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# Delaware Register of Regulations

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Issue Date: October 1, 2013

Volume 17 - Issue 4, Pages 352 - 455

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## IN THIS ISSUE:

Regulations:  
Emergency  
Proposed  
Final

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before September 16, 2013.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 16	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.

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**Symbol Key**

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

**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.)

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

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 805

**PUBLIC NOTICE****805 The School Health Tuberculosis (TB) Control Program**

**WHEREAS**, the Secretary of the Department of Education ("the Secretary") has been charged by the Delaware legislature with the supervision and direction of the administration and operation of the Department of Education ("the Department"), 14 **Del.C.** §103(a); and

**WHEREAS**, the Department has been charged by the Delaware legislature to prescribe rules and regulations that, among other things, govern the physical inspection of and the protection of the health and physical welfare of public school students in the State, 14 **Del.C.** §122(b) (2); and

**WHEREAS**, the Department has promulgated a regulation which requires that School Staff and Extended Services Personnel provide the Tuberculosis Test results from a test administered within the past 12 months during the first 15 working days of employment, 14 **DE Admin. Code** 805.2; and

**WHEREAS**, the most widely used Tuberculosis Test is the tuberculin skin test ("TST") which is performed using purified protein derivative ("PPD"); and

**WHEREAS**, on September 5, 2013, the Department received information from the Delaware Department of Health and Social Services, Division of Public Health ("Public Health") that there is a current nationwide shortage of PPD which has begun to impact the Delaware supply and will affect the mandatory testing of all new employees; and

**WHEREAS**, Public Health has recommended alternative procedures for the mandatory testing requirements of the School Health Tuberculosis Control Program until sufficient quantities of PPD solution are available in Delaware; and

**WHEREAS**, the Secretary finds that revision of regulation 14 **DE Admin. Code** 805 must occur on an emergency basis in order to properly protect the health and physical welfare of the public school students of the State until such time as sufficient supplies of PPD solution are available in Delaware; and

**WHEREAS**, the Secretary will accept, consider and respond to petitions by any interested person for the reconsideration or amendment of this regulation who addresses the same to the attention of Susan K. Haberstroh, MPA, Ed.D., Associate Secretary, Education Supports & Innovative Practices Branch, 401 Federal Street, Suite #2, Dover, DE 19901; and

**WHEREAS**, a copy of this Order will be submitted to the Registrar for publication in the next issue of the *Delaware Register of Regulations*;

**NOW, THEREFORE, IT IS ORDERED** this 16th day of September, 2013:

In accordance with the provisions of 29 **Del.C.** §10119(3), this Order shall be effective for 120 days from the date of execution.

**SO ORDERED** this 16th day of September, 2013.

**Department of Education**

Mark T. Murphy, Secretary of Education

### **805 The School Health Tuberculosis (TB) Control Program**

#### **1.0 Definitions**

**"New School Enterer"** means any child between the ages of one year and twenty one (21) years entering or being admitted to a Delaware public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools. For purposes of this regulation, "new school enterer" shall also include any child who is re-enrolled in a Delaware public school following travel or residency of one month in a location or facility identified by the Delaware Division of Public Health as an area at risk for tuberculosis exposure.

**"School Staff and Extended Services Personnel"** means all persons hired as full or part time employees in a public school. This includes, but is not limited to teachers, administrators, substitutes, contract employees, bus drivers and student teachers whether compensated or not.

**"Tuberculosis Risk Assessment"** means a formal assessment by a healthcare professional to determine possible tuberculosis exposure through the use of a health history or questionnaire.

**"Tuberculosis Test"** means a Mantoux skin test, Quantiferon Gold blood test, or other test approved by the Delaware Division of Public Health.

**"Verification"** means a documented evaluation of the individual's disease status.

**"Volunteers"** mean those persons who give their time to help others for no monetary reward and who share the same air space with public school students and staff on a regularly scheduled basis.

#### **2.0 School Staff and Extended Services Personnel**

2.1 School Staff and Extended Services personnel shall provide the Tuberculosis Test results from a test administered within the past 12 months during the first 15 working days of employment.

2.1.1 Tuberculosis Test requirements may be waived for public school staff and extended services personnel who present a notarized statement that tuberculosis testing is against their religious beliefs. In such cases, the individual shall complete the Delaware Department of Education TB Health Questionnaire for School Employees or provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.

2.1.1.1 If a school staff member or extended services person, who has submitted a waiver because of religious beliefs, answers affirmatively to any of the questions in the Delaware Department of Education TB Health Questionnaire for School Employees he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the

Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.

- 2.1.2 School Staff and Extended Services Personnel need not be retested if they move, within Delaware, from district to district, district to charter school, charter school to district, or charter school to charter school within a five year period; however, a copy of the result of the latest Tuberculosis Test shall be provided to the new district or charter school within sixty (60) days.
- 2.1.3 During the shortage of purified protein derivative (PPD) and until such time as sufficient quantities of PPD are available in Delaware, newly employed School Staff and Extended Services Personnel shall, within the first 15 working days of employment, complete the Delaware Department of Education TB Health Screening Questionnaire in lieu of tuberculin skin testing.
  - 2.1.3.1 If the Questionnaire indicates symptoms suggestive of active TB disease, or a high risk for exposure to TB, the employee is required to seek immediate TB testing or medical evaluation and provide the results to the employer.
  - 2.1.3.2 Acceptable TB testing or medical evaluation includes:
    - 2.1.3.2.1 tuberculin skin test (TST), if PPD solution is available
    - 2.1.3.2.2 interferon gamma release assays (IGRA)
      - 2.1.3.2.2.1 QuantiFERON - TB Gold In-Tube test; or
      - 2.1.3.2.2.2 T-SPOT TB test.
    - 2.1.3.2.3 chest x-ray, if symptomatic, or if TST/IGRA is positive
    - 2.1.3.2.4 sputum smear and culture, if chest e-ray is abnormal and consistent with TB.
  - 2.1.3.3 When upon notification to the Department from Public Health that supplies of PPD solution are restored or an acceptable substitute testing procedure is available, all school employees whose testing was deferred under this alternative procedure must undergo a TST or the acceptable substitute testing procedure and provide the results to the employer within 20 working days.
- 2.2 Every fifth year, by October 15th, all public school staff and extended services personnel shall complete the Delaware Department of Education TB Health Questionnaire for School Employees or, within two (2) weeks, provide Tuberculosis Test results administered within the last twelve (12) months.
  - 2.2.1 If a school staff member or extended services staff member answers affirmatively to any of the questions in the *Delaware Department of Education TB Health Questionnaire for School Employees* he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.
- 2.3 All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential personnel medical information.

### **3.0 Volunteers**

- 3.1 Volunteers shall complete the *Delaware Department of Education's TB Health Questionnaire for Volunteers in Public Schools* prior to their assignment and every fifth year thereafter.
  - 3.1.1 If the volunteer answers affirmatively to any of the questions, he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to the students or staff.
- 3.2 Each public school nurse shall collect and monitor all documentation related to the volunteer's School Health Tuberculosis (TB) Control Program and store them in the school nurse's office in a confidential manner.

### **4.0 New School Enterers**

- 4.1 New school enterers shall provide tuberculosis screening results from either a Tuberculosis Test or the results of a Tuberculosis Risk Assessment administered within the past 12 months prior to school entry.

- 4.1.1 If the new school enterer is in compliance with the other school entry health requirements, a school nurse who is trained in the use of the *Delaware Department of Education TB Risk Assessment Questionnaire for Students* may administer the questionnaire to the student's parent(s), guardian(s) or Relative Caregiver or to a new school enterer who has reached the statutory age of majority (18).
  - 4.1.1.1 If a student's parent(s), guardian(s) or Relative Caregiver or a student 18 years or older answers affirmatively to any of the questions, he/she shall, within two (2) weeks, provide proof of tuberculosis testing results or provide verification from a licensed health care provider or the Division of Public Health that the student does not pose a threat of transmitting tuberculosis to staff or other students.
- 4.2 School nurses shall record and maintain documentation relative to the School Health Tuberculosis (TB) Control Program.

## **5.0 Tuberculosis Status Verification and Follow up**

- 5.1 Tuberculosis Status shall be determined through the use of a Tuberculosis Risk Assessment, Tuberculosis Test or other testing, which may include x-ray or sputum culture. Individuals who either refuse the Tuberculosis Test or have positive reactions to the same, or give positive responses to a tuberculosis risk assessment shall provide verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to staff or other students.
    - 5.1.1 Verification shall include Mantoux results recorded in millimeters (if test was administered), or other Tuberculosis Test results, current disease status (i.e. contagious or noncontagious), current treatment (or completion of preventative treatment for tuberculosis) and date when the individual may return to his/her school assignment without posing a risk to the school setting.
    - 5.1.2 Verification from a health care provider or Division of Public Health shall be required only once if treatment was completed successfully.
    - 5.1.3 Updated information regarding disease status and treatment shall be provided to the public school by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.
    - 5.1.4 Persons with a positive Tuberculosis Test, without active disease, who do not receive prophylactic treatment shall be excluded from school in the event of showing any signs or symptoms of active, infectious disease as described by the Division of Public Health.
  - 5.2 In the event an individual shows any signs or symptoms of active tuberculosis infection, he/she shall be excluded from school until all required medical verification is received by the school. During the specified verification and follow-up an asymptomatic individual, as described by the Division of Public Health, may remain in school until testing and evaluations are completed, but no longer than six (6) weeks.
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## Symbol Key

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

## Proposed Regulations

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

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## DELAWARE RIVER BASIN COMMISSION

### PUBLIC NOTICE

#### Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for pH

The Delaware River Basin Commission ("DRBC" or "Commission") is a Federal interstate compact agency charged with managing the water resources of the Basin without regard to political boundaries. Its commissioners are the governors of the four Basin states – Delaware, New Jersey, New York, and Pennsylvania – and a Federal representative, the North Atlantic Division Commander of the U.S. Army Corps of Engineers. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act. This notice is published by the Commission for information purposes.

**Summary:** The Commission will hold a **public hearing** to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to update stream quality objectives (also called "water quality criteria") for pH in interstate tidal and non-tidal reaches of the main stem Delaware River.

**Dates:** The **public hearing** will be held at 2:00 P.M. on Thursday, October 24, 2013. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Thursday, November 21, 2013. For more information regarding the procedures for the hearing and comments, see Supplementary Information.

**Addresses:** The **public hearing** will be held in the Goddard Conference Room at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

**Oral Testimony and Written Comments:** Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows: If by email, to [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us); if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 A.M.

through 5:00 P.M. except on national holidays) until the close of the comment period at 5:00 P.M. on Thursday, November 21, 2013. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "pH Rulemaking" in the subject line.

**For further information:** The rule text and a report entitled "pH Criteria Revision Recommendations for Interstate Waters of the Delaware River Basin: Basis & Background Document" (DRBC, March 2013) are available on the Commission's web site, [www.drbc.net](http://www.drbc.net). Hard copies of the latter document may be obtained for the price of postage by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. For questions about the technical basis for the rule, please contact Dr. Erik Silldorff at 609-883-9500 ext. 234. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

### Supplementary Information

*Background.* The Commission in 1967 assigned stream quality objectives (also called "criteria") for pH to all tidal and non-tidal interstate streams in the Delaware River Basin ("basin"). Since that time, scientists' understanding of natural fluctuations in freshwater and saltwater pH levels has grown. Likewise, the development and application of pH criteria have evolved, while the Commission's pH stream quality objectives have remained unchanged. Commission scientists in consultation with experts from DRBC member states and federal agencies have evaluated the pH criteria adopted by signatory states and recommended by federal agencies over the past four-and-a-half decades. They have concluded that in order to minimize regulatory inconsistencies and better address natural pH cycles in the main stem Delaware River, two classes of revisions to the Commission's criteria for this shared interstate waterway should be considered. The first concerns the range of pH levels deemed to comprise the numeric standard within the tidal and non-tidal zones of the main stem and tidal portions of tributaries. The second concerns excursions outside the standard range that are attributable to natural conditions. The proposed revisions were unanimously endorsed by the Commission's Water Quality Advisory Committee ("WQAC") in March 2009. The WQAC is a standing committee of stakeholders, including regulators, municipal and industrial dischargers, academicians and environmental organizations that advises the Commission on technical matters relating to water quality within the basin.

*Proposed Change to Existing Criteria.* The Commission's existing pH criteria applicable to the main stem are expressed as ranges. "Between 6.0 and 8.5" is the range currently assigned to all freshwater (non-tidal) zones of the main stem Delaware River – DRBC Water Quality Zones 1A through 1E. In all tidal zones – DRBC Water Quality Zones 2 through 6, which include the tidal main stem and tidal portions of its tributaries – the pH range currently in effect is "between 6.5 and 8.5". The proposed amendments would make 6.5 the lower threshold of acceptable pH conditions for all water quality zones encompassing reaches of the main stem and tidal portions of its tributaries.

*Natural Conditions Clause.* The proposed amendments would add a clause to the pH criteria recognizing natural deviations outside the 6.5 to 8.5 pH range in the moderately acidic waters draining the Catskill Mountains and Pocono Plateau, the high-light and high-productivity zones of the non-tidal main stem, and the acidic coastal plain tidewaters of the Delaware Estuary.

*Proposed Rule Text.* In accordance with these proposed changes, the pH criteria for Water Quality Zones 1A through 1E (non-tidal main stem) and 2 through 6 (tidal main stem and tidal portions of tributaries) are proposed to be amended to read, "Between 6.5 and 8.5 inclusive, unless outside this range due to natural conditions." The affected sections of the Commission's *Water Quality Regulations* consist of subsection C.3 of each of sections 2.20.2 through 2.20.6, respectively, for Water Quality Zones 1A through 1E (non-tidal main stem); and sections 3.30.2 through 3.30.6, respectively, for Water Quality Zones 2 through 6 (tidal main stem and tidal portions of tributaries). It is further proposed to amend paragraph 410.1(c) of title 18 of the Code of Federal Regulations by replacing the date of incorporation by reference that appears there (currently, December 8, 2010), with the date on which the Commission adopts a final rule in response to this proposal.

Dated: September 13, 2013

PAMELA M. BUSH, ESQ.  
Commission Secretary

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

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

#### 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion

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

New Regulation

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

The Secretary of Education intends to amend Title 14 of the Administrative Code by adding a new regulation 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion. This regulation is required by House Bill 42 of the 146th General Assembly.

For purposes of consistency among the local school districts and charters, this legislation directed the Delaware Department of Education to create standardized definitions for certain acts of student misconduct which may result in alternative placement or expulsion. The definitions were developed through review of current school district School Codes of Conduct and in consultation with the school district staff, including attorneys, involved in school discipline.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **November 5, 2013** to Susan Haberstroh, Associate Secretary, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

##### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to improve the school climate thus resulting in helping to improve student achievement.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The new regulation is intended to ensure all students' health and safety are adequately protected, specifically in the area of student discipline.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation is intended to help ensure all students' 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 new regulation is intended to preserve the necessary authority and flexibility of decision making at the local board and school level, but does provide for more specificity in defining behaviors which may result in expulsion or alternative placement.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The legislation and this subsequent regulation do not require additional reporting.

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 expelling or alternatively placing students due to disciplinary infractions does not change because of this 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 other state educational policies and the legislation requiring the regulation.

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation is aligned with the legislation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are

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# PROPOSED REGULATIONS

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no anticipated additional costs to the State. The local school boards may incur an increased cost associated with the publication of their student code of conduct to be in compliance with this regulation.

## 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion

### **1.0 Purpose**

Pursuant to 14 Del.C. §122(b) (26), this regulation provides uniform definitions for student conduct which may result in alternative placement or expulsion. This regulation shall apply to all school districts and charter schools. Nothing contained here shall be interpreted to require the alternative placement or expulsion of a student, nor shall this regulation be interpreted to restrict the ability of school districts and charter schools to determine which student conduct shall result in expulsion or an alternative placement.

### **2.0 Definitions**

In this regulation, the following terms shall have the meanings indicated below:

"Alcohol" shall have the same definition as provided in 4 Del.C. §101(1).

"Alcohol Liquor" shall have the same definition as provided in 4 Del.C. §101(2).

"Crime" shall have the same meaning as provided in 14 Del.C. §4112.

"Charter School" means a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code.

"Commission by a student" means that a student has engaged in behavior equivalent to that which is prohibited by law regardless of whether the student has been criminally convicted of the same.

"Dangerous Instrument" shall have the same meaning as provided in 11 Del.C. §222(4).

"Deadly Weapon" shall have the same meaning as provided in 11 Del.C. §222(5).

"Distribute" "Distributing" or "Distribution" means the transfer or attempted transfer of Alcohol, a Drug, a Look Alike Substance, a Drug Like Substance, or Drug Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"District" means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.

"Drug" means any "controlled substance" or "counterfeit controlled substance" as defined in 16 Del.C. §4701 (6) and (7).

"Drug Like Substance" means any noncontrolled and nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of Drug Like Substance does not include tobacco or tobacco products which are governed by 14 DE Admin. Code 877 Tobacco Policy.

"Drug Paraphernalia" shall have the same meaning as provided in 16 Del.C. §4701 (17).

"Expulsion" means, for purposes of this regulation, the exclusion from the regular school setting for a period determined by the local District board or Charter School board.

"Firearm" means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

"Look Alike Substance" means any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a Drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling.

"Nonprescription Medication" means any over the counter medication; some of these medications may be a "Drug Like Substance."

"Possess", "Possessing", or "Possession" means that a student has on the student's person, in the student's belongings, or under the student's reasonable control prohibited items or substances.

**"Prescription Drugs"** means any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 Del.C. §4701(31), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose Possession it is found.

**"Sexual Act"** means (1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight; (2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to arouse or gratify the sexual desire of any person.

**"School Environment"** means within or on school property, and at school sponsored or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at school sponsored extracurricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

**"Sexual Intercourse"** shall have the same meaning as provided in 11 Del.C. §761(g).

**"Sexual Offense"** means any offense defined by 11 Del.C. §§763-780 and §§1108-1112A, 1352(2) and 1353(2).

**"Student Code of Conduct"** means the District/Charter School approved document which specifies the rights and responsibilities of students, defines conduct that disrupts/threatens a positive/safe school environment, standardizes procedures for consequences, disciplinary action, and defines due process and grievance procedures.

**"Theft"** means those acts described in 11 Del.C. §§ 841 through 846 inclusive.

**"Use"** means that a student is reasonably known to have voluntarily ingested, smoked or otherwise assimilated Alcohol, a Drug or a Drug Like Substance, or is reasonably found to be under the influence of such a substance.

### **3.0 Uniform Definitions for Student Conduct**

The following definitions shall be used whenever a school district or charter school uses such conduct as a basis for alternative placement or expulsion of a student:

**"Arson"** shall mean any act utilizing fire, smoke, or explosives which cause alarm or danger to life; including but not limited to willful or malicious burning of school property, its contents, or the property of others.

**"Assault III"** shall mean: (1) A person intentionally or recklessly causes physical injury to another person; or (2) With criminal negligence the person causes physical injury to another person by means of a Deadly Weapon or a Dangerous Instrument.

**"Attorney General's Report (Juvenile Arrest Warrant and Complaint)"** shall mean the Department of Justice's report of out-of-school criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and Drug offenses.

**"Breaking and Entering"** shall mean unauthorized entry of any locked area of the school environment during or after school; including, but not limited to, rooms, classrooms, auditorium, gym, shops, offices, lockers, cabinets and vehicles.

**"Bullying"** shall mean any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of: (1) Placing a student, school volunteer or school employee in reasonable fear of substantial harm to his or her emotional or physical well-being or substantial damage to his or her property; or (2) Creating a hostile, threatening, humiliating or abusive educational environment due to the pervasiveness or persistence of actions or due to a power differential between the bully and the target; or (3) Interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities or benefits; or (4) Perpetuating bullying by inciting, soliciting or coercing an individual or group to demean, dehumanize,

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## PROPOSED REGULATIONS

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embarrass or cause emotional, psychological or physical harm to another student, school volunteer or school employee.

"**Criminal Drug Offense, Commission of**" shall mean the Commission by a student of the unlawful Possession, Distribution, or use of Alcohol, a Drug, a Drug-Like Substance, and/or Drug Paraphernalia.

"**Criminal Deadly Weapons/Dangerous Instrument Offense, Commission of**" shall mean the Commission by a student of an offense prohibited by 11 Del.C. §§1442 through 1458 inclusive.

"**Criminal Mischief (Vandalism)**" shall mean a student intentionally or recklessly: (1) Damages tangible property of another person or entity; or (2) Tamper with tangible property of another person so as to endanger person or property.

"**Criminal Sexual Offense, Commission of**" shall mean the Commission by a student of an offense prohibited by 11 Del.C. §§763 through 780, inclusive, or §§1108 through 1112A, inclusive, or §1352(2) or §1353(2).

"**Criminal Violent Felony Offense, Commission of**" shall mean the Commission by a student of any violent felony as specified in 11 Del.C. §4201(c).

"**Cyberbullying**" shall mean the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.

"**Dangerous Instrument(s) Possession/Concealment/Sale**" shall mean the unauthorized Possession/concealment/sale by a student of any instrument, article or substance which is readily capable of causing serious physical injury or death.

"**Deadly Weapon(s) Possession/Concealment/Sale**" shall mean the Possession, concealment, or sale of a Deadly Weapon.

"**Defiance of School Authority**" shall mean: (1) A verbal or non-verbal refusal to immediately comply with a reasonable request from school personnel, or refusal to identify oneself at the request of school personnel, and/or refusal to comply with disciplinary action; or (2) A verbal or non-verbal display of disrespect and/or uncivil behavior toward school personnel which either causes a substantial disruption or material interference with school activities.

"**Disorderly Conduct**" shall mean conduct which causes public inconvenience, annoyance or alarm or creates a risk thereof by: engaging in fighting or violent tumultuous or threatening behavior or making an unreasonable noise or an offensively coarse utterance or gesture or display or addressing, abusive language to any person present.

"**Disruption of the Educational Process**" shall mean behavior, which causes a substantial disruption or material interference with school activities.

"**Distribution of Drugs and/or Alcohol and/or Drug Paraphernalia**" shall mean the sale, transfer, or Distribution in school, on school property, or on school field trip of Drugs or Alcohol.

"**Extortion**" shall mean to obtain or attempt to obtain money, goods, services, or information from another by force or the threat of force.

"**Felony Theft (\$1500 or more)**" shall mean: (a) When a person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it; or (b) When a person, in any capacity, legally receives, takes, exercises control over or obtains property of another which is the subject of Theft, and fraudulently converts the property to the person's own use. The Theft is considered a felony when the value of the property received, retained, or disposed of is \$1500 or more or the victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902(2) of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12.

"**Fighting**" shall mean any aggressive physical altercation between two or more individuals.

"Gambling" shall mean participation in games of chance for money or other things of value.

"Gun Free School's Violation" shall mean the prohibited bringing to school, or Possession while in school of a Firearm by a student.

"Harassment" shall mean any actions or statements that intimidate, offend, or defame the dignity or self-esteem of individuals or groups. Harassment may include, but is not limited to verbal harassment or abuse, repeated remarks or jokes with demeaning implications or other offensive behavior. Harassment also includes intimidating, offensive or defaming behavior or materials directed at an individual because of that individual's race, national origin, disability, sexual orientation or religion.

"Inhalant Abuse" shall mean chemical vapors that are inhaled for their mind-altering effects.

"Medications: Inappropriate Use or Possession" shall mean Possessing or using Nonprescription Medication or Prescription Drugs of any type in the School Environment in violation of a charter school or school District's Drug and Alcohol policy.

"Misuse of Technology" shall mean:

The use of school technology equipment in:

Soliciting, using, receiving or sending pornographic or obscene material; or

Accessing unauthorized email; or

The unauthorized downloading and/or installing of files; or

Intentionally damaging technology equipment within the School Environment; or

A situation in which a student deliberately:

Tampers with, damages, alters, accesses, crashes, or corrupts the computer/communications system within the School Environment resulting in the loss or corruption of information or the ability of the system to operate; or

In any way disrupts or degrades the school or District's technology infrastructure.

"Offensive Touching" shall mean intentionally touching another person either with a member of his or her body or with any instrument, knowing that the person is thereby likely to cause offense or alarm to such other person; or Intentionally striking another person with saliva, urine, feces or any other bodily fluid, knowing that the person is thereby likely to cause offense or alarm to such other person.

"Pornography" shall mean the Possession, sharing, or production of any known obscene material within the School Environment.

"Rape or Attempted Rape" shall respectively mean sexual intercourse and attempted Sexual Intercourse without consent of the victim in both cases.

"Reckless Burning" shall mean when a person intentionally or recklessly starts a fire or causes an explosion and recklessly places a building or property in danger of destruction or damage or places another person in danger of physical injury.

"Repeated Violations of Student Code of Conduct" shall mean: (1) Five or more violations of the school's Code of Conduct within a school year, excluding chronic infractions for tardiness or unexcused absences to school/class; or (2) Violation by a student of any behavior contract between the student, his/her legal guardian, and the school.

"Sexual Assault" shall mean any unwanted sexual behavior committed by a perpetrator who is a stranger to the victim or by a perpetrator who is known by the victim or related to the victim by blood, marriage or civil union. Behaviors that fall under this definition include but are not limited to: sexual harassment as defined in §763 of Title 11; sexual contact as defined in §761(f) of Title 11; Sexual Intercourse as defined in §761(g) of Title 11; sexual penetration as defined in §761(i) of Title 11; and child sexual abuse as defined in §901 of Title 10.

"Sexual Misconduct" shall mean a consensual sexual act(s) between two individuals within the School Environment.

"Stealing" means taking, exercising control over or obtaining property of another person intending to deprive that person of it or appropriate it.

"Steroids Possession and/or Use" shall mean the unlawful Use or Possession of steroids.

# PROPOSED REGULATIONS

**"Tampering with Public Records"** shall mean a person knowingly without valid authorization removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any original record or other written material filed with, deposited in or otherwise constituting a record of a public office or public servant.

**"Teen Dating Violence"** shall mean assaultive, threatening or controlling behavior, including stalking as defined in 11 Del.C. §1312, that one person uses against another person in order to gain or maintain power or control in a current or past relationship. The behavior can occur in both heterosexual and same sex relationships, and in serious or casual relationships.

**"Terroristic Threatening"** shall mean when: (1) A person threatens to commit any Crime likely to result in death or in serious injury to person or property; or (2) A person commits an act with intent of causing an individual to believe that the individual has been exposed to a substance that will cause the individual death or serious injury.

**"Terroristic Threatening - Security Threat"** shall mean when a person makes a false statement or statements: (1) Knowing that the statement or statements are likely to cause evacuation of a building, place of assembly, or facility of public transportation; (2) Knowing that the statement or statements are likely to cause serious inconvenience; or (3) In reckless disregard of the risk of causing terror or serious inconvenience.

**"Unlawful Sexual Contact III"** shall mean when a student has sexual contact with another person or causes the victim to have sexual contact with the student or a third person and the student knows that the contact is either offensive to the victim or occurs without the victim's consent.

**"Use and/or Possession of drugs and/or Alcohol and/or Drug Paraphernalia"** shall mean a student unlawfully Possesses, Uses or is under the influence of, in the School Environment, Alcohol, Drugs or any prohibited substance.

#### 4.0 **Effective Date**

This regulation shall become effective for School Codes of Conduct in the 2014-15 school year.

### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1510

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

#### 1510 Issuance of Initial License

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1510 Issuance of Initial License. The regulation applies to the issuance of an Initial License for educators, pursuant to 14 Del.C. §1210. It is necessary to amend this regulation in order to update and clarify some of the definitions, requirements and to adopt a new examination of general knowledge (CORE).

Persons wishing to present their views regarding this matter may do so in writing by the close of business on the 1st day of November, 2013 to Donna Lee Mitchell, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of an initial license to educators who have acquired the prescribed general knowledge, skill and/or education to practice in a particular area, and have met the criteria to receive certification to teach a particular subject or to instruct a particular category of students, to help ensure that students are instructed by educators who are highly qualified.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator licensure, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator licensure, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated, rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation 1510? Title 14 of the Delaware Code requires that we promulgate this regulation for educator licensure.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

**1510 Issuance of Initial License**

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

**1510 Issuance of Initial License**

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# PROPOSED REGULATIONS

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

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

### PUBLIC NOTICE

#### **Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments MAGI-Based Eligibility Groups**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Modified Adjusted Gross Income (MAGI) Based Eligibility Groups*.

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

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

### SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Modified Adjusted Gross Income (MAGI) Based Eligibility Groups*.

#### **Statutory Authority**

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

#### **Background**

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

#### *State Plan Amendments*

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single

streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of “fillable” preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state’s proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

### *Description of State Plan Amendments and Effective Date*

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is October 1, 2013.

Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group  
This SPA identifies the mandatory and optional coverage groups that Delaware will cover.
2. Eligibility Process  
This SPA identifies the use of Delaware’s single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.
3. MAGI Income Methodology  
This SPA identifies certain MAGI options Delaware has chosen.
4. Single State Agency  
This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.
5. Residency  
This SPA identifies the state's residency requirements.
6. Citizenship and Immigration Status  
This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods  
These SPAs identify the groups covered under Delaware’s Title XXI CHIP program (Delaware Healthy Children Program).
2. Title XXI Medicaid Expansion  
This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.
3. Eligibility Process  
This SPA identifies the use of Delaware’s single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.
4. Non-Financial Eligibility  
These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

**REMINDER:** In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;

# PROPOSED REGULATIONS

- Foster Care children; and,
- SSI cash recipients.

## Summary of Proposal

*Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.*

### *MAGI-based Eligibility Groups*

*MAGI-based Eligibility Groups* is the first of seven (7) SPA actions. State plan pages S25, S28, S30, S32, S33, S50, S51, S52 and S53 describe the mandatory and optional Medicaid eligibility group that Delaware will cover. State plan page S14 describes the income eligibility standards for certain eligibility groups. The plan pages provide the criteria for coverage under this group, the MAGI-based income standard to be used, and the choice related to presumptive eligibility. Effective October 1, 2013, DMMA will use modified adjusted gross income (MAGI) standards to determine income eligibility for some eligibility groups. Some of these groups must be covered and others are provided Medicaid coverage at the State's option.

The groups for which the State will be providing coverage are identified below:

State Plan Page Number	Eligibility Group and Citations	Description
<b>Mandatory Groups</b>		
S25	Parents and Other Caretakers 1902(a)(10)(A)(i)(I) and 1931(b)(d) 42 CFR 435.110	Parents and other caretaker relatives of dependent children with household income at or below a standard established by the state.
S28	Pregnant Women 1902(a)(10)(A)(i)(III) and (IV), 1902(a)(10)(A)(ii)(I), (IV) and (IX), 1931(b) and (d), 1920 42 CFR 435.116	Women who are pregnant or post-partum, with household income at or below a standard established by the state.
S30	Infants and Children Under Age 19 1902(a)(10)(A)(i)(III), (IV), (VI) and (VII); 1902(a)(10)(A)(ii)(IV) and (IX); 1931(b) and (d) 42 CFR 435.118	Infants and children under age 19 with household income at or below standards established by the state based on age group.
S32	Individuals Below 133% of the Federal Poverty Level (FPL) 1902(a)(10)(A)(i)(VIII) 42 CFR 435.119	Non-pregnant individuals aged 19 through 64, not otherwise mandatorily eligible, with income at or below 133% FPL.
S33	Former Foster Children up to age 26 1902(a)(10)(A)(i)(IX) 42 CFR 435.150	Individuals under the age of 26, not otherwise mandatorily eligible, who were on Medicaid when they turned age 18 or aged out of foster care.
<b>Optional Groups</b>		
S50	Individuals Above 133% of the FPL 1902(a)(10)(A)(ii)(XX), 1902 (hh) 42 CFR 435.218	Individuals under 65, not otherwise mandatorily or optionally eligible, with income above 133% FPL and at or below a standard established by the state.
S51	Optional Parents and Caretakers 1902(a)(10)(A)(ii)(I) 42 CFR 435.220	Individuals qualifying as parents or caretaker relatives who are not mandatorily eligible and who have income at or below a standard established by the State.

S52	Reasonable Classifications of Individuals 1902(a)(10)(A)(ii)(I) 1902(a)(10)(A)(ii)(IV) 42 CFR 435.222	One or more reasonable classifications of individuals under age 21 who are not mandatorily eligible and who have income at or below a standard established by the state.
S53	Non IV-E Adoption Assistance 1902(a)(10)(A)(ii)(VIII) 42 CFR 435.227	Children with special needs for whom there is a non IV-E adoption assistance agreement in effect with a state, who were eligible for Medicaid, or who had income at or below a standard established by the state.

State Plan Page Number	Citation	Description
S14	AFDC Income Eligibility Standards 42 CFR Part 435	S14 is provided for states to enter various income standards from their AFDC or TANF programs.

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

### Fiscal Impact Statement

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$124,986	\$254,855
ACA Expansion	\$11,924,412	\$26,689,670
Transitional	\$187,657	\$566,356
Former Foster Children	-	-
<b>Total</b>	<b>\$12,237,055</b>	<b>\$27,510,882</b>

A file containing all the PDFs associated with the MAGI-Based Eligibility Groups is available here:  
<http://regulations.delaware.gov/register/october2013/proposed/Benefits.pdf>

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

### Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments Eligibility Process

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

proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with the *Eligibility Process*.

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

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

### **SUMMARY OF PROPOSAL**

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with the *Eligibility Process*.

#### **Statutory Authority**

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

#### **Background**

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

#### *State Plan Amendments*

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

#### *Description of State Plan Amendments and Effective Date*

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is October 1, 2013.

Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group  
This SPA identifies the mandatory and optional coverage groups that Delaware will cover.
2. Eligibility Process  
This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.
3. MAGI Income Methodology  
This SPA identifies certain MAGI options Delaware has chosen.
4. Single State Agency  
This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.
5. Residency  
This SPA identifies the state's residency requirements.
6. Citizenship and Immigration Status  
This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods  
These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).
2. Title XXI Medicaid Expansion  
This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.
3. Eligibility Process  
This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.
4. Non-Financial Eligibility  
These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

**REMINDER:** In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

## Summary of Proposal

*Note: The regulation cited is Code of Federal Regulations.*

*Eligibility Process*

*42 CFR 435.10*

*42 CFR 435, Subpart J and Subpart M*

*Eligibility Process* is the second of seven (7) SPA actions. State plan page S94 is used to indicate the application forms and methods for individuals to apply for and renew Medicaid coverage. Section 1413 of the Affordable Care Act provides for a streamlined process by which individuals seeking health coverage can receive eligibility determinations and enroll in the coverage for which they are eligible. On this plan page, states also

provide assurances relative to the eligibility process. The state plan page further captures the state's choice of the frequency of redeterminations of eligibility for individuals whose eligibility is not based on a MAGI income standard. The state plan page also includes an assurance related to redetermination requirements for individuals whose eligibility is based on a MAGI income standard.

The Affordable Care Act requires that the state agency enter into agreements with the Exchange and other agencies administering insurance affordability programs for the coordination of eligibility and enrollment. The state plan page captures information concerning such agreements.

### *Hospital Presumptive Eligibility*

42 CFR 435.1110

The Affordable Care Act added section 1902(a)(47)(B) of the Social Security Act to give hospitals the option, as of January 1, 2014, to determine presumptive eligibility for Medicaid. Unlike other types of presumptive eligibility, the Act provides this option to Medicaid hospital providers whether or not the state has elected to permit qualified entities to make presumptive eligibility determinations under other sections of the statute. A qualified hospital may elect to make presumptive eligibility determinations on the basis of preliminary information and according to policies and procedures established by the state Medicaid agency.

State plan page S21 contains assurance that no qualified hospitals in Delaware have elected to make presumptive eligibility determinations under 42 CFR 435.1110 at this time.

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

### Fiscal Impact Statement

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$124,986	\$254,855
ACA Expansion	\$11,924,412	\$26,689,670
Transitional	\$187,657	\$566,356
Former Foster Children	-	-
Total	\$12,237,055	\$27,510,882

A file containing the PDFs associated with the MAGI Eligibility Process is available here:  
<http://regulations.delaware.gov/register/october2013/proposed/S21-94.pdf>

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

### Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments MAGI Income Methodology

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *MAGI Income Methodology*.

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

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

## SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *MAGI Income Methodology*.

### Statutory Authority

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

### Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

### State Plan Amendments

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

### Description of State Plan Amendments and Effective Date

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is October 1, 2013.

*Delaware Medicaid MAGI SPAs include:*

1. MAGI-Based Eligibility Group

This SPA identifies the mandatory and optional coverage groups that Delaware will cover.

2. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.

3. MAGI Income Methodology

This SPA identifies certain MAGI options Delaware has chosen.

4. Single State Agency

This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.

5. Residency

This SPA identifies the state's residency requirements.

6. Citizenship and Immigration Status

This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods

These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).

2. Title XXI Medicaid Expansion

This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.

3. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.

4. Non-Financial Eligibility

These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

**REMINDER:** In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

## Summary of Proposal

*Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.*

### *MAGI Income Methodology*

1902(e)(14)

42 CFR 435.603

*MAGI Income Methodology* is the third of seven (7) SPA actions. State plan page S10 is used to describe the options elected by the state with respect to MAGI-based income methodologies, which is the income methodology that will be used effective January 1, 2014 for determining eligibility for most children, pregnant women and parents and caretaker relatives and adults described in 42 CFR 435.119.

The ACA also eliminated the use of disregards or other less restrictive income methodologies under sections 1902(r)(2) and 1931(b)(2)(C) of the Act when determining the income of individuals whose income eligibility is

determined using MAGI- based methodologies.

*Effective Date of MAGI-Based Income Methodologies*

MAGI-based income methodologies become effective January 1, 2014. However, when determining continuing eligibility for beneficiaries who were determined eligible for Medicaid on or before December 31, 2013, MAGI-based income methodologies will not be applied until the later of:

- March 31, 2014, or
- The next regularly scheduled re-determination of eligibility,

if application of MAGI-based methodologies results in a determination that the individual would be ineligible prior to such date.

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

**Fiscal Impact Statement:**

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$124,986	\$254,855
ACA Expansion	\$11,924,412	\$26,689,670
Transitional	\$187,657	\$566,356
Former Foster Children	-	-
Total	\$12,237,055	\$27,510,882

A file containing the PDFs associated with the MAGI Income Methodology is available here:  
<http://regulations.delaware.gov/register/october2013/proposed/S10.pdf>

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**PUBLIC NOTICE**

**Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments  
 Single State Agency**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Single State Agency*.

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

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

**SUMMARY OF PROPOSAL**

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with the *Single State Agency*.

**Statutory Authority**

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

**Background**

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

*State Plan Amendments*

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

*Description of State Plan Amendments and Effective Date*

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is October 1, 2013.

Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group  
This SPA identifies the mandatory and optional coverage groups that Delaware will cover.
2. Eligibility Process  
This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.
3. MAGI Income Methodology  
This SPA identifies certain MAGI options Delaware has chosen.
4. Single State Agency

This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.

5. Residency

This SPA identifies the state's residency requirements.

6. Citizenship and Immigration Status

This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods

These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).

2. Title XXI Medicaid Expansion

This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.

3. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.

4. Non-Financial Eligibility

These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

**REMINDER:** In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

## Summary of Proposal

*Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.*

### *Single State Agency*

1902(a)(5)

42 CFR 431.10

*Single State Agency* is the fourth of seven (7) SPA actions. State plan pages A1-Designation and Authority; A2-Organization and Administration; and, A3-Assurances are about the basic administration of the Medicaid program and the legal authority of the state to submit and administer the state plan: the name of the single state agency, appropriate state statutory authorities, any other agencies or organizations involved in the administration of the plan, and entities that have authority and responsibility to determine eligibility and to conduct fair hearings.

States must designate a single state agency to administer or supervise the administration of the state's Medicaid plan. They must also provide certification by the state Attorney General, citing the legal authority for the single state agency to administer or supervise the administration of the Medicaid plan and to make rules and regulations that it follows in administering the plan or that are binding upon local agencies that administer the plan, as appropriate.

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

# PROPOSED REGULATIONS

## Fiscal Impact Statement:

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$124,986	\$254,855
ACA Expansion	\$11,924,412	\$26,689,670
Transitional	\$187,657	\$566,356
Former Foster Children	-	-
Total	\$12,237,055	\$27,510,882

A file containing the PDFs associated with the MAGI Single State Agency is available here:  
<http://regulations.delaware.gov/register/october2013/proposed/A1-A3.pdf>

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments Residency

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Residency*.

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

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

### SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Residency*.

#### Statutory Authority

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

## Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

## State Plan Amendments

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

## Description of State Plan Amendments and Effective Date

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is October 1, 2013.

Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group  
This SPA identifies the mandatory and optional coverage groups that Delaware will cover.
2. Eligibility Process  
This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.
3. MAGI Income Methodology  
This SPA identifies certain MAGI options Delaware has chosen.
4. Single State Agency  
This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.
5. Residency  
This SPA identifies the state's residency requirements.
6. Citizenship and Immigration Status  
This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods  
These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).
2. Title XXI Medicaid Expansion  
This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.
3. Eligibility Process  
This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.
4. Non-Financial Eligibility  
These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

**REMINDER:** In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

### Summary of Proposal

*Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.*

#### *Residency*

*1902(b)(2)*

*42 CFR 435.403*

*Residency* is the fourth of seven (7) SPA actions. State plan page S88 includes specific requirements for what constitutes state residency and solicits information from the state regarding its interstate agreements (if any), policies for individuals who are temporarily out of the state or temporarily living in the state.

States are required to provide Medicaid to eligible residents of the state, including residents who are absent from the state in certain circumstances, who are otherwise Medicaid eligible in the state. The definition of who is considered a resident of the state includes criteria to be used to determine the residency of individuals who are not capable of indicating intent, who are institutionalized, or who may be absent from the state.

Regulatory changes simplify and clarify residency rules and align those rules with those that apply under the other insurance affordability programs.

This state plan page begins with the state providing assurance that it meets the requirement of providing Medicaid to otherwise eligible residents of the state, including individuals who are absent from the state under certain conditions. The state plan page provides a list of the individuals that must be considered to be residents of the state under certain specified conditions, as required by 42 CFR 435.403.

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

### Fiscal Impact Statement:

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$124,986	\$254,855
ACA Expansion	\$11,924,412	\$26,689,670
Transitional	\$187,657	\$566,356

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Former Foster Children	-	-
Total	\$12,237,055	\$27,510,882

A file containing the PDFs associated with the MAGI Residency is available here:

<http://regulations.delaware.gov/register/october2013/proposed/S88.pdf>

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### **Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments Citizenship and Immigration Status**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Citizenship and Immigration Status*.

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

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

### SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Citizenship and Immigration Status*.

#### **Statutory Authority**

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

#### **Background**

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly

with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

### *State Plan Amendments*

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

### *Description of State Plan Amendments and Effective Date*

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is October 1, 2013.

#### Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group  
This SPA identifies the mandatory and optional coverage groups that Delaware will cover.
2. Eligibility Process  
This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.
3. MAGI Income Methodology  
This SPA identifies certain MAGI options Delaware has chosen.
4. Single State Agency  
This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.
5. Residency  
This SPA identifies the state's residency requirements.
6. Citizenship and Immigration Status  
This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

#### CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods  
These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).
2. Title XXI Medicaid Expansion  
This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.
3. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.

4. Non-Financial Eligibility

These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

**REMINDER:** In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

**Summary of Proposal**

*Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.*

*Citizenship and Immigration Status*

*1902(a)(46)(B); 1903(v)(2), (3) and (4)*

*Proposed 42 CFR 435.4; 435.406; 435.956,*

*78 FR 4594 (issued on January 22, 2013)*

State plan page S89 describes the rules concerning Medicaid requirements related to U.S. citizenship and non-citizen eligibility.

Regulations at 42 CFR 435.406 require states to provide Medicaid to otherwise eligible individuals who are citizens or nationals of the United States, or qualified non-citizens as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (8 U.S.C. 1641) and whose eligibility is not prohibited during the five year waiting period, required at 8 U.S.C. 1613 for certain qualified non-citizens.

Section 1137(d)(4) of the Social Security Act requires states to provide Medicaid to individuals having satisfactory immigration status during a reasonable period of time (known as a reasonable opportunity period) while their immigration status is being verified, if they are otherwise eligible for Medicaid.

Section 211 of the Children's Health Insurance Program Reauthorization Act (CHIPRA) added the requirement to provide a reasonable opportunity period for an individual verifying their citizenship, if otherwise Medicaid eligible. Section 211 of CHIPRA amended section 1903(x) of the Act (requirement to provide documentary evidence of citizenship or nationality), and built upon existing regulation at §435.407(k) to require states to provide individuals who have declared themselves to be U. S. citizens, and who must have their citizenship or nationality status verified, the same reasonable opportunity to provide evidence of citizenship and to provide Medicaid coverage during this reasonable opportunity period, if the individual is otherwise Medicaid eligible, as is afforded to individuals who are verifying their immigration status.

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

**Fiscal Impact Statement:**

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$124,986	\$254,855
ACA Expansion	\$11,924,412	\$26,689,670
Transitional	\$187,657	\$566,356
Former Foster Children	-	-
Total	\$12,237,055	\$27,510,882

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# PROPOSED REGULATIONS

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A file containing the PDFs associated with the MAGI Citizenship and Immigration Status is available here:

<http://regulations.delaware.gov/register/october2013/proposed/S89.pdf>

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments

#### Children's Health Insurance Program (CHIP) MAGI Eligibility

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XXI Medicaid State Plan (Delaware Healthy Children Program) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Children's Health Insurance Program (CHIP) MAGI Eligibility*.

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

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

### SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with the *Children's Health Insurance Program (CHIP) MAGI Eligibility*.

#### Statutory Authority

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

#### Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

*State Plan Amendments*

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

**Summary of Proposal**

*Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.*

*CHIP Modified Adjusted Gross Income (MAGI) Eligibility**2102(a)(2)**2102(b)(1)(B)(v)**2102(b)(3)(C)**2102(b)(3) and 2107(E)(1)(O)**42 CFR Part 457*

To implement several provisions of the Affordable Care Act, Delaware intends to make changes to its Delaware Healthy Children Program State Plan concerning the methodology used to determine eligibility for Targeted Low Income Children. We have summarized the CHIP State plan amendments below.

It is important to note that many of the required pages simply replace pages in the current CHIP State Plan and do not include substantive change to present eligibility and enrollment policy or practice.

Proposed CHIP MAGI Eligibility State Plan Amendments (SPAs) include:

1. MAGI Eligibility & Methods

These SPA pages designate the eligibility and income methodology for Targeted Low-Income Children. The plan pages assure that Delaware will provide coverage not to exceed twelve (12) months for children ineligible for Medicaid as a result of the elimination of income disregards as required by the Affordable Care Act (ACA). The SPA page also assures that Delaware does not apply a spenddown process for households that have income that exceeds the CHIP limit.

State Plan Page Number: CS 7-Targeted Low-Income Children

State Plan Page Number: CS 15-MAGI-Based Income Methodology

State Plan Page Number: CS 16-Spenddowns

2. Title XXI Medicaid Expansion

This SPA sets MAGI-based income standards for CHIP Medicaid Expansions coverage for children age 6-18 year olds with incomes between 100% -133% of the Federal Poverty Level (FPL).

State Plan Page Number: CS3-MAGI Income Standards for CHIP Medicaid Expansion

3. Eligibility Process

These SPA pages detail Delaware's eligibility and enrollment process, including the single, streamline application, the methods by which Delaware Medicaid can accept an application, the renewal process, and assurance that the state will coordinate eligibility and enrollment with federally facilitated marketplaces.

State Plan Page Number: CS 24-General Eligibility

4. Non-Financial Eligibility

These SPAs identify the CHIP program's non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

# PROPOSED REGULATIONS

## Residency

These SPA pages assure that Delaware provides medical assistance to eligible residents of the State of Delaware.

State Plan Page Number: CS 17-Residency

## Citizenship

These SPA pages assure that Delaware provides medical assistance to eligible citizens of the United States and lawfully residing immigrants.

State Plan Page Number: CS 18-Citizenship/Lawfully Residing Immigrants

## Social Security Number

These SPA pages assure that Delaware Medicaid requires individuals to furnish their Social Security number as a condition of eligibility unless they meet the requirements for an exception.

State Plan Page Number: CS 19-Social Security Number

The following SPA pages contain additional assurances relating to eligibility, including a mechanism to assure that CHIP is not used as a substitution of coverage, an assurance the state does not have a premium lock out period; an assurance the state does provide continuous coverage regardless of the family's changing circumstances, and, clarifies that the state does not allow presumptive eligibility for children or pregnant women.

State Plan Page Number: CS 20-Substitution of Coverage

State Plan Page Number: CS 21-Premium Lock-Outs

State Plan Page Number: CS 27-Continuous Eligibility

State Plan Page Number: CS 28-Presumptive Eligibility – Children

State Plan Page Number: CS 29-Presumptive Eligibility – Pregnant Women

These SPAs will be effective October 1, 2013 as required by federal law.

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

### **Fiscal Impact Statement:**

<b>Change to Federal Expenditures</b>	<b>State Fiscal Year 2014</b>	<b>State Fiscal Year 2015</b>
Former CHIP Kids	\$124,986	\$254,855
ACA Expansion	\$11,924,412	\$26,689,670
Transitional	\$187,657	\$566,356
Former Foster Children	-	-
<b>Total</b>	<b>\$12,237,055</b>	<b>\$27,510,882</b>

A file containing the PDFs associated with CHIP MAGI Eligibility is available here:

<http://regulations.delaware.gov/register/october2013/proposed/Chip.pdf>

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Title XIX Medicaid State Plan Medicaid Rehabilitative Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding *Medicaid Rehabilitative Services*.

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

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

### SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of its intention to amend the Title XIX Medicaid State Plan regarding its methods and standards for coverage and reimbursement of *Medicaid Rehabilitative Services*.

#### Statutory Authority

- §1905 of the Social Security Act (a)(13), *Other diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §440.130(d), *Rehabilitative services*
- 42 CFR §440.60, *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.225, *Optional services*
- 42 CFR §440.20, *Outpatient hospital services and rural health clinic services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

#### Background

Section 1905(a)(13) of the Social Security Act (the Act) includes rehabilitative services as an optional Medicaid State plan benefit. Current Medicaid regulations at 42 CFR §440.130(d) provides a definition of rehabilitative services. Rehabilitative services are defined as "any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice under State law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level." The broad general language in this regulatory definition has afforded States considerable flexibility under their State plans to meet the needs of their State's Medicaid population.

Rehabilitative services are specialized services of a medical or remedial nature delivered by uniquely qualified practitioners designed to treat or rehabilitate persons with mental illness or substance use disorder diagnoses. These services will be provided to recipients on the basis of medical necessity.

The Delaware Medical Assistance Program (DMAP) covers rehabilitative services provided to eligible Medicaid recipients by eligible providers. Rehabilitative services are medically related treatment, rehabilitative, and support services for persons with disabilities caused by mental illness and substance use disorder.

#### Summary of Proposal

##### *Purpose and Rationale*

This proposed State plan amendment (SPA) targets service delivery, specifically, substance use disorder treatment services, crisis intervention services, and other licensed behavioral health practitioners. This plan amendment makes the changes and clarifications necessary for Delaware to be responsive to the United States

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Department of Justice (DOJ) Settlement through the addition of new services and modifications to existing services.

The proposed SPA is designed to ensure that quality rehabilitative services are provided in a coordinated manner that is in the best interest of the individuals, are limited to rehabilitative purposes and, are furnished by qualified providers.

This proposed SPA would also provide guidance to ensure that services claimed under the optional Medicaid rehabilitative benefit are rehabilitative out-patient services, are furnished by qualified providers, and are provided to Medicaid eligible individuals according to a goal-oriented rehabilitation plan.

## *Proposed Amendment*

Pursuant to the notice requirements of 42 CFR §447.205, Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of its intention to file a state plan amendment regarding the rehabilitative services option. If implemented as proposed, the coverage and reimbursement methodology plan amendments will accomplish the following, effective October 2, 2013:

1. Remove mental health clinics from the Medicaid Clinic Option and cover the services provided by those facilities in the Other Licensed Practitioner Section of the State Plan. This will allow Medicaid to reimburse Psychologists, Licensed Clinical Social Workers, Licensed Professional Counselors of Mental Health, and Licensed Marriage and Family Therapists (LMFTs) services when provided in a clinic or community setting when permitted under State practice laws.
2. Include Crisis Intervention and Outpatient and Residential Substance Use Disorder Treatment in the Rehabilitation State Plan. This will allow the State to provide Medicaid eligible individuals with mobile and site-based crisis intervention for individuals experiencing a behavioral health crisis. In addition, the State will be able to provide recovery-oriented treatment for individuals with substance use disorders.
3. Remove the Community Support Service Program from the State Plan effective July 1, 2014. On that date, a new 1915(i)-like service under the 1115 demonstration waiver will begin operating for individuals under the DOJ settlement agreement to ensure that individuals with serious Mental illness (SMI) receive the supports necessary to remain in the community.

**IMPORTANT NOTE:** Federal law and regulations use the term “intermediate care facilities for the mentally retarded”. DHSS/DMMA prefers to use the accepted term “individuals with intellectual disability” (ID) instead of “mental retardation.” However, as “intermediate care facilities for the mentally retarded (ICF/MR)” is the term/acronym currently used in all Federal requirements, that term/acronym will be used on applicable amended State plan pages.

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

## **Fiscal Impact Statement**

- There is no increase in cost on the General Fund.
- The proposed services in this State plan amendment will be budget neutral.
- Federal budget impact for federal fiscal years 2014 and 2015 are projected as follows:

Federal Fiscal Year 2014	Federal Fiscal Year 2015
\$13,685,958.92	\$17,469,215.07

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

**Title XIX Medicaid State Plan Medicaid Rehabilitative Services**

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)y and z (16 **Del.C.** §122(3)y and z)

### PUBLIC NOTICE

#### **4408 Facilities that Perform Invasive Medical Procedures**

On April 1, 2013 (Volume 16, Issue 10), the Department of Health and Social Services (DHSS) published in the *Delaware Register of Regulations* its notice of proposed regulations governing medical facilities and held them out for public comment per Delaware law. The public comments resulted in significant changes, which necessitated the submission of a new set of regulations for public review and comment.

On October 1, 2013, the Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is again proposing regulations for facilities that perform invasive medical procedures using anesthesia. These regulations establish standards with respect to the safe and sanitary conditions, and require the accreditation of any facility that performs invasive medical procedures in which the accepted standard of care requires anesthesia, major conduction anesthesia, or sedation. These regulations also provide for the investigation of any patient, patient legal representative or current facility employee complaints involving the unsafe and/or unsanitary conditions in such facilities.

Copies of the proposed regulations are available for review in the October 1, 2013 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Thursday, October 31, 2013 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4913

#### **4408 Facilities that Perform Invasive Medical Procedures**

##### **1.0 Purpose**

Delaware Department of Health and Social Services adopts these regulations pursuant to the authority vested by 16 **Del.C.** §122(3)(y and z). These regulations establish standards with respect to the safe and sanitary conditions, and require the accreditation of any facility that performs invasive medical procedures in which the accepted standard of care requires anesthesia, major conduction anesthesia, or sedation. These regulations also provide for the investigation of any patient or current facility employee complaints involving the unsafe and/or unsanitary conditions in such facilities.

##### **2.0 Definitions**

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

"**Accredited Facility**" means a facility that is accredited by an accrediting organization approved by the Department. Approval requires an accrediting organization to be independent from facility.

"**Accrediting Organization**" means an organization able to measure the quality of facility's services and performance against nationally-recognized and evidenced-based standards that focus on (1) ensuring quality health care and provider competence, (2) reducing risks, (3) monitoring standards of practice (4) promoting continuous quality improvement, and (5) demonstrating accountability. The organization requires facilities complete self-assessments and expert surveyors conduct thorough reviews.

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**"Adverse Event"** means the death or serious injury of any patient at a facility; a reasonable determination by the Department that death or serious injury may result from any unsafe or unsanitary condition at a facility; or the initiation of any criminal investigation arising out of or relating to any diagnosis, treatment or other medical care at a facility.

**"Anesthesia"** means anxiolysis, conscious sedation, deep sedation, major conduction anesthesia, minimal sedation, moderate sedation or general anesthesia. Local anesthesia is not included in this definition.

**"Anxiolysis"** means minimal sedation.

**"ASA Classification"** means the American Society of Anesthesiologists's physical status classification of preoperative patients for anesthetic risk assessment.

**"Certified Registered Nurse Anesthetist"** means an individual currently licensed under 24 Del.C. Ch.19.

**"Complaint"** means a complaint filed by a patient or current facility employee in writing, in such format as the Department requires.

**"Conscious Sedation"** means moderate sedation

**"Deep Sedation"** means a drug-induced depression of consciousness during which: (1) patients cannot be easily aroused but respond purposefully following repeated or painful stimulation, (2) the ability to independently maintain ventilatory function may be impaired, (3) patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate, and (4) cardiovascular function is usually maintained.

**"Dentist"** means an individual currently licensed under 24 Del.C. Ch. 11.

**"Department"** means the Delaware Department of Health and Social Services or its designee.

**"Facility"** means a location at which any invasive medical procedure is performed, but shall not include any hospital, as defined in 16 Del.C. §1001(2), or any freestanding birthing center, freestanding surgical center or freestanding emergency center as such terms are defined in defined in 16 Del.C. §122 (3)p.

**"General Anesthesia"** means a drug-induced loss of consciousness during which: (1) patients are not arousable, even by painful stimulation, (2) The ability to independently maintain ventilatory function is often impaired, (3) patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function, (4) cardiovascular function may be impaired.

**"Invasive Medical Procedure"** means any medical procedure, including dental and podiatric procedures, in which the accepted standard of care requires anesthesia, major conduction anesthesia or sedation.

**"Local Anesthesia"** means the injection of the skin or muscle, or application of an anesthetic drug to a specific area of the body, to prevent patients from feeling pain directly where the pain will occur during a medical, surgical or dental procedure. Local anesthesia can be divided into four groups: injectable, topical, dental (non-injectable) and ophthalmic. Local anesthesia does include infiltration block anesthesia but would not include procedures in which local anesthesia is injected into areas of the body other than skin or muscle (i.e. systemic sedation such as spinal, epidural, axillary, stellate ganglion block, regional blocks, supraclavicular, infraclavicular and intravenous regional anesthesia) where significant cardiovascular or respiratory complications may result.

**"Major Conduction Anesthesia"** means the administration of a drug, or a combination of drugs, to interrupt nerve impulses without loss of consciousness, e.g. epidural, caudal, or spinal anesthesia, lumbar or brachial plexus blocks, and intravenous regional anesthesia. However, isolated blockade of small peripheral nerves, such as digital nerves are not included.

**"Minimal Sedation"** means a drug-induced state during which: (1) patients respond normally to verbal commands, (2) cognitive and physical coordination may be impaired but airway reflexes and ventilatory and cardiovascular functions are unaffected.

**"Moderate Sedation"** means a drug-induced depression of consciousness during which: (1) patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation, (2)

no interventions are required to maintain a patent airway, (3) spontaneous ventilation is adequate, and (4) cardiovascular function is usually maintained.

"Patient" means a person, person's spouse, parent, legal guardian, or legal custodian of a person under 18 or any legal guardian or legal custodian of a person who is an adult, who has received diagnosis, treatment or other medical care at a facility.

"Physician" means an individual currently licensed under 24 Del.C. Ch. 17.

"Physician Assistant" means an individual currently licensed under 24 Del.C. Ch. 17.

"Plan of Correction" means a facility's written response to findings of regulatory non-compliance. Plans must adhere to the format specified by the Department, include acceptable timeframes in which deficiencies will be corrected and must be approved by the Department.

"Podiatrist" means an individual currently licensed under 24 Del.C. Ch. 5.

"Procedure" means invasive medical procedure.

"Registered Nurse" means an individual currently licensed under 24 Del.C. Ch.19.

"Serious Injury" means physical injury that creates a substantial risk of death, or that causes serious disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ or which causes the termination of a pregnancy without the consent of the pregnant female.

"Time-out" means a pause in action conducted in the procedure room immediately before the procedure is to begin. The time-out (1) involves the entire operative team, including the patient, (2) uses active communication and (3) includes correctly identifying: the patient, the procedure, and the site.

## **3.0 Patient Care**

- 3.1 The physician/dentist/podiatrist must determine that the facility is an appropriate forum for the particular procedure(s) to be performed on the particular patient.
- 3.2 The physician/dentist/podiatrist and/or when involved, the certified registered nurse anesthetist must determine whether the patient is an appropriate candidate for the anesthesia to be provided in the facility using the ASA classification system.
  - 3.2.1 The physician/dentist/podiatrist or certified registered nurse anesthetist must examine the patient immediately before the procedure to evaluate the risk of anesthesia and of the procedure to be performed.
- 3.3 The facility must maintain written protocols for the timely and safe transfer of a patient to a hospital for emergency care or hospitalization if necessary.
- 3.4 At least one attending clinical team member must be certified in Advanced Cardiac Life Support.
- 3.5 The facility must maintain equipment and supplies, unless precluded or invalidated by the nature of the patient, procedure, or equipment, including but not limited to:
  - 3.5.1 Age-appropriate and size-appropriate monitors, resuscitative equipment, supplies and medication in accordance with the scope of the procedures and the anesthesia services provided, including, but not limited to:
    - 3.5.1.1 Electrocardiographic monitor;
    - 3.5.1.2 Blood pressure monitor;
    - 3.5.1.3 Pulse oximeter;
    - 3.5.1.4 Continuous suction device;
    - 3.5.1.5 Positive pressure ventilation device;
    - 3.5.1.6 Oxygen;
    - 3.5.1.7 Emergency intubation equipment;
    - 3.5.1.8 IV solutions and IV tubing;
    - 3.5.1.9 Sufficient ampoules of dantrolene sodium or similar FDA approved drug, if the facility utilizes anesthetic agents that trigger malignant hyperthermia;

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- 3.5.1.10 Esophageal or precordial stethoscope;
- 3.5.1.11 Temperature monitoring device; and
- 3.5.1.12 End tidal CO2 monitor.
- 3.5.1.13 Crash cart shall include:
  - 3.5.1.13.1 Appropriate resuscitative equipment; and
  - 3.5.1.13.2 Medications for surgical, procedural or anesthetic complications.
- 3.5.2 Appropriate sterilization equipment.
- 3.5.3 Adequate procedure room lighting.
- 3.6 Written informed consent is required prior to the procedure reflecting:
  - 3.6.1 The patient's knowledge of the identified risks of the procedure (including anesthesia);
  - 3.6.2 The consent to the procedure;
  - 3.6.3 The licensed individual performing the procedure;
  - 3.6.4 The type of anesthesia to be administered; and
  - 3.6.5 The anesthesia provider.
- 3.7 The facility must maintain a policy/procedure for a time-out to ensure the risk of medical error is minimized.
- 3.8 A physician/dentist/podiatrist/physician assistant/certified registered nurse anesthetist or registered nurse with post-anesthesia care experience and certification in Advanced Cardiac Life Support must monitor the patient until the patient has met the facility's criteria for discharge.
- 3.9 A physician/dentist/podiatrist must be available onsite during patient treatment and until the patients are medically discharged.

### **4.0 General Requirements**

- 4.1 All records maintained by the facility shall be open to inspection by the authorized representatives of the Department.
- 4.2 The facility must permit photocopying of any records or other information by, or on behalf of authorized representatives of the Department, as necessary to determine or verify compliance with these regulations or accepted standards of practice. The Department shall keep patient information confidential in accordance with state and federal laws.
- 4.3 Report of adverse events:
  - 4.3.1 The facility must report all adverse events to the Department within forty-eight (48) business hours of the occurrence.
  - 4.3.2 The facility must conduct an investigation of all adverse events.
  - 4.3.3 The facility must forward a complete investigative report to the Department within 30 calendar days of the event.
- 4.4 The facility must keep reports of adverse events, accidents and medical emergencies on file at the facility for a minimum of five years.
- 4.5 Facility procedures shall not:
  - 4.5.1 Generally result in blood loss of more than ten percent of estimated blood volume in a patient with a normal hemoglobin;
  - 4.5.2 Include major or prolonged intracranial, intrathoracic, abdominal or major joint replacement procedures;
  - 4.5.3 Directly involve major blood vessels; or
  - 4.5.4 Be generally emergent or life-threatening in nature.
- 4.6 All personnel who provide clinical care in a facility must be qualified to perform services commensurate with appropriate levels of education, training and experience and in keeping with practice standards. Nothing in these regulations shall prohibit a licensed individual from performing procedures within their scope of practice.

- 4.7 All services shall be provided in a safe and effective manner in accordance with accepted standards of practice.
- 4.7.1 The facility shall develop and maintain policies and procedures based upon accepted standards of practice.
- 4.8 Back-up power sufficient to ensure patient protection in the event of an emergency shall be immediately available.
- 4.9 There must be sufficient space in the room in which the procedure is being performed.
- 4.9.1 The room shall accommodate all necessary equipment and personnel allowing for expeditious access to the patient and all resuscitation and monitoring equipment.
- 4.10 All equipment shall be maintained and functional to ensure patient safety.
- 4.11 A facility that chooses to stop performing invasive medical procedures and voluntarily surrenders accreditation, must notify the Department in writing, 30 days prior to the voluntary surrender of accreditation or cessation of invasive medical procedures.

## **5.0 Infection Control**

- 5.1 The facility must provide and maintain a functional and sanitary environment, to avoid sources and transmission of infections and communicable diseases.
- 5.2 The facility shall establish and implement an ongoing infection prevention and control program which shall be based upon nationally-recognized infection control guidelines/standards (i.e. CDC, AORN, etc.) to prevent, control and investigate infections and communicable diseases.
- 5.2.1. The ongoing infection prevention and control program must:
  - 5.2.1.1 Include an active surveillance component that covers both patients and personnel working in the facility.
    - 5.2.1.1.1 Surveillance includes infection detection through ongoing data collection and analysis.
  - 5.2.1.2 Include mechanisms that result in immediate action to take preventive or corrective measures that improve the facility's infection control outcomes.
  - 5.2.1.3 Target its plan to be specific to each particular area of the facility, including, but not limited to, the waiting room(s), the recovery room(s) and the procedure areas.

## **6.0 Medical Record**

- 6.1 A legible, comprehensive and accurate medical record must be maintained for each patient evaluated or treated.
- 6.2 The medical record must include:
  - 6.2.1 Patient identifying information;
  - 6.2.2 Patient's medical history and a physical examination:
    - 6.2.2.1 Inclusive of the cardiorespiratory system and other systems related to the diagnosis;
    - 6.2.2.2 Completed within 30 days prior to the procedure;
  - 6.2.3 Diagnosis and plan of care;
  - 6.2.4 Appropriate diagnostic reports;
  - 6.2.5 Informed consent;
  - 6.2.6 Documentation of the time-out;
  - 6.2.7 Operative/procedure report
  - 6.2.8 Pathology reports, if applicable; and
  - 6.2.9 Outcome and follow-up plans
  - 6.2.10 Documentation of anesthesia used:
    - 6.2.10.1 A separate anesthesia record must be kept for all anesthesia/sedation;
    - 6.2.10.2 Documentation must include:
      - 6.2.10.2.1 Type of anesthesia;

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- 6.2.10.2.2 Drug type, dose and route;
- 6.2.10.2.3 Time of administration;
- 6.2.10.2.4 Fluids administered;
- 6.2.10.2.5 Patient weight;
- 6.2.10.2.6 Vital signs monitoring;
- 6.2.10.2.7 Estimated blood loss;
- 6.2.10.2.8 Duration of procedure; and
- 6.2.10.2.9 Any complication or unusual event related to the procedure or anesthesia.

6.2.11 Intra-procedure and post-procedure monitoring.

6.3 The facility must ensure the security and confidentiality of the medical record in accordance with state and federal laws.

## **7.0 Patient Rights**

7.1 The facility must post written notice of patient rights in a conspicuous place, at or near, the entrance in a manner which is plainly visible and easily read by the patients (or their representatives, if applicable) waiting for treatment.

7.1.1 The facility's notice of rights must include the names, addresses, and telephone numbers of the State agencies and accrediting organization to whom patients can report complaints.

7.1.1.1 Complaints received by the Department will be investigated as appropriate.

7.1.1.2 Complainants (unless anonymous) will be notified of the outcome of any investigation.

7.2 The patient has the right to:

7.2.1 High-quality care delivered in a safe, timely, efficient and cost-effective manner and assurance the expected results can be reasonably anticipated.

7.2.2 Dignity, respect and consideration of legitimate concerns.

7.2.3 Privacy and confidentiality.

7.2.4 Be involved in all aspects of care:

7.2.4.1 Informed consent must be obtained after discussion of the risks, benefits and alternatives for the procedure.

7.2.4.2 The patient must be given information about the current diagnosis, treatment and prognosis.

7.2.5 Refuse any procedure or treatment and to be advised of the likely medical consequences of such refusal.

7.2.6 Know who will be delivering the care and the qualifications of such individuals.

7.2.7 Exercise her/his rights without being subjected to discrimination or reprisal.

7.2.8 Voice grievances regarding treatment or care that is (or fails to be) furnished.

7.2.9 Be free from all forms of abuse, mistreatment, neglect or harassment.

7.2.10 Receive care from individuals who are properly trained and competent to perform their duties.

7.2.11 Request and receive a copy of the posted written notice of the patient rights.

## **8.0 Disciplinary Actions**

8.1 The Department may impose sanctions singly or in combination when it finds a facility has:

8.1.1 Violated any of these regulations;

8.1.2 Violated standards for safe and sanitary care in a facility;

8.1.3 Failed to correct deficiencies in accordance with a timetable submitted by the facility and agreed upon by the Department;

8.1.4 Engaged in any conduct or practices detrimental to the welfare of the patients; or

8.1.5 Refused to allow the Department access to the facility or records for the purpose of conducting inspections/surveys/investigations as deemed necessary by the Department based on the receipt of a complaint or report of an adverse event.

**8.2** Disciplinary sanctions:

8.2.1 The Department may make and enforce such emergency orders as it deems necessary to protect the health and safety of the public.

8.2.1.1 If the Department determines during the course of any investigation or inspection that any facility poses an immediate and substantial risk to the health or safety of any person, the Department may order that such facility be closed until such time as it no longer poses a substantial risk.

8.2.1.1.1 An order of closure under this section shall remain in effect for a period not longer than 90 calendar days from the date of the issuance of said order, unless the facility requests a continuance of the date for the final hearing before the Department.

8.2.1.2 If the Department determines during the course of any investigation or inspection that any facility poses a possible risk to the health or safety of any person, the Department may:

8.2.1.2.1 Issue of a letter of reprimand and/or

8.2.1.2.2 Require the facility to complete a plan of correction.

**8.3** Imposition of Disciplinary Action

8.3.1 The Department may issue an order to close the facility immediately.

8.3.1.1 An order to close may apply to the performance of invasive medical procedures.

8.3.1.2 An order to close may apply to the facility as a whole.

8.3.2 The facility shall be notified forthwith in writing. The order to close shall be personally served upon the facility or sent by mail, return receipt requested, to the facility's last address of record.

8.3.2.1 A statement of deficiencies (identified during the investigation/inspection) will be forwarded to the facility within 48 hours of completion of the investigation/inspection.

8.3.3 In response to the order to close, the facility may:

8.3.3.1 Take no action, in which case the order to close shall remain in effect.

8.3.3.2 Take action to correct the unsafe and unsanitary practices identified during the survey.

8.3.3.2.1 The facility may submit evidence through a written plan of correction showing that the deficient practices, identified during the investigation, have been addressed and corrected.

8.3.3.2.1.1 A change of location for the facility does not nullify an order to close and an acceptable plan of correction must still be submitted.

8.3.3.2.2 The Department shall determine if the plan of correction is acceptable.

8.3.3.2.3 Once accepted, the Department shall schedule a revisit as soon as possible.

8.3.3.3 Request, in writing, an administrative hearing with the Secretary of the Department to contest the order to close.

8.3.3.3.1 Such request must be received within 20 calendar days from the date on which the order to close was issued.

8.3.3.3.1.1 As soon as possible, but in no event later than 60 calendar days after the issuance of the closure order, the Department shall convene a hearing on the reasons for closure.

8.3.3.3.1.2 The Department shall make a determination based upon the evidence presented.

8.3.3.3.1.3 A written copy of the determination and the reasons upon which it is based shall be sent to the facility within 30 calendar days.

8.3.3.3.2 A facility may request an expedited hearing.

8.3.3.3.2.1 The Department shall schedule the hearing on an expedited basis provided that the Department receives the facility's written request for an expedited hearing within

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five (5) calendar days from the date on which the facility received notification of the Department's decision to close the facility.

8.3.3.3.2.2 The Department shall convene an expedited hearing within 15 calendar days of the receipt by the Department of such a request.

8.3.3.3.2.3 The Department shall make a determination based upon the evidence presented.

8.3.3.3.2.4 A written copy of the determination and the reasons upon which it is based shall be sent to the facility within 30 calendar days.

8.3.4 During an administrative hearing:

8.3.4.1 The facility has the right to be represented by counsel.

8.3.4.2 All statements made shall be under oath.

8.3.4.3 The facility has the right to examine and cross-examine witnesses.

8.3.4.4 A stenographic recording will be made by a qualified court reporter. At the request and expense of any party, such record shall be transcribed with a copy to the other party.

8.3.4.5 The decision of the Department shall be based upon sufficient legal evidence. If the charges are supported by such evidence, the Department may continue, modify or revoke the closure order.

8.3.5 Upon reaching its conclusion of law and determining an appropriate disciplinary action, the Department shall issue a written decision and order in accordance with § 10128 of Title 29.

8.3.6 All decisions of the Department shall be final and conclusive. Where the facility is in disagreement with the action of the Department, the facility may appeal the Department's decision to the Superior Court within 30 days of service or of the postmarked date of the copy of the decision mailed to the facility. The appeal shall be on the record to the Superior Court and shall be as provided in §§ 10142 - 10145 of Title 29.

## **9.0 Accreditation Requirements and Procedures**

9.1 General requirements

9.1.1 All facilities must register with the Department using a form created by the Department. It will include:

9.1.1.1 The facility name;

9.1.1.2 Facility address;

9.1.1.3 Facility phone number;

9.1.1.4 A contact person; and

9.1.1.5 Acknowledgment that invasive medical procedures are performed in the facility.

9.1.2 No person shall establish, conduct or maintain in this State any facility without obtaining accreditation from an accrediting organization that is approved by the Department.

9.1.2.1 The Department shall maintain a list of approved accrediting organizations.

9.1.3 All facilities must provide proof of accreditation to the Department within 12 months of the first day of operation of such facility.

9.1.4 The accreditation certificate shall be posted in a conspicuous place on the facility premises, at or near the entrance, in a manner which is plainly visible and easily read by the public.

9.1.5 The facility must submit an accreditation certificate to the Department within 30 days of each accrediting organization survey.

9.1.5.1 The Department may request and the facility must submit a copy of the entire accreditation report.

9.1.5.2 Facilities required to submit a plan of correction to an accrediting organization will also be required to submit a copy of the plan of correction to the Department.

9.2 Accreditation termination

9.2.1 Termination of accreditation may occur secondary to:

9.2.1.1 Voluntary surrender of accreditation by the facility.

9.2.1.2 Revocation of accreditation by the accrediting organization.

9.2.2 Any facility that fails to maintain accreditation shall immediately cease to operate.

9.2.2.1 The facility may be required to remain open for administrative purposes for a period of time to be determined by the Department.

## 9.3 Inspection

9.3.1 Unannounced inspections of any facility by authorized representatives of the Department may occur:

9.3.1.1 Anytime upon receipt of a complaint by a current facility employee or patient or upon the occurrence of any adverse event.

9.3.1.2 Anytime upon receipt of a referral from the Division of Professional Regulation.

9.3.2 Facilities certified by the Centers for Medicare and Medicaid Services (CMS) will be inspected pursuant to the process required by CMS rather than otherwise stated in these regulations.

## 9.4 Notice to patients

9.4.1 The facility shall notify each patient (or the patient's authorized representative) scheduled for an upcoming invasive medical procedure of an accreditation termination, or as directed under an order issued by the Department.

9.4.2 The facility shall include in the notification information regarding alternative healthcare providers.

## 9.5 Exclusions from accreditation

9.5.1 The following persons, associations or organizations are not required to obtain accreditation as facilities:

9.5.1.1 Those facilities required to be licensed under Title 16 of the **Delaware Code**.

## 10.0 Severability

In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

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### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Chapter 49A (16 **Del.C.**, Ch. 49A)  
16 **DE Admin. Code** 4470

### **PUBLIC NOTICE**

#### **4470 State of Delaware Medical Marijuana Code**

On October 1, 2013, the Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, plans to publish as proposed regulations governing the State of Delaware Medical Marijuana Act and hold them out for public comment per Delaware law.

The Delaware Medical Marijuana Act was signed by Governor Jack Markell on May 13, 2011 and took effect on July 1 of that year. In February 2012, the portion of the law that allowed for the establishment of compassion centers was suspended by the Governor's Office following new guidance from the US Department of Justice. The Governor has provisionally lifted the suspension of compassion centers, reducing the number of compassion centers from three (one in each county) to one pilot program compassion center. These regulations establish standards and address the new scope of the program operating with one compassion center and without an independent testing center.

Copies of the proposed regulations are available for review in the October 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Health Systems Protection Section at 302-744-4705.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning

the proposed regulations must submit same to Deborah Harvey by Thursday, October 31, 2013 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700

**4470 State of Delaware Medical Marijuana Code**

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

**[4470 State of Delaware Medical Marijuana Code](#)**

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**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE**

**Delaware's Temporary Assistance for Needy Families (TANF) State Plan Amendment**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Delaware Temporary Assistance for Needy Families (TANF) State Plan.

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

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

**Summary of Proposal**

The Division of Social Services (DSS) hereby affords the public notice of its intention to amend the Delaware Temporary Assistance for Needy Families (TANF) State Plan regarding program implementation.

**Statutory Authority**

- Title IV-A of the Social Security Act, Section 402, *Eligible States; State Plan*
- Section 402(a)(1)(A) of the Social Security Act, *General Provisions*
- Section 402(b) of the Social Security Act, *Plan Amendments*
- Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96), *Spending Policies for Assistance Under State TANF Programs*
- 147<sup>th</sup> Delaware General Assembly, House Bill #75, *Civil Marriage Equality and Religious Freedom Act of 2013*

**Background**

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193) provides funding to states through the Temporary Assistance for Needy Families (TANF) block grant. The

TANF block grant is used to provide cash assistance, services and work programs for needy families, utilizing federal TANF funds along with state funds to develop and deliver services to needy families.

Delaware's TANF program is administered by Delaware Health and Social Services (DHSS)/ Division of Social Services (DSS) and is delivered through a collaborative partnership among Delaware's Department of Health and Social Services, Department of Labor (DOL), the Delaware Economic Development Office (DEDO) and, the Delaware Transit Corporation (DTC).

Delaware operates its TANF program in accordance with a State Plan which describes how DHSS/DSS will administer the State's TANF-funded cash assistance program. Section 402 of the Social Security Act requires that States periodically submit to the Secretary of the United States Department Health and Human Services a TANF state plan to maintain or renew their status as a eligible State". In general, the State plan describes the eligibility rules, the populations served, the programs offered, and the State maintenance of effort spending.

### *TANF State Plan Amendments*

In accordance with section 402(b) of the Social Security Act, Delaware will amend its TANF State Plan whenever the DHSS/DSS determines there is a significant change in program policy or rule.

### **Summary of Proposal**

The following plan amendments modify Delaware's currently approved state plan that is effective from October 1, 2011 through September 30, 2014.

To maintain compliance with the Social Security Act, Division of Social Services (DSS) proposes to amend the following TANF State plan sections and policy to reflect two (2) policy changes and to meet one (1) federally mandated State plan inclusion, effective October 1, 2013.

The two (2) policy changes are:

1. In the section titled "*Needy Families*" on page 4: The Delaware TANF State plan is updated to specify that the TANF program affords partners in a same gender marriage the same program rights, benefits, responsibilities, obligations, and duties as afforded different gendered married partners. This revision reflects a change in Delaware law that resulted from the Civil Marriage Equality and Religious Freedom Act of 2013. This Act became effective on July 1, 2013.
2. In the section titled "*Efforts to Reduce Out-of-Wedlock Births*" on page 30: The Delaware TANF State plan is updated to include the Jobs for Delaware Graduates program as a means to reduce out of wedlock/teen pregnancies.

The plan also notes that Delaware may use Maintenance of Effort (MOE) spending to fund the programming. States are required to include in their State plan efforts to reduce out of wedlock pregnancies.

The one (1) federally mandated TANF State plan component is:

In the section titled "*TANF Benefits Issued Via Electronic Benefit Transfer (EBT)*" on page 37 and on page 38: Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) requires States to include in their TANF State plans, policies and procedures instituted to ensure TANF recipients do not access TANF benefits via Electronic Benefit Transfer (EBT) at gambling institutions, liquor stores, or adult oriented entertainment establishments.

Delaware does not issue TANF benefits via EBT, and therefore has not developed policies or procedures to limit access to EBT for TANF recipients.

DSS will receive public comment for these amendments to the State plan and will file the amendments with the federal Department of Health and Human Services, Administration for Children and Families (ACF). All comments received during the comment period will receive consideration for the proposed amendment of the Delaware TANF State plan.

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

**[Delaware's Temporary Assistance for Needy Families \(TANF\) State Plan Amendment](#)**

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# PROPOSED REGULATIONS

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 **Delaware Code**, Chapter 60; (7 **Del.C.**, Ch. 60)  
7 **DE Admin. Code** 1125

#### REGISTER NOTICE; SAN 2013-24

#### 1125 Requirements for Preconstruction Review

#### 1. TITLE OF THE REGULATION:

Amend 7 **DE Admin. Code** 1125, Requirements for Preconstruction Review.

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

The Department proposes to revise 7 **DE Admin. Code** 1125, in Section 1.9, Definitions, under the definition of "Significance", in the table under (a), to restore the significance level of nitrogen oxides (NO<sub>x</sub>) of 40 tons per year that was inadvertently removed. This action will bring 7 **DE Admin. Code** 1125 back into agreement with the federal new source review regulation in this regard. The Department will submit this change to the Environmental Protection Agency as a revision to the State Implementation Plan (SIP).

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

None.

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

7 **Delaware Code**, Chapter 60.

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

None.

#### 6. NOTICE OF PUBLIC COMMENT:

The Department will hold a public hearing on this proposed amendment on Monday, October 28, 2013, starting at 6:00 pm in the Richardson and Robbins Building auditorium, located at 89 King's Highway in Dover. Interested persons may submit comments in writing to Gene Pettingill, Division of Air Quality, 715 Grantham Lane, New Castle DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

#### 7. PREPARED BY:

Gene Pettingill (302-323-4542) September 9, 2013

#### 1125 Requirements for Preconstruction Review

06/11/13 xx/xx/xx

#### 1.0 General Provisions

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

1.9 Definitions - For the purposes of this regulation

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

##### **"Significant"**

(a) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (TPY)

Nitrogen oxides: 40 TPY

Sulfur dioxide: 40 TPY

Particulate matter: 25 TPY

Ozone:

New Castle and Kent Counties - 25 TPY of either volatile organic compounds or nitrogen oxides \*

Sussex County - 40 TPY of either volatile organic compounds or nitrogen oxides \*

Lead: 0.6 TPY

Asbestos: 0.007 TPY

Beryllium: 0.0004 TPY

Mercury: 0.1 TPY

Vinyl chloride: 1 TPY

Fluorides: 3 TPY

Sulfuric acid mist: 7 TPY

Hydrogen sulfide (H<sub>2</sub>S): 10 TPY

Total reduced sulfur (including H<sub>2</sub>S): 10 TPY

Reduced sulfur compounds (including H<sub>2</sub>S): 10 TPY

PM<sub>10</sub> particulate: 15 TPY

PM<sub>2.5</sub>: 10 TPY of direct PM<sub>2.5</sub> emissions; 40 TPY of sulfur dioxide emissions; 40 TPY nitrogen oxide emissions.

\*Note: Increases in net emissions shall not exceed 25 tons per year in New Castle and Kent Counties, or 40 tons per year in Sussex, when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years which includes the calendar year in which such increases occur. No part of the five consecutive years shall extend before January 1, 1991.

(b) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the CAA that (a) does not list, any emissions rate.

(c) Notwithstanding (a), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than one µg/m<sup>3</sup>, (24-hour average).

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

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

**1125 Requirements for Preconstruction Review**

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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

5500 Bail Enforcement Agents

Statutory Authority: 24 Delaware Code, Section 5504(a) (24 Del.C. §5504(a))

### PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with Del. Code Title 24 Chapter 55 proposes to amend the Rules & Regulations. These amendments will improve the safety of the public and the bail enforcement agents and professionalize the industry. If you wish to view the complete Rules &

# PROPOSED REGULATIONS

Regulations, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 31, 2013, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Tuesday, November 26, 2013, 10:00am, at the DGE Conference Room, 655 South Bay Road, Suite 1A, Dover, Delaware.

## 5500 Bail Enforcement Agents

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

#### 7.0 Continuing Education And Training

Continuing education/training shall be 32 hours every four (4) years with the breakdown being eight (8) hours per year, which must include at least two (2) hours ~~a-per~~ each year in training on the use of deadly force. Failure to have the eight hours of training every year shall be grounds for suspension or revocation of a current license or rejection of a renewal application. Any licensed Bail Enforcement Agent (BEA) not obtaining the continuing education for a given year by the last class offered shall be placed on emergency suspension immediately. Once the continuing education class has been taken for the following year, Professional Licensing may administratively re-instate the BEA.

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

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

## 5500 Bail Enforcement Agents

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

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

### PUBLIC NOTICE

The Delaware Board of Mental Health and Chemical Dependency Professionals proposes to amend its regulations. These changes remove references to paper licensure renewal forms, clarify that license renewal is conducted on-line, alter the permitted time period for inactive status, modify and clarify the requirements for supervised counseling experience and modify and clarify the requirements for continuing education so that the continuing education requirements for all professions are consistent with one another.

The Board will hold a public hearing on the proposed rule change on October 23, 2013 at 12:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 7, 2013.

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

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

#### 2.0 Licensure for Professional Counselors of Mental Health (LPCMH)

##### 2.1 Licensure by Certification Requirements

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

2.1.3 Professional Counseling Experience means the accumulation of hours spent providing face to face professional mental health clinical counseling services with clients and other matters directly related to the treatment of clients, in an setting that is clearly designated to provide professional mental health clinical counseling services and is subject to the Health Insurance Portability and Accountability Act of 1996 (~~HIPPA~~ HIPAA). Educational or guidance counseling is not considered clinical mental health counseling. However, professional counseling experience done under the ~~auspicious~~ auspices of a mental health organization providing contracting services to a school or school system may be acceptable to the Board.

2.1.3.1 30 graduate semester hours or more attained beyond the master's degree, may be substituted for up to 1,600 hours of the required clinical experience, provided that hours are clearly related to the field of counseling and are acceptable to the Board. Graduate credit hours shall be verified by an official transcript submitted directly to the Board by the accredited educational institution at which the course work was done.

2.1.3.2 Supervised clinical experience or post-master's degree alternative shall be verified by the "Professional Experience Reference Form" or the "Verification of Self Employment" form.

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

## 2.3 License Renewal

2.3.1 Renewal Date - The LPCMH license shall be renewable biennially on September 30<sup>th</sup> of even-numbered years. License renewal ~~may be is~~ accomplished online at the Division of Professional Regulation's (~~Division~~) website. ~~Alternatively, licensees may submit paper renewal documents. Requests for paper renewal forms must be directed to the Division.~~

2.3.2 Requirements for Renewal are as follows:

2.3.2.1 Certification - The candidate for renewal shall hold current certification in good standing as of the date of licensure renewal in NBCC, ACMHC or other certifying organization acceptable to the Board. This certification shall be verified by attestation. Attestation shall be completed electronically ~~if the renewal is accomplished online. Alternatively, the attestation of certification may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.~~

2.3.2.2 Continuing Education (CE) Requirements

2.3.2.2.1 ~~Requirement~~ The candidate for renewal shall have completed no less than 40 clock hours of acceptable CE per two (2) year licensure renewal period. CE requirements for initial licensure periods of less than two (2) years shall be prorated. Purpose – The CE requirement is intended to maintain licensees' professional competence in the practice of professional mental health counseling, marriage and family therapy, and chemical dependency counseling.

2.3.2.2.2 Licensees must complete at least 40 acceptable CE hours during the previous licensure period in order to renew their license. CE requirements for initial licensure periods of less than two (2) years shall be prorated as follows:

2.3.2.2.2.1 If the license was granted between April 1 and September 30 of an even-numbered year, the licensee must complete 0 hours of CE during his or her initial licensing period.

2.3.2.2.2.2 If the license was granted between October 1 of an odd-numbered year and March 31 of an even-numbered year, the licensee must complete 10 hours of CE during his or her initial licensing period.

2.3.2.2.2.3 If the license was granted between April 1 and September 30 of an odd-numbered year, the licensee must complete 20 hours of CE during his or her initial licensing period.

2.3.2.2.2.4 If the license was granted between October 1 of an even-numbered year and March 31 of an odd-numbered year, the licensee must complete 30 hours of CE during his or her initial licensing period.

2.3.2.2.23 Acceptable CE shall include the following:

## PROPOSED REGULATIONS

- ~~2.3.2.2.23.1~~ CE hours approved by a national mental health organization (such as NBCC, ACMHC, or APA), shall be acceptable. Other training programs may apply for Board approval. CE should be oriented towards enhancement of the knowledge and practice of counseling. Hours are to be documented by a certificate signed by the presenter or by a designated official of the sponsoring organization, or substance abuse treatment organization or their local affiliates, such as the National Board for Certified Counselors, Inc. (NBCC), the Academy of Clinical Mental Health Counselors (ACMHC), American Association for Marriage and Family Therapy (AAMFT), the International Family Therapy Association (IFTA), NAADAC, The Delaware Certification Board, Inc. or National Association for Social Work (NASW), or the American Psychological Association (APA) are acceptable, regardless of course content, and do not need to be approved by the Board.
- ~~2.3.2.2.23.2~~ Academic course work, presentation of original papers providing training and clinical supervision may be applied for up to 20 clock hours of the continuing education requirement. These hours are to be documented by an official transcript, syllabus, or a copy of the published paper presented. Under no circumstances may there be less than 20 hours of face-to-face participation in CE as outlined above. Any activity that would achieve the purpose of the CE requirement, explained in section 2.3.2.2.1 above, is acceptable and does not require Board review and approval. Examples include, but are not limited to, interactive courses, workshops, seminars and webinars.
- ~~2.3.2.2.3.2.1~~ Courses that do not clearly achieve the purpose of CE require Board approval. Licensees should request Board approval in advance of attendance. Requests for approval may be submitted afterward, but there is no guarantee of approval. These hours must be documented by a course agenda, syllabus, or other brief documentation that would allow the Board to assess the appropriateness of the course content. Only licensees may request course approvals. Sponsoring organizations may not request course approvals.
- ~~2.3.2.2.3.3~~ Teaching academic or CE courses, presentation of original papers, or the writing of a peer-reviewed article may account for up to 20 CE hours. These hours are to be documented by an official transcript, syllabus, or a copy of the published paper presented.
- ~~2.3.2.2.3.4~~ Any education or training that is not interactive/does not occur in real time with an instructor and students, trainees, or participants, may only account for a maximum of 50% of the CE requirement. Examples include, but are not limited to, reading of professional education materials, correspondence courses and static online courses.
- ~~2.3.2.2.34~~ Make-Up of Disallowed Hours - In the event that the board disallows certain CE continuing education clock hours, the candidate for renewal licensee shall have three (3) months after the licensure renewal date the date of the Board's notice that the hours have been disallowed to complete the balance of acceptable CE hours required.
- 2.3.2.3 Hardship – The Board shall have the authority to make exceptions to the CE requirements, in its discretion, upon a showing of good cause. “Good Cause” may include, but is not necessarily limited to: disability, illness, military service, extended absence from the jurisdiction, or exceptional family responsibilities. Request for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not comply with the terms of the hardship exception established by the Board.
- 2.3.2.4 Verification of CE hours shall be by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of

~~completion may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.~~

- 2.3.3 Post-Renewal Audit – The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the CE requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period. Licensees shall retain their CE course attendance documentation for at least one (1) year after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license suspended or revoked. Licensees renewing during the late renewal period shall be audited.

## 2.4 Inactive Status

- 2.4.1 A ~~written~~ request must be submitted to have a license placed on inactive status. Inactive status is effective immediately upon Board approval. The inactive status may continue ~~through the then current licensure period and the following two-year licensure period~~ for five years from the date of Board approval. An inactive license shall ~~expire~~ terminate at the end of the ~~two-year licensure~~ five-year period unless either (1) the Board grants an extension before the end of the licensure period or (2) the license is returned to active status before the end of the five-year period.

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

## 4.0 Licensure for Chemical Dependency Professionals (LCDP)

### 4.1 Licensure by Certification Requirements

- 4.1.1 Education. The applicant's master's degree shall be documented by an official transcript submitted directly to the Board by the degree-granting institution.
- 4.1.2 Experience. Counseling experience shall be defined as the accumulation of 3,200 hours ~~spent in~~ no less than two years, providing chemical dependency services in a professional clinical setting, including face-to-face interaction with clients and other matters directly related to the treatment of clients. Supervision shall be verified by the "Supervision Reference Form," which shall be submitted directly to the Board by the approved clinical supervisor.

4.1.2.1 At least 1500 of the 1600 hours required to be supervised must be in the actual provision of face to face direct chemical dependency counseling services.

4.1.2.1.1 At least 750 of these 1500 hours must be individual face to face client sessions and must include the actual provision of direct chemical dependency counseling services.

4.1.2.1.2 The remaining 750 hours may be individual, group, couple, family counseling services, or some combination thereof.

4.1.2.2 If a proposed supervisor is not a professional licensed by the Delaware Board of Professional Counselors of Mental Health and Chemical Dependency Counselors, the proposed supervisor must attest, on a form provided by the Board for this purpose:

4.1.2.2.1 That s/he has read and is familiar with the requirements for licensure as a Chemical Dependency Professional in Delaware, including the applicable statute and these regulations;

4.1.2.2.2 That s/he has read and is familiar with either the DCB or NADAAC Code of Ethics;

4.1.2.2.3 That s/he has been a licensed professional in good standing for at least five years; and

4.1.2.2.4 That s/he has been appropriately trained to provide clinical supervision.

- 4.1.3 Certification. To be licensed by certification an applicant must be certified by the National Association for Addictions Professionals (NAADAC) as a National Certified Addictions Counselor (NCAC) or Master Addictions Counselor (MAC), by the Delaware Certification Board (DCB Inc.) as a Certified Alcohol and Drug Counselor (CADC), or by another certifying organization acceptable to the Board.

# PROPOSED REGULATIONS

- 4.1.3.1 Another certifying organization must meet all of the following criteria to be acceptable to the Board:
- 4.1.4-3.1.1 The organization shall be a national professional chemical dependency organization recognized as setting national standards of clinical competency;
  - 4.1.4-3.1.2 The organization shall require the applicant to take and pass a standardized examination designed to test his understanding of the principles involved in the chemical dependency specialty for which he is being certified; and
  - 4.1.4-3.1.3 The organization shall prescribe a code of ethics substantially equivalent to NAADAC's.

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

## 4.3 License Renewal

- 4.3.1 **Renewal Date.** The LCDP shall be renewable biennially on or before September 30<sup>th</sup> of even-numbered years. License renewal ~~may be~~ is accomplished online at the Division of Professional Regulation's (Division) website. ~~Alternatively, licensees may submit paper renewal documents. Requests for paper renewal forms must be directed to the Division.~~
- 4.3.2 **Requirements for Renewal** are as follows:
- 4.3.2.1 **Certification.** As of the renewal date, licensees must be certified by and in good standing with DCB Inc., NAADAC, or by another certifying organization acceptable to the Board pursuant to regulation 4.1.3. Certification shall be verified by attestation. Attestation shall be completed electronically ~~if the renewal is accomplished online. Alternatively, the attestation of certification may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.~~
  - 4.3.2.2 **Continuing Education (CE) Requirements.** ~~Licensees must complete at least 40 acceptable CE hours during the previous licensure period in order to renew their license. LCDP CE hours approved by a chemical dependency organization, including but not limited to DCB Inc. and NAADAC, shall be acceptable. Other training programs may apply for Board approval. Acceptable CE's are oriented towards enhancement, knowledge, and practice of chemical dependency counseling. CE requirements for initial licensure periods of less than two (2) years shall be prorated.~~
    - 4.3.2.2.1 Purpose. The CE requirement is intended to maintain licensees' professional competence in the practice of mental health counseling, marriage and family therapy and chemical dependency counseling.
    - 4.3.2.2.2 Licensees must complete at least 40 acceptable CE hours during the previous licensure period in order to renew their license. CE requirements for initial licensure periods of less than two (2) years shall be prorated, as follows:
      - 4.3.2.2.2.1 If the license was granted between April 1 and September 30 of an even-numbered year, the licensee must complete 0 hours of CE during his or her initial licensing period.
      - 4.3.2.2.2.2 If the license was granted between October 1 of an odd-numbered year and March 31 of an even-numbered year, the licensee must complete 10 hours of CE during his or her initial licensing period.
      - 4.3.2.2.2.3 If the license was granted between April 1 and September 30 of an odd-numbered year, the licensee must complete 20 hours of CE during his or her initial licensing period.
      - 4.3.2.2.2.4 If the license was granted between October 1 of an even-numbered year and March 31 of an odd-numbered year, the licensee must complete 30 hours of CE during his or her initial licensing period.
    - 4.3.2.2.3 Acceptable CE includes:
      - 4.3.2.2.3.1 CE courses approved by a national mental health or substance abuse treatment organization or their local affiliates, such as the National Board for Certified Counselors, Inc. (NBCC), the Academy of Clinical Mental Health Counselors

(ACMHC), American Association for Marriage and Family Therapy (AAMFT), the International Family Therapy Association (IFTA), NAADAC, The Delaware Certification Board, Inc. or National Association for Social Work (NASW), or the American Psychological Association (APA) are acceptable, regardless of course content, and do not need to be approved by the Board.

4.3.2.2.3.2 Any activity that would achieve the purpose of the CE requirement, explained in section 4.3.2.2.1 above, is acceptable and does not require Board review and approval. Examples include, but are not limited to, interactive courses, workshops, seminars and webinars.

4.3.2.2.3.2.1 Courses that do not clearly achieve the purpose of CE require Board approval. Licensees should request Board approval in advance of attendance. Requests for approval may be submitted afterward, but there is no guarantee of approval. These hours must be documented by a course agenda, syllabus, or other brief documentation that would allow the Board to assess the appropriateness of the course content. Only licensees may request course approvals. Sponsoring organizations may not request course approvals.

4.3.2.2.3.3 Teaching academic or CE courses, presentation of original papers, or the writing of a peer-reviewed article may account for up to 20 CE hours. An official transcript, agenda, or syllabus must be provided to document course hours and content. A copy of the published paper presented must be provided to document hours and content. Only the hours worked in preparation and delivery of the items contained in 4.3.2.2.3.2 will be counted.

4.3.2.2.3.4 Any education or training that is not interactive/does not occur in real time with an instructor and students, trainees, or participants, may only account for a maximum of 50% of the CE requirement. Examples include, but are not limited to, reading of professional education materials, correspondence courses and static online courses.

4.3.2.2.44 Verification. Verification of CE hours shall be by attestation. Attestation shall be completed electronically ~~if the renewal is accomplished online. Alternatively, the attestation of completion may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.~~

4.3.2.2.25 Hardship. The Board shall have the authority to make exceptions to the CE requirements, in its discretion, upon a showing of good cause. "Good Cause" may include, but is not limited to: disability, illness, military service, extended absence from the jurisdiction, or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not comply with the Board's terms for the hardship exception.

4.3.3 Post-Renewal Audit. The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the renewal requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period and for at least one (1) year after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license suspended or revoked. Licensees renewing during the late renewal period shall be audited.

4.3.3.1 Make-Up of Disallowed Hours - In the event that the Board disallows certain continuing education clock hours, the licensee shall have three months after the date of the Board's notice that the hours have been disallowed to complete the balance of acceptable continuing education hours required.

4.4 Inactive Status

# PROPOSED REGULATIONS

- 4.4.1 A ~~written~~ request must be submitted to have a license placed on inactive status. Inactive status is effective immediately upon Board approval. The inactive status may continue ~~through the then current licensure period and the following two-year licensure period~~ for five years from the date of Board approval. An inactive license shall ~~expire~~ terminate at the end of the ~~two-year licensure~~ five-year period unless either (1) the Board grants an extension before the end of the licensure period or (2) the license is returned to active status before the end of the ~~licensure~~ five-year period.
- 4.4.2 Extension. The Board shall extend the inactive status for an additional two-year licensure period upon timely written request. Inactive licenses expire at the end of the licensure period, so written requests for extension must be received well in advance of the end of the licensure period to avoid expiration.
- 4.4.3 Return to Active Status. Before the end of the then current two-year licensure period, a license shall be returned to active status upon fulfillment of the following requirements by the licensee:
- 4.4.3.1 Written Request. Submit a written request to have the license returned to active status.
- 4.4.3.2 Certification. Provide proof of certification in good standing by DCB Inc., NAADAC, or another certifying organization acceptable to the Board pursuant to regulation 4.1.3.
- 4.4.3.3 Continuing Education. Provide proof of completion of 40 hours of acceptable CE, obtained within the two (2) year period immediately preceding the request for return to active status.
- 4.4.3.4 Fee. Pay the licensure renewal fee. No late fee shall be assessed for return to active status.
- 4.6 Ethics. The Board hereby adopts the current version of the National Association for Addictions Professionals (NAADAC) Code of Ethics (Code). The practice of all persons possessing an LCDP shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.

## 5.0 License for Marriage and Family Therapists (LMFT)

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

#### 5.3 License Renewal

- 5.3.1 Renewal Date. The LMFT shall be renewable biennially on or before September 30<sup>th</sup> of even-numbered years. License renewal ~~may be~~ is accomplished online at the Division of Professional Regulation's (Division) website. ~~Alternatively, licensees may submit paper renewal documents. Requests for paper renewal forms must be directed to the Division.~~
- 5.3.2 Continuing Education (CE) Requirements
- 5.3.2.1 Purpose. The CE requirement is intended to maintain licensees' professional competence in the practice of mental health counseling, marriage and family therapy and chemical dependency counseling.
- 5.3.2.2 Licensees must complete at least 40 acceptable CE hours during the previous licensure period in order to renew their license. CE requirements for initial licensure periods of less than two (2) years shall be prorated, as follows:
- 5.3.2.2.1 If the license was granted between April 1 and September 30 of an even-numbered year, the licensee must complete 0 hours of CE during his or her initial licensing period.
- 5.3.2.2.2 If the license was granted between October 1 of an odd-numbered year and March 31 of an even-numbered year, the licensee must complete 10 hours of CE during his or her initial licensing period.
- 5.3.2.2.3 If the license was granted between April 1 and September 30 of an odd-numbered year, the licensee must complete 20 hours of CE during his or her initial licensing period.
- 5.3.2.2.4 If the license was granted between October 1 of an even-numbered year and March 31 of an odd-numbered year, the licensee must complete 30 hours of CE during his or her initial licensing period.
- 5.3.2.3 Acceptable CE includes:

- 5.3.2.3.1 CE courses approved by a national mental health or substance abuse treatment organization or their local affiliates, such as the American Association for Marriage and Family Therapy (AAMFT), the International Family Therapy Association (IFTA), the National Board for Certified Counselors, Inc. (NBCC), Academy of Clinical Mental Health Counselors (ACMHC), NAADAC, The Delaware Certification Board, Inc., the National Association for Social Work (NASW), or the American Psychological Association (APA) are acceptable, regardless of course content, and do not need to be approved by the Board.
- 5.3.2.3.2 Any course activity that would achieve the purpose of the CE requirement, explained in regulation section 5.3.2.1 above, is acceptable and does not require Board review and approval. Examples include, but are not limited to, interactive courses, workshops, seminars and webinars.
- 5.3.2.3.2.1 Courses that do not clearly achieve the purpose of CE require Board approval. Licensees should request Board approval in advance of attendance. Requests for approval may be submitted afterward, but there is no guarantee of approval. These hours must be documented by a course agenda, syllabus, or other brief documentation that would allow the Board to assess the appropriateness of the course content. Only licensees may request course approvals. Sponsoring organizations may not request course approvals.
- 5.3.2.3.3 Teaching academic or CE courses, presentation of original papers, or the writing of a peer-reviewed article may account for up to 20 CE hours. An official transcript, agenda, or syllabus must be provided to document course hours and content. A copy of the published paper presented must be provided to document hours and content. Only the hours worked in preparation and delivery of the items contained in 5.3.2.3.2 will be counted.
- 5.3.2.3.4 ~~CE obtained through independent or home study, including online CE,~~ Any education or training that is not interactive/does not occur in real time with an instructor and students, trainees, or participants may only account for a maximum of 50% of the CE requirement. Examples include, but are not limited to, reading of professional education materials, correspondence courses and static online courses.

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

- 5.3.6 Make-Up of Disallowed Hours - In the event that the Board disallows certain continuing education clock hours, the licensee shall have three months after the date of the Board's notice that the hours have been disallowed to complete the balance of acceptable continuing education hours required.

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

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

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**DIVISION OF PROFESSIONAL REGULATION**

**3500 Board of Examiners of Psychologists**

Statutory Authority: 24 Delaware Code, Section 3506 (24 **Del.C.** §3506)  
24 **DE Admin. Code** 3500

**PUBLIC NOTICE**

**3500 Board of Examiners of Psychologists**

The Delaware Board of Examiners of Psychologists, pursuant to 24 **Del.C.** §3506(a)(1), proposes to revise its regulations. The proposed additions to the regulations seek to add rules regarding inactive status of a psychology

license and the requirements to reactive a license from inactive status.

The Board will hold a public hearing on the proposed rule change on November 4, 2013 at 9:00 a.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

## 3500 Board of Examiners of Psychologists

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

#### 5.0 Procedures for Licensure

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

5.4 Inactive Status: A licensee may be placed on inactive status by the Board for a period of no more than five years. Requests for inactive status shall be made, in writing, to the Board and requests which exceed one year shall be renewed biennially at the time of regular license renewals.

5.4.1 To apply for reactivation of an inactive license, a licensee shall:

5.4.1.1 Submit a letter requesting reactivation:

5.4.1.2 Submit a prorated reactivation fee:

5.4.1.3 Be required to be fingerprinted by the State Bureau of Identification and provide all other necessary information in order to obtain a criminal background check; and

5.4.1.4 Submit proof of completion of the continuing education requirements below:

5.4.1.4.1 Inactive status for one year or less: 20 CE hours, including three hours of continuing education in ethics:

5.4.1.4.2 Inactive status for more than one year: 40 CE hours, including six hours of continuing education in ethics, completed within 24 months prior to reapplication.

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

**3500 Board of Examiners of Psychologists**

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## OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b) and 977 (5 Del.C. §121(b) & 977)  
5 DE Admin. Code 905

### PUBLIC NOTICE

## 905 Loan Limitations: Credit Exposure to Derivative Transactions

### Summary

The State Bank Commissioner proposes to amend existing Regulation 905, "Loan Limitations: Credit Exposure to Derivative Transactions", which sets forth the rules for calculating the credit exposure arising from a derivative transaction entered into by a bank for purposes of determining the bank's loan limitations pursuant to Section 909 of Title 5 of the **Delaware Code**.

Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (Dodd-Frank Act), required state law lending limits to take into consideration credit exposure to derivative transactions in order for FDIC-insured state banks to be permitted to engage in derivative transactions. Dodd-Frank Act Section 610 imposed a similar requirement on national banks, and on June 20, 2012, the Office of the Comptroller of the Currency (OCC) issued an interim final rule implementing these requirements. Existing Regulation 905 is based on the OCC's interim final rule so that the requirements for state banks would be the same as those for national banks.

On June 25, 2013, the OCC released a final rule, which made certain adjustments to its interim rule. The

proposed amendment reflects these adjustments in order to retain parity between state and national banks with respect to credit exposure arising from derivative transactions.

Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this proposed amendment in accordance with Title 5 of the **Delaware Code**. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the **Delaware Code**.

### **Comments**

A copy of the proposed amendment to existing Regulation 905 is being published in the October 1, 2013 edition of the *Delaware Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may submit written comments, suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amendment should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a). Public comments must be received on or before October 31, 2013. Written materials submitted will be available for inspection at the above address.

### **Adoption of Proposed Regulation**

On or after October 31, 2013, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amendment to existing Regulation 905 or make additional changes because of the public comments received.

## **905 Loan Limitations: Credit Exposure to Derivative Transactions**

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

## **2.0 Definitions**

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

“**Effective margining arrangement**” means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank’s net credit exposure to the counterparty that exceeds \$4 25 million created by the derivative transactions covered by the agreement.

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

“**Loans and extensions of credit**”

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

b. The following items do not constitute loans or extensions of credit for purposes of Section 909 of Title 5 of the **Delaware Code** and this regulation:

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

6. A. That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

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

- C. That portion of one or more loans or extensions of credit, not to exceed 10 percent of capital and surplus, with respect to which the bank has purchased protection in the form of a single-name credit derivative that meets the requirements of this regulation

# PROPOSED REGULATIONS

from an eligible protection provider if the reference obligor is the same legal entity as the borrower in the loan or extension of credit and the maturity of the protection purchased equals or exceeds the maturity of the loan or extension of credit.

**(Break in Continuity Within Section)**

## 3.0 Credit Exposure to Derivative Transactions.

- 3.1 *Derivative transactions.* For purposes of Section 909 of Title 5 of the **Delaware Code**, derivative transactions entered into by a bank shall be included for purposes of determining the bank's loan limitations.
- 3.2 *Non-credit derivatives.* ~~Subject to Subsections 3.3 and 3.4 of this section,~~ a A bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by one of the following methods. ~~Subject to Subsection 3.4 of this section,~~ a A bank shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.
- 3.2.1 *Internal Model Method.*
- 3.2.1.1 *Credit exposure.* The credit exposure of a derivative transaction under the Internal Model Method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.
- 3.2.1.2 *Calculation of current credit exposure.* A bank shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark to market value is zero or negative, than the current credit exposure is zero.
- 3.2.1.3 *Calculation of potential future credit exposure.* A bank shall calculate its potential future credit exposure by using ~~an internal model that has been approved by the Commissioner and the appropriate Federal banking agency for purposes of Section 909 of Title 5 of the Delaware Code, or any other appropriate model approved by the Commissioner and the appropriate Federal banking agency either:~~
- 3.2.1.3.1 An internal model the use of which has been approved in writing for purposes of 12 CFR part 3, Appendix C, Section 32(d), 12 CFR part 167, Appendix C, Section 32(d), or 12 CFR part 390, subpart Z, Appendix A, Section 32(d), as appropriate, provided that the bank provides prior written notice to the Commissioner and the appropriate Federal banking agency of its use for purposes of this section; or
- 3.2.1.3.2 Any other appropriate model the use of which has been approved in writing for purposes of this section by the Commissioner and the appropriate Federal banking agency.  
Any substantive revisions to a model made after the bank or savings association has provided notice of the use of the model to its regulator or after the regulator has approved the use of the model must be approved by the [state and the] appropriate Federal banking agency before the bank may use the revised model.
- 3.2.1.4 *Net credit exposure.* A bank that calculates its credit exposure by using the ~~Internal~~ Model Method pursuant to this paragraph may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.
- 3.2.2 *Conversion Factor Matrix Method.* The credit exposure arising from a derivative transaction under the Conversion Factor Matrix Method shall equal and remain fixed at the potential future credit exposure of the derivative transaction which shall equal the product of the notional amount of the derivative transaction and a fixed multiplicative factor as determined at the execution of the transaction by reference to Table 1 below.

Table 1—Conversion Factor Matrix for Calculating Potential Future Credit Exposure. <sup>1</sup>
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Original maturity <sup>2</sup>	Interest Rate	Foreign exchange rate and gold	Equity	Other <sup>3</sup> (includes commodities and precious metals except gold)
1 year or less	0.015	0.015	0.20	0.06
Over 1 to 3 years	0.03	0.03	0.20	0.18
Over 3 to 5 years	0.06	0.06	0.20	0.30
Over 5 to 10 years	0.12	0.12	0.20	0.60
Over 10 years	0.30	0.30	0.20	1.00

<sup>1</sup> For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

<sup>2</sup> For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

<sup>3</sup> Transactions not explicitly covered by any other column in the Table are to be treated as "Other."

~~3.2.3 *Remaining Maturity Method.* The credit exposure arising from a derivative transaction under the Remaining Maturity Method shall equal the greater of zero or the sum of the current mark-to-market value of the derivative transaction added to the product of the notional amount of the transaction, the remaining maturity in years of the transaction, and a fixed multiplicative factor determined by reference to Table 2, below.~~

Table 2 — Remaining Maturity Factor for Calculating Credit Exposure				
	<u>Interest Rate</u>	<u>Foreign-exchange rate and gold</u>	<u>Equity</u>	<u>Other<sup>4</sup> (includes commodities and precious metals except gold)</u>
<u>Multiplicative Factor</u>	<u>1.5%</u>	<u>1.5%</u>	<u>6%</u>	<u>6%</u>

<sup>4</sup> Transactions not explicitly covered by any other column in the Table are to be treated as "Other."

~~3.2.3 *Current Exposure Method.* The credit exposure arising from a derivative transaction (other than a credit derivative transaction) under the Current Exposure Method shall be calculated pursuant to 12 CFR part 3, Appendix C, Sections 32(c)(5), (6) and (7); 12 CFR part 167, Appendix C, Sections 32(c)(5), (6) and (7); or 12 CFR part 390, subpart Z, Appendix A, Sections 32(c)(5), (6) and (7), as appropriate.~~

3.3 *Credit Derivatives.*

3.3.1 *Counterparty Exposure.*

3.3.1.1 Notwithstanding Subsection 3.2 of this section, a bank that uses the Conversion Factor Matrix Method or ~~Remaining Maturity Method~~, ~~Current Exposure Method~~, or that uses the ~~Internal Model Method~~ without entering an effective margining arrangement, as defined in Section 2.0 of this regulation, shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

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## PROPOSED REGULATIONS

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- 3.3.1.2 Special rule for certain effective margining arrangements. A bank must add the EMA threshold amount to the counterparty credit exposure arising from credit derivatives calculated under the Model Method. The EMA threshold is the amount under an effective margining arrangement with respect to which the counterparty is not required to post variation margin to fully collateralize the amount of the bank's net credit exposure to the counterparty.
- 3.3.2 Reference Entity Exposure A bank shall calculate the credit exposure to a reference entity arising from credit derivatives entered by the bank by adding the net notional value of all protection sold on the reference entity. However, the bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.
- 3.4 Special Rule for Central Counterparties. In addition to amounts calculated under previous sections of this rule, the measure of counterparty exposure to a central counterparty shall also include the sum of the initial margin posted by the bank, plus any contributions made by it to a guaranty fund at the time such contribution is made. However, this does not apply to a bank or saving association that uses an internal model pursuant to this regulation if such model reflects the initial margin and any contributions to a guaranty fund.
- 3.45 Mandatory use of a certain method. The Commissioner or the appropriate Federal banking agency may, in their discretion, require or permit a bank to use ~~the Internal Model Method set forth in Subsection 3.2.1, the Conversion Factor Matrix Method set forth in Subsection 3.2.2, or the Remaining Maturity Method set forth in Subsection 3.2.3~~ a specific method or methods set forth in this Section 3.0 to calculate the credit exposure ~~of arising from all~~ derivative transactions or any specific, or category of, derivative transactions; upon finding, in their discretion, that such method is ~~necessary to promote consistent with~~ the safety and soundness of the bank.

*(Break in Continuity Within Section)*

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

**905 Loan Limitations: Credit Exposure to Derivative Transactions**

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## Symbol Key

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

## Final Regulations

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

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

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 501

### REGULATORY IMPLEMENTING ORDER

#### 501 State Content Standards

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 501 Content Standards to adopt the Next Generation Science Standards (NGSS) as the content standards for science. The NGSS were developed in partnership with 26 states, including Delaware.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 3, 2013, in the form hereto attached as Exhibit "A". In addition, five public informational hearings were held at the dates listed below. At the time of the public informational hearing, a powerpoint presentation and handouts were provided [http://www.doe.k12.de.us/infosuites/staff/ci/content\\_areas/science.shtml](http://www.doe.k12.de.us/infosuites/staff/ci/content_areas/science.shtml).

- Aug. 6 Carvel Building, Wilmington
- Aug. 7 UD Cavell Building, Georgetown
- Aug. 8 Dept. of Agriculture, Dover
- Aug. 12 DNREC Field Office, Lewes
- Aug. 13 Middletown High School, Middletown

The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the adoption of the amendments. There were 6 additional comments received and considered by the Department. Some of the concerns raised included, but were not limited

to, implementation costs and timeline, loss of local control for instruction, professional development for teachers, "rigor" within the NGSS, and "ownership" of the standards. A comment was also received related to student privacy and data.

The Department believes the powerpoint and handouts address many of the issues raised, but is also aware that all implementation questions cannot be answered at this time. The Department is committed to partnering with the districts and charter schools to maximize efficiencies in implementation. In addition, the state is a lead state in the NGSS Consortium. This partnership provides the opportunity for sharing of resources. The adoption of these standards does not preclude a district or charter school from providing advanced coursework, such as Advanced Placement. The Department values and encourages continued engagement from the community on the implementation process.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 501 Content Standards in order to adopt the Next Generation Science Standards (NGSS) as the content standards for science.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 501 Content Standards. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 501 Content Standards attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 501 Content Standards hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 501 Content Standards amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 501 Content Standards in the *Administrative Code of Regulations* for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 19, 2013. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19th day of September 2013.

### **Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 19th day of September 2013

### **State Board of Education**

Teri Quinn Gray, Ph.D., President  
 Jorge L. Melendez, Vice President  
 G. Patrick Heffernan  
 Barbara B. Rutt

Gregory B. Coverdale, Jr.  
 Terry M. Whittaker, Ed.D.  
 Randall L. Hughes II

## 501 State Content Standards

### **1.0 Instructional Programs**

- 1.1 Instructional programs offered in the public schools of Delaware shall be in alignment with the appropriate content standards documents. These documents are: English Language Arts Curriculum Framework, Mathematics Curriculum Framework, Science Curriculum Framework, Social Studies Curriculum Framework, Health Education Curriculum Framework and Assessment, Physical Education Content Standards, Visual and Performing Arts Content Standards, Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, World Language Curriculum Framework Content Standards, Technology Education Curriculum Framework Content Standards, Skilled and Technical Sciences Content Standards and the Family and Consumer Sciences Content Standards.
- 1.1.1 The content standards documents may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.
- 1.1.1.1 Effective with the 2010-2011 school year, Delaware Content Standards in English language arts and mathematics shall be comprised of the Common Core Standards developed in partnership with the National Governors Association and the Council of Chief State School Officers.
- 1.1.1.2 Effective with the 2013-2014 school year, the Next Generation Science Standards (NGSS) developed in partnership with twenty-six (26) states, including Delaware, shall be adopted as the Delaware Content Standards in science. For purposes of this subsection, "adopted" shall mean to accept a set of standards as the basis for curriculum and assessment alignment across the state according to a timeline established and disseminated by the Department of Education.
- 1.1.2 Integration of the content standards shall be provided for within and across the curricula.
- 1.1.3 Instructional materials and curricula content shall be kept current and consistent with provisions of 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards and 14 **DE Admin. Code** 503 Instructional Program Requirements.

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 851

**REGULATORY IMPLEMENTING ORDER****851 K to 12 Comprehensive Health Education Program****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program to require cardiopulmonary resuscitation (CPR) awareness and use of an automated external defibrillator (AED) and awareness of organ/tissue donating in the high school. The addition of these curricular areas would commence in schools no later than the 2014-2015 school year.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 3, 2013, in the form hereto attached as Exhibit "A". The Department received 57 comments of support and/or endorsement from various organizations as well as from the public at large. While all were supportive, several of the comments requested "psychomotor learning" or "hands on" instruction for CPR. The Department has modified the regulation to clarify that certain standards should be utilized when complying with this section of the regulation. Districts and charter schools can locally decide to increase any requirements or additional components.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program to require cardiopulmonary resuscitation (CPR) awareness and use of an automated external

defibrillator (AED) and awareness of organ/tissue donating in the high school.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program in the *Administrative Code of Regulations* for the Department of Education.

### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 19, 2013. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19th day of September 2013.

#### Department of Education

Mark T. Murphy, Secretary of Education

Approved this 19th day of September 2013

#### State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

### 851 K to 12 Comprehensive Health Education Program

#### 1.0 Program Requirements

- 1.1 Each school district and charter school shall have a sequential, skill-based K to 12 Comprehensive Health Education Program based on the Delaware Health Education Standards that establishes a foundation of understanding the relationship between personal behavior and health and shall include at a minimum the following:
  - 1.1.1 Identification of a district level person to coordinate the district program and a coordinator in each building to assure compliance at the building level. Each charter school shall identify a person to coordinate the program for the charter school.
  - 1.1.2 Appointment of persons such as teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and others with expertise in the areas of health, family life and safe and drug free schools and communities to serve as members of the Consolidated Application Planning Committee.

- 1.1.3 The use of the state content standards for health education for grades K to 12 to address the core concepts: tobacco, alcohol and other drugs, injury prevention and safety, nutrition and, physical activity, family life and sexuality, personal health and wellness, mental health and community and environmental health with minimum hours of instruction as follows:
- 1.1.3.1 In grades K to 4, a minimum of thirty (30) hours in each grade of comprehensive health education and family life education of which ten (10) hours, in each grade, must address drug and alcohol education.
  - 1.1.3.2 In grades 5 and 6, a minimum of thirty five (35) hours in each grade of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug and alcohol education.
  - 1.1.3.3 In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug and alcohol education. If all of the 60 hours are provided in one year at grade 7 or 8, an additional fifteen hours of drug and alcohol education must be provided in the other grade.
  - 1.1.3.4 In grades 9 to 12, one half (1/2) credit of comprehensive health education is required for graduation of which fifteen (15) hours of this 1/2 credit course must address drug and alcohol education. In addition, no less than two (2) hours of this 1/2 credit course shall cover cardiopulmonary resuscitation (CPR) awareness [based on current evidence-based emergency cardiovascular guidelines], use of an Automated External Defibrillator (AED) as well as a component on the life saving and life enhancing effects of organ and tissue donation. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of drug and alcohol education must be provided for all students. CPR awareness, use of an AED and organ/tissue donation awareness shall be integrated into each high school Health Education Program no later than the 2014-2015 school year.
- 1.1.4 Inclusion of a comprehensive sexuality education and an HIV prevention program that stresses the benefits of abstinence from high risk behaviors.
- 1.1.5 Inclusion of the core concepts of nutrition and family life and sexuality implemented through Family and Consumer Science courses.
- 1.1.6 Inclusion of research-based fire safety education in grades kindergarten through grade 6.
- 1.1.7 Inclusion of an evidence-based tobacco, alcohol, drug and interpersonal violence prevention program.
- 1.1.8 The use of effective instructional methods as demonstrated in sound research in the core concepts and skills inclusive of accessing information, self management, analyzing internal and external influences, interpersonal communication, decision making and goal setting and advocacy.
- 1.1.9 A description of the method(s) used to implement and evaluate the effectiveness of the program ~~which shall be reported in the District/School Success Plan~~ upon request of the Department.
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## OFFICE OF THE SECRETARY

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

### REGULATORY IMPLEMENTING ORDER

#### 917 Accelerated Academic Programs

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 917 Accelerated Academic Programs. Senate Bill 27 of the 147th General Assembly created a new program of start-up grants to public schools for the purpose of initiating new programs to offer specialized educational services

to students who are capable of performing accelerated academic work, or renewing existing programs of the same description whose funding sources are expiring. Senate Bill 27 expressly requires the Department of Education to promulgate regulations creating an explicit formula for evaluating proposals for these grants, and this proposed regulation is promulgated to comply with that statutory requirement. The criteria outlined in this proposed regulation are those required by Senate Bill 27.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 3, 2013, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities and the Delaware Arts Alliance. Based on the comments received, the Department has amended section 2.5 for clarification purposes. In addition, the Department considered the comment related to the professional development and how this directly impacts students. The Department supports the current language as there is a need to ensure general education teachers are provided professional development on how to engage, react and to teach academically accelerated students.

In view of the timing of the legislation and the publication requirements for the regulation, for the 2013-14 academic year only, the Department will accept applications for these programs through October 25, 2013. Decisions will be made by November 1, 2013.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 917 Accelerated Academic Programs in order to meet the requirements of the new statute.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 917 Accelerated Academic Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 917 Accelerated Academic Programs attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 917 Accelerated Academic Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 917 Accelerated Academic Programs amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 917 Accelerated Academic Programs in the *Administrative Code of Regulations* for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 19, 2013. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19th day of September 2013.

### Department of Education

Mark T. Murphy, Secretary of Education

Approved this 19th day of September 2013

### State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

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## 917 Accelerated Academic Programs

### **1.0 Definitions**

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

**“Academic work”** means work in the areas of writing, reading, science, math, or engineering, or work in other areas (including history, social studies and visual and/or performing arts) that specifically incorporates one of those academic areas.

**“Accelerated academic work”** shall have the same meaning as “advanced academic work.”

**“Advanced academic work”** means academic work that would meet the content standard dictated by 14 **DE Admin. Code** 501 or its successor at least one semester earlier than anticipated by the standard. For example, a course targeted at having students meet content standards in academic work by the middle of their school year which they otherwise would not be expected to meet until the end of their school year would consist of advanced academic work.

### **2.0 Applications for Accelerated Academic Program Grants**

- 2.1 By August 1 of each calendar year, the Department of Education shall determine if the state has allocated funds for grants under this regulation and 14 **Del.C.** §3113. If such grants have been allocated, the Department shall ensure that applications for such grants are delivered by September 1 of the same calendar year to each public school in the state.
- 2.2 Applications for grants under this regulation shall be due by October 1 of each calendar year, and decisions regarding grants shall be made by November 1 of each calendar year.
- 2.3 All decisions regarding the awarding of grants shall be made according the numeric scoring rubric outlined in Section 3.0 of this regulation, and the scoring sheets used to determine grantees shall be preserved and considered public information.
- 2.4 Grants under this regulation and 14 **Del.C.** §3113 shall be for a one-year period. Absent some affirmative showing by the Department as to why a grant awarded under this regulation should not be renewed, it will be renewed for a second year to a recipient that complies with the conditions of the grant. Grants under this regulation shall not be awarded for more than two years.
- 2.5 Only programs that offer educational services specifically targeted at students who are capable of performing advanced academic work may receive grants under this regulation and 14 **Del.C.** §3113. Proposed programs may include programming in areas that are not academic work as defined by this regulation~~[, including visual and performing arts.]~~ provided that the stated purpose of the program and effect of its curriculum is improved student performance in academic work.
- 2.6 Only programs that propose a method for assessing the impact of the proposed program on participating students’ academic growth may receive grants under this regulation and 14 **Del.C.** §3113.
- 2.7 Proposed programs that do not meet the requirements of subsection 2.5 and 2.6 cannot receive grant funds and will not be scored under the rubric established by Section 3.0.
- 2.8 Grants under this regulation and 14 **Del.C.** §3113 are limited to new programs and existing programs whose funding sources are expiring. Grants shall not be awarded to supplant existing funds for current programs. Any proposal for an existing program to receive funds must specify the existing funding source for the program, specify the reason that the existing funding source is expiring, and explain why the proposed grant would not be supplanting existing funds.

### **3.0 Scoring of Applications**

All applications for grants under this regulation shall receive a specific numerical score from the panel of persons assigned by the Department to rate the applications. Those programs receiving the top possible scores shall receive grants to the extent that funds are available. Scoring shall be done on formal score sheets.

- 3.1 Quality of proposed curriculum (zero to 20 points). What is the proposed curriculum for the program, from what sources is the curriculum derived, and how likely is it to enable students to learn the

advanced academic work that is the subject of the proposed program? A proposed program that is not based upon a reliable source and is not likely to enable students to learn the advanced academic work that is the subject of the proposed program should receive zero points under this measure. A proposed program that is based upon a reliable source but does not adequately explain how that curriculum will enable students to learn the advanced academic work that is the subject of the proposed program should receive five points under this measure. A proposed program that is based upon a reliable source and adequately explains how that curriculum will enable students to learn the advanced academic work that is the subject of the proposed program should receive fifteen points under this measure. The Department shall have the discretion to award up to five additional points for proposed curriculums that have exceptional features which the Department can articulate.

- 3.2 Qualifications of instructors (zero to 20 points). Who are the persons who will teach the proposed curriculum, what is their experience generally and specifically with respect to teaching material similar to the proposed curriculum, are there any objective criteria that qualify them as outstanding instructors? A proposed program that offers no specific information regarding the instructors who will teach students in the proposed program should receive zero points under this measure. A proposed program that demonstrates subject matter expertise among the teachers for the proposed program that is directly aligned with the subject matter of the program should receive ten points under this measure. A proposed program that demonstrates both subject matter expertise and additional indicia of high teacher quality, which may include licensures, certifications, recommendations, accreditations, or other equivalent criteria, should receive fifteen points under this measure. The Department shall have the discretion to award up to five additional points for proposed programs that will use instructors who demonstrate extraordinary credentials or qualifications which the Department can articulate.
- 3.3 Integration with existing school programs (zero to 8 points). How will this new program be integrated with the existing programming at the school, both to ensure that the program is logistically feasible and to ensure that participating students are able to participate in other school activities outside the program? A proposed program that does not demonstrate how it will be integrated with existing school programming should receive zero points under this measure. A proposed program that demonstrates that it is logistically coordinated with other activities occurring within the school where the program is sited should receive four points under this measure. A proposed program that demonstrates that its curriculum is integrated in a substantive way with other school activities which are available to participating students should receive eight points under this measure.
- 3.4 Sustainability (zero to 8 points). Has the applicant described how it will sustain the proposed program after the requested grant expires in one to two years, either by showing how the program can be sustained with existing state and local funds or by identifying the funding sources that will be used to sustain the program? A program that does not identify how it will be sustained should receive zero points under this measure. A program that provides information and/or commitments making it likely that the program can be sustained after expiration of the requested grant should receive four points under this measure. A program that provides information and/or commitments providing a high level of certainty that the program can be sustained after expiration of the requested grant should receive eight points under this measure.
- 3.5 Transportation issues (zero to 8 points). Is the program offered during the normal school day where bus transportation is available, and if not, how does the program propose to provide transportation to participating students? If the program is not offered during the normal school day and does not propose to provide transportation to participating students, the program should receive zero points under this measure. If the program is either (a) offered during the normal school day or (b) specifies how it will provide transportation for participating students, the program should receive eight points under this measure.
- 3.6 Incorporation of successful program designs (zero to 8 points). Does the proposed program incorporate elements of existing programs targeted at students capable of doing advanced academic work, or adequately explain why it has considered existing models and decided to use a different model? If the proposed program does not incorporate elements of any existing programs and fails to indicate why it has examined existing programs targeted at students capable of doing advanced academic work and elected to choose a different design, the proposed program should receive zero

points under this measure. If the proposed program does not incorporate elements of any existing programs but satisfactorily explains its decision, after examining existing programs, to not incorporate elements of those programs, the proposed program should receive four points under this measure. If the proposed program specifically incorporates elements of existing programs, it should receive eight points under this measure.

- 3.7 Efficiency of spending (zero to 6 points). Does the proposed program target the maximum possible percentage of its funds on activities that will directly impact students? Professional development and program assessment are considered activities that will directly impact students. If the proposed program does not address the degree to which the funds it requests will be dedicated to activities that directly impact students, the program should receive zero points under this measure. If the proposed program demonstrates that more than 85% of the requested funds will be dedicated to activities that directly impact students (which include professional development, purchase of books and supplies, and program assessment), the proposed program should receive three points under this measure. If the proposed program demonstrates that more than 95% of the requested funds will be dedicated to activities that directly impact students (which include professional development, purchase of books and supplies, and program assessment), the proposed program should receive six points under this measure.
- 3.8 Encouragement of participation by students from diverse backgrounds (zero to 8 points). Does the proposed program encourage students from diverse backgrounds, including students with disabilities, low-income students, African-American students, and ESL students, to participate in the program provided that they are capable of doing advanced academic work? To the extent that accommodations are needed for students with disabilities who are otherwise capable of doing advanced academic work, does the proposed program provide for such accommodations? A proposed program that does not specifically describe any efforts that will be made to encourage participation by students from diverse backgrounds should receive zero points under this measure. A proposed program that proposes credible steps that will be taken to encourage participation by students from diverse backgrounds should receive four points under this measure. A proposed program that proposes credible steps that will be taken to encourage participation by students from diverse backgrounds and demonstrates advance consideration of accommodating otherwise-qualified students with disabilities should receive eight points under this measure.
- 3.9 Identification of eligible students (zero to 8 points). Does the proposed program have a transparent, reliable, fair, and robust method to determine which students are eligible to participate? A proposed program that does not specify the means by which students will be determined to be eligible for the program should receive zero points under this measure. A proposed program that specifies a single, reliable method for determining eligibility for the proposed program, tied specifically to the proposed curriculum, should receive four points under this measure. A proposed program that demonstrates multiple reliable methods for determining eligibility for the proposed program, tied specifically to the proposed curriculum, should receive eight points under this measure.
- 3.10 Program evaluation (zero to 6 points). How reliable and accurate is the program evaluation component of the applicant's proposal? A program that proposes a single, reliable method for evaluating the success of the proposed program after students have completed the program should receive three points under this measure. A proposed program that proposes multiple reliable methods for evaluating the success of the proposed program after students have completed the program should receive six points under this measure.
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# FINAL REGULATIONS

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE/DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

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

### 1915(c) Home and Community-Based Services Waiver

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) / Division of Developmental Disabilities Services (DDDS) initiated proceedings to notify the public that a 1915(c) Home and Community-Based Services Waiver (HCBS) waiver amendment has been submitted to the Centers for Medicare and Medicaid Services (CMS) to add a new core service, *Group Supported Employment*. 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 August 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Services (DMMA)/Division of Developmental Disabilities Services (DDDS) has submitted a 1915(c) Home and Community-Based Services (HCBS) Waiver amendment to the Centers for Medicare and Medicaid Services (CMS) to add a new core service, *Group Supported Employment*.

#### Statutory Authority

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*

#### Background

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

The waiver to provide home and community-based services to developmentally disabled adults was developed by the Division of Developmental Disabilities Services (DDDS) and the Division of Social Services (DSS) in 1982, received approval from the Center for Medicare and Medicaid Services (CMS), and became effective on July 1, 1983. The waiver includes support services necessary to maintain individuals in the community as an alternative to institutionalization. The cost of the Home and Community-Based Services Waiver for the Developmentally Disabled (HCBS/DD) shall not exceed the cost of care of the Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

DDDS is the agency that has primary responsibility for administering the HCBS/DD waiver as well as providing, or contracting for the provision of, most of the services. Providers of Pre-Vocational Training, Supported Employment and Residential Habilitation services are certified by DDDS and contract directly with the Delaware Medical Assistance Program (DMAP).

## Summary of Proposal

Currently, the Division of Developmental Disabilities Services (DDDS) 1915(c) Home and Community Based Services (HCBS) Medicaid waiver allows consumers to receive Supported Employment with a one-to-one staffing ratio. Many states also allow Supported Employment to be provided in a group to individuals who work as a team, generally at a single worksite of a host community business or industry, with initial training, supervision, and ongoing support provided by on-site staff.

DDDS proposes to amend its 1915(c) HCBS waiver to offer consumers the opportunity to choose a group setting as opposed to receiving a one-on-one service. What was formerly called "Supported Employment" under the waiver will now be called "Individual Supported Employment" and the service definition will be amended so that the language is consistent with the new definition for Group Supported Employment. A new reimbursement methodology for Group Supported Employment is proposed herein for which public notice of the change must be made in accordance with 42 CFR 447.205.

Furthermore, DDDS proposes to change the unit of reimbursement for Day Habilitation, Pre-vocational Service and Supported Employment under the waiver from an hourly billable unit to a fifteen (15) minute billable unit. This change is necessary in order to align the billing units with the increments in which services are actually delivered.

Finally, DDDS proposes to change the frequency of the case manager contact schedule to review the plan of care with the consumer from a monthly face to face visit with the consumer and their family or guardian to review the plan to a monthly "paper" review of the plan by the case manager without the consumer and four face to face visits per year to review the plan with the consumer/family/guardian, of which two must be in the consumer's home.

Pursuant to the notice requirements of 42 CFR 447.205, Delaware Health and Social Services/Division of Medicaid and Medical Assistance/Division of Developmental Disabilities Services (DHSS/DMMA/DDDS), hereby affords the public notice of its intention to solicit public comment on the Department's intent to request a 1915(c) Home and Community-Based Services (HCBS) (HCBS) Waiver amendment to add a new core service, Group Supported Employment. If implemented as proposed, the waiver amendment will have the following effect on October 1, 2013:

- 1) Defining and adding "Group Supported Employment" as a waiver service in accordance with Waiver Technical Guide Version 3.5;
- 2) Adding reimbursement methodology for Group Supported Employment;
- 3) Adding provider qualifications for Group Supported Employment (the qualifications will be the same as for Individual Supported Employment);
- 4) Revising and renaming the service definition of "Supported Employment" to "Individual Supported Employment" in accordance with Waiver Technical Guide Version 3.5;
- 5) Clarifying that staff to consumer ratio must be one to one;
- 6) Changing the currently hourly billable unit for Day Habilitation, Supported Employment and Pre-vocational service to fifteen (15) minutes; and,
- 7) Revising the frequency of the case manager review of the plan of care from a monthly face-to-face visit with the consumer and their family or guardian to review the plan to a monthly "paper" review of the plan with documentation and four (4) face-to-face visits per year to review the plan with the consumer / family/guardian.

## *Draft of Proposed Waiver Amendment Application*

A draft of Delaware's waiver amendment application is currently available for review on the Division of Developmental Disabilities Services website at <http://www.dhss.delaware.gov/ddds/>

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

## Fiscal Impact Statement

There is no increase in cost on the General Fund. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver.

Supported Employment in a group setting is being offered as an alternative for individuals who are most likely already receiving Supported Employment Services or Pre-Vocational Services, so there is no expected additional

cost.

### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

#### GACEC and SCPD

First, the current "supported employment" definition contains an exclusion for transportation: "Transportation is not included in supported employment services." At page 158. In contrast, the proposed definitions of individual and group supported employment include transportation as an included expense.<sup>1</sup> At pages 158-159. GACEC advises that this change merits the endorsement of the Council; and, SCPD strongly endorses this revision.

Second, the State proposes to revamp its standards for case manager monitoring of progress on plans of care. The current standard requires a direct interview with the client every month. The proposed standard requires monthly "paper" monitoring supplemented by a face-to-face direct interview 4 times/year, 2 of which must be in the client's home. At page 159. See also attached page 91 from Waiver. The Councils identified the following concerns in this context.

- A. The "Waiver" still contains references to the old standard. See, e.g., attached page 92: "The DDDS Case Manager reviews and monitors the implementation of services at least monthly through a direct, person to person meeting and discussion with the participant."
- B. The new standards do not literally permit any flexibility. For example, other sections in the Waiver contemplate updating a plan when the participant's needs change (Waiver, attached pages 85 and 99) and the ELP can require "other progress reports" (Waiver, attached page 91). Literally, a case manager could view the schedule as a rigid "cap" which cannot be exceeded. Thus, there may be circumstances in which more than four (4) face-to-face interviews are needed annually to address a participant's needs. It would be preferable to clarify that the monthly review protocol is a "minimum" which case managers may exceed.
- C. It's unclear what documentation would be analyzed by the case manager conducting a monthly "paper" review. Attendance reports may be available on a monthly basis but would not be informative in the context of progress on ELP vocational goals. See attached page 156 from Waiver. The Waiver only contemplates submission of vocational work reports on a quarterly, not a monthly basis. See attached page 91. DHSS could consider either making submission of vocational work reports a monthly requirement or requiring submission of other documentation to allow for meaningful monthly review. For example, Chimes prepares a detailed monthly vocational report. See attached form.

Third, one of the principal rationales for adopting a 15-minute billable unit for day program, pre-vocational services, and supported employment services is flexibility. DDDS wishes to ensure that participants can engage in combinations of supported employment and pre-vocational services. Authorizing billing in small increments facilitates this approach. However, there is some "tension" between this intended flexibility and language in the Waiver itself. Consider the following recitals:

Day Habilitation services can be provided as a full day or hourly. ...Day habilitation may not be provided to a participant during the same hours that Supported Employment, Work Services or Community Inclusion is provided.

Pre-Vocational services can be provided as a full day or hourly. ... Pre-vocational services may not be provided to a participant during the same hours that Supported Employment, Work Services, or Community Inclusion is provided.

Waiver, pages 48 and 50 (attached).

1. Transportation costs are also included in rates for day programs and pre-vocational services. See attached p. 153 from "Waiver".

Consider a participant who engages in supported employment between 11-11:30 and pre-vocational services between 11:30-12. Using the 15 minute billing increment, the provider could bill 2 units of supported employment and 2 units of pre-vocational services. However, the above language would literally bar such billing. Alternatively, consider a participant who engages in supported employment between 9-11:05 and pre-vocational services between 11:05-12:00. The provider could not bill for pre-vocational services for the period 11:05-12:00 since within the same hour as supported employment. For maximum flexibility, the State could consider revising the above "limiting" language and adopting a "quarter hour" unit akin to that used for behavioral consultative services and nursing consultative services. See attached p. 167 from Waiver. See also attached page 153: "Small group will be paid in 15 minute billable units." It would simply be less confusing to adopt a "quarter hour" standard than to sometimes refer to "hourly" units (page 166) and sometimes refer to "15 minute billable units" (page 153).

Fourth, in a related context, guidance on the 15 minute billable units for behavioral consultative services and nursing consultative services addresses "rounding":

Units of time 1-8 minutes shall not be billed. Units of time 8-15 minutes shall be billed as one 15 minute unit.

See attached page 154 from Waiver. The Councils could not locate any analog for "rounding" for 15 minute billable units for supported employment, pre-vocational services, and day programming. Clarification would be preferable.

**Agency Response:** DMMA/DDDS appreciate the Councils' endorsement of our intention to make transportation available to individuals receiving Supported Employment.

Thank you also for your comments regarding the proposed changes to the frequency of the case manager review of the plan of care for each waiver participant. As a result of your comments, we have proposed alternate language to the Centers for Medicare and Medicaid Services (CMS) as follows:

*The DDDS State Case Manager monitors the contracted agency's implementation of the participant's plan of care (the ELP) on a monthly basis with the participant and/or appropriate team members. At least once each calendar quarter, the case manager will conduct a face to face interview with the participant. The case manager must conduct at least two of the face to face interviews in the participant's home, during which the plan is reviewed with the participant, his/her or guardian, if applicable, and/or appropriate team members to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her stated priority outcomes.*

The new language now indicates that the case manager must have a face to face meeting with the participant at least once each calendar quarter. We have also correct page 92 of the application to be consistent with the new standard. We hope this has addressed your concerns.

Thank you for pointing out that the service description in Appendix C still referred to the billable units for Day Habilitation and Pre-Vocational Service as "full day" and "hourly", as opposed to full day and 15 minute units. The two references you cited have been removed from Appendix C, as a description of the reimbursement methodology is in Appendix I and does not belong in Appendix C. The example you provided in your letter would not be problematic if both services are billed in 15 minute increments.

Regarding your comment regarding the lack of language around how to "round" minutes up or down to determine how many 15 minute increments may be billed, this level of billing detail is usually not specified in a waiver application and is, instead part of the billing instructions published by DMMA for providers. We will remove this language in the renewal of the waiver effective July 1, 2013 for the Clinical Consultative service and will ensure that this billing guidance language is included for all services which may be billed in 15 minute increments in the Medicaid Provider-Specific on line manual which we are in the process of working with DMMA to revise.

Please note related changes on DMMA Final Order Regulation #13-36 Attachment indicated by **[Bracketed Bold language]** for text added at the time the final order was issued and by ~~**[Bracketed bold stricken through]**~~ for language deleted at the time the final order was issued.

Thank you again for your excellent comments.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 1, 2013 *Register of Regulations*

should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to publish for public comment a draft of the Division of Developmental Disabilities Services (DDDS) 1915(c) Home and Community-Based Services Waiver (HCBS) waiver to add a new core service, *Group Supported Employment*, is adopted and shall be final effective October 10, 2013.

Rita M. Landgraf, Secretary, DHSS

#### DMMA FINAL ORDER REGULATION #13-36 ATTACHMENT

DDDS Waiver Amendment  
Public Notice Attachment

#### Current Definition of Supported Employment

Supported employment services consists of intensive, ongoing supports that enable participants, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who, because of their disabilities, need supports, to perform in a regular work setting. Supported employment may include assisting the participant to locate a job or develop a job on behalf of the participant. Supported employment is conducted in a variety of settings, particularly work sites where persons without disabilities are employed. Supported employment includes activities needed to sustain paid work by participants, including supervision and training. When supported employment services are provided at a work site where persons without disabilities are employed, payment is made only for the adaptations, supervision and training required by participants receiving waiver services as a result of their disabilities but does not include payment for the supervisory activities rendered as a normal part of the business setting.

Documentation is maintained in the file of each participant receiving this service that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.).

Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

1. Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;
2. Payments that are passed through to users of supported employment programs; or
3. Payments for training that is not directly related to an individual's supported employment program.

Transportation is not included in supported employment services.

#### Proposed Definition of Individual Supported Employment (new)

Individual Supported Employment Services are provided to participants, at a one to one staff to consumer ratio, who because of their disabilities, need ongoing support to obtain and maintain an individual job in competitive or customized employment, or self-employment position, in an integrated work setting in the general workforce for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. The outcome of this service is sustained paid employment at or above the minimum wage in an integrated setting in the general workforce, in a job that meets personal and career goals in order to promote community inclusion.

Supported individual employment may also include support to establish or maintain self-employment, including home-based self-employment. Supported employment services are individualized and may include any combination of the following services: vocational/job-related discovery or assessment, person-centered employment planning, job placement, job development negotiation with prospective employers, job analysis, job carving, training and systematic instruction, job coaching, on the job employment supports, social skills training, benefits support, training and planning, transportation, asset development and career advancement services, implementation of assistive technology, and other workforce support services including services not specifically related to job skill training that enable the waiver participant to be successful in integrating into the job setting.

**[Documentation is maintained that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or IDEA (20 U.S.C. 1401 et seq.) Federal financial participation is not**

**claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment; or payments that are passed through to users of supported employment services.]**

#### Provider Qualifications Group Supported Employment

The Provider Qualifications for Group Supported Employment will be the same as are currently approved in the DDDS waiver for Supported Employment.

#### Proposed Definition of Group Supported Employment (new)

Supported Employment Small Group Employment Support are services and training activities provided in regular business, industry, and community settings for groups of two (2) to eight (8) workers with disabilities. Examples include mobile crews and other employment work groups. Small group employment support must be provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces. The outcome of this service is sustained paid employment and work experience leading to further career development and individual integrated community based employment for which an individual is compensated, at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Supported employment small group employment supports may be a combination of the following services: vocation/job related discovery or assessment, person center employment planning, job placement, job development, social skills training, negotiation with prospective employers, job analysis, training and systematic instruction, job coaching, benefits supports, training and planning, transportation and career advancements services.

Other workplace support services may include services not specifically related to job skill training that enable the waiver participant to be successful in integrating in to the job setting.

**[Documentation is maintained that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or IDEA (20 U.S.C. 1401 et seq.) Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment; or payments that are passed through to users of supported employment services.]**

#### Proposed Reimbursement Methodology for Group Supported Employment (new)

The payment rate for Group Supported Employment will be based on the rate for Individual Supported Employment, which is a one-to-one staff-to-consumer ratio. The payment rate for the addition of each consumer in the group shall be computed by dividing the payment rate for Individual Supported Employment by the number of participants in the group (up to a maximum of 8) and applying a gross up factor to account for additional incremental costs related to the provision of group supported employment that would not have been captured in the base Individual Supported Employment rate. Group Supported Employment will be paid in 15 minute billable units.

#### Case Manager Review of the Plan of Care - Appendix D: Participant-Centered Planning and Service Delivery, D-1: Service Plan Development

##### Current Waiver Language

The DDDS State Case Manager monitors the contracted agency's implementation of the participant's plan of care (the ELP) on a monthly basis. This monitoring includes a direct interview with the participant to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her state priority outcomes. In effect, the participant has a known advocate with the state, which maintains contractual authority over the provider agency.

##### Proposed Waiver Language

The DDDS State Case Manager monitors the contracted agency's implementation of the participant's plan of care (the ELP) on a monthly basis ~~[In addition to the monthly paper monitoring, this includes a direct~~

~~interview with the participant four times per year, two of which must be in the participant's home, to review the plan with the participant and his/her family or guardian to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her state priority outcomes.~~ with the participant and/or appropriate team members. At least once each calendar quarter, the case manager will conduct a face to face interview with the participant. The case manager must conduct at least two of the face to face interviews in the participant's home, during which the plan is reviewed with the participant, his/her or guardian, if applicable, and/or appropriate team members to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her stated priority outcomes.] In effect, the participant has a known advocate with the state, which maintains contractual authority over the provider agency.

Current Performance Measure D-d-2

The percentage of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care on at least a monthly basis. (The number of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care on at least a monthly basis/the number of participants whose services and supports were reviewed by OQM.)

Proposed Performance Measure D-d-2

~~[The percentage of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care at least four times per year, of which two visits must be in the participant's home. (The number of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care at least every four months (two of which must be in the home)/the number of participants whose services and supports were reviewed by OQM.)~~ The% of participants whose Case Manager met them to review the Plan of Care at least once each calendar qtr, 2 of which must be in the participant's home w/i the plan year. (# of participants whose Case Manager met them to review the POC at least once each calendar qtr (2 of which must be in the home within the plan year)/# of participants whose services and supports were reviewed by OQM.])

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 9705 (p)(1) (16 Del.C. §9705 (p)(1))  
16 DE Admin. Code 4303

**ORDER**

**4303 Automatic External Defibrillation**

**NATURE OF THE PROCEEDINGS:**

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Automatic External Defibrillation. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code**, Ch. 101 and authority as prescribed by 16 **Delaware Code**, Section 9705 (p)(1).

On August 1, 2013 (Volume 17, Issue 2), 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 September 3, 2013, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

**SUMMARY OF EVIDENCE**

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social

Services (DHSS) Regulations Governing Automatic External Defibrillation were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Entities offering written comments include:

IAED Grassroots (International Academies of Emergency Dispatch)

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

**IAED Grassroots (International Academies of Emergency Dispatch):**

...placement of an AED within the State of Delaware. 4.6 The OEMS will be responsible for notifying the jurisdictional *public safety answering point* of the placement of an SAED within the boundaries of their jurisdiction. 5.0 Eligibility\* 5.1 Any agency, organization...

...placement of an SAED within the State of Delaware. 4.5 The OEMS shall be responsible for notifying the jurisdictional *public safety answering point* of the placement of an SAED within the boundaries of their jurisdiction 4.6 SAED Providers, SAED agencies and SAED...

**Agency Response:** The Agency appreciates and acknowledges these comments. The term "public safety answering point" has been in the AED regulations since the inception of the AED program. Dispatch centers in each jurisdiction of the state identify themselves by a different name, i.e. Fire Board, Kent Center, etc., thus, the state prefers using the generally accepted universal term of "public safety answering point" instead of specifically delineating each dispatch center.

The public comment period was open from August 1, 2013 through September 3, 2013.

Based on comments received during the public comment period no changes have been made to the proposed regulation. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

**FINDINGS OF FACT:**

Based on public comments received, no changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

**THEREFORE, IT IS ORDERED**, that the proposed State of Delaware Regulations Governing Automatic External Defibrillation are adopted and shall become effective October 11, 2013, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 165 (17 DE Reg. 165). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**4303 Automatic External Defibrillation**

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, §122(3)c (16 **Del.C.**, §122(3)c)

16 **DE Admin. Code** 4462

**ORDER**

**4462 Public Drinking Water Systems**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Public Drinking Water Systems. The DHSS proceedings to adopt regulations were initiated

pursuant to 29 **Del.C.** §101 and authority as prescribed by 16 **Del.C.** §122(3)c.

On July 1, 2013 (Volume 17, Issue 1), 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 31, 2013, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

### SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Public Drinking Water Systems were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

One written comment was received on the proposed regulation during the public comment period (July 1, 2013 through July 31, 2013). The written comment was received from:

Ms. Patti Kay Wisniewski, Consumer Confidence Report Rule Lead, US EPA Region 3, Drinking Water Branch

Ms. Wisniewski's public comment and the DHSS (Agency) response follow.

#### **Ms. Patti Kay Wisniewski:**

EPA has reviewed the July 1, 2013, proposed changes to the regulations governing the Public Drinking Water Systems in Delaware. Of particular interest is the addition of 4.3.3.4.1.3 for water suppliers to include in their Consumer Confidence Reports (CCR) any detections of unregulated contaminants for which EPA has developed and published a health advisory.

Several questions have arisen in terms of how this provision is intended to be applied. How is this different from 4.3.3.4.1.2? Having read a press release about this change, we are presuming that any detection of an Unregulated parameter will need to be reported if EPA has developed and published a health advisory, as opposed to only reporting those parameters which exceed a health advisory as stated in 4.3.3.5.3.

Several questions arise related to implementation such as: Which units should be used to report results in the report? Does this apply to draft and/or final health advisories? Will the community water suppliers (CWS) know where to locate information on EPA's health advisories? Will CWS need to add any definitions to the CCR to explain health advisories, as these definitions were added to Section 2., but not to Section 4, the CCR rule, for any of these to be included in a CCR? It is also unclear whether the CWSs will need to include sources of these contaminants and the health effects?

It seems confusing as to whether this reference to unregulated contaminants is the same as noted in 4.3.3.4.1.2 which specifically references the Federal listing at 40 CFR 141.40 (aka the UMCR)? If so, perhaps there is a clearer method of describing the requirement within one provision, rather than two?

If the intent is to have water suppliers report detections of any and all parameters that they might have found, isn't this similar to the provision at 4.3.3.5.3? I note that 4.3.3.5.3 is limited to including in CCRs detections above a proposed MCL or health advisory level; therefore, might it be clearer to revise or delete this provision so as to not conflict with the added provision at 4.3.3.4.1.3. You might want to move the sentence about contacting the EPA Hotline to the new provision to assist with obtaining this information. If your new provision is more stringent than 4.3.3.5.3, (i.e. include all results if there is a health advisory even if results are below the health advisory) then there would be no problems from a Primacy perspective with removing this provision if captured elsewhere.

The provision added at 4.3.3.4.1.3 seems more stringent than the Federal rule, we merely wish to help with making this as clear as possible for the water suppliers.

**Agency Response:** The Agency appreciates and acknowledges your comment. In order to better clarify the intent of our actions we have moved the requirement for including unregulated contaminants, for which EPA has developed final health advisories, from 4.3.3.4.1.3 to 4.3.3.5.3.

The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

#### **FINDINGS OF FACT:**

Based on public comments received, non-substantive changes were made to the proposed regulations. Minor

technical corrections were made to further clarify the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

**THEREFORE, IT IS ORDERED**, that the proposed State of Delaware Regulations Governing Public Drinking Water Systems are adopted and shall become effective October 11, 2013, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, 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:**

**4462 Public Drinking Water Systems**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 1902(a) (7 **Del.C.** §1902(a))  
7 **DE Admin. Code** 3200

**Secretary's Order No.: 2013-F-0035**

**Date of Issuance: September 10, 2013**

**Effective Date of the Amendment: October 11, 2013**

### **3200 Horseshoe Crabs**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

#### **Background and Procedural History**

This Order considers proposed regulations to amend 7 **DE Admin. Code** 3200: *Horseshoe Crabs*, to include revisions to §3201 (*Definitions*), and to add a new §3216, to wit: *Prohibition on Possession or Use of Asian Horseshoe Crabs*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-06. The Department published its initial proposed regulation Amendments in the July 1, 2013 *Delaware Register of Regulations*, and held a public hearing on July 25, 2013.

The purpose of this action seeks to define and prevent the possession and use of Asian horseshoe crabs (*Carcinoscorpius rotundicauda*, *Tachypleus gigas*, and *Tachypleus tridentatus*) to protect human health and the shellfish resources of the State of Delaware. It should be noted that Delaware's Council on Shell Fisheries has endorsed the Department's development of regulations regarding this important issue.

Atlantic horseshoe crabs (*Limulus polyphemus*) are extensively used as bait in Delaware's American eel and whelk pot fisheries. The demand for horseshoe crabs as bait, as well as for their ecological functions, prompted the development of an extensive coastwide management program. The high demand and reduced availability of horseshoe crabs (particularly female horseshoe crabs) has driven prices very high in recent years, and has motivated seafood dealers in New York to import non-native Asian horseshoe crabs for use as bait in the American eel and whelk fisheries.

There is concern that these non-native Asian horseshoe crabs may host parasites and pathogens that could have severe negative impacts on Delaware's native horseshoe crab population (*Limulus polyphemus*), which is of extreme ecological and economic importance in the Delaware Bay. The Department is also concerned of the potential impacts of these parasites and pathogens upon other native species. In addition, the Department is aware that at least one species of Asian horseshoe crab, *C. rotundicauda*, is known to accumulate the powerful neurotoxin tetrodotoxin (TTX), which does not degrade by freezing or high temperature (cooking). Poisonings from

this neurotoxin have been known to result in death in individuals that consume it through eating contaminated fish and shellfish. The potential for TTX accumulation in eel and whelk, as well as subsequent risk to human health, is unknown.

Due to the aforementioned human health concerns, the United States Fish & Wildlife Service is working to add Asian horseshoe crabs to the list of "Injurious Wildlife" under the Lacey Act. This federal action would make it unlawful to import Asian horseshoe crabs, however, such effort is expected to take a year or more to fully accomplish. Unfortunately, prohibiting the importation or use of Asian Horseshoe crabs is beyond the scope of the Atlantic States Marine Fisheries Commission's Federal Management Plan for Horseshoe Crabs. However, the Commission recently approved Resolution 13-01, recommending that member states take any and all action necessary to ban the importation and use of Asian horseshoe crabs as bait as soon as possible.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 3200, *Horseshoe Crabs*, pursuant to 7 Del.C. §1902(a). It should be noted that no members of the public attended the public hearing held by the Department on July 25, 2013, nor was any public comment received by the Department at any time during the course of this promulgation. 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 August 28, 2013 (Report). This Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

### Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record, and drafted the proposed Amendments. Furthermore, I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments.

With the adoption of this Order, Delaware will be enabled to protect human health and the shellfish resources of the State by revising its existing Regulations on Horseshoe Crab to add a definition for Asian horseshoe crabs under §3201, and to make it unlawful to possess or use as bait Asian horseshoe crabs, or parts thereof, without written authorization from the DNREC Director of the Division of Fish & Wildlife, through the inclusion of a new §3216.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the same, including at the public hearing held on July 25, 2013;
- 3.) The Department held a public hearing on July 25, 2013 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) add a definition for Asian horseshoe crabs under §3201; (2) make it unlawful to possess or use as bait Asian horseshoe crabs, or parts thereof, without written authorization from the DNREC Director of the Division of Fish & Wildlife, through the inclusion of a new §3216; (3) better protect human health and the shellfish resources of the State of Delaware against the potential aforementioned hazards associated with the importation of this non-native Asian horseshoe crab; and lastly, because (4) the amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final regulation 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.

Collin P. O'Mara, Secretary

\*Please note that no changes were made to the regulation as originally proposed and published in the July 2013 issue of the *Register* at page 49 (17 DE Reg. 49). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**3200 Horseshoe Crabs**

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

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

### ORDER

#### **2925 Real Estate Commission Education Committee**

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on June 13, 2013 at a scheduled meeting of the Delaware Real Estate Commission ("the Commission") to receive comments regarding proposed amendments to the Commission's Education Guidelines ("Guidelines"). The Commission proposed revisions to Rule 3.0, pertaining to the composition of the Education Committee. These revisions will facilitate the appointment and retention of Education Committee members and ensure that their meetings have a quorum. In addition, Rule 6.7 is added to permit licensees to obtain continuing education credit for completion of a broker's licensing course.

The proposed changes to the Guidelines were published in the *Register of Regulations*, Volume 16, Issue 11, on May 1, 2013. Notice of the June 13, 2013 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was June 28, 2013, 15 days following the public hearing. The Commission deliberated on the proposed revisions at its regularly scheduled meeting on July 11, 2013.

#### **Summary of the Evidence and Information Submitted**

The following exhibits were made a part of the record:

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

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

The Commission received no verbal or written comment.

#### **Findings of Fact and Conclusions**

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

Pursuant to 24 **Del.C.** §2906(a)(1), the Commission has the statutory authority to promulgate rules and regulations. The proposed revisions will facilitate the appointment and retention of Education Committee members and ensure that their meetings have a quorum. In this way, the Education Committee will be able to continue in the important work they perform in ensuring the adequacy of both pre-licensing education and continuing education. Rule 6.7 will permit licensees to obtain continuing education credit for completion of a broker's licensing course which will ensure licensee competence while preventing the undue burden of duplicative education. The Commission concludes that adoption of the Guidelines as amended advances professional standards and is in the best interest of the public.

#### **Decision and Effective Date**

The Commission hereby adopts the proposed amendments to the Guidelines as effective 10 days following publication of this Order in the *Delaware Register of Regulations*.

#### **Text and Citation**

The text of the revised Guidelines remains as published in the *Delaware Register of Regulations*, Volume 16,

Issue 11, on May 1, 2013.

**SO ORDERED** this 11th day of July, 2013.

**DELAWARE REAL ESTATE COMMISSION**

Michael Harrington, Sr., Professional Member,  
Chairperson

Andrew Staton, Professional Member,  
Vice-Chairperson

Ricky H. Allamong, Professional Member,  
Secretary

James C. Brannon, Jr., Public Member

Gilbert Emory, Public Member

Joseph F. McCann, Public Member

Patricia O'Brien, Public Member

Vincent M. White, Professional Member

Christopher J. Whitfield, Professional Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2013 issue of the *Register* at page 1165 (16 DE Reg. 1165). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2925 Real Estate Commission Education Committee**

**DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 10113(b)(4) (24 **Del.C.** §10113(b)(4))  
24 **DE Admin. Code** 2930

**ORDER**

**2930 Council on Real Estate Appraisers**

**Nature and Stage of the Proceedings**

On March 1, 2013, the Delaware Council on Real Estate Appraisers published proposed regulations in the *Delaware Register of Regulations*. Volume 16, Issue 9. The notice indicated that written comments would be accepted by the Council for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 22, 2013 at a regularly scheduled meeting of the Council on Real Estate Appraisers to receive verbal comments regarding the Council's proposed amendments to its regulations.

**Summary of the Evidence and Information Submitted**

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

Board Exhibit 1- *News Journal* Affidavit of publication of notice of April 22, 2013 Council Regulation hearing.

Board Exhibit 2- *Delaware State News* Affidavit of publication of notice of April 22, 2013 Council Regulation hearing.

There was no verbal testimony given at the public hearing on April 22, 2013. No written comments were received by Council during the initial thirty day public comment period. No written comments were received during the fifteen day 29 **Del.C.** §10118(a) public comment period.

Pursuant to 29 **Del.C.** §10113(b)(4) and 24 **Del.C.** §4006(a)(1) the Delaware Council on Real Estate Appraisers issues this Order adopting the below amendment to the Council's Regulations.

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

**IT IS SO ORDERED** this 17th day of September, 2013.

Georgianna Trietley, Chairperson

Ronald Mandato  
Bradford T. Levering  
Douglas Nickel  
Lynn Baker  
Jan Jenkins  
Frank Smith  
Frank Long

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2013 issue of the *Register* at page 949 (16 DE Reg. 949). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2930 Council on Real Estate Appraisers**

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**DIVISION OF PROFESSIONAL REGULATION  
Board of Veterinary Medicine**

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

**ORDER**

**3300 Board of Veterinary Medicine**

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on August 13, 2013 at a scheduled meeting of the Delaware Board of Veterinary Medicine (“the Board”) to receive comments regarding proposed amendments to the Board’s rules and regulations. The Board proposed amendments to Rule 11.1.2, addressing licensure of veterinary technicians. The revisions clarify that applicants seeking licensure pursuant to the educational and/or experiential alternatives set forth in Rule 11.1.2 must have their applications approved by October 1, 2013. If an application is not approved by October 1, 2013, the applicant must show graduation from an AVMA approved program. The revisions also provide that if an applicant does not pass the examination set forth in Rule 11.1.4 within one year after the date of approval of the application, in order to pursue licensure, the applicant shall re-apply for licensure and submit the application fee. Any applicant who re-applies after October 1, 2013 shall have received a degree from a veterinary technician program accredited by the AVMA or from a foreign veterinary program approved by the AVMA.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 16, Issue 12, on June 1, 2013. Notice of the August 13, 2013 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was August 28, 2013, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on September 10, 2013.

**Summary of the Evidence and Information Submitted**

The following exhibits were made a part of the record:

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

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

The Board received no written or verbal comment.

**Findings of Fact and Conclusions**

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

Pursuant to 24 **Del.C.** §3306(a)(1), the Board has the statutory authority to promulgate rules and regulations. The proposed amendments implement and clarify 24 **Del.C.** §3319(a)(1), which provides that the Board may license veterinary technicians who meet certain educational and/or experiential qualifications. However, those

alternative methods to licensure are an option only until October 1, 2013, with the Board given the authority to shorten that time period. The proposed rule revisions specify the time parameters and requirements for applicants who wish to become licensed through the alternative methods.

The Board concludes that adoption of the rules and regulations as amended is in the best interest of the public in that the revisions clarify statutory language and provide guidance to applicants for licensure as veterinary technicians.

#### Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations as effective 10 days following publication of this Order in the *Delaware Register of Regulations*.

#### Text and Citation

The text of the revised rules and regulations remains as published in the *Delaware Register of Regulations*, Volume 16, Issue 12, on June 1, 2013.

**SO ORDERED** this 10th day of September, 2013.

#### DELAWARE BOARD OF VETERINARY MEDICINE

Craig Metzner, D.V.M., President

Roberta Jackson, V.M.D.

Rachel Longfellow, L.V.T., Vice-President

Lynn Nellius, L.V.T.

Lena Corder

Natalie Titus, D.V.M.

Patricia Ennis

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2013 issue of the *Register* at page 1262 (16 DE Reg. 1262). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3300 Board of Veterinary Medicine**

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## OFFICE OF MANAGEMENT AND BUDGET

### DIVISION OF FACILITIES MANAGEMENT

Statutory Authority: 16 Delaware Code, Chapter 78 (16 Del.C. Ch. 78)

#### ORDER

#### Regulation Governing the State of Delaware Asbestos Certification and Training Program

**AND NOW**, this 13th day of September, 2013, Ann Shepard Visalli, as Director of the Delaware Office of Management and Budget, in accordance with 29 Del.C. §§6303A & 6307A, for the reasons stated below enters this ORDER adopting and promulgating the Regulation Governing the State of Delaware Asbestos Certification and Training Program (the "Regulation").

#### NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION

In accordance with procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C. Ch. 101, the Director of the Delaware Office of Management and Budget is adopting the final regulation governing the State of Delaware Asbestos Certification and Training Program.

On July 1, 2013 (Volume 17, Issue 1), the Delaware Office of Management and Budget published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 Del.C. § 10115. It was requested that written materials and suggestions from the public concerning the proposed regulations be delivered to the Office of Management and Budget by August 30, 2013 or be presented at a duly noted public hearing on

August 7, 2013, after which time the Office of Management and Budget would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

Corrections deemed not material have been made by the Office of Management and Budget.

## SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding the proposed REGULATION GOVERNING THE STATE OF DELAWARE ASBESTOS CERTIFICATION AND TRAINING PROGRAM were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. A public hearing on the proposed regulation was held on August 7, 2013. No members of the public attended or offered comments. The public comment period was open from July 1, 2013 through August 30, 2013. No comments were received on the proposed regulation during the public comment period and no changes have been made to the proposed regulation.

## FINDINGS OF FACT AND CONCLUSIONS

1. The Delaware Office of Management and Budget has established rules and procedures to safeguard the public by requiring that renovations or demolitions which disturb asbestos be conducted only by contractors, supervisors, and workers certified by the Office of Management and Budget's Division of Facilities Management.

2. The Regulation reflects these rules and procedures and comprehensively updates language contained therein for federal requirements and state business practices.

3. The Director of the Delaware Office of Management and Budget has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §§6303A & 6307A.

## DECISION AND ORDER CONCERNING THE REGULATION

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

Ann Shepard Visalli, Director, Delaware Office of Management and Budget

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

**Regulation Governing the State of Delaware Asbestos Certification and Training Program**

**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE****Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for pH**

The Delaware River Basin Commission ("DRBC" or "Commission") is a Federal interstate compact agency charged with managing the water resources of the Basin without regard to political boundaries. Its commissioners are the governors of the four Basin states – Delaware, New Jersey, New York, and Pennsylvania – and a Federal representative, the North Atlantic Division Commander of the U.S. Army Corps of Engineers. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act. This notice is published by the Commission for information purposes.

**Summary:** The Commission will hold a **public hearing** to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to update stream quality objectives (also called "water quality criteria") for pH in interstate tidal and non-tidal reaches of the main stem Delaware River.

**Dates:** The **public hearing** will be held at 2:00 P.M. on Thursday, October 24, 2013. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Thursday, November 21, 2013. For more information regarding the procedures for the hearing and comments, see Supplementary Information.

**Addresses:** The **public hearing** will be held in the Goddard Conference Room at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

**Oral Testimony and Written Comments:** Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows: If by email, to [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us); if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period at 5:00 P.M. on Thursday, November 21, 2013. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "pH Rulemaking" in the subject line.

**For further information:** The rule text and a report entitled "pH Criteria Revision Recommendations for Interstate Waters of the Delaware River Basin: Basis & Background Document" (DRBC, March 2013) are available on the Commission's web site, [www.drbc.net](http://www.drbc.net). Hard copies of the latter document may be obtained for the price of postage by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. For questions about the technical basis for the rule, please contact Dr. Erik Silldorff at 609-883-9500 ext. 234. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

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

The State Board of Education will hold its monthly meeting on Thursday, October 17, 2013 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments; Citizenship and Immigration Status**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware

Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Citizenship and Immigration Status*.

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

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

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

#### **PUBLIC NOTICE**

#### **Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments; Children's Health Insurance Program (CHIP) MAGI Eligibility**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XXI Medicaid State Plan (Delaware Healthy Children Program) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Children's Health Insurance Program (CHIP) MAGI Eligibility*.

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

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

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

#### **PUBLIC NOTICE**

#### **Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments; Eligibility Process**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with the *Eligibility Process*.

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

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments; MAGI Income Methodology**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *MAGI Income Methodology*.

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

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments; MAGI-Based Eligibility Groups**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Modified Adjusted Gross Income (MAGI) Based Eligibility Groups*.

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

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments; Residency**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Residency*.

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

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

**PUBLIC NOTICE**

**Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments; Single State Agency**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Single State Agency*.

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

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

**PUBLIC NOTICE**

**Title XIX Medicaid State Plan  
Medicaid Rehabilitative Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding *Medicaid Rehabilitative Services*.

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

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

**DIVISION OF PUBLIC HEALTH**

**PUBLIC NOTICE**

**4408 Facilities that Perform Invasive Medical Procedures**

On April 1, 2013 (Volume 16, Issue 10), the Department of Health and Social Services (DHSS) published in the *Delaware Register of Regulations* its notice of proposed regulations governing medical facilities and held them out for public comment per Delaware law. The public comments resulted in significant changes, which necessitated the submission of a new set of regulations for public review and comment.

On October 1, 2013, the Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is again proposing regulations for facilities that perform invasive medical procedures using anesthesia. These regulations establish standards with respect to the safe and sanitary conditions, and require the accreditation of any facility that performs invasive medical procedures in which the accepted standard of care requires anesthesia, major conduction anesthesia, or

sedation. These regulations also provide for the investigation of any patient, patient legal representative or current facility employee complaints involving the unsafe and/or unsanitary conditions in such facilities.

Copies of the proposed regulations are available for review in the October 1, 2013 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Thursday, October 31, 2013 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4913

### **DIVISION OF PUBLIC HEALTH**

#### **PUBLIC NOTICE**

#### **4470 State of Delaware Medical Marijuana Code**

On October 1, 2013, the Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, plans to publish as proposed regulations governing the State of Delaware Medical Marijuana Act and hold them out for public comment per Delaware law.

The Delaware Medical Marijuana Act was signed by Governor Jack Markell on May 13, 2011 and took effect on July 1 of that year. In February 2012, the portion of the law that allowed for the establishment of compassion centers was suspended by the Governor's Office following new guidance from the US Department of Justice. The Governor has provisionally lifted the suspension of compassion centers, reducing the number of compassion centers from three (one in each county) to one pilot program compassion center. These regulations establish standards and address the new scope of the program operating with one compassion center and without an independent testing center.

Copies of the proposed regulations are available for review in the October 1, 2013 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Health Systems Protection Section at 302-744-4705.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Thursday, October 31, 2013 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700

### **DIVISION OF SOCIAL SERVICES**

#### **PUBLIC NOTICE**

#### **Delaware's Temporary Assistance for Needy Families (TANF) State Plan Amendment**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Delaware Temporary Assistance for Needy Families (TANF) State Plan.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware

19720-0906 or by fax to (302) 255-4425 by October 31, 2013.

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

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

### **DIVISION OF AIR QUALITY**

#### **1125 Requirements for Preconstruction Review**

#### **REGISTER NOTICE SAN 2013-24**

The Department proposes to revise 7 **DE Admin. Code** 1125, in Section 1.9, Definitions, under the definition of "Significance", in the table under (a), to restore the significance level of nitrogen oxides (NO<sub>x</sub>) of 40 tons per year that was inadvertently removed. This action will bring 7 **DE Admin. Code** 1125 back into agreement with the federal new source review regulation in this regard. The Department will submit this change to the Environmental Protection Agency as a revision to the State Implementation Plan (SIP).

The Department will hold a public hearing on this proposed amendment on Monday, October 28, 2013, starting at 6:00 pm in the Richardson and Robbins Building auditorium, located at 89 King's Highway in Dover. Interested persons may submit comments in writing to Gene Pettingill, Division of Air Quality, 715 Grantham Lane, New Castle DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

## **DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

### **DIVISION OF STATE POLICE**

#### **PUBLIC NOTICE**

#### **5500 Bail Enforcement Agents**

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with Del. Code Title 24 Chapter 55 proposes to amend the Rules & Regulations. These amendments will improve the safety of the public and the bail enforcement agents and professionalize the industry. If you wish to view the complete Rules & Regulations, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 31, 2013, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Tuesday, November 26, 2013, 10:00am, at the DGE Conference Room, 655 South Bay Road, Suite 1A, Dover, Delaware.

## **DEPARTMENT OF STATE**

### **DIVISION OF PROFESSIONAL REGULATION**

#### **CONTROLLED SUBSTANCE ADVISORY COMMITTEE**

#### **PUBLIC NOTICE**

#### **Uniform Controlled Substances Act Regulations**

Pursuant to 16 **Del.C.** §4731, the Delaware Controlled Substance Advisory Committee has proposed revisions to its rules and regulations. Rule 2.0 is revised to add the requirement that all practitioners registered under Chapter 47 of Title 16 of the Delaware Code must complete continuing education in order to qualify for continued registration. The amendment will enhance practitioner competence for greater protection of the public.

A public hearing will be held on October 23, 2013 at 9:00 a.m., 1 Wilmington Avenue, Governor Bacon Health Center, Delaware City, DE 19706. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Committee at the above

address. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be November 7, 2013, which is 15 days following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**  
**1100 Board of Dentistry and Dental Hygiene**

Pursuant to 16 **Del.C.** §4731, the Delaware Controlled Substance Advisory Committee has proposed revisions to its rules and regulations. Rule 2.0 is revised to add the requirement that all practitioners registered under Chapter 47 of Title 16 of the Delaware Code must complete continuing education in order to qualify for continued registration. The amendment will enhance practitioner competence for greater protection of the public.

A public hearing will be held on August 28, 2013 at 9:30 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Committee at the above address. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be September 12, 2013, which is 15 days following the public hearing.

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** 1106(a)(1), proposes to add a new section to its regulations, 12.0, et. al.. The proposed addition defines unprofessional conduct within the practice of dentistry and dental hygiene and lists examples of such conduct.

The Board will hold a public hearing on the proposed rule change October 24, 2013 at 3:30 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 8, 2013.

**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**

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

The Delaware Board of Mental Health and Chemical Dependency Professionals proposes to amend its regulations. These changes remove references to paper licensure renewal forms, clarify that license renewal is conducted on-line, alter the permitted time period for inactive status, modify and clarify the requirements for supervised counseling experience and modify and clarify the requirements for continuing education so that the continuing education requirements for all professions are consistent with one another.

The Board will hold a public hearing on the proposed rule change on October 23, 2013 at 12:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 7, 2013.

The proposed rule changes are as follows, additions are indicated in underline, deletions are indicated in strike-through:

**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**  
**3500 Board of Examiners of Psychologists**

The Delaware Board of Examiners of Psychologists, pursuant to 24 **Del.C.** §3506(a)(1), proposes to revise its regulations. The proposed additions to the regulations seek to add rules regarding inactive status of a psychology license and the requirements to reactive a license from inactive status.

The Board will hold a public hearing on the proposed rule change on November 4, 2013 at 9:00 a.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

**OFFICE OF THE STATE BANKING COMMISSIONER****PUBLIC NOTICE****905 Loan Limitations: Credit Exposure to Derivative Transactions****Summary**

The State Bank Commissioner proposes to amend existing Regulation 905, "Loan Limitations: Credit Exposure to Derivative Transactions", which sets forth the rules for calculating the credit exposure arising from a derivative transaction entered into by a bank for purposes of determining the bank's loan limitations pursuant to Section 909 of Title 5 of the Delaware Code.

Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (Dodd-Frank Act), required state law lending limits to take into consideration credit exposure to derivative transactions in order for FDIC-insured state banks to be permitted to engage in derivative transactions. Dodd-Frank Act Section 610 imposed a similar requirement on national banks, and on June 20, 2012, the Office of the Comptroller of the Currency (OCC) issued an interim final rule implementing these requirements. Existing Regulation 905 is based on the OCC's interim final rule so that the requirements for state banks would be the same as those for national banks.

On June 25, 2013, the OCC released a final rule, which made certain adjustments to its interim rule. The proposed amendment reflects these adjustments in order to retain parity between state and national banks with respect to credit exposure arising from derivative transactions.

Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this proposed amendment in accordance with Title 5 of the Delaware Code. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

**Comments**

A copy of the proposed amendment to existing Regulation 905 is being published in the October 1, 2013 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may submit written comments, suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amendment should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a). Public comments must be received on or before October 31, 2013. Written materials submitted will be available for inspection at the above address.

**Adoption of Proposed Regulation**

On or after October 31, 2013, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amendment to existing Regulation 905 or make additional changes because of the public comments received.