology includes special income counting rules for children and dependents. The Delaware Division of Medicaid and Medical Assistance (DMMA) is adding further policy clarification to ensure the correct application of MAGI rules to MAGI Medicaid and Delaware Healthy Children's Program (DHCP) cases.

## Summary of Proposal

### *Purpose*

The purpose of this proposed regulation is to clarify policy related to special income counting rules for children and dependents.

### *Summary of Proposed Changes*

Effective for services provided on and after January 12, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 16000 of the Delaware Social Services Manual (DSSM) regarding MAGI Methodology.

### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 3, 2018.

### *Provider Manuals and Communications Update*

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

## Fiscal Impact

No fiscal impact is projected as a result of this policy clarification.

**\*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/november2018/proposed/22 DE Reg 361RFA 11-01-18.pdf>

## 16000 Financial Methodologies - Application of Modified Adjusted Gross Income (MAGI) Methodology

This section implements section 1902(e)(14) of the Social Security Act and describes the modified adjusted gross income (MAGI) methodology used to determine household composition and family size and how income is counted for the financial eligibility determination of modified adjusted gross income (MAGI)-related eligibility groups in accordance with the Affordable Care Act of 2010.

### 16100 Definitions

The following words and terms, when used in the context of these policies, will have the following meaning unless the context clearly indicates otherwise.

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

**“Household income”** means the sum of the MAGI-based income of every individual included in the individual’s household unless an exception applies.

Exceptions:

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

The MAGI-based income of a tax dependent, ~~other than a spouse or biological, adopted, or step-child claimed by someone other than a parent,~~ who is not expected to be required to file a tax return for the taxable year in which eligibility is being determined, is not included in the household income of the taxpayer whether or not such tax dependent files a tax return.

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

**“Tax dependent”** means ~~an individual for whom another individual claims a deduction for a personal exemption under section 151 of the Internal Revenue Service Code for a taxable year. a person, other than the taxpayer or the taxpayer’s spouse, for whom an exemption can be claimed. To be your dependent, a person must be your qualifying child or qualifying relative.~~

---

*(Break in Continuity of Sections)*

## **16500.4 Special income counting rules for children claimed by a parent**

A child's MAGI based income is excluded from total household income if:

- The child is either under age 19 or is an adult child claimed by a parent as a tax dependent; and
- The child and parent are both included in the MAGI-based household; and
- The child's income is below the tax filing threshold (i.e., the child is not expected to be required to file a tax return for the current tax year).

This rule applies to a child or children living with a parent whether household composition is based on the rules for tax filers or the non-filer rules.

It does not matter whether the child actually files a tax return.

## **16500.5 Special income counting rules for children or dependents claimed by someone other than a parent**

The special income counting rule for tax dependents applies in the case of tax dependents who are claimed by someone other than a parent.

A tax dependent's income is excluded from total household income if:

- The tax dependent and the tax filer who expects to claim the individual are both included in the household; and
- The tax dependent's income is below the tax filing threshold (i.e., the tax dependent is not expected to be required to file a tax return for the current tax year).

When determining the total household income of a child or dependent who is not living with a parent, the MAGI-based income is always counted in determining the child or dependent's eligibility, even if the income is below the tax filing threshold.

## **16500.6 Applying the tax filing threshold for tax dependents**

Whether a dependent has to file a return generally depends on the amount of the dependent's earned or unearned income.

Single dependents (under age 65) are required to file a tax return if the dependent has earned or unearned income that is more than the limits, or tax thresholds, announced by the IRS annually. IRS Publication 929 Tax Rules for Children and Dependents describes how to determine if a dependent is required to file a return and the applicable tax thresholds.

To determine the tax thresholds that apply, we use all of the dependent's MAGI based counted income with the exception of the dependent's Social Security Benefits (SSB).

Only the taxable portion of the dependent's SSB may be applied toward the tax filing threshold. If no portion of the SSB is taxable, none of those benefits will be applied toward the tax filing threshold.

Except in rare cases, such as receipt of a lump sum payment, a child or tax dependent's SSB will not be taxable unless the tax dependent has other income which itself exceeds the tax filing threshold.

If a child or tax dependent's MAGI based income counts toward the total household income, then all of the dependent's SSB counts.

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

**MAGI Methodology**

---

# PROPOSED REGULATIONS

---

## DEPARTMENT OF INSURANCE

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 2501 (18 Del.C. §§311 & 2501)  
18 DE Admin. Code 610

#### PUBLIC NOTICE

#### 610 Automobile Premium Consumer Comparison

##### A. Type of Regulatory Action Required

Repeal of Existing Regulation.

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

Chapter 18 of the Delaware Administrative Code at Regulation 610 requires insurers who have a prescribed market share to, annually, by October 1, submit certain data to the Department of Insurance (Department) concerning automobile rates so that the Department may use those data as the basis of its on-line rate comparison tool. The purpose of the on-line rate comparison tool was to allow consumers to easily compare automobile insurance rates based on set driving scenarios, driver profiles and zip codes.

However, since the inception of the rate calculator in 2006, insurers have built their own calculators which can be precisely tailored to fit an exact consumer profile. Thus, the Department's calculator is obsolete and the regulation requiring the data call should be repealed.

The Department does not plan to hold a public hearing on the proposed repeal of Regulation 610. The regulation proposed for repeal appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed repeal of the regulation. Any written submission in response to this notice and relevant to the proposed repeal must be received by the Department of Insurance no later than 4:30 p.m. EST, the 3<sup>rd</sup> day, December, 2018. Any such requests should be directed to:

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

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

<http://regulations.delaware.gov/register/november2018/proposed/22 DE Reg 364RFA 11-01-18.pdf>

#### ~~610 Automobile Premium Consumer Comparison~~

##### 4.0 Authority

- 4.1 This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§311 and 2501 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 104.

##### 2.0 Definitions

~~"Insurer" shall mean every insurer licensed to offer and sell non-fleet private passenger automobile insurance coverage in the State of Delaware.~~

~~“Private passenger auto market share” shall be determined by data from the National Association of Insurance Commissioners for the prior calendar year for line numbers 19.1, 19.2 and 21.1 for the State of Delaware~~

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

~~“Rate survey” shall mean a request by the Department that insurers calculate estimated annual insurance premiums based on hypothetical consumer profiles, and to include variations in driving record, vehicle and other factors identified by the Department. The rate survey shall include estimated premiums for each zip code or other geographic area identified by the Department.~~

## **3.0 Scope**

- 3.1 Insurers with 1 percent or more of the Delaware private passenger automobile insurance market share shall be required to complete the full rate survey required by this regulation.
- 3.2 Insurers with .01 to .99 percent of private passenger automobile insurance market share shall be required to complete a limited rate survey consisting of a lesser number of hypothetical consumer profiles identified by the Department.
- 3.3 Insurers with less than .01 percent of private passenger automobile insurance market share shall not be required to complete a rate survey pursuant to this regulation.

## **4.0 Insurer Information**

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

## **5.0 Survey Completion Deadline**

- 5.1 The Department of Insurance shall make available the rate survey request format with hypothetical consumer profiles, coverage levels, vehicle models and other information necessary for calculating rate estimates on the Department’s website no later than September 15<sup>th</sup> of each year.
- 5.2 In 2006, all required rate survey data from insurers must be submitted to the Department on or before November 1<sup>st</sup>, 2006. In all subsequent years, all required rate survey data from insurers must be submitted to the Department on or before October 15<sup>th</sup> of each year.
- 5.3 Rate survey data that is incomplete or not reported according to the Department’s instructions will be returned to the insurer for correction and must be resubmitted within 10 business days.

## **6.0 Survey Format**

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

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

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

## **8.0 Consumer Quote Requests**



# PROPOSED REGULATIONS

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

## ~~9.0 Penalties~~

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

## ~~10.0 Severability~~

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

## ~~11.0 Effective Date~~

- ~~11.1 This Regulation shall become effective September 11, 2006.~~

---

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 3342B and 3556A (18 Del.C. §§311, 3342B & 3556A)

### PUBLIC NOTICE

## 1319 Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers

### A. Type of Regulatory Action Required

Proposed New Regulation

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

On August 29, 2018, the Governor signed into law SB 227 as amended by Senate Amendment No. 1 and House Amendment No. 1 as amended by House Amendment No. 1 to House Amendment No. 1, entitled "An Act to Amend Title 16, Title 18, and Title 29 of the Delaware Code Relating to Primary Care Services" (the Act). The Act provides that Sections 5 through 8 become effective on January 1, 2019 and expire "three years after enactment into law unless otherwise provided by a subsequent Act of the General Assembly."

Section 5 of the Act adds new 18 Del.C. §3342B to the Uniform Health Policy Provisions Law codified at 18 Del.C. Chapter 33, Subchapter 1. Section 6 of the Act adds new 18 Del.C. §3556A to Chapter 35 of the Delaware Insurance Code, which concerns group and blanket health insurance. Both new provisions require, *inter alia*, that insurance carriers "provide coverage for chronic care management and primary care at a reimbursement rate that is not less than the Medicare reimbursement for comparable physician services."

The Act also requires that the Delaware Department of Insurance (the Department) "arbitrate disagreements regarding rates under this section" for which the parties involved in the dispute must pay, and that the Department "adopt regulations to implement the requirements of this section no later than 90 days after the effective date of this Act."

The Department is therefore proposing new 18 DE Admin. Code 1319, Arbitration of Disputes between Carriers and Primary Care and Chronic Care Management Providers, to implement the requirements of 18 Del.C. §§3342B and 3556A.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m., 3<sup>rd</sup> day, December, 2018 by mailing to:

Delaware Department of Insurance  
Attn.: Leslie W. Ledogar, Esq., Regulatory Specialist  
Docket No. 3909-2018  
841 Silver Lake Boulevard  
Dover, DE 19904

Comments may also be emailed to [leslie.ledogar@state.de.us](mailto:leslie.ledogar@state.de.us).

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

**\*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/november2018/proposed/22 DE Reg 366RFA 11-01-18.pdf>

## **1319 Arbitration of Disputes between Carriers and Primary Care and Chronic Care Management Providers**

### **1.0 Purpose and Statutory Authority**

- 1.1 The purpose of this regulation is to implement 18 Del.C. §§3342B and 3556A, which require health insurance carriers to submit to arbitration any dispute with a provider regarding claims for reimbursement for primary care and chronic care management services.
- 1.2 This Regulation is promulgated pursuant to 18 Del.C. §§311, 3342B, and 3556A and 29 Del.C. Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

### **2.0 Definitions**

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

"Chronic care management" means the services in the Chronic Care Management Services program, as administered by the Centers for Medicare and Medicaid Services, and includes Current Procedural Terminology ("CPT") codes 99487, 99489, and 99490.

"Department" means the Delaware Department of Insurance.

"Medicare" means the federal Medicare Program (U.S. Public Law 89-87, as amended) [42 U.S.C. § 64 1395 et seq.].

"Primary care" means health care provided by a primary care provider.

"Primary care provider" means any physician or individual licensed under Title 24 of the Delaware Code to provide health care, with whom the patient has initial contact and by whom the patient may be referred to a specialist. Examples of a primary care provider include primary care physicians (including an obstetrician - gynecologist, to the extent that provider is serving in the role as a primary care provider), certified nurse practitioners, physician assistants, and other front-line practitioners for chronic care management and primary care who provide primary care in a family, pediatrics, internal medicine, or a geriatrics practice.

---

# PROPOSED REGULATIONS

---

"Provider" means a provider of chronic care management or a primary care provider.

## **3.0 Notice of Final Reimbursement Decision**

- 3.1 A carrier shall notify a provider, in writing, of a carrier's final decision regarding reimbursement for an individual claim, procedure or service, if the decision does not authorize reimbursement of the provider's charge in its entirety. Such notice may be separate from or a part of the written notice of the carrier's decision.
- 3.2 Any notice given to a provider pursuant to subsection 3.1 shall:
- 3.2.1 Be in writing; and
- 3.2.2 Give the provider notice of the provider's right to arbitration through the Department's arbitration program, by including, at a minimum, the following language:

"You have the right to seek review of our decision regarding the amount of your reimbursement. The Delaware Insurance Department provides claim arbitration services which are in addition to, but do not replace, any other legal or equitable right you may have to a review of this decision or any right of review based on your contract with us. You can contact the Delaware Insurance Department for information about arbitration by calling the Arbitration Secretary at 302-674-7322 or by sending an email to: [DOI-arbitration@state.de.us](mailto:DOI-arbitration@state.de.us). All requests for arbitration must be filed within 60 days from the date you receive this notice; otherwise, this decision will be final."

## **4.0 Arbitration Procedures**

- 4.1 Provider Petition for Arbitration.
- 4.1.1 A provider or his or her authorized representative may request that the Department review a carrier's final reimbursement decision through arbitration by complying with all of the following requirements:
- 4.1.1.1 Complete in full the Department's standard Petition for Arbitration form, which may be downloaded from the Department's website;
- 4.1.1.2 Attach to the completed Petition for Arbitration all supporting documentation;
- 4.1.1.3 Include a filing fee in the form of a check that is made payable to the Department of Insurance, which shall be in the amount of \$75;
- 4.1.1.4 File the original and one copy of Petition for Arbitration and the appropriate filing fee with the Department, at the following address:
- Delaware Department of Insurance  
ATTN: Arbitration Secretary  
841 Silver Lake Blvd.  
Dover, DE 19904
- 4.1.1.5 Ensure that the Petition for Arbitration is timely submitted so that it is received by the Department no later than 60 days after the provider received the carrier's final reimbursement decision.
- 4.1.2 A provider who requests Department review under subsection 4.1.1 shall also:
- 4.1.2.1 Send a copy of the Petition and supporting documentation to the carrier by certified mail, return receipt requested; and
- 4.1.2.2 Deliver to the Department a Proof of Service confirming that a copy of the Petition was sent to the carrier by certified mail, return receipt requested.
- 4.1.3 The Department may refuse to accept any Petition that is not timely filed or does not otherwise meet the criteria for arbitration.
- 4.2 Carrier Response to Petition for Arbitration

- 4.2.1 Within 20 days of receipt of the Petition for Arbitration, the carrier shall deliver to the Department an original and one copy of a Response to the Petition for Arbitration, to which it shall attach all supporting documents or other evidence.
- 4.2.2 At the time of delivering the Response to the Department, the carrier shall also:
- 4.2.2.1 Send a copy of the Response and supporting documentation to the provider or his or her authorized representative by first class U.S. mail, postage prepaid; and
- 4.2.2.2 Deliver to the Department a Proof of Service confirming that a copy of the Response was mailed to the health care provider or his or her authorized representative.
- 4.2.3 The Department may return any non-conforming Response to the carrier.
- 4.3 Appointment of Arbitrator
- 4.3.1 Upon receipt of a petition filed in proper form, the Department shall assign an Arbitrator.
- 4.3.2 The Arbitrator shall be of suitable background and experience to decide the matter in dispute and shall not be affiliated with any of the parties or with the patient whose care is at issue in the dispute.
- 4.4 Summary Disposition of Petition by the Arbitrator
- 4.4.1 An Arbitrator may summarily dispose of a Petition if:
- 4.4.1.1 The carrier fails to timely deliver a Response; or
- 4.4.1.2 The Arbitrator determines that the Petition is meritless on its face or that the subject of the Petition is not appropriate for arbitration under this regulation.
- 4.4.2 If the carrier fails to timely respond to a Petition for Arbitration, the Department may, after verifying proper service and with written notice to the parties, assign the matter to the next scheduled Arbitrator for summary disposition.
- 4.4.2.1 The Arbitrator may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on the carrier.
- 4.4.2.2 The Arbitrator may allow the re-opening of the matter to prevent a manifest injustice. A carrier must make a request for re-opening no later than fifteen days after notice of the default judgment.
- 4.4.3 If the Arbitrator determines that the subject of the Petition is not appropriate for arbitration under this regulation or is meritless on its face, the Arbitrator may summarily dismiss the Petition and provide notice of such dismissal to the parties.
- 4.5 Arbitration Hearing
- 4.5.1 The Arbitrator shall schedule the matter for a hearing in a timeframe that will allow the Arbitrator to render a written decision within 45 days after the delivery to the Department of the Petition for Arbitration. The Arbitrator shall give notice of the arbitration hearing date to the parties at least 10 days prior to the hearing. The parties are not required to appear and may rely on the papers delivered to the Department.
- 4.5.2 Testimony at the arbitration hearing is to be limited, to the maximum extent possible, to statements by each party in which they are afforded the opportunity to explain their view of the previously submitted evidence and to answer any questions posed by the Arbitrator.
- 4.5.3 If the Arbitrator allows any testimony in addition to that provided for in subsection 4.5.2, the Arbitrator shall allow brief cross-examination or other response by the opposing party.
- 4.5.4 The Delaware Uniform Rules of Evidence will be used for general guidance but will not be strictly applied.
- 4.5.5 Because the testimony may involve evidence relating to personal health information that is confidential and protected by state or federal laws from public disclosure, the arbitration hearing shall be closed to the public.
- 4.5.6 The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone, in or outside of the parties' presence, for information the Arbitrator deems necessary to resolve the matter.

---

# PROPOSED REGULATIONS

---

4.5.7 The Arbitrator shall consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this regulation. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties that has not been provided to the opposing party with at least five days notice, except claims of a continuing nature that are set out in the filed papers.

## 4.6 Arbitrator's Written Decision

4.6.1 The Arbitrator shall render his or her decision in writing and shall mail a copy of the decision to each of the parties and to the Department within 45 days of the filing of the Petition.

4.6.2 If the Arbitrator determines that the carrier's final reimbursement decision provides reimbursement in an amount that is not sufficient, the carrier shall reimburse the provider in the amount that the Arbitrator so determines, within 45 days from the date of the Arbitrator's decision.

## 4.7 Arbitration Costs

4.7.1 The Arbitrator shall charge to the parties the cost of the arbitration, which the Arbitrator shall bill at the Arbitrator's actual time spent and direct expenses incurred to conduct the arbitration.

4.7.2 The Arbitrator may allocate to each party a percentage of the Arbitrator's costs to conduct the arbitration.

4.7.3 The Arbitrator may award to the health care provider the filing fee, if the health care provider is the prevailing party in the arbitration.

## **5.0 Carrier Recordkeeping and Reporting Requirements**

5.1 A carrier shall maintain written or electronic records for five years after completion of each arbitration case, documentation of each Petition for Arbitration including, at a minimum, the following information:

5.1.1 The date the Petition was filed;

5.1.2 The name and identifying information of the health care provider on whose behalf the Petition was filed;

5.1.3 A general description of the reason for the Petition; and

5.1.4 The date and description of the arbitration decision or other disposition of the Petition.

5.2 A carrier shall file with its annual report to the Department the total number of Petitions for Arbitration filed, with a breakdown showing:

5.2.1 The total number of final reimbursement decisions upheld through arbitration; and

5.2.2 The total number of final reimbursement decisions reversed through arbitration.

## **6.0 Non-Retaliation**

A carrier shall not terminate or in any way penalize a provider with whom it has a contractual relationship and who exercises the right to file a Petition for Arbitration, solely on the basis of such filing.

## **7.0 Confidentiality of Health Information**

Nothing in this Regulation shall supersede any federal or state law or regulation governing the privacy of health information.

## **8.0 Computation of Time**

8.1 In computing any period of time prescribed or allowed by this Regulation, the day of the act or event after which the designated period of time begins to run shall not be included.

8.2 The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the Department is closed, in which event the period shall run until the end of the next day on which the Department is open.

8.3 When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation.

8.4 As used in this section, "legal holidays" means those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

## **9.0 Effective Date and Expiration Date**

This Regulation shall become effective upon adoption and shall expire on August 29, 2021, unless otherwise readopted, with or without amendments.

---

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 1720; 18 Delaware Code Chapters 33, 35 and 36; 29 Delaware Code, Chapter 101, and in response to 26 CFR 54.9833-1, 29 CFR 2590.736, 45 CFR 146.125 and 45 CFR 148.120

(18 Del.C. §§311 & 1720; 18 Del.C. Chs. 33, 35 & 36; 29 Del.C. Ch. 101 & in response to 26 CFR 54.9833-1, 29 CFR 2590.736, 45 CFR 146.125 and 45 CFR 148.120)

### PUBLIC NOTICE

#### 1320 Minimum Standards for Short-Term, Limited Duration Health Insurance Plans

#### **A. Type of Regulatory Action Required**

Proposed New Regulation

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

Short-term, limited duration (STLD) health insurance has long been offered to individuals through the non-group market and through associations. The product was originally designed for people who experience a temporary gap in health insurance coverage. Unlike other products that are considered "limited benefit" or "excepted benefit" policies (cancer-only or hospital indemnity that pay a fixed dollar benefit per inpatient stay), STLD health insurance policies are sometimes advertised as providing "major medical" coverage.

STLD policies are distinguishable from other comprehensive major medical policies in that they only provide coverage for a limited term, typically less than 365 days, and, as the name implies, are not renewable. Thus, an individual who bought an STLD and then becomes seriously ill has historically been unable to renew coverage when the policy ends.

STLD policies also have other significant limitations, including the types of services covered, and caps on the maximum claims-paid amounts. Additionally, pursuant to an exemption in the federal Affordable Care Act (ACA), STLD policies are exempt from the market rules that apply to most major medical health insurance policies sold to individuals in the non-group market, including rules that prohibit medical underwriting, pre-existing condition exclusions, and lifetime and annual limits. They are also exempt from the ACA's minimum coverage standards.

In 2017, Congress reduced the ACA's individual mandate tax penalty, (the requirement that individuals have minimum essential health coverage or face a tax penalty) to \$0, beginning in 2019. It is possible that this change could lead more consumers to contemplate purchasing STLD policies.

On August 3, 2018, the federal government issued a rule that will apply to STLD health insurance policies sold on or after October 2, 2018. See 83 Fed. Reg. 38212 (the Final Rule). The Final Rule would extend the period during which plans can be sold from three to 12 months and would allow for consecutive renewal of short-term policies. The relaxation in renewal requirements allows consumers to enroll in the policies for a period arguably longer than "short term" and may re-enroll in the policies for an indefinite period of time.

Although the intent of the Final Rule is to grant consumers more affordable coverage alternatives than are offered through state health insurance marketplaces, the more "affordable" coverage comes with less actual coverage. Specifically, consumers who purchase these plans may face limited benefit offerings, significant out-of-pocket costs, the risk of plan cancellation due to pre-existing conditions, and possible deceptive advertising practices. A producer's duty of competence includes ensuring that consumers considering these policies are fully advised of the terms, benefits, and limitations of the coverage.

The Final Rule expressly describes short-term coverage as "a type of health insurance coverage that was

primarily designed to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another plan or coverage (emphasis added)." *Id.* at 38213.

STLD health insurance policies are not considered minimum essential coverage for purposes of satisfying the ACA individual mandate. *Id.* at 38213 and 38225.

Increased sales of these plans to younger, healthy people is expected to draw thousands of healthy consumers out of Delaware's Health Insurance Marketplace (HIM) risk pool, leading to an unhealthy risk mix and subsequent increases in marketplace health insurance premiums.

The sale of these plans can begin on October 1, 2018, which is 60 days after the Final Rule was issued. Therefore, states, including Delaware, have a short window within which to implement consumer protections, as the sale of these short-term policies could begin later this year.

The Final Rule specifically states that "states generally remain free to adopt . . . other standards as they see fit." *Id.* at 38225.

Elsewhere in this edition of the *Register of Regulations*, the Department published an emergency order by which it adopted new 18 **DE Admin. Code** 1320 - Minimum Standards for Short-Term, Limited Duration Health Insurance Plans, to ensure that carriers offering STLD health insurance plans comply with minimum consumer protection and notification standards so as to partially prevent the erosion of the stability of Delaware's HIM and to protect Delaware consumers from being potentially misled into purchasing a STLD health insurance plan without being fully informed of its coverage limits or applicability.

The Department is therefore concurrently proposing new 18 **DE Admin. Code** 1320 - Minimum Standards for Short-Term, Limited Duration Health Insurance Plans with the purpose of permanently codifying the regulations that are the subject of the Commissioner's Emergency Order adopting these same regulations.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m., 3<sup>rd</sup> day, December, 2018 by mailing to:

Delaware Department of Insurance

Attn.: Leslie W. Ledogar, Esq., Regulatory Specialist

Docket No. 3909-2018

841 Silver Lake Boulevard

Dover, DE 19904

Comments may also be emailed to [leslie.ledogar@state.de.us](mailto:leslie.ledogar@state.de.us).

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

**\*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/november2018/proposed/22 DE Reg 371RFA 11-01-18.pdf>**

## **1320 Minimum Standards for Short-Term, Limited Duration Health Insurance Plans**

### **1.0 Purpose**

**1.1 The purpose of this regulation is to:**

**1.1.1 Ensure that any short-term, limited duration health insurance policy that is offered in this state complies with certain minimum requirements:**

**1.1.2 Set forth the requirements on producers and agents who offer short-term health insurance policies to this State's consumers; and**

**1.1.3 Provide for full disclosure and notice in the sale of short-term, limited duration health insurance policies, as defined in this regulation.**

### **2.0 Authority**

---

This regulation is issued pursuant to the authority vested in the Commissioner pursuant to 18 **Del.C.** §311, 18 **Del.C.** §1720, 18 **Del.C.** Chs. 33, 35 and 36, 29 **Del.C.** Ch. 101 and in response to 26 CFR 54.9833-1, 29 CFR 2590.736, 45 CFR 146.125 and 45 CFR 148.120.

### **3.0 Applicability and Scope**

- 3.1 This regulation shall apply to short-term, limited-duration health insurance coverage offered for sale in this state. The requirements contained in this regulation shall be in addition to any other applicable regulations previously adopted.
- 3.2 This regulation shall not apply to:
- 3.2.1 Medicare supplement policies subject to 18 **Del.C.** Ch. 34; or
- 3.2.2 Long-term care insurance policies subject to 18 **Del.C.** Ch. 71.

### **4.0 Definitions**

The following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Carrier" means any entity that provides health insurance in this State. Carrier includes an insurance company, health service corporation, managed care organization and any other entity providing a plan of health insurance or health benefits subject to State insurance regulation. Carrier also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health insurance.

"Certificate" means a statement of the coverage and provisions of a policy of either individual or group accident and sickness insurance, which has been delivered or issued for delivery in this state and includes riders, endorsements and enrollment forms, if attached to the policy.

"Commissioner" means the Delaware Insurance Commissioner.

"Direct response solicitation" means a communication through a sponsoring or endorsing entity or individually through mail, telephone, the internet or other mass communication media.

"Health care services" means any services or supplies included in the furnishing to any individual of medical care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any individual of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury, disability or disease.

"Short-term, limited duration health insurance" means health insurance coverage provided pursuant to a contract with a health carrier that has an expiration date specified in the contract that is less than or equal to 3 months after the original effective date of the contract and has a duration of no longer than 3 months in total.

### **5.0 Minimum Policy Standards**

- 5.1 No carrier shall advertise, sell or otherwise offer for sale or cause to be offered for sale a policy that it purports to be a short-term, limited duration health insurance policy, unless that policy meets the definition of short-term, limited duration health insurance policy as defined in Section 4.0 of this regulation and the policy meets the following minimum standards:
- 5.1.1 The policy may not be issued for a period longer than three months;
- 5.1.2 The three-month policy term limit set in subsection 5.1.1 is a single occurrence limit and may not be effectively extended by issuing the same policy for successive back-to-back terms or by issuing a different short-term, limited duration policy to the same policy holder more than once in any given year;
- 5.1.3 The carrier shall apply the same underwriting standards to all applicants, regardless of whether they have previously been covered by short-term, limited duration health insurance;
- 5.1.4 The policy contains the notice required in federal law as dictated in Section 6.0 of this regulation;  
and
- 5.1.5 The policy shall be offered at a rate that has an actuarially expected loss ratio of at least 60 percent.



# PROPOSED REGULATIONS

- 5.2 Every carrier who offers a short-term, limited duration health insurance policy shall obtain the approval of the terms and conditions of that policy from the Commissioner before such policy may be offered for sale in this state.
- 5.3 The Commissioner reserves the right to reject for approval a short-term, limited duration health insurance policy that, in the opinion of the Commissioner, is unjust, unfair, or unfairly discriminatory to the policyholder, a person insured under the policy, or to a beneficiary of the policy.

## **6.0 Disclosure and Notice Requirements**

- 6.1 Except as provided in subsection 6.2, a carrier shall, at time of sale, enclose with every short-term, limited duration health insurance policy an outline of coverage of such policy delivered or issued for delivery in this state, in accordance with the following:
- 6.1.1 If the sale of a policy occurs through an agent, the outline of coverage shall be delivered to the applicant at the time of application or to the certificate holder at the time of enrollment;
- 6.1.2 If the sale of a policy occurs through direct response solicitation, the outline of coverage shall be delivered no later than in conjunction with the issuance of the policy or delivery of the certificate;
- 6.1.3 If the outline of coverage required in this section is not delivered at the time of application or enrollment, the advertising materials delivered to the applicant or enrollee shall contain all the information required in subsection 6.1;
- 6.1.4 If the outline of coverage is delivered to the applicant or enrollee at the time of application or enrollment, the carrier shall collect an acknowledgment of receipt or certificate of delivery of the outline of coverage and the carrier shall maintain evidence of the delivery; and
- 6.1.5 If coverage is issued on a basis other than as applied for, an outline of coverage properly describing the coverage or contract actually issued shall be delivered with the policy or certificate to the applicant or enrollee.
- 6.2 An outline of coverage for short-term, limited duration health insurance shall not be required to be delivered by the carrier if the certificate contains a brief description of:
- 6.2.1 Benefits;
- 6.2.2 Provisions that exclude, eliminate, restrict, limit, delay or in any other manner operate to qualify payment of the benefits;
- 6.2.3 Non-renewability provisions; and
- 6.2.4 The notice requirements as provided in subsection 6.5.
- 6.3 Coverage outlines provided pursuant to subsection 6.1 shall include:
- 6.3.1 A statement identifying the applicable category or categories of coverage;
- 6.3.2 A description of the principal benefits and coverage provided;
- 6.3.3 A statement of the exceptions, reductions and limitations;
- 6.3.4 A statement that the policy is not renewable; and
- 6.3.5 A statement that the outline is a summary of the policy or certificate issued or applied for and that the policy or certificate should be consulted to determine governing policy provisions.
- 6.4 With respect to a policy having a coverage start date before January 1, 2019, a carrier shall display prominently in the application materials provided in connection with enrollment a notice, in at least 14 point type, that includes the following language in the following format:
- This coverage is **NOT** required to comply with certain federal market requirements for health insurance, principally those contained in the **AFFORDABLE CARE ACT**.
  - Be sure to check your policy carefully to make sure you are aware of any **EXCLUSIONS** or **LIMITATIONS** regarding coverage of **PREEXISTING CONDITIONS** or **HEALTH BENEFITS** (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services).
  - Be sure to check your policy carefully to make sure you are aware of any **LIFETIME** and/or **ANNUAL DOLLAR LIMITS** on health benefits.

- If this coverage expires or you lose eligibility for this coverage, **YOU MIGHT HAVE TO WAIT** until an open enrollment period to get other health insurance coverage.
- This coverage is **NOT "MINIMUM ESSENTIAL COVERAGE."** If you don't have minimum essential coverage for any month in 2018, you may have to make a payment when you file your tax return unless you qualify for an exemption from the requirement that you have health coverage for that month.

6.5 With respect to policies having a coverage start date on or after January 1, 2019, a carrier shall display prominently in the application materials provided in connection with enrollment a notice, in at least 14 point bolded type, that includes the following language:

- This coverage is **NOT** required to comply with certain federal market requirements for health insurance, principally those contained in the **AFFORDABLE CARE ACT**.
- Be sure to check your policy carefully to make sure you are aware of any **EXCLUSIONS** or **LIMITATIONS** regarding coverage of **PREEXISTING CONDITIONS** or **HEALTH BENEFITS** (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services).
- Be sure to check your policy carefully to make sure you are aware of any **LIFETIME** and/or **ANNUAL DOLLAR LIMITS** on health benefits.
- If this coverage expires or you lose eligibility for this coverage, **YOU MIGHT HAVE TO WAIT** until an open enrollment period to get other health insurance coverage.
- This coverage is **NOT "MINIMUM ESSENTIAL COVERAGE."** If you don't have minimum essential coverage for any month in 2019 or thereafter and the penalty for not having minimum essential coverage is more than the 2018 amount of \$0, you may have to make a payment when you file your tax return unless you qualify for an exemption from the requirement that you have health coverage for that month.

## **7.0 Requirements for Replacement**

7.1 Application forms shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and sickness insurance presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

7.2 Upon determining that a sale will involve replacement, a carrier, other than a direct response carrier, or its agent, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in subsection 7.3. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the carrier. A direct response carrier shall deliver to the applicant upon issuance of the policy, the notice described in subsection 7.4. In no event, however, will such a notice be required in the solicitation of the following types of policies: accident only and single premium nonrenewable policies.

7.3 The notice required by subsection 7.2 for a carrier, other than a direct response carrier, shall provide, in substantially the following form:

### NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (insert Company Name) Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under the policy you are replacing with this policy.

# PROPOSED REGULATIONS

(2) You may wish to secure the advice of your present carrier or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, re-read it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

7.4 The notice required by subsection 7.2 for a direct response carrier shall be as follows:

## NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (insert Company Name) Insurance Company. Your new policy provides 10 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under the policy you are replacing with this policy.

(2) You may wish to secure the advice of your present carrier or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert Company Name and Address) within 10 days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)

## **8.0 Severability**

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

## **9.0 Effective Date**

This regulation shall take effect 10 days after final publication in the Delaware Register of Regulations.

---

**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.

**SUMMARY OF THE PROPOSED REVISION**

The proposed revision amends two existing Rules as follows:

- The proposed amendments include an amendment of Rule 610 relating to the examination requirements of individuals applying to be registered as a broker-dealer or broker-dealer agent. It will require that applicants new to the securities industry successfully complete the Securities Industry Essentials ("SIE").
- The proposed amendments also include an amendment to Rule 710 relating to the examination requirements of individuals applying to be registered as an investment adviser or investment adviser representative. It will require that applicants new to the securities industry successfully complete the SIE.

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

Jillian Lazar  
Investor Protection Director  
Department of Justice, Investor Protection Unit  
State Office Building, 5<sup>th</sup> 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*.

**\*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/november2018/proposed/22 DE Reg 377RFA 11-01-18.pdf>

**Rules Pursuant to the Delaware Securities Act  
(Break in Continuity of Sections)**

**610 Examination Requirement**

An individual applying to be registered as a broker-dealer or a broker-dealer agent under the Act must successfully complete the North American Securities Administrators Association (NASAA) Uniform Securities Agent State Law Examination (NASAA Series 63 or 66), administered by FINRA. Applicants who are new to the securities industry as of October 1, 2018 must also successfully complete the Securities Industry Essentials examination ("SIE"), administered by FINRA.

**(Break in Continuity of Sections)**

**710 Examination Requirements**

- (a) *Examination Requirements.* An individual applying to be registered as an investment adviser or investment adviser representative under the Act ~~shall provide the Director with proof of obtaining a~~

# PROPOSED REGULATIONS

~~passing score on and who is new to the securities industry as of October 1, 2018 must successfully complete the Securities Industry Essentials examination ("SIE"), administered by FINRA. In addition, all investment adviser or investment adviser representative applicants must successfully complete one of the following examinations:~~

- (1) The Uniform Investment Adviser Law Examination (Series 65 examination); or
  - (2) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).
- (b) *Waivers.* The examination shall not apply to an individual who currently holds one of the following professional designations:
- (1) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.
  - (2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
  - (3) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
  - (4) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
  - (5) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or
  - (6) Such other professional designation as the Director may by rule or order recognize.

**\*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**

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### DIVISION OF STATE POLICE

#### 2400 BOARD OF EXAMINERS OF CONSTABLES

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

**24 DE Admin. Code 2400**

#### PUBLIC NOTICE

#### 2400 Board of Examiners of Constables

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 Del. C. Ch. 27 proposes to amend the following adopted rules in 24 DE Admin. Code 2400 Board of Examiners of Constables: Rule 1.0 Licensing. If you wish to view the complete Rules, contact Ms. Ashley Hughes at 302-672-5337. Any persons wishing to present views may submit them in writing, by December 3, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold a meeting Wednesday, December 19, 2018, at the Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

**\*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/november2018/proposed/22 DE Reg 378RFA 11-01-18.pdf>**

#### 2400 Board of Examiners of Constables

### 1.0 Licensing

*(Break in Continuity Within Section)*

- 1.9 ~~If an applicant wishes to work for more than one agency, they must submit an application, and be approved by the Board for each agency. All other requirements do not need to be submitted as they are already on file in the Professional Licensing Section. Any commissioned constable currently employed with an approved entity may, with the approval of the Director, be commissioned to work with any other approved entity for the purpose of new or secondary employment as a constable. The constable will be allowed to work for the new entity upon such approval and receiving their new commission and identification card. Any approval must be affirmed and voted on by the Board at the next scheduled meeting.~~

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

**2400 Board of Examiners of Constables**

---

## DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

### DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code, Section 343 (31 Del.C. §343)  
9 DE Admin. Code 101

#### PUBLIC NOTICE

#### **101 DELACARE: Regulations for Early Care and Education and School-Age Centers**

#### SUMMARY

The Office of Child Care Licensing (OCCL) proposes to amend DELACARE: Regulations for Early Care and Education and School-Age Centers. This proposal includes the following changes:

- Using plain language throughout the regulation;
- Clarification regarding the requirements for lead-paint risk assessments for centers that were built before 1978, including abatement for lead-paint hazards;
- Radon testing, including mitigation if necessary;
- Air quality testing for centers located in a building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Fingerprinting conducted before a staff member begins employment at the center;
- Comprehensive background checks for applicants, licensees, staff members, and volunteers before being alone with children;
- Broadening the education requirements for school-age site coordinators and reducing the experience requirements;
- Allowing early childhood interns to be alone with children during naptime;
- Certified staff at all times to administer medications, as needed;
- The allowance for licensees to be able to administer non-intravenous medication when requested by the parent; and
- Suspension and expulsion policies.
- Requiring centers to be free of lead-paint and radon hazards and the additional requirement for centers located in a building/structure that contains or contained a business that may result in unacceptable air quality to have the air quality tested protects children's health. Comprehensive background checks and suspension and expulsion policies are required to comply with the Child Development Block Grant Act of 2014. Lastly, by amending these regulations, the needs of children requiring medication (with parent/guardian permission) while in child care will be met, consistent with the principles of the Americans with Disabilities Act.

In addition, the application forms, the specific requirements to obtain a license, and due process provisions

have been added to the regulation.

**COMMENTS**

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them to the Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families, 3411 Silverside Road, Hagley Building, Wilmington, Delaware, 19810, Attention: Kelly McDowell or email them to Kelly McDowell at [Kelly.McDowell@state.de.us](mailto:Kelly.McDowell@state.de.us) by the close of business on December 7, 2018.

**\*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/november2018/proposed/22 DE Reg 379RFA 11-01-18.pdf](http://regulations.delaware.gov/register/november2018/proposed/22%20DE%20Reg%20379RFA%2011-01-18.pdf)

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

**101 DELACARE: Regulations for Early Care and Education and School-Age Centers**

---

**DIVISION OF FAMILY SERVICES  
OFFICE OF CHILD CARE LICENSING**

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345

(29 Del.C. §9003(7) & 31 Del.C. §§341-345)  
9 DE Admin. Code 103

**PUBLIC NOTICE**

**103 Regulations for Family and Large Family Child Care Homes**

**SUMMARY**

The Office of Child Care Licensing (OCCL) proposes to amend DELACARE: Regulations for Family and Large Family Child Care Homes. This proposal includes the following requirements:

- Lead-paint risk assessments for family child care homes that were built before 1978, including abatement for lead-paint hazards;
- Radon testing for family and large family homes, including mitigation if necessary;
- Air quality testing for large family homes located in a commercially-zoned building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Fingerprinting conducted before a staff member begins employment and before a new adult household member moves into the home;
- Comprehensive background checks for applicants, licensees, adult household members, staff members, and adult volunteers;
- Qualified staff at all times to administer medications, as needed;
- The allowance for licensees to be able to administer non-intravenous medication when requested by the parent; and
- Suspension and expulsion policies.

Requiring family and large family homes to be free of lead-paint and radon hazards, and the additional requirement for large family homes located in commercially located buildings that contain or contained a business that may result in unacceptable air quality to have the air quality tested protects children's health. Lastly, by amending these regulations, the needs of children requiring medication (with parent/guardian permission) while in

child care will be met, consistent with the principles of the Americans with Disabilities Act.

In addition, the application forms, the specific requirements to obtain a license, and due process provisions have been added to the regulation.

## COMMENTS

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them to the Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families, 3411 Silverside Road, Hagley Building, Wilmington, Delaware, 19810, Attention: Kelly McDowell or email them to Kelly McDowell at [Kelly.McDowell@state.de.us](mailto:Kelly.McDowell@state.de.us) by the close of business on December 7, 2018.

### \*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/november2018/proposed/22 DE Reg 380RFA 11-01-18.pdf>

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

[103 Regulations for Family and Large Family Child Care Homes](#)

---

## DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 315 (26 Del.C. §315)

### PUBLIC NOTICE

#### 1010 Regulations Governing the Administration of the Electric and Natural Gas Utility Distribution System Improvement Charge ("DSIC")

IN THE MATTER OF THE ADOPTION OF  
REGULATIONS GOVERNING ADMINISTRATION OF  
THE ELECTRIC AND NATURAL GAS UTILITY  
DISTRIBUTION SYSTEM IMPROVEMENT CHARGE  
PROVIDED FOR IN 26 DEL. C. §315 (OPENED  
OCTOBER 9, 2018)

||  
PSC REGULATION DOCKET NO. 64

### PUBLIC NOTICE OF PROPOSED REGULATIONS

The Delaware General Assembly has enacted legislation pursuant to which electric distribution and natural gas distribution utilities subject to the jurisdiction of the Delaware Public Service Commission (the "Commission") may file, on a semiannual basis, proposed rate schedules establishing a Distribution System Improvement Charge ("DSIC") rate that provides such utilities the opportunity to recover the cost of new, used and useful utility plant that meets certain eligibility criteria. See 26 Del.C. §315 (Electric and Natural Gas Utility Distribution System Improvement Charge). The legislation further provides that the Commission may adopt rules and regulations to administer the DSIC so long as those rules and regulations are not inconsistent with the Public Utilities Act of 1974.

The Commission has promulgated proposed regulations to implement and administer the DSIC (the "Proposed Regulations"), 26 Del. Admin. Code ch. 1010. The Proposed Regulations establish filing deadlines for DSIC applications; effective dates of new DSIC rates; requirements for filing a DSIC application; a review and approval process; and annual reconciliation and audit procedures.

The Commission has the authority to promulgate the Proposed Regulations pursuant to 26 Del.C. §§209(a),



315(d), and 29 **Del.C.** ch. 101.

The Commission hereby solicits written comments, suggestions, and compilations of data, briefs, or other written materials concerning the Proposed Regulations. Anyone submitting any written materials must email such materials to Joshua Bowman at [Joshua.Bowman@state.de.us](mailto:Joshua.Bowman@state.de.us) on or before December 3, 2018.

Any public hearing conducted by the Commission will be duly noticed in accordance with 29 **Del.C.** §§10115(b).

Copies of the Proposed Regulations may be obtained from the Commission office at 861 Silver Lake Blvd, Suite 100, Dover, DE 19904. The Proposed Regulations will also be available on the Commission's website: <https://dep.sc.delaware.gov/>.

Any individual with disabilities who wishes to review submissions or to participate in this docket should contact the Commission to discuss any auxiliary aids or services to facilitate such review or participation. Such contact may be in person, in writing, by telephone or otherwise. The Commission's toll-free telephone number in Delaware is (800) 282-8574. You may also make inquiries by voice telephone at 302-736-7500 or by internet email at [Joshua.Bowman@state.de.us](mailto:Joshua.Bowman@state.de.us).

#### **ORDER NO. 9282**

**AND NOW**, this 9<sup>th</sup> day of October, 2018:

**WHEREAS**, the General Assembly has enacted statutes creating an Electric and Natural Gas Utility Distribution System Improvement Charge ("DSIC") (26 **Del.C.** §315); and

**WHEREAS**, 26 **Del.C.** §315(d) provides that the Delaware Public Service Commission (the "Commission") may adopt rules and regulations to administer the DSIC that are not inconsistent with the Public Utilities Act of 1974 (the "Act"); and

**WHEREAS**, Staff has presented the Commission with proposed regulations; and

**WHEREAS**, the Commission has considered Staff's proposed regulations and finds that the proposed regulations should be proposed for public comment;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS, THAT:**

1. Pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 et seq., the Commission promulgates the Proposed Regulations Governing Administration of the Electric and Natural Gas Utility Distribution System Improvement Charge (the "Proposed Regulations").

2. The Commission Secretary shall transmit to the Registrar of Regulations for publication in the Delaware *Register* this Order, the Notice of the Proposed Regulations attached hereto as Exhibit A and the Proposed Regulations attached hereto as Exhibit B.

3. The Commission Secretary shall cause the Notice attached hereto as Exhibit A to be published in *The News Journal* and the *Delaware State News* newspapers on or before November 1, 2018.

4. The Commission Secretary shall cause the Notice attached hereto as Exhibit A to be sent by United States mail, first class postage prepaid, to all persons who have made written requests for advance notice of the Commission's regulation-making proceedings and to the following utilities:

- Chesapeake Utilities Corporation
- Delmarva Power & Light Company

Additionally, the Commission Secretary shall also send the Notice and the Regulations to the Division of the Public Advocate.

5. The Proposed Regulations shall govern the administration of the DSIC for any applications filed pursuant to 26 **Del.C.** §315 until this Commission approves such final regulations.

6. The public utilities identified in Paragraph 4 of this Order are hereby placed on notice that the costs of the proceedings will be charged to them under the provisions of 26 **Del.C.** §§114(b)(1) and (b)(4).

7. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

Dallas Winslow, Chairman

Joann T. Conaway, Commissioner

Harold B. Gray, Commissioner

Manubhai C. Karia, Commissioner  
K. F. Drexler, Commissioner

ATTEST: Donna Nickerson, Secretary

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

<http://regulations.delaware.gov/register/november2018/proposed/22 DE Reg 381RFA 11-01-18.pdf>

## **1010 Regulations Governing the Administration of the Electric and Natural Gas Utility Distribution System Improvement Charge ("DSIC")**

### **1.0 General**

- 1.1 Authority. These regulations are adopted pursuant to 26 Del.C. §§209(a) and 315(d), and 29 Del.C. Ch. 101.
- 1.2 Purpose. The purpose of these regulations is to standardize the format utilities shall use to present financial and operating data that support the recovery of eligible capital improvements costs, made pursuant to 26 Del.C. §315.
- 1.3 Capitalized Terms. Capitalized terms used herein that are defined in 26 Del.C. §315 shall have the same meaning as they have in those sections. Other capitalized terms shall have the meaning ascribed to them in these regulations.

### **2.0 Effective Date and Recovery Period**

- 2.1 A utility may initiate or seek a change in its DSIC rate by filing an application ("Application") and supporting schedules as required by these Regulations with the Commission to be effective on January 1<sup>st</sup> or July 1<sup>st</sup> of each year. Applications shall be filed with the Commission at least 30 days prior to the effective date.
- 2.2 New DSIC rates shall be effective for bills rendered on and after January 1 and July 1 each year without proration.
- 2.3 The DSIC rate shall be adjusted semi-annually for Eligible Distribution System Improvements placed in service during the six-month period ending two months prior to the effective date. For a January 1 effective date, the applicable recovery period is May 1 through October 31; for a July 1 effective date, the applicable recovery period is November 1 through April 30.
- 2.4 The DSIC rate shall be reset to zero as of the effective date of new base rates, including interim base rates under bond during a base rate case, that provide for the prospective recovery of the annual costs theretofore recovered under the DSIC rate.
- 2.5 Utilities may file DSIC Applications while a base rate case is pending; however, the Application shall not include Eligible Distribution System Improvements that fall within the utility's selected test period in the base rate case.

### **3.0 Filing Requirements**

- 3.1 Each DSIC Application shall include the following information:
  - 3.1.1 A PSC filing cover sheet (which can be found at the Commission website);
  - 3.1.2 A cover letter from the utility;
  - 3.1.3 The appropriate filing fee as required by 26 Del.C. §114(a);
  - 3.1.4 An original Application, which shall include:
    - 3.1.4.1 A request to place rates into effect in no less than thirty (30) days from the date of the application;
    - 3.1.4.2 The new DSIC rate expressed as a percentage carried to two (2) decimal places; and
    - 3.1.4.3 The dollar amount and percentage of the proposed DSIC rate change.
  - 3.1.5 The identification of a utility contact person responsible for the Application.

# PROPOSED REGULATIONS

## 3.1.6 A DSIC Application shall include the following schedules:

- 3.1.6.1 Schedule 1: Development of rate and supporting data (see Form 1):
- 3.1.6.2 Schedule 1A: Capital structure approved in the utility's most recent base rate/general rate case (see Form 2):
- 3.1.6.3 Schedule 1B: Over-collections or Under-collections from the utility's previous DSIC filing (see Form 3):
- 3.1.6.4 Schedule 2: Net cost of projects (identified by utility's internal project number) placed into service, and unreimbursed plant additions and plant retired, for the appropriate DSIC filing period (see Form 4):
- 3.1.6.5 Schedule 2A: Net Accumulated Depreciation, identified by FERC USOA account number (see Form 5):
- 3.1.6.6 Schedule 3: Revised tariff page(s). Additions should be indicated by underlining; deletions should be indicated by strikethroughs.

3.2 The utility shall serve the Division of the Public Advocate's office with a copy of the Application at the same time that the utility files the Application with the Commission.

3.3 The utility shall notify its customers of changes in the DSIC rate by including appropriate information in the first bill that customers receive following any change in the DSIC rate. A message printed directly on the bill shall be acceptable notice.

## **4.0 Determining Distribution System Improvement Eligibility**

4.1 For Applications premised on 26 Del.C. §315(a)(4)c.1., the Application shall:

4.1.1 Include a description of which distribution facilities being replaced have reached their useful service life and are fully depreciated;

4.1.2 Include a description of which distribution facilities being replaced are worn out or are in a deteriorated condition, and:

4.1.2.1 The utility shall include the method(s) and criteria used in determining that the distribution facilities being replaced are worn out;

4.1.2.2 The utility shall include the method(s) and criteria used in determining that the distribution facilities being replaced are in such a deteriorated condition that replacement of those facilities is required;

4.1.3 For Electric Distribution Companies ("EDC"), an Application premised on 26 Del.C. §315(a)(4)c.1. for distribution facilities being replaced or renewed because they are negatively impacting the quality and reliability of service to the customer, eligibility shall be determined only if the distribution facility being replaced satisfies at least one of the following criteria;

4.1.3.1 The distribution facility being replaced is part of a distribution feeder which has been identified by the EDC in the most recent Annual Performance Report filed with the Commission as one of the 2% of distribution feeders or 10 feeders, whichever is more, serving at least one Delaware customer, as having the poorest reliability;

4.1.3.2 The distribution facility being replaced is part of a distribution feeder which, according to the most recent Annual Performance Report filed with the Commission by the EDC, has at least two of the three reliability indices (SAIFI, CAIDI, SAIDI) that exceeds the levels stated in paragraph 82 of the amended settlement agreement in PSC Docket No. 14-193, specifically, SAIDI exceeding 175 minutes, SAIFI exceeding 1.5, and CAIDI exceeding 120 minutes.

4.2 For Applications premised on 26 Del.C. § 315(a)(4)c.2., eligibility shall be determined in the same manner as subsection 4.1.3 above.

## **5.0 Review and Approval Procedure**

5.1 Staff will review each utility's DSIC Application to ensure compliance with the provisions of 26 Del.C. §315 and these regulations. Staff has five (5) days to review the Application for compliance.

- 5.2 Staff shall notify the utility of any defect(s) in its Application within five (5) business days of its submission to the Commission. The utility shall have five (5) business days to correct such defect(s) and resubmit the Application.
- 5.3 Within five (5) business days of a utility's submission of an Application, Staff and the Division of the Public Advocate may issue data requests to the utility concerning the Application. Staff and/or the Division of the Public Advocate will attach a Certificate of Service identifying the person upon whom electronic service was made. Such data requests shall be deemed served if sent to the utility's identified representative(s) via electronic mail at the correct electronic mail address.
- 5.4 The utility shall submit its written responses to any data requests issued by Staff and/or the Division of the Public Advocate to the Staff analyst, Staff counsel, and the Division of the Public Advocate within five (5) business days of their receipt.
- 5.5 As soon as reasonably practicable, but in no event fewer than seven (7) calendar days before the Commission meeting at which the Application is scheduled for consideration, Staff shall advise the utility in writing whether it intends to recommend that the Commission approve or deny the filing of the Application. If Staff will recommend that the Commission deny the Application, Staff shall fully set forth its reasons therefore. Staff shall also provide its recommendation to the Commission in writing.
- 5.6 The Application will be scheduled for consideration at the Commission meeting that is the closest meeting prior to the effective date of the new DSIC rate. If Staff has recommended that the Commission deny the Application, the utility will be permitted to submit evidence contesting that recommendation.
- 5.7 Upon Commission approval of the Application, the DSIC rate will be implemented pending the year-end Staff audit discussed in Section 7.0.

## **6.0 DSIC and Customer Bills**

- 6.1 The DSIC charge shall be broken out as a separate line item on customers' bills.
- 6.2 The DSIC rate shall be expressed as a percentage carried out to two (2) decimal places.
- 6.3 The DSIC shall be applied to the portion of the customer's bill related to the delivery or distribution of natural gas or electricity.
- 6.4 The DSIC rate applied between base rate filings shall be capped at 7.5% of the amount billed to customers under otherwise applicable rates and charges. The DSIC rate increase applied shall not exceed 5% within any twelve (12)-month period. The aforesaid level of increase is limited to the portion of the customer's charge related to the delivery or distribution of natural gas or electricity.

## **7.0 Annual Reconciliation and Audit**

- 7.1 DSIC rates shall be subject to an annual reconciliation based on a period consisting of the twelve months ending December 31 of each year.
- 7.2 DSIC rates shall be subject to audit by the Staff. Such audits will be conducted between February and May of each year. Staff, if it deems necessary, will visit the utility's Delaware administrative offices to review the utility's documents. The utility must make staff available to assist with the field audit.
- 7.3 Discovery.
  - 7.3.1 Staff may issue data requests to the utility during the annual audit to obtain information regarding but not limited to:
    - 7.3.1.1 Whether the plant included in the calculation of the proposed DSIC was an Eligible Distribution System Improvement;
    - 7.3.1.2 Whether the utility used the correct depreciation and cost of capital rates in the calculation;
    - 7.3.1.3 Whether the utility correctly accounted for all retirements corresponding to the Eligible Distribution System Improvement;
    - 7.3.1.4 Whether the approved DSIC rate was applied correctly to customers' bills; and
    - 7.3.1.5 Whether any over- or under-collections were properly reflected in the calculation of the DSIC rates.

# PROPOSED REGULATIONS

7.3.2 **26 DE Admin. Code** 1001 - 2.6.6 shall govern the deadline for responses to such data requests.

7.4 Unless otherwise extended by action of the General Assembly, upon termination of the electric and natural gas distribution system improvement charge on June 14, 2025, the DSIC rate will go to zero and no over-/under-collections will carry forward. However, upon the audit of the final DSIC rate, if any distribution system improvements included are determined to be ineligible, the over-collection(s) associated with such ineligible distribution system improvements shall be refunded with interest to customers.

### FORM 1 SCHEDULE 1: DEVELOPMENT OF RATE AND SUPPORTING DATA

	<u>Item</u>	<u>(11/1/XX - 4/30/XX) / (5/1/XX - 10/31/XX)</u>
1	Net Utility Plant Additions (Schedule 2)	\$
2	Net Accumulated Depreciation Reserve Change (Schedule 2A)	\$
3	Net Change in Rate Base (Line 1 + Line 2)	\$
4	Pre-Tax Rate of Return (Schedule 1A)	%
5	Semi-Annual Pre-Tax Rate of Return (Line 4 / 2)	%
6	Semi-Annual Investment Cost Recovery (Line 3 * Line 5)	\$
7	Semi-Annual Depreciation Expense (Schedule 2A)	\$
8	Semi-Annual DSIC Revenue Requirement (Line 6 + Line 7)	\$
8A	Total Over-/Under-Collection from Previous DSIC (Schedule 1B)	\$
9	Total Semi-Annual DSIC Revenue Requirement (Line 8 + Line 8A)	\$
10	Semi-Annual Projected Distribution Revenues	\$
11	Projected DSIC Rate Increase (Line 9/Line 10)	%

### FORM 2 SCHEDULE 1A: CAPITAL STRUCTURE APPROVED IN MOST RECENT GENERAL/BASE RATE CASE

<b>Capital Structure in PSC Docket No. XX-XXXX</b>					
	%	Cost	Weighted Cost	Revenue Multiplier	Pre-Tax Cost
Cost of Debt	XX.XX%	X.XX%	X.XX%	X.XXXXX	X.XX%
Cost of Equity	XX.XX%	X.XX%	X.XX%	X.XXXXX	X.XX%
	100%		X.XX%		X.XX%

### FORM 3 SCHEDULE 1B: OVER-/UNDER-COLLECTIONS FROM PREVIOUS DSIC APPLICATION

<u>Docket No.</u>	<u>Over/(Under)Collection</u>
XX-XXXX	\$
XX-XXXX	\$

### FORM 4 SCHEDULE 2: PROJECTS PLACED INTO SERVICE AND/OR RETIRED

<b>Utility Plant in Service (11/1/XX - 4/30/XX) / (5/1/XX - 10/31/XX)</b>				
<u>Project Name</u>	<u>Description</u>	<u>Project No.</u>	<u>DSIC Amount (net of CIAC)</u>	<u>Retirement Cost</u>
		XXXXXX	\$	\$

		XXXXX	\$ _____	\$ _____
		XXXXX	\$ _____	\$ _____
		XXXXX	\$ _____	\$ _____
		XXXXX	\$ _____	\$ _____
<u>Total</u>			\$ _____	\$ _____
<u>Net Total</u>			\$ _____	\$ _____

**FORM 5**  
**SCHEDULE 2A: NET ACCUMULATED DEPRECIATION**

Net Additions to Plant and Depreciation Expense (11/1/XX – 4/30/XX) / (5/1/XX – 10/31/XX)				
Account Name	FERC Account No.	Amount	Depreciation Rate	Depreciation Amount
Mains	XXXXXX	\$ _____	X.XX%	\$ _____
Meters	XXXXXX	\$ _____	X.XX%	\$ _____
Lines	XXXXXX	\$ _____	X.XX%	\$ _____
<b>TOTAL</b>		\$ _____ (Schedule 2)		\$ _____
Semi-Annual Depreciation Expense				\$ _____

Accumulated Depreciation Reserve Change	
Semi-Annual Depreciation Expense (above)	\$ ( _____ )
Retirements (Schedule 2)	\$ _____
<b>TOTAL</b>	\$ _____

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF TRANSPORTATION SOLUTIONS**

Statutory Authority: 17 Delaware Code, Section 141; 29 Delaware Code, Section 8404(8)  
(17 Del.C. §141; 29 Del.C. §8404(8))  
2 DE Admin. Code 2403

**PUBLIC NOTICE**

**2403 Special Events Policies and Procedures—Traffic Management**

Under Title 17 of the **Delaware Code**, Section 141, as well as 29 **Delaware Code** Section 8404(8), the Traffic Operations and Management Section of the Delaware Department of Transportation (DelDOT), has the authority to regulate the traffic impacts of special events that affect the safe movement of traffic on the State’s transportation network, and adopted the Special Events Policies and Procedures – Traffic Management regulation. The Department seeks to adopt revisions to this regulation to waive temporary traffic control costs for special events held by an organizer exempt from federal income tax under Internal Revenue Code Section 501(c)(3) or if the applicant and organizer is a State Agency, County, incorporated Municipality, school district, or accredited college or university. The revisions allow organizers not meeting the conditions above to request a waiver if proceeds to an event are donated to a 501(c)(3) organization or if the need for temporary traffic control is created by impacts associated with a Department project.

The Department will take written comments on these proposed revisions to the Special Events Policies and Procedures – Traffic Management regulation from November 1, 2018 through December 3, 2018.

Questions or comments regarding these proposed revisions should be directed to: Donald Weber, P.E., Asst. Director, Traffic Operations and Management Section, Division of Transportation Solutions, Delaware Department of Transportation 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-4060 (telephone) (302) 653-2859 (fax) [don.weber@state.de.us](mailto:don.weber@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/november2018/proposed/22 DE Reg 387RFA 11-01-18.pdf>

### **2403 Special Events Policies and Procedures—Traffic Management**

#### **1.0 Introduction**

- 1.1 Planned special events include, but are not limited to, sporting events, concerts, festivals and conventions occurring at permanent multi-use venues. They also include less frequent public events such as parades, fireworks displays, bicycle races, sporting games, motorcycle rallies, marathons, seasonal festivals and block parties which may occur at temporary venues. A planned special event often creates the need to establish altered traffic patterns to handle the increased traffic volumes generated by the event and traffic diverted due to the event. The size of the temporary traffic control (TTC) zone associated with a planned special event can be small, such as closing a street for a festival, or can extend throughout a municipality for larger events.
- 1.2 Planned special events can have direct and indirect impacts on the transportation system. Events that have direct impacts to the transportation system are those that require full roadway or lane closures to accommodate the needs of the event. Events having indirect impacts to the transportation system are those types of events that attract large crowds affecting normal traffic flow on Delaware's roadways.
- 1.3 The purpose of this Special Events Policy is to outline the requirements for obtaining a permit to conduct a special event that will impact roadways in the State of Delaware and to describe the temporary traffic control that may be required to ensure the least impact to the traveling public and to provide a reasonably safe venue for the event. In addition, the policy identifies the requirements for developing necessary temporary traffic control plans as well as identifying the parties responsible for providing temporary traffic control and determining who pays the costs of such temporary traffic control.

#### **2.0 Legal Authority**

- 2.1 Title 17, Chapter 1, Subchapter III, Section 141 of the Delaware Code gives the Delaware Department of Transportation jurisdiction and control over all state highways outside the limits of incorporated cities and towns for the purpose of regulating traffic and for the use and operation of all vehicles thereover, and gives the Department the authority to adopt any and all rules and regulations respecting the use of such highways and the operation of all vehicles upon the same.
- 2.2 For state maintained roadways within the corporate limits of municipalities, the local government is responsible for approving the special event after consultation with the Department of Transportation. All temporary traffic control for special events inside the limits of municipalities shall comply with the requirements of the Delaware Manual on Uniform Traffic Control Devices (DE MUTCD). For those events occurring on state maintained roadways within the corporate limits of municipalities, the temporary traffic control shall be reviewed and approved by DeIDOT. DeIDOT shall also be consulted for those events that occur on non state maintained roadways, but divert traffic to state maintained roadways.

#### **3.0 Special Event Permit Application**

- 3.1 The Delaware Department of Transportation (DeIDOT) requires the organizer of a planned special event that impacts the transportation system to get approval from the Department to hold such events and to review any temporary traffic control that is necessary for the event to occur. Event organizers are required to fill out DeIDOT's *Special Event Permit Application* and submit the completed

application to the Special Events Coordinator in the Traffic ~~Safety~~ Operations and Management Special Events Section. This form can be emailed by clicking the appropriate button at the top of the application. The Department's Special Events Coordinator will review the application and the location of the event and determine if temporary traffic control measures or other requirements are needed to safely conduct the event and to minimize the impacts to the transportation system. If additional information is needed, the Special Events Coordinator will coordinate that information with the event organizer. Once all requirements are satisfied, an approved copy of the *Special Event Permit Application* will be provided to the event organizer. An approved copy will be held by the Traffic ~~Safety~~ Operations and Management Special Events Section.

- 3.1.1 The following types of Planned Special Events require a Special Events Permit from the DeIDOT:
- 3.1.1.1 Events with a direct impact on the transportation system. These events typically require lane and/or complete road closures.
  - 3.1.1.2 Events with an indirect impact on the transportation system. These events typically occur off of the roadway but attract large crowds which could affect normal traffic flow on Delaware's roadways

3.2 Special Event Permit Application Procedures

- 3.2.1 The *Special Event Permit Application* shall be filled out by the event organizer and submitted to the Department no fewer than 90 days prior to the beginning of the event. The Special Event Permit Application can be found at:

[http://www.deldot.gov/information/community\\_programs\\_and\\_services/planned\\_spec\\_events/index.shtml](http://www.deldot.gov/information/community_programs_and_services/planned_spec_events/index.shtml) [http://deldot.gov/Business/planned\\_spec\\_events/index.shtml](http://deldot.gov/Business/planned_spec_events/index.shtml)

- 3.2.2 The following information is required to be shown on the permit application:

3.2.2.1 Event Organizer Information

- 3.2.2.1.1 Applicant's name, address, phone number and e-mail address
- 3.2.2.1.2 Organization name, address and phone number, if applicable
- 3.2.2.1.3 Documentation of organization's 501(c)(3) status, if applicable

3.2.2.2 Event Information

- 3.2.2.2.1 Name and location of event
- 3.2.2.2.2 Type of event
- 3.2.2.2.3 Date of event (start and end dates)
- 3.2.2.2.4 Time of event (start and end times)
- 3.2.2.2.5 Name of a contact person that will be the Department's direct contact during the planning stages of the event. A phone number and email address should also be provided.
- 3.2.2.2.6 Name of a contact person including address and a phone number at which that person can be reached during the day(s) of the event.
- 3.2.2.2.7 Proposed routing for the event, if the event is a bike race, marathon or other on-roadway event.

3.2.2.3 Temporary Traffic Control Plan

- 3.2.2.3.1 Identify if the event will require the closure of any State maintained roadways or intersections. If yes, list the roads or intersections that will be closed.
- 3.2.2.3.2 Identify if the event will require the closure of any lanes on State maintained roadways. If yes, list the lanes to be closed on each roadway.
- 3.2.2.3.3 A temporary traffic control plan, if lanes or entire roadways will be closed. Information regarding temporary traffic control plans can be found in Section III and IV of this policy.
- 3.2.2.3.4 Detailed temporary traffic control plans shall be submitted to the Department's Special Events Coordinator no less than six (6) weeks prior to the start of the event.

3.2.2.4 Additional Information



- 3.2.2.4.1 Identify provisions for medical treatment during the event
  - 3.2.2.4.2 Identify provisions for sanitary facilities during the event
  - 3.2.2.4.3 Identify provisions for police or fire police assistance during the event. If a signed agreement exists between the police agency and the event organizer, a copy of the agreement should be included with the application.
- 3.2.3 The completed application can be electronically submitted to the Special Events Coordinator by clicking on the email button at the top of the application. If the applicant desires to mail a printed version of the application, it can be sent to the following address:
- Delaware Department of Transportation  
 Traffic ~~Safety~~ Operations and Management Special Events Section  
 Special Events Coordinator  
 169 Brickstore Landing Road  
 Smyrna, DE 19977

## 4.0 Event Traffic Control

- 4.1 Planned special events typically have impacts on the transportation system and these impacts can be classified as either direct or indirect. Some events have both types of impacts. This section describes the necessary temporary traffic control that is required for those events that have direct impacts on the transportation system. In addition, it describes how the event organizer works with DeIDOT on the development of a Transportation Operations Plan for those events with an indirect impact on the transportation system. Guidelines for the use of law enforcement and the use of Portable Changeable Message Signs (PCMS) are also provided.
- 4.2 Events with Direct Impacts on the Transportation System:
- 4.2.1 Planned special events with direct impacts on the transportation system are those events that require a lane or roadway closure in order for the event to take place. These types of events may include but are not limited to bike races/tours, marathons, block parties, parades and festivals. In order to safely and efficiently move traffic around the event area, temporary traffic control is required and shall comply with the provisions of Part 6 of the Delaware Manual on Uniform Traffic Control Devices (DE MUTCD). This information can be found at:  
[http://www.deldot.gov/information/pubs\\_forms/manuals/de\\_mutcd/index.shtml](http://www.deldot.gov/information/pubs_forms/manuals/de_mutcd/index.shtml)  
[http://deldot.gov/Publications/manuals/de\\_mutcd/index.shtml](http://deldot.gov/Publications/manuals/de_mutcd/index.shtml)
  - 4.2.2 For events that have direct impacts on the transportation system, the event organizer shall submit a temporary traffic control plan to DeIDOT for review and approval.
  - 4.2.3 Special Events Requiring Lane or Shoulder Closures:
    - 4.2.3.1 Planned special events with direct impacts on the transportation system may require the closure of one or more travel lanes or a shoulder on a two-lane roadway or multi-lane highway. In order to move traffic safely around the event area, temporary traffic control is required. In most situations, typical temporary traffic control cases from the DE MUTCD should be used and the applicable cases are listed below:
      - 4.2.3.1.1 Two-Lane, Two-Way Traffic Shoulder Closure
      - 4.2.3.1.2 Multilane, Divided, Non-Access Controlled Highways – Shoulder Closure
      - 4.2.3.1.3 Two-Lane, Two-Way Traffic Lane Closure
      - 4.2.3.1.4 Multilane, Divided Highways and Interstates – Lane Closure
    - 4.2.3.2 In most situations a copy of the standard temporary traffic control case and the accompanying standard notes can be submitted for review by DeIDOT. There are some instances that may require additional temporary traffic control devices and this will be determined by DeIDOT through consultation with the applicant. Temporary traffic control plans must be submitted no fewer than six (6) weeks prior to the event.
    - 4.2.3.3 Several of the standard temporary traffic control cases noted above allow the use of flaggers or require the use of flaggers to move traffic through the affected area. Due to the

dangers associated with directing traffic, the only people allowed to perform flagging operations on Delaware's roadways are the following:

- 4.2.3.3.1 A person with a valid flagger registration card from the American Traffic Safety Services Association (ATSSA). That person shall have their flagger card in their possession while performing flagging duties.
- 4.2.3.3.2 Uniformed Fire Police
- 4.2.3.3.3 Uniformed Local Police
- 4.2.3.3.4 Uniformed State Police

4.2.3.4 All personnel performing flagging duties shall wear a safety vest in accordance with the Delaware MUTCD. All temporary traffic control devices shall conform to the requirements of the Delaware MUTCD.

#### 4.2.4 Special Events Requiring Roadway Closures

4.2.4.1 Planned special events with direct impacts on the transportation system may require the full closure of one or more roadways. In order to move traffic safely around the event area, temporary traffic control and a signed detour route is required. Detour routes shall be determined by DeIDOT and an official detour plan with the proper approval signatures will be developed by DeIDOT for the applicant. Requests for detour plans shall be submitted to DeIDOT no less than six (6) weeks prior to the event. Depending upon the duration of the closure, law enforcement personnel may be used to direct traffic around the closure area, in lieu of providing a signed detour route. The use of law enforcement officers in lieu of a signed detour will be determined by DeIDOT in consultation with the applicant.

#### 4.3 Events with Indirect Impacts on the Transportation System

4.3.1 Planned Special Events may have an indirect impact on the transportation system based on the number of event participants or attendees. Events that have indirect impacts on the transportation system include concerts, sporting events, fairs/carnivals and other events that attract large crowds of people. While these events may not require the closure of roads or lanes, they do create an impact to existing traffic due to the increased traffic volumes (vehicular and/or pedestrian volumes) that are experienced, sometimes on roadways that are not designed for the increased traffic or pedestrians. To mitigate these impacts, it is necessary to develop a Transportation Operations Plan to determine how traffic will be managed when patrons are arriving at or leaving the event and how the event traffic will interact with existing traffic. If in addition, to having indirect impacts on the transportation system, the event requires the closure of roadways or lanes, please refer to the previous section for additional information.

4.3.2 The development of the Transportation Operations Plan will typically be completed by DeIDOT's Traffic Operations and Management Special Events Section with input provided by Safety and Transportation Management Center staff and the event organizer. DeIDOT and the event organizer will also meet with the state police to discuss the plan. If the event is within the limits of a municipality, DeIDOT and the event organizer will also meet with the local police and other local authorities having jurisdiction. The following items are typically reviewed and determined during the plan development:

- 4.3.2.1 Location of event, event parking and entrances/exits to/from the event area.
- 4.3.2.2 Roadways surrounding the event area and expected road closures
- 4.3.2.3 Locations for traffic control points during entry and exit
- 4.3.2.4 Locations for parking payment, credential checks, etc.
- 4.3.2.5 Lane closures to accommodate entry and exit maneuvers from the event area to minimize impacts to existing traffic and to allow for free flow movements.
- 4.3.2.6 Pedestrian movements around the event area to provide reasonably safe pedestrian passage
- 4.3.2.7 Locations for portable changeable message signs to direct road users to and around the event.

---

## PROPOSED REGULATIONS

---

- 4.3.2.8 Locations for traffic management devices such as portable traffic cameras, portable detection units, etc.
- 4.3.3 The planning process for these types of events needs to start early in order to ensure a smooth event. The event organizer shall submit the Special Event Permit Application to DeIDOT no fewer than 90 days prior to the beginning of the event. Once the permit is received by DeIDOT, a meeting will be scheduled with the event organizer and other applicable parties to discuss the event and any operational concerns. This meeting will be scheduled eight (8) weeks prior to the event date. The final transportation operations plan, with approved permit, will be completed four (4) weeks prior to the event date. The Transportation Operations Plan will include locations of all devices necessary to carry out the plan, including locations of all lane or roadway closures that may be necessary to facilitate event traffic around the event area.
- 4.4 Use of Law Enforcement for Planned Special Events
  - 4.4.1 Law enforcement officers (State Police, Local Police and/or Fire Police) may be needed to assist with traffic control during a planned special event. Law enforcement may also be needed to provide escorts for certain types of events such as foot races, bike races or parades. It is the responsibility of the event organizer to secure the appropriate number of law enforcement officers that are needed for the event and the costs of using law enforcement officers, if applicable, are the responsibility of the event organizer.
- 4.5 Use of Portable Changeable Message Signs
  - 4.5.1 Portable Changeable Message Signs (PCMS) are portable devices that can display a variety of transportation related messages. These devices may be useful for a planned special event to direct attendees to parking areas and to direct other road users around the event to avoid traffic delays. The use of PCMS is governed by the Delaware MUTCD and these devices may only display transportation related messages. They cannot be used to advertise the event or provide other non-transportation related messages to the traveling public as the device themselves can present a distraction to motorists if not used properly.
  - 4.5.2 DeIDOT has developed an approval form that must be submitted to receive approval to use PCMS in DeIDOT's right-of-way. This form can be found at:  
[http://www.deldot.gov/information/pubs\\_forms/manuals/de\\_mutcd/pdf/PCMS\\_Approval\\_Form.doc](http://www.deldot.gov/information/pubs_forms/manuals/de_mutcd/pdf/PCMS_Approval_Form.doc)  
[http://deldot.gov/Publications/manuals/de\\_mutcd/docs/PCMS\\_Approval\\_Form.doc](http://deldot.gov/Publications/manuals/de_mutcd/docs/PCMS_Approval_Form.doc)
  - 4.5.3 Additional information regarding the use of PCMS can be found in Part 6 of the Delaware MUTCD and in the memorandum titled "Portable Changeable Message Signs," which can be found at:  
[http://www.deldot.gov/information/pubs\\_forms/manuals/de\\_mutcd/pdf/Portable\\_Changeable\\_Message\\_Signs.pdf](http://www.deldot.gov/information/pubs_forms/manuals/de_mutcd/pdf/Portable_Changeable_Message_Signs.pdf)  
[http://deldot.gov/Publications/manuals/de\\_mutcd/pdfs/Portable\\_Changeable\\_Message\\_Signs.pdf](http://deldot.gov/Publications/manuals/de_mutcd/pdfs/Portable_Changeable_Message_Signs.pdf)

### 5.0 Event Organizer Responsibilities

- 5.1 The event organizer must ensure that the following pre-event and event day activities have been conducted:
  - 5.1.1 Pre-Event Activities
    - 5.1.1.1 Submit the Special Events Application to the Traffic Safety Operations and Management Special Events Section no fewer than 90 days prior to the event.
    - 5.1.1.2 Meet with representatives from DeIDOT, no fewer than eight weeks prior to the event, to discuss and develop a transportation operations plan, if one is required for the event.
    - 5.1.1.3 Submit the Temporary Traffic Control Plan to the Traffic Safety Operations and Management Special Events Section no fewer than six weeks prior to the event.
    - 5.1.1.4 Notify the local or state police and fire companies no fewer than 60 days prior to the event regarding the proposed lane closures and event location.

- 5.1.1.5 Notify DeIDOT's Public Relations Section no fewer than 10 days prior to the event to have a press release issued notifying the public that lanes or roads will be closed within the event area. The Public Relations Section can be reached at (302) 760-2080
- 5.1.2 Event Day Activities
  - 5.1.2.1 Contact the DeIDOT Transportation Management Center no fewer than one hour prior to the event to notify of the impending lane closures. The Transportation Management Center can be reached at (302) 659-4600.
  - 5.1.2.2 Place all temporary traffic control devices in accordance with the approved temporary traffic control plan and the Transportation Operations Plan, if an operations plan was developed.
  - 5.1.2.3 A designated person must monitor the temporary traffic control devices and adjust as needed.
  - 5.1.2.4 At the conclusion of the event, all temporary traffic control devices must immediately be removed from the roadway and the roadway restored to its normal conditions.
  - 5.1.2.5 Contact the DeIDOT Transportation Management Center upon restoring the roadway to normal conditions to notify of the completed event and removal of traffic restrictions.
- 5.2 In the event of an emergency, the event organizer may be required to immediately reopen the roadway. Upon notification by a DeIDOT official or law enforcement personnel, the event organizer shall immediately restore the roadway to normal operations.
- 5.3 The event organizer or event participants shall not erect any advertising signs or other non-traffic control signs within DeIDOT's right-of-way. The event organizer or event participants shall not paint any markings on the roadway(s) within the event location.

## 6.0 Costs

- 6.1 As of this time, there are no permit fees for the Special Events Permit Application. In addition, there are no fees charged by DeIDOT to develop temporary traffic control plans, detour plans or transportation operations plans.
- 6.2 The event organizer is responsible for the costs associated with temporary traffic control for a particular planned special event. These costs may include, but will not be limited to, the procurement of the required compliant temporary traffic control devices, the use of portable changeable message signs and labor associated with the installation and removal of temporary traffic control devices. The event organizer may request DeIDOT's assistance with the deployment of the temporary traffic control plan and/or the transportation operations plan, however, the Department must be reimbursed for all equipment and labor costs associated with the event and DeIDOT's support is subject to the availability of the necessary resources. If the event organizer requests DeIDOT assistance, the Department will generate a cost estimate and will send the cost estimate and a concurrence letter to the event organizer for review. If the event organizer concurs with the cost estimate, the event organizer shall sign the concurrence letter and send it back to DeIDOT. No charges will be incurred until after the event is completed. Upon completion of the event, the Department will contact the event organizer, review all costs incurred and then the Department will send the event organizer a bill for services rendered. The event organizer will not be responsible for the costs associated with temporary traffic control deployed by DeIDOT for a particular planned special event if the organizer is exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3) and proper documentation of the organization's 501(c)(3) status has been provided to the Department. State Agencies, Counties, incorporated Municipalities, school districts, and accredited colleges and universities will not be responsible for the costs associated with temporary traffic control deployed by DeIDOT for a particular planned special event if the event is a direct activity of the entity making application. Event organizers that do not have 501(c)(3) status or meet the conditions noted above may request a waiver for costs associated with temporary traffic control deployed by DeIDOT for a particular planned special event if proceeds generated by the event are donated to a 501(c)(3) organization for which the appropriate supporting documents have been provided to the Department or if the need for temporary traffic control is created by impacts associated with a Department project.

- 6.3 If the event organizer does not utilize DeIDOT forces for the deployment of the temporary traffic control plan or transportation operations plan, the event organizer shall procure the necessary devices and labor from entities that have experience with temporary traffic control. Failure to have the necessary provisions in place for the day of the event will result in the revocation of the Special Events Permit and will result in the removal of all event participants from DeIDOT's right-of-way.

#### **7.0 Coordination of Special Events**

There may be instances where two or more planned special events occurring in close proximity to each other will be scheduled for the same day(s). If this is the case, the Special Events Manager for DeIDOT will meet with the event organizers from each event and determine how best to manage potential conflicts between events. This may require modifications to event routes, event traffic control plans and event schedules. DeIDOT reserves the right to direct these changes to prevent event traffic control and event routes from overlapping. Failure to comply with DeIDOT's changes will result in revocation of the Special Events Permit.

#### **8.0 Revocation of Permit by DeIDOT**

- 8.1 Failure to comply with the approved temporary traffic control plan, the provisions of the approved Special Events Permit or failure to complete the pre-event and/or event day activities will result in revocation of the approved Special Events Permit. DeIDOT reserves the right to stop the event activities and restore the roadway to normal conditions if the approved temporary traffic control is conducted in an unsafe manner or if there are unforeseen traffic delays experienced as a result of the special event.
- 8.2 The event organizer or event participants shall not erect any advertising signs or other non-traffic control signs within DeIDOT's right-of-way. The event organizer or event participants shall not paint any markings on the roadway(s) within the event location. Failure to comply will result in the revocation of the Special Events Permit, immediate removal of all participants from DeIDOT's right-of-way.

**The Proposed Special Event Cost Waiver Application is available in PDF format at the following location:**

**Proposed Special Event Cost Waiver**

**[http://regulations.delaware.gov/register/november2018/proposed/Proposed Special Event Cost Waiver.pdf](http://regulations.delaware.gov/register/november2018/proposed/Proposed%20Special%20Event%20Cost%20Waiver.pdf)**

---

---

## Symbol Key

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

## Final Regulations

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

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

---

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 1008

### REGULATORY IMPLEMENTING ORDER

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

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

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education, developed the amendments to 14 **DE Admin. Code** 1008. The amendments include adding five defined terms to subsection 1.1; revising the Junior High and Middle School Transfer Rule (subsection 2.4), Passing Work Rule (subsection 2.6), and Years of Participation Rule (subsection 2.7) to be consistent with changes to 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics that went into effect in 2017; clarifying the concussion protocol in Section 3.0; specifying the required concussion training course for coaches in Section 7.0; adding the requirement that all football coaches complete Heads Up Football training to subsection 7.4; and revising subsection 7.6, which concerns coaching out of season, in accordance with Senate Concurrent Resolution No. 79.

Notice of the proposed regulation was published in *The News Journal* and *Delaware State News* on September 1, 2018 in the form attached hereto as Exhibit "A." In addition, notice of the proposed regulation was published in the *Register of Regulations* on September 1, 2018 in the form attached hereto as Exhibit "B."

The Department received six written submittals. Nicholas J. Fina, Ed.D., the Chairperson of the State Council for Persons with Disabilities ("SCPD"), commented that the SCPD endorses the amendments to the concussion

protocol (Section 3.0). Ann C. Fisher, the Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), stated that GACEC "endorses the proposed changes as they will assist in limiting life-altering head injuries and promote safe practices among student athletes." In addition, both SCPD and GACEC commented that the proposed amendments provide a rational approach to school transfers in an attempt to diminish transfers that are motivated by obtaining athletic advantage. SCPD and GACEC each suggested adding clarifying language to subsection 2.7 concerning a hardship based on a disability.

Bob Gilmore commented that subsection 7.6.2.5.1 would "give an advantage to players with greater economic means" and that "[a]llowing the use of school equipment (if a district is willing) works to 'level the playing field.'" Taylor Trevisan stated that the DIAA Board of Directors should "make change." Jennifer Mayer, a coach and Christiana High School's Athletic Director, indicated that she is not in favor of the proposed amendments to subsection 7.6, which concern coaching out of season. She also "suggest[ed] that the regulation be changed to limit 'open gyms.'" Rodney Griffin commented that allowing coaching out of season "[w]ould help close the gap for Delaware student athletes who compete against athletes from bordering states that have less stringent out of season coaching rules" and that allowing coaching throughout the year "would potentially give our athletes a head start on earning an athletic scholarship and be better prepared for success at the college level."

On October 11, 2018, the DIAA Board of Directors considered each of the written submittals. Of the six written submittals received, it was unclear whether four concerned the proposed amendments to 14 **DE Admin. Code** 1008, 14 **DE Admin. Code** 1009, or both regulations. The four written submittals were from Mr. Gilmore, Mr. Trevisan, Ms. Mayer, and Mr. Griffin. As a result, the DIAA Board of Directors considered the four written submittals for both regulations (i.e., 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009).

As to GACEC's and SCPD's suggestion to add clarifying language to subsection 2.7, the DIAA Board of Directors may consider the suggestion as part of the ongoing comprehensive review of its regulations.

As to subsection 7.6.2.5.1, the DIAA Board of Directors found that the language gives DIAA member schools the option to lend their own equipment to their student athletes who participate with an outside group (e.g., a camp or clinic) during the time period when coaching out of season is permitted; however, to help discourage full contact in lacrosse and football during the summer period for safety reasons, member schools would not be permitted to lend their helmets and shoulder pads to their student athletes who participate with an outside group. The DIAA Board of Directors found that it is charged with preserving and promoting the educational significance of interscholastic athletics and protecting the physical well-being of all student athletes.

Although the rules concerning open gyms (Section 6.0 of this regulation) are not part of the proposed amendments, the DIAA Board of Directors noted that it could add the open gym rules as an item on one of its future agendas.

The DIAA Board of Directors found that further changes in response to the written submittals were not necessary and voted to propose 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics, in the form that was published, for adoption by the Department subject to the State Board of Education's approval.

## II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement the provisions of 14 **Del.C.** Ch. 3. In addition, the Department finds that further changes in response to the written submittals are not necessary. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics.

## III. DECISION TO AMEND THE REGULATION

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

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics adopted

hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited as 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics in the Administrative Code of Regulations for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Department pursuant to 14 **Del.C.** §§122(b) and 303(a) on October 25, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 25<sup>th</sup> day of October, 2018.

### Department of Education

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

Approved this 25<sup>th</sup> day of October, 2018.

### State Board of Education

Whitney Townsend Sweeney, President

Dr. Audrey J. Noble, Vice President

Nina Lou Bunting

Candace Fifer

Vincent Lofink

Wali W. Rushdan, II

Terry M. Whittaker, Ed.D.

## 1008 DIAA Junior High and Middle School Interscholastic Athletics (Break in Continuity of Sections)

### 2.0 Eligibility: No Student Shall Represent a School in an Interscholastic Scrimmage or Contest if the Student Does Not Meet the Following Requirements

#### (Break in Continuity Within Section)

#### 2.4 Eligibility, Transfers

##### 2.4.1 Purpose

##### 2.4.1.1

The intent of the Junior High and Middle School Transfer Rule is to deter students from transferring schools for athletic purposes, to help discourage recruitment, and to reduce the opportunity for undue influence to be exerted by persons who seek to benefit from a student's athletic talent. DIAA recognizes that, because of the number of transfers that occur each year, it is difficult to carry out that intent if an individualized determination is required for all students who transfer schools. The exceptions in subsection 2.4.3 of this regulation involve circumstances in which establishing a hardship for eligibility purposes is not required; strict enforcement of the rule will not serve to accomplish the purpose of the rule; the spirit of the rule will not be offended or compromised; the principle of educational balance over athletics will not be offended or compromised; and there is no safety [risk] to teammates or competitors.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2018 issue of the *Register* at page 186 (22 DE Reg. 186). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

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



---

# FINAL REGULATIONS

---

## OFFICE OF THE SECRETARY

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

### REGULATORY IMPLEMENTING ORDER

#### 1009 DIAA High School Interscholastic Athletics

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

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education ("Department"), developed the amendments to 14 **DE Admin. Code** 1009. The amendments include adding two defined terms to subsection 1.1; clarifying the concussion protocol in Section 3.0; specifying the required concussion training course for coaches in Section 7.0; adding the requirement that all football coaches complete Heads Up Football training to subsection 7.4; and revising subsection 7.6, which concerns coaching out of season, in accordance with Senate Concurrent Resolution No. 79.

Notice of the proposed regulation was published in *The News Journal* and *Delaware State News* on September 1, 2018 in the form attached hereto as Exhibit "A." In addition, notice of the proposed regulation was published in the *Register of Regulations* on September 1, 2018 in the form attached hereto as Exhibit "B."

The Department received twelve written submittals. Nicholas J. Fina, Ed.D., the Chairperson of the State Council for Persons with Disabilities ("SCPD"), commented that the SCPD supports the proposed amendments to the training requirements for coaches related to head injuries in Section 7.0. Ann C. Fisher, the Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), stated that GACEC "endorses the proposed changes, especially the training requirements for athletic coaches relating to head injury."

The Department also received written submittals from Dion Lamb, Kevin Molen (a parent), John Kwoka, Matt Carucci (the Catholic Youth Ministry Sports Coordinator), Jennifer Mayer (a coach and Christiana High School's Athletic Director), Trina Leclerc (a parent of a former student athlete), and MaryPat Kwoka (a high school and club coach), which indicated that they are not in favor of the proposed amendments to subsection 7.6 (coaching out of season). In addition, Mr. Lamb and Ms. Leclerc commented that they support a proposal that was written by Ms. Kwoka and Ms. Mayer. Mr. Lamb further commented that there should not be a limitation for coaches involved in beach doubles volleyball. Ms. Mayer "suggest[ed] that the regulation be changed to limit 'open gyms.'" Bob Gilmore stated that subsection 7.6.2.5.1 would "give an advantage to players with greater economic means" and that "[a]llowing the use of school equipment (if a district is willing) works to 'level the playing field.'"

Taylor Trevisan commented that the DIAA Board of Directors should "make change." Rodney Griffin commented that allowing coaching out of season "[w]ould help close the gap for Delaware student athletes who compete against athletes from bordering states that have less stringent out of season coaching rules" and that allowing coaching throughout the year "would potentially give our athletes a head start on earning an athletic scholarship and be better prepared for success at the college level." Ms. Leclerc provided examples of how the current coaching out of season rule is applied and of how the proposed amendments would be applied.

On October 11, 2018, the DIAA Board of Directors considered each of the written submittals. Of the twelve written submittals received, it was unclear whether four concerned the proposed amendments to 14 **DE Admin. Code** 1008, 14 **DE Admin. Code** 1009, or both regulations. The four written submittals were from Mr. Gilmore, Mr. Trevisan, Ms. Mayer, and Mr. Griffin. As a result, the DIAA Board of Directors considered the four written submittals for both regulations (i.e., 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009).

The proposal that Mr. Lamb and Ms. Leclerc support was considered by the DIAA Board of Directors at its August 9, 2018 meeting. The DIAA Board of Directors voted to publish the amendments that were recommended by the DIAA Rules and Regulations Committee without further changes. Beach doubles volleyball is not a DIAA-recognized sport. The rules concerning open gyms are set forth in Section 6.0, which is not part of the proposed amendments. The DIAA Board of Directors noted that it could add the open gym rules as an item on one of its future agendas.

As to subsection 7.6.2.5.1, the DIAA Board of Directors found that the language gives DIAA member schools the option to lend their own equipment to their student athletes who participate with an outside group (e.g., a camp or clinic) during the time period when coaching out of season is permitted; however, to help discourage full contact in lacrosse and football during the summer period for safety reasons, member schools would not be permitted to lend their helmets and shoulder pads to their student athletes who participate with an outside group.

The DIAA Board of Directors found Ms. Leclerc's examples helpful, but the Board also found that it is charged with preserving and promoting the educational significance of interscholastic athletics and protecting the physical well-being of all student athletes, not just advanced athletes who wish to have an opportunity to be coached by the best coaches.

The DIAA Board of Directors found that further changes in response to the written submittals were not necessary and voted to propose 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics, in the form that was published, for adoption by the Department subject to the State Board of Education's approval.

## II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement the provisions of 14 **Del.C.** Ch. 3. In addition, the Department finds that further changes in response to the written submittals are not necessary. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics.

## III. DECISION TO AMEND THE REGULATION

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

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics adopted hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited as 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics in the Administrative Code of Regulations for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Department pursuant to 14 **Del.C.** §§122(b) and 303(a) on October 25, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 25<sup>th</sup> day of October, 2018.

**Department of Education**

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

Approved this 25<sup>th</sup> day of October, 2018.

**State Board of Education**

Whitney Townsend Sweeney, President

Dr. Audrey J. Noble, Vice President

Nina Lou Bunting

Candace Fifer

Vincent Lofink

Wali W. Rushdan, II

Terry M. Whittaker, Ed.D.

\*Please note that no changes were made to the regulation as originally proposed and published in the September 2018 issue of the *Register* at page 187 (22 DE Reg. 187). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1009 DIAA High School Interscholastic Athletics**

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**ORDER****Home Health Services****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Home Health Services, specifically, to add accreditation as an option to Medicare certification for Medicaid providers. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after September 1, 2018 Delaware Health and Social Services/ Division of Medicaid and Medical Assistance proposes to amend Title XIX Medicaid State Plan page Attachment 4.19-B Page 6 and Attachment 3.1-A Page 3.1 Addendum regarding Home Health Services.

**Background**

Currently, to receive reimbursement, Delaware Medicaid providers must obtain Medicare certification.

Delaware Health and Social Services (DHHS)/Division of Medicaid and Medical Assistance (DMMA) has worked closely with the provider community to develop an alternative which provides flexibility and removes limitations.

**Statutory Authority**

- 1902(a)(10)(D) of the Social Security Act, *Home health services*

**Purpose**

The purpose of this proposed regulation is to add accreditation as an option to Medicare certification for Medicaid providers.

*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 1, 2018.

*Centers for Medicare and Medicaid Services Review and Approval*

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

*Provider Manuals and Communications Update*

Also, there may be additional provider manuals that may require updates as a result of these changes. The

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

## Fiscal Impact Statement

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

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

The initial Proposed Regulation for Home Health Services was published in the June 1, 2018 issue of the Delaware *Register of Regulations* (21 DE Reg. 951) with a comment period of June 1 - July 2. After consideration of public comments, the Proposed regulation was reprinted as Proposed in the September 1, 2018 issue of the Delaware *Register of Regulations* and there were no comments received as a result of that publication.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Home Health Services, specifically, to add accreditation as an option to Medicare certification for Medicaid providers is adopted and shall be final effective November 13, 2018.

Date: 10/24/2018

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

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2018 issue of the *Register* at page 194 (22 DE Reg. 194). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Home Health Services**

---

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 7406 (16 Del.C. §7406)  
16 DE Admin. Code 4465

## ORDER

## 4465 Delaware Radiation Control Regulations

## NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Radiation Control. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 7406.

On June 1, 2018 (Volume 21, Issue 12), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 Del.C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by July 16, 2018, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that

evaluation are summarized in the accompanying "Summary of Evidence."

### SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Radiation Control were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (June 1, 2018 through July 16, 2018).

Entities offering written comments include:

- American Society of Radiologic Technologists, Greg Morrison, Associate Executive Director
- Delaware Association of Nurse Anesthetists, Delphos E. Price, Jr., President.

#### Comments from the American Society of Radiologic Technologists

The American Society of Radiologic Technologists (ASRT), which represents 154,000 members nationally including more than 400 medical imaging and radiation therapy professionals in Delaware, respectfully submits comments regarding the most recent proposed amendments to the Delaware rules and regulations. ASRT appreciates you incorporating comments provided in 2017. At that time, we expressed our concern with adding advanced nurse practice to the definition of "Licensed Practitioner", particularly because this addition would have allowed Advanced Practice Nurse Practitioners (APRNs) to perform or supervise performance of medical imaging and radiation therapy procedures. Because of the DPHs actions, ASRT supports the recently proposed definition of "Licensed Practitioner" whereby APRNs and PAs are granted the privilege of ordering diagnostic or supportive x-ray procedures for patients. In furtherance of our beliefs, we recommend updating the definition to indicate APRNs and PAs may not supervise the performance of diagnostic or supportive x-ray procedures. Lastly, we also suggest removing "state-licensed practitioners" because there is no separate, proposed definition for this term. Instead, we support using the proposed definition of "Licensed Practitioner" with the provision that specifies that APRNs and PAs may order but not supervise the performance of diagnostic or supportive x-ray procedures for patients in accordance with Title 24, Delaware Code.

The ASRT recommends revisions to the following definitions impacted by the suggested revision to "Licensed Practitioner": Principal Supervisor, Direct Supervision, General Supervision, and Personal Supervision in all definition sections of 4465 where they are included in the proposed rule. The ASRT also recommends revision to the definition of "Radiation Technologist" and inserting a suggested definition for "Radiation Therapist" in Part X.

The ASRT recommends revision to Part F, Section 11.0 Computed Tomography (CT) Equipment, specifying that an operator of CT x-ray system must be a Medical Radiologic Technologist - CT, to clarify that an operator of a CT x-ray system must have passed a post-primary examination in computed tomography.

#### Response

All comments submitted by the ASRT were evaluated. All comments submitted regarding definitions related to professional scope of practice were incorporated into the final rule. One comment submitted regarding qualification of an operator of CT x-ray systems was declined as it proposes to fundamentally change the minimum qualifications already set forth in these regulations.

#### Comments from the Delaware Association of Nurse Anesthetists

Thank you for the opportunity to comment on the proposed regulation 16 **DE Admin. Code** 4465. I am the president of the Delaware Association of Nurse Anesthetists (DANA) and submit these comments on the association's behalf. Nurse Anesthetists have advanced education and training, and are licensed to practice in Delaware as Advanced Practice Registered Nurses (APRNs). In the definitions sections in the proposed regulation "Licensed Practitioner" has been amended to include Advanced Practice Registered Nurses (APRNs) and Physicians Assistants (PAs) in the general section of the regulation and specifically in Part F. This is appropriate and fully supported by our organization. While PAs are also included in Part F - Medical Diagnostic and Interventional X-Ray and Imaging Systems under Section 5.13 entitled Operator Qualifications, it appears that APRNs have been inadvertently omitted.

The scope of practice for APRNs with advanced training and certification as Certified Registered Nurse Anesthetists includes the use of fluoroscopy and other technologies for diagnosis and care delivery. The Delaware Code directs that APRNs can prescribe, administer and dispense medication, including controlled substances, as well as diagnose, prescribe and institute therapy and when doing so, the APRN shall not be held to any lesser

standard of care than that of a physician providing care to a specific patient condition or population. Including APRNs in sections 5.13.1.1 and 5.14.1 properly brings the Delaware Radiation Control Regulations in harmony with other provisions of current Delaware law that relate to patient care and safety.

## **Response**

All comments submitted by the DANA were evaluated. Comments submitted were related to professional scope of practice, and were not incorporated. The intent of the proposed rule was to revise the definition of "Licensed Practitioner" to enable APRNs and PAs to order diagnostic and supportive x-ray procedures, to harmonize the radiation control regulations with Title 24 Delaware Code. The comments from DANA seek to widen the scope of practice for APRNs beyond Title 24 Delaware Code and into the realm of physicians and radiologic technologists working within their professional scope of practice to interpret (ie. Radiologists) and perform various radiation technology procedures (Medical Radiologic Technologists, Nuclear Medicine Technologists and Radiation Therapists) which are performed by licensed or certified individuals who have passed national credentialing boards (American College of Radiology and American Registry of Radiologic Technologists, respectively) for specialized areas of practice within the radiologic health sciences.

## **FINDINGS OF FACT:**

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

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Radiation Control is adopted and shall become effective November 13, 2018, after publication of the final regulation in the Delaware *Register of Regulations*.

Date: 10/22/2018

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

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

**4465 Delaware Radiation Control Regulations**

---

## **DEPARTMENT OF LABOR**

### **DIVISION OF INDUSTRIAL AFFAIRS**

#### **OFFICE OF LABOR LAW ENFORCEMENT**

Statutory Authority: 29 Delaware Code, Section 8503(7) and 19 Delaware Code, Section 105(a)(8)

(29 **Del.C.** §8503(7) & 19 **Del.C.** §105(a)(8))  
19 **DE Admin. Code** 1322

### **ORDER**

**1322 Prevailing Wage Regulations**

#### **I. NATURE OF PROCEEDINGS**

Pursuant to its authority under 29 **Del.C.** §8503(7) and 19 **Del.C.** §105(a)(8), the State of Delaware, Department of Labor's Division of Industrial Affairs (herein "the Department") proposed to amend its regulations enforcing the Prevailing Wage Law, 29 **Del.C.** §6960. The Department's purpose in proposing these amendments was to formally limit the number of fringe benefits deductions the Department will recognize; expand the scope of the circumstances under which the Department shall hold administrative hearings; and make minor changes to the conduct of those hearings themselves. The proposed amendments are also intended to add a Diver Classification and include that Classification in the Classification booklet. Minor amendments and changes were also inserted

regarding other portions of the regulations, including a change to the statutory thresholds for prevailing wage projects to make them consistent with the Prevailing Wage Law itself.

In May of 2018 the Department initially proposed to amend these regulations. A public hearing was held on May 21, 2018, at which the Department received public comment. The Department also received public comment in the form of written suggestions. The Department incorporated some of these suggestions into a revised proposal. Notice of a public comment period of thirty (30) days on the Division's proposed regulations was published in the Delaware *Register of Regulations* for August, 2018 as well as in two Delaware newspapers of general circulation in accordance with 29 **Del.C.** §10115. A public hearing was held on September 24, 2018. This is the Department's Decision and Order adopting the proposed regulations.

## II. PUBLIC COMMENTS

The Department received numerous public comments in response to its notice of intention to adopt the proposed regulations. Some comments praised all or portions of the Department's proposal. Other comments requested changes to the proposed regulations. Those suggestions included that the Department's proposed fringe benefit regulations include precise time-frames as to when benefits are provided to workers; opposition to efforts to bring Department fringe benefit regulations in line with federal regulations; changes to the methodology of the Department's prevailing wage survey; and a proposal to eliminate the Department's power to determine matters are resolved in the context of providing deficiency withholdings to underpaid workers.

## III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Department's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Department with comments opposing the Department's plan. Thus, the Department concludes that its consideration of the proposed amended regulations was entirely within its prerogatives and statutory authority and is now free to adopt the proposed amended regulations. They are unchanged from the proposed regulations except that they retain language from the existing regulations which requires valid fringe benefit funds to be distributed to an escrow account at least monthly.

## IV. ORDER

**AND NOW this 1<sup>st</sup> day of November, 2018,** it is hereby ordered that:

1. The proposed amendments to the Division's regulations are adopted;
2. The text of the regulations shall be in the form attached hereto as Exhibit A;
3. 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(e); and
4. The Division reserves to itself the authority to issue such order and further orders in this matter as may be just and proper.

**IT IS SO ORDERED.**

Cerron Cade, Secretary

### 1322 Prevailing Wage Regulations (Break in Continuity of Sections)

#### 3.0 Concepts and Definitions

- 3.1 This section presents definitions and explanations to provide a basic understanding of elements inherent in collecting wage data and issuing wage determinations, and enforcing prevailing rates.

#### (Break in Continuity Within Section)

##### 3.1.10 Fringe Benefits.

##### 3.1.10.1

Fringe benefits may be considered in determining whether an employer has met his/her prevailing wage obligations. ~~As a general rule, any fringe benefit may be considered as long as the employer is not legally required to provide it. Therefore, benefits such as health, welfare or retirement benefits, vacation, holiday pay or sick leave pay could be considered fringe benefits. Employer payments for unemployment insurance, workers'~~

~~compensation, FICA, etc. (which are required by law) would not be considered fringe benefits. To be considered a "bona fide" fringe benefit for purposes of the Act, a fringe benefit plan, fund, or program must constitute a legally enforceable obligation which meets the following criteria:~~

~~In order to be considered a valid fringe benefit, payments must be made either in cash, or contributed to an irrevocable escrow account at least once each month.~~

~~"Irrevocable" means that the benefit may not be forfeited. However, a benefit plan can be considered by the Department provided that payments to the plan are made irrevocably by the employer, even though certain employees may forfeit their individual rights to the benefits under certain prescribed conditions. Thus, if payments are made by the employer, and no return of those payments is possible, the plan would be acceptable, even though individual employees might not receive the benefits under certain situations. Benefits forfeited by such employees remain in an escrow account for the use of the other employees.~~

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

~~3.1.10.1.4 Except as provided in subsection 3.1.10.2, the contractor's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that the contractor, its owners, officers, or business, will not be able to recapture any of the contributions paid in nor in any way divert the funds to its own use or benefit. [In order to be considered a valid fringe benefit, payments must be made either in cash, or contributed to an irrevocable escrow account at least once each month.]~~

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2018 issue of the Register at page 203 (22 DE Reg. 203). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**1322 Prevailing Wage Regulations**

---

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Section 6010 and 29 Delaware Code, Section 10113(b)(4); (7 Del.C. §6010, 29 Del.C §10113(b)(4))  
**7 DE Admin. Code 1134**

**Secretary's Order No.: 2018-A-0053**

**Date of Issuance: October 3, 2018**

**Effective Date of the Amendment: November 11, 2018**

**1134 Emission Banking and Trading Program**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §6010 and 29 Del.C. §10113(b)(4), DNREC hereby revises Section 1134 of Title 7 of the Delaware Administrative Code to correct existing referencing error contained therein by replacing "Economic Development Office" with "Department of State, Division of Small Business." This correction is necessitated as a result of recent changes made to Delaware law, specifically, the codification of House Bill 432, effective July 1, 2018, which transferred State of Delaware economic development functions formerly located within the Delaware Department of Economic Development to the Department of State.



**Findings of Fact**

Based on Delaware law and the record as referenced above, I make the following findings of fact:

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

**Decision and Order Concerning the Regulation**

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revision to 7 **DE Admin. Code** 1134: ***Emission Banking and Trading Program***, be adopted and promulgated as follows, to wit:

Section 8.5.2 shall be corrected by replacing "Economic Development Office" with "Department of State, Division of Small Business."

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

Shawn M. Garvin, Secretary

**1134 Emission Banking and Trading Program**  
***(Break in Continuity of Sections)***

10/06/1997

**8.0 Certification of an Emission Reduction*****(Break in Continuity Within Section)***

- 8.5 Prior to certifying an emission reduction, the Department will make the following adjustments to both the ozone season and non-ozone season emission reductions that are submitted to the Department for certification:

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

- 8.5.2 Credit for emission reductions generated by shutdowns will be reduced by the value of 50% of the total reductions. 25% of the total reductions will be retired to provide a net air quality benefit and 25% will be held in a separate account by the Delaware ~~Economic Development Office~~ Department of State, Division of Small Business, for economic development purposes after certification by the Department pursuant to 8.6 of this regulation.

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

**1134 Emission Banking and Trading Program**

---

## DIVISION OF CLIMATE, COASTAL AND ENERGY Delaware Coastal Programs

Statutory Authority: 7 Delaware Code, Section 6010(a) (7 **Del.C.** §6010(a))  
Federal Coastal Zone Management Act (15 CFR part 923, subpart H)  
7 **DE Admin. Code** 108

Secretary's Order No.: 2018-CCE-0052

Date of Issuance: September 19, 2018  
Effective Date of the Amendment: November 11, 2018

### 108 Delaware Coastal Management Program Federal Consistency Policies and Procedures

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 **Del.C.** §6010 and 29 **Del.C.** §10113(b)(4), DNREC hereby revises Section 108 of Title 7 of the Delaware Administrative Code to correct all current grammatical, clerical, and legal citation/referencing errors presently contained therein, and to make this Regulation consistent with the formatting set forth in the current edition of the *Delaware Administrative Code Drafting and Style Manual*.

#### Findings of Fact

Based on Delaware law and the record as reflected above, I make the following findings of fact:

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

#### Decision and Order Concerning the Regulation

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revisions to 7 **DE Admin. Code** 108: *Delaware Coastal Management Program - Federal Consistency Policies and Procedures*, be adopted and promulgated.

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

Shawn M. Garvin,  
Secretary

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

108 Delaware Coastal Management Program Federal Consistency Policies and Procedures

---

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

### 1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1305 (24 **Del.C.** §1305)  
24 **DE Admin. Code** 1300

#### ORDER

### 1300 Board of Examiners of Private Investigators & Private Security Agencies

Pursuant to the Guidelines in 29 **Del.C.** Section 10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. The proposed change was

published in the Delaware *Register of Regulations* on September 1, 2018 (Vol. 22, Issue 3). Following notice and a public hearing on the proposed adoption of amendments to Rule 4.0 Training Requirements, the Board makes the following Findings and Conclusions:

### Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to place the responsibility of training the instructors and offering the mandatory training at an approved training facility.

### Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will place the responsibility of training the instructors and offering the mandatory training at an approved training facility.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to place the responsibility of training the instructors and offering the mandatory training at an approved training facility.

### Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 Del.C. Section 1304 et seq. and, in particular, 24 Del.C. Section 1304(b)(3).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 Del.C. Section 1304 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 Del.C. Section 1304(b)(3) and guidelines of 29 Del.C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be November 11, 2018.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 11th day of October, 2018.

Lt. Colonel Monroe B. Hudson, Jr., Chairman  
 Director Robert J. Irwin  
 Ms. Sandra C. Taylor  
 Mr. Mark W. Rainford  
 Mr. Wayne A. Keller

Ms. Kelly R. Jansen  
 Vacant - Public Member  
 Vacant - Private Security Agency  
 Vacant - Armored Car Agency

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2018 issue of the *Register* at page 212 (22 DE Reg. 212). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1300 Board of Examiners of Private Investigators & Private Security Agencies**

## DEPARTMENT OF STATE DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Statutory Authority: 30 Del.C. Code, Section 1815(b) (30 Del.C. §1815(b))  
1 DE Admin. Code 901

### ORDER

#### 901 Historic Preservation Tax Credit Program

In accordance with 29 Del.C. §10118 and 30 Del.C. Ch.18, Subch. II, §1815(b), for the reasons set forth herein, the Delaware Department of State, Division of Historical and Cultural Affairs enters this Order amending the Historic Preservation Tax Credit Program regulation.

#### NATURE OF THE PROCEEDINGS

Pursuant to its authority under 30 Del.C. Ch.18, Subch. II, §1815(b), the Division proposes to adopt an amended regulation for the Historic Preservation Tax Credit Program to specify under what circumstances a Credit Award would be withdrawn, establish a time frame during which rehabilitation work may qualify for a Credit Award, amend the fee schedule, and make other clarifications and technical corrections to the regulation. The amended regulation also reflects changes to the program made in the 149th General Assembly. The Historic Preservation Tax Credit Act (30 Del.C. Ch. 18, Subch. II) was amended to increase the maximum tax credit available for owner-occupied historic properties (81 Del. Laws. c. 390), and the Bond and Capital Improvements Act increased the total amount of credits available in each state fiscal year through state fiscal year 2024 (81 Del. Laws. c. 303).

The Division gave notice of its intent to amend the regulation in the August 1, 2018 issue of the Delaware *Register of Regulations*. At that same time, the Division submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 Del.C. Ch. 104. The Division solicited written comments from the public for thirty (30) days as mandated by 29 Del.C. §10118(a).

#### SUMMARY OF EVIDENCE

In accordance with Delaware law, public notice regarding the proposed amendment of the regulation governing the Historic Preservation Tax Credit Program was published in the Delaware *Register of Regulations*. The public comment period was open from August 1, 2018 through September 4, 2018. Notice of the proposed amendment was also published in the *News Journal* on August 8, 2018 and the *Delaware State News* on August 5 and August 7, 2018, was posted on the Division's website, and was distributed to recipients of the Division's e-newsletter. The Division received written comments.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Division received written comments from five homeowners, three non-profit organizations, one municipality, and three developers including one large corporation and two individuals. The Division of Historical and Cultural Affairs has reviewed and considered each comment, summarized below, and responds as follows:

**First, Fee Increases:** The Division received several written comments requesting reconsideration of the new fee structure established in Section 8.0 of the regulation. Comments included: the proposed fee structure is not comparable with fees charged by other state programs or with the federal historic tax credit program (examples given); the fee would place an undue burden on non-profit organizations and applicants for resident-occupied properties; and the increase in costs would diminish the value of the credits and discourage application to the program.

**Division Response:** The Division amended subsection 8.1.1 of the regulation, reducing the application fee for resident-occupied properties and resident-curators from \$250 to \$100. The Division has reviewed and considered comments concerning the other aspects of the fee structure and determined to retain subsection 8.1.2 of the proposed regulation as posted. The fee schedule has not been adjusted since it was established in 2002.

**Second, Fee Cap:** The Division received written comments requesting imposition of a cap on the total fee

charged, stating that the Division's proposed fee structure is not in alignment with the federal historic tax credit program which has a cap.

**Division Response:** The Division has reviewed and considered these comments and determined to retain subsection 8.1.2 of the proposed regulation as posted.

Third, "Grandfathering" Previously Approved Projects: The Division received written comments questioning the applicability of the new regulation to projects that have been previously initiated and/or are already underway. Commenters specifically requested that such projects be "grandfathered" and exempted from the new fee structure established in Section 8.0 and from the new subsection 5.5 limiting applications to only proposed work. A definition of the term "initiated" was suggested. Homeowners with completed projects that had planned to apply for a subsequent award (allowed under the previous program guidelines) also considered new subsection 5.5 detrimental and asked that it be removed from the regulation, modified to allow completed work within a reasonable period or if the work meets the Secretary of the Interior's Standards for Rehabilitation.

**Division Response:** The Division added a new subsection 4.6 to provide a definition of "initiated" projects, and a new subsection 4.7 citing circumstances when approval of a Part 1 application will expire. The Division then added a new Section 12.0 Transition Provisions that allows applicants to proceed under the previous regulation (18 DE Reg. 237) and guidance under specific circumstances. References to Section 12.0 were added to subsections 5.5 and 8.1, accordingly. However, the Division maintains that the limitations imposed by subsection 5.5 are necessary to ensure that the program is in keeping with its original intent, and notes that the program as a whole already requires that work meet the Secretary of the Interior's Standards.

Fourth, "Moratorium" on Applications: The Division received several written comments concerned that applicants were not made aware of the impending changes until after the proposed regulation was posted, at which time the Division was not accepting new applications, and under the new regulations their projects may no longer be eligible for the program.

**Division Response:** The Division added a new Section 12.0 Transition Provisions, which allows applicants to proceed under the previous regulation (18 DE Reg. 237) and guidance under specific circumstances, and cites the provisions of Section 10 that gives applicants the ability to appeal the Division's disapproval of an application.

Fifth, Conditional Approvals and Timeframes for Approval: The Division received written comments requesting clarification of when a Part 2 application is considered approved, pertaining to the interpretation of new subsection 5.5. It was noted that the regulation does not mention conditional approvals, though they occur. Related issues concerning the federal tax credit program were cited. It was suggested that a specific timeframe for approval or rejection of an application be included in the regulation.

**Division Response:** The Division added language to subsection 5.7 specifying that the Division may apply conditions to a Part 2 approval. The timeframe for review is currently in program guidance and the Division finds it is not necessary to add it to the regulation. The Division also finds it best to address in program guidance the unique issues that may arise when applicants are seeking both federal and state tax credits.

Sixth, Clarify Wording in subsections 5.5, 7.4 and 7.6: The Division received written comments suggesting specific language changes in these subsections.

**Division Response:** The Division amended subsection 5.5, changing "carried out" to "completed." The Division will use updated guidance to address provide further discussion of subsection 7.4, regarding circumstances when an increase in a credit award can be considered. The Division finds that new subsection 7.6 of the regulation, as written, reflects the allocation of credits to certain pools as specified by Delaware Code, 30 Del.C. Ch. 18, Subch. II, §1816, and allows sufficient flexibility for changes to the total credits allowed.

Seventh, Expedite Document Circulation for Final Approvals: The Division received written comments recommending the agency consider use of e-copies to obtain signatures from state government officials, including the Division of Historical and Cultural Affairs and Division of Revenue, and correspondence with applicants to expedite final approvals.

**Division Response:** The Division will explore this recommendation in the future.

## FINDINGS OF FACT

The public was given the required notice of the Division's intention to amend the Historic Preservation Tax Credit Program regulation and was given opportunity to provide the Division with comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. Public comments were received. The Division has responded to the public comments in the Summary of Comments

Received with Agency Response and Explanation of Changes. Thus, the Division finds that the proposed regulation, which adds subsections 4.6 and 4.7 and adds Section 12.0, should be adopted in the best interest of the general public of the State of Delaware. Additionally, some grammatical amendments and edits were made to the proposed regulations.

**THEREFORE, IT IS SO ORDERED**, this 1<sup>st</sup> day of November 2018 that the proposed Division of Historical and Cultural Affairs Amendment to the Historic Preservation Tax Credit Program Regulation 901 is adopted and shall become effective ten (10) days from the date of its publication in the November 2018 Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(e) and (g).

Jeffrey Bullock  
Secretary of State

## 901 Historic Preservation Tax Credit Program (Break in Continuity of Sections)

### 3.0 Definitions

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

“**Act**” means the [**“Historic Preservation Tax Credit Act”, under**] 30 Del.C. Ch. 18, Subch. II.

### 4.0 Procedures for Certification of Historic Property

#### (Break in Continuity Within Section)

**[4.6 Once the State Office has approved the Part 1 application, the project is considered initiated for the purpose of this program.**

**4.7 The Part 1 application shall expire if a Part 2 application is not received by the State Office within one calendar year from the date of issue of the approved Part 1.]**

### 5.0 Procedures for Certification of Rehabilitation

#### (Break in Continuity Within Section)

5.5 The Part 2 application shall include any proposed rehabilitation work. Any rehabilitation work that has been ~~carried out~~ completed] prior to the approval of the Part 2 application is not eligible for consideration[, except as provided for under Section 12.0].

#### (Break in Continuity Within Section)

5.67 The Delaware State Historic Preservation Officer shall determine whether the proposed rehabilitation for which a complete application is received under ~~Section subsection~~ 5.1 of this regulation meets the definition of a certified rehabilitation and shall send the applicant notice of the determination. The State Office may require modifications to the ~~plan work as described in the Part 2 application~~ in order to meet the definition of a certified rehabilitation. **[The State Office may also apply conditions to a Part 2 approval so as to insure the work meets the definition of a certified rehabilitation.]**

#### (Break in Continuity of Sections)

### 8.0 Fees for Processing Rehabilitation Certification Request

8.1 The fee for review of rehabilitation work for projects where the qualified expenditures are over \$100,000 is \$250 for each separate application. Final action will not be taken on an application until the appropriate remittance is received. No fee will be charged for rehabilitation projects where the qualified expenditures are less than \$100,000. ~~All~~ **Except as provided for under Section 12.0, all** applicants who seek a Credit Award for their certified rehabilitation are subject to a fee.

8.1.1 The fee for applicants of owner-occupied properties and resident curators is ~~[\$250 \$100]~~. The fee is due at the time the applicant submits their Request for Certification of Historic Property application. All fees are non-refundable.

*(Break in Continuity Within Section)*

8.1.5 This fee schedule is applicable to all projects initiated after the effective date of these rules[, except as provided for under Section 12.0].

*(Break in Continuity of Sections)*

**[12.0 Transitional Provisions**

- 12.1 An applicant that has initiated, but not yet completed, a project prior to November 11, 2018 shall be subject to the regulation as adopted September 1, 2014 (18 DE Reg. 237), following existing guidance associated with that regulation.
- 12.2 Property owners that consulted with the State Office concerning a specific project prior to November 11, 2018 may request that the Division accept an application under the terms of the regulation as adopted September 1, 2014 (18 DE Reg. 237), following existing guidance associated with that regulation; the Division may consider such a request provided that:
  - 12.2.1 The applicant demonstrates that the information in their previously approved Part 1 application remains valid, and submits the Part 2 application to the State Office by December 31, 2018.
  - 12.2.2 If no Part 1 had been previously submitted, then the applicant submits both the Part 1 and Part 2 applications to the State Office by December 31, 2018.
  - 12.2.3 The applicant may submit no more than one such request per property.
  - 12.2.4 All other program requirements are met.
- 12.3 For owner-occupied properties with applications under subsections 12.1 and 12.2, the Credit Award may not exceed \$30,000.
- 12.4 A taxpayer whose application is disapproved under subsection 12.2 may appeal in accordance with the administrative review process established in Section 10.0 of this regulation.]

\*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2018 issue of the *Register* at page 147 (22 DE Reg. 147). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**901 Historic Preservation Tax Credit Program**

---

**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 clarify the education requirements for applicants; change the name of the NCARB training program from Intern Development Program to Architectural Experience Program; clarify that the continuing education requirements apply to calendar years; and allow licensees to seek pre-approval of continuing education units.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Following publication in the Delaware *Register of Regulations* on July 1, 2018 a public hearing was held on September 5, 2018. 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 September 5, 2018. 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 clarify the education requirements for applicants; change the name of the NCARB training program from Intern Development Program to Architectural Experience Program; clarify that the continuing education requirements apply to calendar years; and allow licensees to seek pre-approval of continuing education units.

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.

## 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*.

**IT IS SO ORDERED** this 3<sup>rd</sup> day of October, 2018 by the Delaware Board of Architects.

Paul Guggenberger, RA, President

Daniel Ridgely, RA, Secretary

Robert Maffia, RA

Todd Breck, RA

Brian Hutchison, Jr., RA (absent)

Herbert Russell, Public Member

John Lynch, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the July 2018 issue of the *Register* at page 27 (22 DE Reg. 27). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**300 Board of Architects**



---

# GENERAL NOTICES

---

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)

#### REGISTER NOTICE

### Approving Final Revisions to Delaware's State Implementation Plan ("SIP"): Revision to Address Section 110 Infrastructure Requirements of the Clean Air Act for the 2015 National Ambient Air Quality Standards ("NAAQS") for Ground-Level Ozone

**Date of Issuance: October 8, 2018**

**Effective Date of the Amendment: October 8, 2018**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §§6006, 6010, and all other statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

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

This Order relates to the proposed revisions to the Delaware State Implementation Plan ("SIP"), specifically, to address the Section 110 Infrastructure Requirements of the Clean Air Act ("CAA") for the 2015 National Ambient Air Quality Standards ("NAAQS") for Ground-Level Ozone. Delaware is required by Section 110 of the federal Clean Air Act to submit to the U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS as established by EPA.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware submitted its initial SIP to EPA in 1972. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality non-attainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment, and presented at a public hearing prior to submitting to EPA for adoption.

On October 1, 2015, the EPA promulgated a revised NAAQS for ground-level ozone at a level of 0.070 parts per million. The proposed SIP revisions fulfill the infrastructure requirement relative to the 2015 Ozone NAAQS, and demonstrate how Delaware's SIP satisfies the CAA's "Good Neighbor" provision, as set forth in Section 110(a)(2)(D)(i)(I). In particular, the Good Neighbor provision requires each state to demonstrate that emissions from sources within that state do not contribute significantly to non-attainment in, or interfere with maintenance by, any other state with respect to a particular NAAQS. With the proposed SIP document, Delaware will show it satisfies the Good Neighbor provision for the 2015 Ozone NAAQS by showing that all non-trivial sources of emissions of nitrogen oxides and volatile organic compounds in Delaware are well controlled.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revisions as referenced above, pursuant to 7 Del.C. Chapter 60. The Department published the General Notice of the proposed SIP revisions, and of the August 22, 2018 public hearing held in this matter, in the August 1, 2018 Delaware *Register of Regulations*. One member of the public attended that hearing, but no formal public comment was received by the Department with regard to this matter. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated September 21, 2018 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the record, and recommends the adoption of the proposed SIP revisions as attached to the Report as Appendix "A."

---

## Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed Delaware SIP document is well-supported. I further find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the SIP document. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to its proposed SIP document, pursuant to 7 **Del.C.** Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting this proposed SIP document as final;
3. The Department provided adequate public notice of the proposed SIP document, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed SIP document, including at the time of the public hearing held on August 22, 2018, and held the record open through close of business on September 6, 2018, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the aforementioned recommended proposed SIP document as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of this proposed SIP document will enable the Department to provide certification to EPA that (1) Delaware meets all of the necessary implementation, maintenance, and enforcement measures for the 2015 Ozone NAAQS, as set forth in Section 110(a)(2) of the Clean Air Act; and (2) Delaware satisfies the Good Neighbor provision for the 2015 Ozone NAAQS, as specifically set forth in Section 110(a)(2)(D)(i)(I) of the Clean Air Act, by showing that all non-trivial sources of emissions of nitrogen oxides and volatile organic compounds in Delaware are well controlled;
6. The Department's proposed SIP document, as published in the August 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final SIP document, which shall become effective immediately upon the signing of this Order; and
7. The Department shall submit this Order approving as final the proposed Delaware SIP document to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

**\*Please Note: Due to the size of the SIP and Appendix A, they are not being published here. PDF versions are available at the following locations:**

**DNREC Clean Air Act SIP**

[http://regulations.delaware.gov/register/november2018/general/DNREC Clean Air Act SIP.pdf](http://regulations.delaware.gov/register/november2018/general/DNREC%20Clean%20Air%20Act%20SIP.pdf)

**Appendix A**

[http://regulations.delaware.gov/register/november2018/general/Appendix A.pdf](http://regulations.delaware.gov/register/november2018/general/Appendix%20A.pdf)

---

---

**CALENDAR OF EVENTS/HEARING NOTICES**

---

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

The Delaware River Basin Commission will hold a public hearing on **Wednesday, November 14, 2018** beginning at 1:30 p.m. A business meeting will be held the following month on **Wednesday, December 12, 2018** 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 18977. For more information, visit the DRBC web site at [www.drbc.gov](http://www.drbc.gov) or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203 and [pamela.bush@drbc.gov](mailto:pamela.bush@drbc.gov).

---

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

The State Board of Education will hold its monthly meeting on Thursday, November 15, 2018 at 5:00 p.m. at Mispillion Elementary School located at 311 Lovers Lane, Milford, Delaware.

---

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Physician Assistants**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 3, 2018. Please identify in the subject line: Physician Assistant.

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

---

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Prescription Assistance**

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 Delaware Social Services Manual (DSSM) regarding Prescription Assistance, specifically, *to restore the Delaware Prescription Drug Payment Assistance Program*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 3, 2018. Please identify in the subject line: Prescription Assistance.

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

by other interested persons.

---

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**  
**MAGI Methodology**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding MAGI Methodology, specifically, to clarify policy related to special income counting rules for children and dependents.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 3, 2018. Please identify in the subject line: MAGI Methodology.

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

---

**DEPARTMENT OF INSURANCE**  
**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE**  
**610 Automobile Premium Consumer Comparison**

Chapter 18 of the Delaware Administrative Code at Regulation 610 requires insurers who have a prescribed market share to, annually, by October 1, submit certain data to the Department of Insurance (Department) concerning automobile rates so that the Department may use those data as the basis of its on-line rate comparison tool. The purpose of the on-line rate comparison tool was to allow consumers to easily compare automobile insurance rates based on set driving scenarios, driver profiles and zip codes.

However, since the inception of the rate calculator in 2006, insurers have built their own calculators which can be precisely tailored to fit an exact consumer profile. Thus, the Department's calculator is obsolete and the regulation requiring the data call should be repealed.

The Department does not plan to hold a public hearing on the proposed repeal of Regulation 610. The regulation proposed for repeal appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed repeal of the regulation. Any written submission in response to this notice and relevant to the proposed repeal must be received by the Department of Insurance no later than 4:30 p.m. EST, the 3<sup>rd</sup> day, December, 2018. Any such requests should be directed to:

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

**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****1319 Arbitration of Disputes between Carriers and Primary Care and Chronic Care Management Providers**

On August 29, 2018, the Governor signed into law SB 227 as amended by Senate Amendment No. 1 and House Amendment No. 1 as amended by House Amendment No. 1 to House Amendment No. 1, entitled "An Act to Amend Title 16, Title 18, and Title 29 of the Delaware Code Relating to Primary Care Services" (the Act). The Act provides that Sections 5 through 8 become effective on January 1, 2019 and expire "three years after enactment into law unless otherwise provided by a subsequent Act of the General Assembly."

Section 5 of the Act adds new 18 **Del.C.** §3342B to the Uniform Health Policy Provisions Law codified at 18 **Del.C.** Chapter 33, Subchapter 1. Section 6 of the Act adds new 18 **Del.C.** §3556A to Chapter 35 of the Delaware Insurance Code, which concerns group and blanket health insurance. Both new provisions require, *inter alia*, that insurance carriers "provide coverage for chronic care management and primary care at a reimbursement rate that is not less than the Medicare reimbursement for comparable physician services."

The Act also requires that the Delaware Department of Insurance (the Department) "arbitrate disagreements regarding rates under this section" for which the parties involved in the dispute must pay, and that the Department "adopt regulations to implement the requirements of this section no later than 90 days after the effective date of this Act."

The Department is therefore proposing new 18 **DE Admin. Code** 1319, Arbitration of Disputes between Carriers and Primary Care and Chronic Care Management Providers, to implement the requirements of 18 **Del.C.** §§3342B and 3556A.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m., 3<sup>rd</sup> day, December, 2018 by mailing to:

Delaware Department of Insurance  
Attn.: Leslie W. Ledogar, Esq., Regulatory Specialist  
Docket No. 3909-2018  
841 Silver Lake Boulevard  
Dover, DE 19904

Comments may also be emailed to [leslie.ledogar@state.de.us](mailto:leslie.ledogar@state.de.us).

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

---

**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****1320 Minimum Standards for Short-Term, Limited Duration Health Insurance Plans**

Short-term, limited duration (STLD) health insurance has long been offered to individuals through the non-group market and through associations. The product was originally designed for people who experience a temporary gap in health insurance coverage. Unlike other products that are considered "limited benefit" or "excepted benefit" policies (cancer-only or hospital indemnity that pay a fixed dollar benefit per inpatient stay), STLD health insurance policies are sometimes advertised as providing "major medical" coverage.

STLD policies are distinguishable from other comprehensive major medical policies in that they only provide coverage for a limited term, typically less than 365 days, and, as the name implies, are not renewable. Thus, an individual who bought an STLD and then becomes seriously ill has historically been unable to renew coverage when the policy ends.

STLD policies also have other significant limitations, including the types of services covered, and caps on the maximum claims-paid amounts. Additionally, pursuant to an exemption in the federal Affordable Care Act (ACA), STLD policies are exempt from the market rules that apply to most major medical health insurance policies sold to

individuals in the non-group market, including rules that prohibit medical underwriting, pre-existing condition exclusions, and lifetime and annual limits. They are also exempt from the ACA's minimum coverage standards.

In 2017, Congress reduced the ACA's individual mandate tax penalty, (the requirement that individuals have minimum essential health coverage or face a tax penalty) to \$0, beginning in 2019. It is possible that this change could lead more consumers to contemplate purchasing STLD policies.

On August 3, 2018, the federal government issued a rule that will apply to STLD health insurance policies sold on or after October 2, 2018. See 83 Fed. Reg. 38212 (the Final Rule). The Final Rule would extend the period during which plans can be sold from three to 12 months and would allow for consecutive renewal of short-term policies. The relaxation in renewal requirements allows consumers to enroll in the policies for a period arguably longer than "short term" and may re-enroll in the policies for an indefinite period of time.

Although the intent of the Final Rule is to grant consumers more affordable coverage alternatives than are offered through state health insurance marketplaces, the more "affordable" coverage comes with less actual coverage. Specifically, consumers who purchase these plans may face limited benefit offerings, significant out-of-pocket costs, the risk of plan cancellation due to pre-existing conditions, and possible deceptive advertising practices. A producer's duty of competence includes ensuring that consumers considering these policies are fully advised of the terms, benefits, and limitations of the coverage.

The Final Rule expressly describes short-term coverage as "a type of health insurance coverage that was primarily designed to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another plan or coverage (emphasis added)." *Id.* at 38213.

STLD health insurance policies are not considered minimum essential coverage for purposes of satisfying the ACA individual mandate. *Id.* at 38213 and 38225.

Increased sales of these plans to younger, healthy people is expected to draw thousands of healthy consumers out of Delaware's Health Insurance Marketplace (HIM) risk pool, leading to an unhealthy risk mix and subsequent increases in marketplace health insurance premiums.

The sale of these plans can begin on October 1, 2018, which is 60 days after the Final Rule was issued. Therefore, states, including Delaware, have a short window within which to implement consumer protections, as the sale of these short-term policies could begin later this year.

The Final Rule specifically states that "states generally remain free to adopt . . . other standards as they see fit." *Id.* at 38225.

Elsewhere in this edition of the *Register of Regulations*, the Department published an emergency order by which it adopted new 18 **DE Admin. Code** 1320 - Minimum Standards for Short-Term, Limited Duration Health Insurance Plans, to ensure that carriers offering STLD health insurance plans comply with minimum consumer protection and notification standards so as to partially prevent the erosion of the stability of Delaware's HIM and to protect Delaware consumers from being potentially misled into purchasing a STLD health insurance plan without being fully informed of its coverage limits or applicability.

The Department is therefore concurrently proposing new 18 **DE Admin. Code** 1320 - Minimum Standards for Short-Term, Limited Duration Health Insurance Plans with the purpose of permanently codifying the regulations that are the subject of the Commissioner's Emergency Order adopting these same regulations.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m., 3<sup>rd</sup> day, December, 2018 by mailing to:

Delaware Department of Insurance

Attn.: Leslie W. Ledogar, Esq., Regulatory Specialist

Docket No. 3909-2018

841 Silver Lake Boulevard

Dover, DE 19904

Comments may also be emailed to [leslie.ledogar@state.de.us](mailto:leslie.ledogar@state.de.us).

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

**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.

The proposed revision amends two existing Rules as follows:

- The proposed amendments include an amendment of Rule 610 relating to the examination requirements of individuals applying to be registered as a broker-dealer or broker-dealer agent. It will require that applicants new to the securities industry successfully complete the Securities Industry Essentials ("SIE").
- The proposed amendments also include an amendment to Rule 710 relating to the examination requirements of individuals applying to be registered as an investment adviser or investment adviser representative. It will require that applicants new to the securities industry successfully complete the SIE.

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

Jillian Lazar  
Investor Protection Director  
Department of Justice, Investor Protection Unit  
State Office Building, 5<sup>th</sup> 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*.

---

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DIVISION OF STATE POLICE**  
**2400 BOARD OF EXAMINERS OF CONSTABLES**  
**PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del. C.** Ch. 27 proposes to amend the following adopted rules in 24 **DE Admin. Code** 2400 Board of Examiners of Constables: Rule 1.0 Licensing. If you wish to view the complete Rules, contact Ms. Ashley Hughes at 302-672-5337. Any persons wishing to present views may submit them in writing, by December 3, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold a meeting Wednesday, December 19, 2018, at the Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

---

**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**  
**DIVISION OF FAMILY SERVICES**  
**OFFICE OF CHILD CARE LICENSING**  
**PUBLIC NOTICE**

**101 DELACARE: Regulations for Early Care and Education and School-Age Centers**

The Office of Child Care Licensing (OCCL) proposes to amend DELACARE: Regulations for Early Care and Education and School-Age Centers. This proposal includes the following changes:

- Using plain language throughout the regulation;
- Clarification regarding the requirements for lead-paint risk assessments for centers that were built before 1978, including abatement for lead-paint hazards;
- Radon testing, including mitigation if necessary;
- Air quality testing for centers located in a building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Fingerprinting conducted before a staff member begins employment at the center;
- Comprehensive background checks for applicants, licensees, staff members, and volunteers before being alone with children;
- Broadening the education requirements for school-age site coordinators and reducing the experience requirements;
- Allowing early childhood interns to be alone with children during naptime;
- Certified staff at all times to administer medications, as needed;
- The allowance for licensees to be able to administer non-intravenous medication when requested by the parent; and
- Suspension and expulsion policies.
- Requiring centers to be free of lead-paint and radon hazards and the additional requirement for centers located in a building/structure that contains or contained a business that may result in unacceptable air quality to have the air quality tested protects children's health. Comprehensive background checks and suspension and expulsion policies are required to comply with the Child Development Block Grant Act of 2014. Lastly, by amending these regulations, the needs of children requiring medication (with parent/guardian permission) while in child care will be met, consistent with the principles of the Americans with Disabilities Act.

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them to the Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families, 3411 Silverside Road, Hagley Building, Wilmington, Delaware, 19810, Attention: Kelly McDowell or email them to Kelly McDowell at [Kelly.McDowell@state.de.us](mailto:Kelly.McDowell@state.de.us) by the close of business on December 7, 2018.

---

**DIVISION OF FAMILY SERVICES**  
**OFFICE OF CHILD CARE LICENSING**  
**PUBLIC NOTICE**

**103 Regulations for Family and Large Family Child Care Homes**

The Office of Child Care Licensing (OCCL) proposes to amend DELACARE: Regulations for Family and Large Family Child Care Homes. This proposal includes the following requirements:

- Lead-paint risk assessments for family child care homes that were built before 1978, including abatement for lead-paint hazards;
- Radon testing for family and large family homes, including mitigation if necessary;
- Air quality testing for large family homes located in a commercially-zoned building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Fingerprinting conducted before a staff member begins employment and before a new adult household member moves into the home;
- Comprehensive background checks for applicants, licensees, adult household members, staff members, and adult volunteers;
- Qualified staff at all times to administer medications, as needed;
- The allowance for licensees to be able to administer non-intravenous medication when requested by the parent; and
- Suspension and expulsion policies.

Requiring family and large family homes to be free of lead-paint and radon hazards, and the additional requirement for large family homes located in commercially located buildings that contain or contained a business



that may result in unacceptable air quality to have the air quality tested protects children's health. Lastly, by amending these regulations, the needs of children requiring medication (with parent/guardian permission) while in child care will be met, consistent with the principles of the Americans with Disabilities Act.

In addition, the application forms, the specific requirements to obtain a license, and due process provisions have been added to the regulation.

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them to the Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families, 3411 Silverside Road, Hagley Building, Wilmington, Delaware, 19810, Attention: Kelly McDowell or email them to Kelly McDowell at [Kelly.McDowell@state.de.us](mailto:Kelly.McDowell@state.de.us) by the close of business on December 7, 2018.

---

**DEPARTMENT OF STATE**  
**PUBLIC SERVICE COMMISSION**  
**PUBLIC NOTICE**

**1010 Regulations Governing the Administration of the Electric and Natural Gas Utility Distribution System**

The Delaware General Assembly has enacted legislation pursuant to which electric distribution and natural gas distribution utilities subject to the jurisdiction of the Delaware Public Service Commission (the "Commission") may file, on a semiannual basis, proposed rate schedules establishing a Distribution System Improvement Charge ("DSIC") rate that provides such utilities the opportunity to recover the cost of new, used and useful utility plant that meets certain eligibility criteria. See 26 **Del.C.** §315 (Electric and Natural Gas Utility Distribution System Improvement Charge). The legislation further provides that the Commission may adopt rules and regulations to administer the DSIC so long as those rules and regulations are not inconsistent with the Public Utilities Act of 1974.

The Commission has promulgated proposed regulations to implement and administer the DSIC (the "Proposed Regulations"), 26 *Del. Admin. Code* ch. 1010. The Proposed Regulations establish filing deadlines for DSIC applications; effective dates of new DSIC rates; requirements for filing a DSIC application; a review and approval process; and annual reconciliation and audit procedures.

The Commission has the authority to promulgate the Proposed Regulations pursuant to 26 **Del.C.** §§209(a), 315(d), and 29 **Del.C.** ch. 101.

The Commission hereby solicits written comments, suggestions, and compilations of data, briefs, or other written materials concerning the Proposed Regulations. Anyone submitting any written materials must email such materials to Joshua Bowman at [Joshua.Bowman@state.de.us](mailto:Joshua.Bowman@state.de.us) on or before December 3, 2018.

Any public hearing conducted by the Commission will be duly noticed in accordance with 29 **Del.C.** §§10115(b).

Copies of the Proposed Regulations may be obtained from the Commission office at 861 Silver Lake Blvd, Suite 100, Dover, DE 19904. The Proposed Regulations will also be available on the Commission's website: <https://dep.sc.delaware.gov/>.

Any individual with disabilities who wishes to review submissions or to participate in this docket should contact the Commission to discuss any auxiliary aids or services to facilitate such review or participation. Such contact may be in person, in writing, by telephone or otherwise. The Commission's toll-free telephone number in Delaware is (800) 282-8574. You may also make inquiries by voice telephone at 302-736-7500 or by internet email at [Joshua.Bowman@state.de.us](mailto:Joshua.Bowman@state.de.us).

---

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF TRANSPORTATION SOLUTIONS**  
**PUBLIC NOTICE**

**2403 Special Events Policies and Procedures—Traffic Management**

Under Title 17 of the **Delaware Code**, Section 141, as well as 29 **Delaware Code** Section 8404(8), the Traffic Operations and Management Section of the Delaware Department of Transportation (DelDOT), has the authority to regulate the traffic impacts of special events that affect the safe movement of traffic on the State's transportation

---

network, and adopted the Special Events Policies and Procedures – Traffic Management regulation. The Department seeks to adopt revisions to this regulation to waive temporary traffic control costs for special events held by an organizer exempt from federal income tax under Internal Revenue Code Section 501(c)(3) or if the applicant and organizer is a State Agency, County, incorporated Municipality, school district, or accredited college or university. The revisions allow organizers not meeting the conditions above to request a waiver if proceeds to an event are donated to a 501(c)(3) organization or if the need for temporary traffic control is created by impacts associated with a Department project.

The Department will take written comments on these proposed revisions to the Special Events Policies and Procedures – Traffic Management regulation from November 1, 2018 through December 3, 2018.

Questions or comments regarding these proposed revisions should be directed to: Donald Weber, P.E., Asst. Director, Traffic Operations and Management Section, Division of Transportation Solutions, Delaware Department of Transportation 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-4060 (telephone) (302) 653-2859 (fax) [don.weber@state.de.us](mailto:don.weber@state.de.us).

---