
Delaware Register of Regulations

Issue Date: September 1, 2014

Volume 18 - Issue 3, Pages 170 - 248



IN THIS ISSUE:

Regulations:
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 August 15, 2014.

Cover Photo by
Dr. Brian Kutner

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF RESEARCH STAFF

Lori Christiansen, Director; **Mark J. Cutrona**, Deputy Director; **Tara Donofrio**, Administrative Specialist II, **Jerry Grant**, Joint Sunset Analyst; **Jeffrey W. Hague**, Registrar of Regulations; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Executive Secretary; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Printer; **Yvette W. Smallwood**, Assistant Registrar of Regulations; **Holly Wagner**, Research Analyst; **Rochelle Yerkes**, Office Manager; **Sara Zimmerman**, Legislative Librarian.

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

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3011 Delaware TANF Employment and Training Program Requirements. 18 **DE Reg.** 143 (Final)

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 275

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

275 Charter Schools

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 275 **Charter Schools**. This regulation amends the approval procedure for charter schools as required by Senate Bill 209 as amended by Senate Amendment 1. The amendments are related specifically to how “impact” may be used as an element of approval and any conditions upon approval or disapproval of a charter.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **October 5, 2014** to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to how “impact” may be used in the approval of a charter’s application or renewal and is not specifically related to improving student achievement as measured against state achievement standards.

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

275 Charter Schools (Break in Continuity of Sections)

2.0 Definitions

- 2.1 The following definitions apply for purposes of interpreting the Charter School Law and these regulations:

(Break in Continuity Within Section)

“Impact” means the positive and negative effect that a new charter school or charter school expansion, if it should be approved, is projected to have upon the surrounding area and the education system of the state. Information regarding Impact may, by itself or in combination with other factors, form the basis for conditions being placed on the approval of a new charter school or modification. Impact shall include educational, financial, and community information.

(Break in Continuity Within Section)

3.0 Application Process

(Break in Continuity Within Section)

3.10 Consideration of Impact

- 3.10.1 The Department and the State Board may use public comments and information from the public record to inform the development of any proposed conditions relating to Impact. When deciding whether to impose conditions, and/or the nature of conditions to be imposed, the Department and the State Board may consider one or more of the following criteria regarding impact:

- 3.10.1.1 Educational Impact may include but shall not be limited to:

- 3.10.1.1.1 Projected effects on academic performance, including historical student achievement and growth trends of the applicant and the projected sending schools and districts;

- 3.10.1.1.2 Programmatic offerings and grade levels, including waiting lists and other information about similar programs in the surrounding area and unique program offerings as detailed in the application; and
- 3.10.1.1.3 Partnerships with local education agencies (including potential opportunities for district collaboration, innovation, and parent and community involvement).
- 3.10.1.2 Financial Impact shall include, but shall not be limited to, projected increases and decreases in costs and in revenue received by local education agencies, including fixed costs, teacher units, and transportation expenses, which are calculated using publicly available and verifiable data and information.
- 3.10.1.3 Community Impact may include, but shall not be limited to, projected social, cultural, demographic, environmental, and economic trends and effects on the surrounding area.
- 3.10.2 The Department shall publish any proposed conditions relating to Impact, including written justification for the conditions, on the Charter School Office web page no later than the first Thursday in March. Any proposed conditions shall be added to the public record and forwarded to the applicants.
- 3.10.3 The State Board shall review the Department's proposed conditions relating to Impact, and may propose additional conditions or modify conditions proposed by the Department. The State Board shall submit any proposed conditions, including written justification for the conditions, to the Department's Charter School Office no later than 3 business days before the final meeting of the Accountability Committee. Any proposed conditions shall be added to the public record and forwarded to the applicants.
- 3.10.4 The final decision of the Secretary, presented for the assent of the State Board may include any of the previously proposed conditions relating to Impact, but shall not include any conditions related to Impact not proposed in accordance with 14 **DE Admin. Code** 275.3.10.2 and 275.3.10.3.
- 3.10.5 The State Board, in addition to voting to assent to the decision of the Department, may include any previously proposed conditions related to Impact or modify conditions related to Impact within the Secretary's decision, but shall not include any conditions relating to Impact not previously proposed in accordance with 14 **DE Admin. Code** 275.3.10.2 and 275.3.10.3 in their motion for assent to approve such application.

(Break in Continuity of Sections)

9.0 Modifications of Charters

(Break in Continuity Within Section)

9.9 Minor modifications\

(Break in Continuity Within Section)

- 9.9.1 A minor modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which is not a major modification. Minor modifications include, but are not limited to:

(Break in Continuity Within Section)

- 9.9.1.7 A change to the current authorized number of hours, either daily or annually, devoted to actual school sessions. Regardless of any proposed change, the school shall maintain the minimum instructional hours required by Title 14 of the Delaware Code; or

(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:**

275 Charter Schools

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 405

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

405 Minor Capital Improvement Programs

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend **14 DE Admin. Code 405 Minor Capital Improvement Programs**. This regulation amendment increases the threshold from \$500,000 to \$750,000 for which such projects can be classified as Minor Capital Improvement Projects.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **October 5, 2014** to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is to update the Minor Capital Improvement Program. This regulation is not specifically related to improving student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that 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 amended regulations does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

405 Minor Capital Improvement Programs

1.0 Minor Capital Improvement Program

- 1.1 The Minor Capital Improvement (MCI) Program (~~MCI~~) is a program ~~to~~ which provides for the planned and programmed maintenance and repair of the school plant. The program's primary purpose is to

keep real property assets in their original condition of completeness and efficiency on a scheduled basis. It is not for increasing the plant inventory or changing its composition. ~~Minor Capital~~ Capital Improvement Projects are projects that cost less than \$500,000 \$750,000 unless the project is for roof repair. The MCI program shall be reviewed annually by the school district and should be comprised of work necessary for good maintenance practice.

- 1.2 ~~Minor Capital~~ Capital Improvement Project pPurchase eOrders shall be submitted to the State Division of Accounting prior to any work being done. A separate purchase order must be submitted for each project reviewed and approved by both the Department of Education and the Office of Management and Budget prior to submission to the Division of Accounting. (One copy of the approved purchase order ~~will be returned to~~ should be retained by the district for their information and record.)
- 1.3 Use of Funds: The following areas are authorized for the expenditure of ~~Minor Capital Improvement Program—MCI~~ funds: maintenance, repairs, modernization, inspections, testing, maintenance agreements and service contracts related to: roofs, heating systems, ventilation & and air conditioning systems, plumbing & and water systems, electrical systems, windows, doors, floors, ceilings, masonry, structural built in equipment, painting, fire suppression ~~systems,~~ and life safety systems, security systems installation and maintenance, school grounds, athletic facilities and playgrounds, office equipment used for instructional purposes only and renovations, alterations and modernizations that do not require major structural changes.
- 1.4 Exclusions: Funds allocated for a specific project shall be used only for that project. Program funds may not be used for the following: movable equipment other than office equipment used for instructional purposes that is transported from one location to another, routine janitorial supplies, new construction that increases the area of a building or extends any of its component systems, site improvements that add to or extend the existing roadways or ~~side walks~~ sidewalks, surfacing a non-surfaced area for parking, completing major construction projects or specific items omitted or deleted from major construction projects or floor space allocated according to formula and used otherwise.
- 1.5 Invoices: Invoices shall be ~~sent directly to the Division of Accounting~~ approved by both the Department of Education and the Office of Management and Budget prior to submission to the Division of Accounting for processing. Payments may be made as the project progresses or after work has been completed and accepted, as warranted by the nature and scope of the individual project(s).

2.0 Career Technical Program Equipment Replacement Requests

- 2.1 Replacement of Career Technical Program ~~eEquipment~~ may be accomplished using ~~Minor Capital Improvement,~~ MCI Vocational Education Replacement funds.
- 2.2 Career Technical Program Equipment is defined as either a movable or fixed unit but not a built in unit. In addition, the equipment shall retain its original shape and appearance with use, be nonexpendable, and represent an investment which makes it feasible and advisable to capitalize and not lose its identity through incorporation into a different or more complex unit. Computers and computer peripheral equipment may be purchased using ~~Minor Capital Improvement~~ MCI Vocational Education Equipment Replacement Funds provided such equipment purchased with such funds is used in a vocational education setting for the service life of said equipment.
 - 2.2.1 In order to replace Career Technical Program ~~eEquipment~~, the equipment must have a unit cost of \$500 or more, be obsolete or more ~~then~~ than five (5) years old, and be purchased with state, state and local or local funds.
- 2.3 Funds shall be allocated based on the percentage of a district's Vocational Division II Units to the total of such units of all participating districts. This percentage is applied to the total funds available in a given year for ~~capital~~ Career Technical Program eEquipment. ~~Career Technical Schools are 100% State funded.~~ Allocations for technical school districts do not require a local match.

3.0 Purchase Orders

Funds may be expended ~~anytime during the life of the Act which appropriated the funds,~~ as long as the appropriation is active and continuing as authorized through legislation, usually, a three year period. Appropriations may be accumulated over those three years and expended for a major replacement

PROPOSED REGULATIONS

when a sufficient balance is attained. Funds unexpended when the ~~appropriating Act~~ appropriation expires shall revert to the State unless properly ~~and duly~~ continued through legislation, and in accordance with Office of Management and Budget requirements.

4.0 Cost Limitations

The maximum cost of a ~~Minor Capital Improvement MCI~~ Project is ~~\$500,000~~ \$750,000 except roof repairs and replacements which are not cost limited. Non-roof projects exceeding the ceiling shall be requested in through the Major Capital Improvement Program request process.

5.0 Temporary Employees

Workers may be hired under the ~~Minor Capital Improvement MCI~~ Program provided they are temporary hires and directly involved in the planning, constructing, or record maintenance of the construction project.

6.0 Reporting

~~School districts shall account for Minor Capital Improvement summary and detailed projects in the accounting system as required by the Delaware Department of Education in order to accomplish proper control and reporting of said projects.~~

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4826 (29 **Del.C.** §4826)
10 **DE Admin. Code** 206

PUBLIC NOTICE

206 Internet Lottery Rules and Regulations

AUTHORITY

Delaware Department of Finance, Office of the State Lottery, pursuant to 29 **Delaware Code**, Section 4826(c) is proposing to amend Regulations for the Delaware Lottery 10 **DE Admin. Code** 206 section 13.2 and 13.3, Internet Lottery.

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Delaware Department of Finance ("Department"), Office of the State Lottery, pursuant to 29 **Delaware Code**, Section 4826 (29 **Del.C.** §4826) is proposing amendments to 10 **DE Admin. Code** 206 Section 13.2 and 13.3.

These amendments will update Internet Lottery regulations related to anonymous play and play for free requirements.

NOTICE OF PUBLIC COMMENT:

Interested persons may submit comments in writing to Rebecca Goldsmith, Delaware Lottery Office, 1575 McKee Road, Suite 102, Dover, Delaware 19904.

The comment period will close on September 30, 2014.

206 Internet Lottery Rules and Regulations (Break in Continuity of Sections)

13.0 Customers: Registration, Funds and Protection

Requirement to Register

- 13.1 No player may play an Internet lottery game without first registering to become an authorized player.
- 13.2 Regardless of location, pc and mac players may register to play for free by providing, at a minimum, the following:
 - 13.2.1 Full Name
 - 13.2.2 Address and/or email address
 - 13.2.3 Date of Birth or affirmation of legal gambling age
 - 13.2.4 Self-verification that the information provided is correct.
- 13.3 Automated identity and age verification need not be performed for players registering to play for free. Only subsection 13.2.3 shall be required for players registering to play for free on a mobile device.

(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:**

206 Internet Lottery Rules and Regulations

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

Title XXI Delaware Healthy Children Program State Plan - Cost Sharing and Payment

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, 42 CFR §457.65 and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*.

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 September 30, 2014.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*.

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
- Title XXI of the Social Security Act, *State Children's Health Insurance Program*
- 42 CFR Part 457, *State Children's Health Insurance Programs (SCHIPs)*
- 16 Delaware Code, Section 9909

Background

The Balanced Budget Act of 1997, enacted on August 5, 1997, established the "State Children's Health Insurance Program (SCHIP)" by adding Title XXI to the Social Security Act. The purpose of this program is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Delaware's SCHIP program called the Delaware Healthy Children Program (DHCP) is authorized under Title 19, Chapter 99, and Section 9905 of the Delaware Code.

Modified Adjusted Gross Income (MAGI) Conversion Plan

Under the Affordable Care Act, to complete the transition to the MAGI-based methodology, states developed MAGI-based income eligibility standards for the applicable eligibility groups that "are not less than the effective income levels" that were used to determine Medicaid and CHIP income eligibility as of the enactment of the Affordable Care Act. The conversion of current income eligibility standards to equivalent MAGI-based income eligibility standards account for any income disregards now used. Finally, under section 1902(e)(14)(E) of the Act, each state must submit to the Secretary for approval its proposed MAGI-equivalent income eligibility standards and the methodologies and procedures that support those proposed standards, for each applicable eligibility group. This submission is referred to as the state's "MAGI Conversion Plan". Delaware's conversion plan was approved on September 17, 2013.

The conversion to MAGI-based income eligibility standards impacts the percentages of the Federal Poverty Level (FPL) used to set the premium levels under CHIP.

Summary of Proposal

The Centers for Medicare and Medicaid Services (CMS) recently advised Delaware that the State needs to amend the Delaware Healthy Children Program (DHCP) state plan to update the premium levels to account for the MAGI-based conversion standards.

Therefore, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) will be submitting a state plan amendment to change the percentages of the Federal Poverty Level (FPL) applied to the premium levels and to describe the incentives for pre-payment of premiums, as follows:

1. Effective January 1, 2014, the ten dollar (\$10.00) per family per month premium for families with incomes between 101% and 133% of the Federal Poverty Level (FPL) is obsolete. Children in these families transitioned to Medicaid effective January 1, 2014.
2. Effective January 1, 2014, the conversion to MAGI-based standards results in a premium of fifteen dollars (\$15.00) per family per month for families with incomes between 134% and 166% of the FPL and a premium of twenty-five dollars (\$25.00) per family per month for families with incomes between 167% and 212% of the FPL. These revised premium levels have been in practice since January 1, 2014, but had not been set forth in the CHIP state plan.

Section 8 of the DHCP State Plan and Section 18700 of the Division of Social Services Manual (DSSM) will be amended to reflect the above-referenced change to the premium levels.

In addition, based on agency review, DHSS/DMMA intends to amend the DHCP state plan at section 8.2.1 to update the language regarding incentives for pre-payment of premiums. The updated language reflects incentives for pre-payment of premiums that have been in practice since the inception of Delaware's CHIP program. These incentives are described at Section 18700 of the Division of Social Services Manual (DSSM).

Fiscal Impact Statement

The proposed regulation changes impose no increase in costs on the General Fund as the income conversion takes into account current disregards so the net effect is zero.

DMMA PROPOSED REGULATION #14-33a REVISION:

MODEL APPLICATION TEMPLATE FOR STATE CHILD HEALTH PLAN UNDER TITLE XXI OF THE SOCIAL SECURITY ACT STATE CHILDREN'S HEALTH INSURANCE PROGRAM

DELAWARE HEALTHY CHILDREN PROGRAM

Section 8. Cost Sharing and Payment (Section 2103(e))

- Check here if the state elects to use funds provided under Title XXI only to provide expanded eligibility under the state's Medicaid plan, and continue on to Section 9.

8.1. Is cost-sharing imposed on any of the children covered under the plan? (42 CFR 457.505)

8.1.1. YES

8.1.2. NO, skip to question 8.8.

Describe the amount of cost-sharing and any sliding scale based on income, the group or groups of enrollees that may be subject to the charge and the service for which the charge is imposed or time period for the charge, as appropriate. (Section 2103(e)(1)(A)) (42CFR 457.505(a), 457.510(b) & (c), 457.515(a)&(c))

- 8.2.1. Premiums: ~~\$10 per family per month (PFPM) for families with incomes between 101% and 133% of the FPL, \$15 PFPM for families with incomes between 134% and 166% of the FPL, and \$25 PFPM for families with incomes between 167% and 200% of the FPL (see Section 4.3 for information on effect of non-payment of premiums). Incentives for pre-payment of premiums will be considered. Fifteen dollars (\$15.00) per family per month for families with incomes between 134% and 166% of the Federal Poverty Level (FPL) and twenty-five dollars (\$25.00) per family per month for families with incomes between 167% and 212% of the FPL. (See Section 4.3 and CHIP MAGI State Plan Page CS21 for information on the effect of non-payment of premiums).~~
Incentives for pre-payment of premiums include the following: Pay three (3) months get one (1) premium free month; pay six (6) months get two (2) premium free months; pay nine (9) months get three (3) premium free months.

DMMA PROPOSED REGULATION #14-33b REVISION:

18700 Premium Requirements

Families with eligible children are required to pay a premium in order to receive coverage. The premium is per family per month regardless of the number of eligible children in the family. The monthly premium will vary according to family income as follows:

<u>Family Income</u>	<u>Premium</u>
>142% FPL <-or= 176% FPL <u>134% FPL = 176% FPL</u>	\$15.00
177% FPL <-or= 212% FPL <u>177% FPL = 212% FPL</u>	\$25.00

Payments that are less than one (1) month's premium will not be accepted.

Coverage begins the first of the month following payment of the initial premium. Payments for the initial premium will be accepted through a monthly cut-off date known as the authorization date. The authorization date is set by the automated eligibility system. If payment of the initial premium is received by the authorization date, coverage under DHCP will be effective the following month. Premium payments for ongoing coverage will be accepted through the last day of the month.

Families will be able to pay in advance and purchase up to one year's coverage. The following incentive is offered for advance payments:

Pay three (3) months – get one (1) premium free month

Pay six (6) months – get two (2) premium free months

Pay nine (9) months – get three (3) premium free months.

The advance premium payments for coverage may extend beyond the scheduled eligibility renewal. If the child is determined to be ineligible, the advance premium payments will be refunded to the family.

Coverage will be cancelled when the family is in arrears for two premium payments. The coverage will end the last day of the month when the second payment is due. If one premium payment is received by the last day of the cancellation month, coverage will be reinstated.

Families who lose coverage for nonpayment of premiums will have received two unpaid months of coverage. Families who are cancelled for nonpayment of premiums may reenroll at any time without penalty. Reenrollment will begin with the first month for which the premium paid.

Good cause for nonpayment of premiums will be determined on a case-by-case basis.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Diamond State Health Plan 1115 Demonstration Waiver Amendment – Promoting Optimal Mental Health for Individuals through Supports and Empowerment

In compliance with 42 U.S.C. §1315(d), 42 CFR Part 431, Subpart G, 42 CFR 447.205 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) notifies the public that it intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver to coordinate coverage of the new Home and Community-Based Services (HCBS) behavioral health program, identified as *PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment)*.

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 September 30, 2014.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver to coordinate coverage of the new Home and

Community-Based Services (HCBS) behavioral health program, identified as *PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment)*.

Statutory Authority

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

Background

Under a waiver of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Goals of the DSHP are to improve and expand access to healthcare to more adults and children throughout the State, create and maintain a managed care delivery system emphasizing primary care, and to strive to control the growth of healthcare expenditures for the Medicaid population.

Specifically, the proposed waiver amendment provides home- and community-based services (HCBS) for individuals in a target population with behavioral health needs in order to support those individuals in the community and prevent institutionalization.

The Department proposes to comprehensively meet the needs of individuals with behavioral health (BH) needs, including individuals identified under the State's Olmstead settlement with the United States Department of Justice.

Summary of Proposal

In accordance with the public notice requirements of 42 U.S.C. §1315(d), 42 CFR Part 431, Subpart G, 42 CFR 447.205 and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA), Division of Substance Abuse and Mental Health (DSAMH) gives notice of their intent to file an application with the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver.

If implemented as proposed, the proposed 1115 demonstration amendment will have the following effect on January 1, 2015:

- For adult Medicaid populations meeting the Olmstead settlement behavioral health (BH) target population as well as Medicaid-eligible adults requiring HCBS to live and work in the most integrated setting and meeting targeting and functional limitations statewide, the State will offer an enhanced benefit package of HCBS using the 1915(i)-like authority in the 1115 demonstration in addition to the State Plan services to help maintain individuals in home- and community based settings. The enhanced Medicaid benefit package will be coordinated by DSAMH through the fee-for-service program in compliance with home- and community-based standards and assurances and the signed Olmstead agreement. This population will continue to receive non-BH and most non-enhanced BH Medicaid State Plan services through the managed care organization (MCO) benefit. See the benefit sections below for a description of the covered services. The State is also considering including non-medical transportation services in the State's existing transportation broker contract and the amendment would provide the freedom of choice authority necessary for that contract amendment.
- For adults served in MCOs throughout the State who are not in the PROMISE target populations, the MCOs will integrate all covered services for mental illness, SUDs, and physical health conditions under this demonstration.

Draft of Proposed 1115 Waiver Amendment

A draft of Delaware's waiver amendment is currently available for review on the Division of Medicaid and Medical Assistance (DMMA) website at <http://dhss.delaware.gov/dhss/dmma/> and the Division of Substance Abuse and Mental Health website at <http://www.dhss.delaware.gov/dhss/dsamh/>.

The provisions of this waiver 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. Demonstrations must be “budget neutral” over the life of the project, meaning that they cannot be expected to cost the Federal government more than it would cost without the waiver.

**DMMA PUBLIC NOTICE AND NOTICE OF PUBLIC HEARINGS #14-38
PUBLIC NOTICE AND NOTICE OF PUBLIC HEARINGS****DELAWARE HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH****DELAWARE DIAMOND STATE HEALTH PLAN 1115 DEMONSTRATION WAIVER AMENDMENT**

In accordance with the public notice requirements of 42 U.S.C. §1315(d), 42 CFR Part 431, Subpart G, 42 CFR 447.205 and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA), Division of Substance Abuse and Mental Health (DSAMH) gives notice of their intent to file an application with the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver.

Background

Specifically, this waiver amendment provides home- and community-based services (HCBS) for individuals in a target population with behavioral health needs in order to support those individuals in the community and prevent institutionalization.

While this HCBS service package includes many similarities to options and services available through the State’s Diamond State Health Plan PLUS (DSHP PLUS) program, a significant difference is that this waiver amendment does not require individuals to meet an institutional level of care in order to qualify for HCBS. The State will be using the 1115 demonstration to target HCBS to individuals with behavioral health, to make HCBS accessible to more individuals, and to ensure the quality of the HCBS. The demonstration will also authorize Delaware to waive Section 1902(a)(10)(B) of the Act pertaining to comparability of Medicaid services and 1902(a)(23)(A) pertaining to Freedom of Choice of Medicaid providers.

Current Program

Delaware Medicaid currently provides medical model mental health services to adults with psychiatric disabilities through contracts with private agencies. These services include Assertive Community Treatment Teams, Intensive Case Management Teams, group homes, and clinic-based services. All additional support services, to maintain adults with psychiatric disabilities in the community, must be accessed through DSAMH and are subject to limited stated funds under the Olmstead settlement.

Purpose and Rationale

The Department proposes to comprehensively meet the needs of individuals with behavioral health (BH) needs, including individuals identified under the State’s Olmstead settlement with the United States Department of Justice.

Goals and Objectives

The goals of the delivery system models are to improve clinical and recovery outcomes for individuals with behavioral health (BH) needs and reduce the growth in costs through a reduction in unnecessary institutional care through care coordination, including initiatives to increase network capacity to deliver community based recovery-oriented services and supports. The demonstration amendment will seek to address the issues arising from special needs populations with seriously and persistently mentally ill and/or substance use disorder (SUD) through a

comprehensive, interconnected approach to providing services to all individuals with BH needs in Delaware, ensuring that the individuals served are receiving the most appropriate services to meet their needs in the most integrated settings possible.

This amendment also seeks limited freedom of choice authority for the Pathways program to ensure that sufficient authority exists to administer that innovative authority. The Pathways program is an employment supports program to serve transition age individuals with disabilities, using a Medicaid 1915(i) HCBS State Plan Amendment (SPA). Delaware will implement the Pathways to Employment program to expand choices and opportunities in Delaware for individuals seeking to enter the job market.

Proposed 1115 Demonstration Waiver Amendment

The 1115 amendment will be sought to ensure coordination with the Diamond State Health Plan PLUS (DSHP PLUS) long term care program, to allow the State to include State Plan behavioral health (BH) services in the managed care organization (MCO) benefit package, and to allow the State to competitively procure vendors under its new HCBS behavioral health program, identified as PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment). The amendment will ensure that the freedom of choice waiver required for the procurement under this new HCBS program, a 1915(i) like authority granted under the State's current 1115 demonstration waiver, is in place. In particular, because of the small size of the State and low volume of services needed, the State will be competitively procuring contractors under the demonstration to meet the high quality and fidelity standards required under the Olmstead settlement.

If implemented as proposed, the proposed 1115 demonstration amendment will have the following effect on January 1, 2015:

- For adult Medicaid populations meeting the Olmstead settlement BH target population as well as Medicaid-eligible adults requiring HCBS to live and work in the most integrated setting and meeting targeting and functional limitations statewide, the State will offer an enhanced benefit package of HCBS using the 1915(i)-like authority in the 1115 demonstration in addition to the State Plan services to help maintain individuals in home- and community based settings. The enhanced Medicaid benefit package will be coordinated by DSAMH through the fee-for-service program in compliance with home- and community-based standards and assurances and the signed Olmstead agreement. This population will continue to receive non-BH and most non-enhanced BH Medicaid State Plan services through the MCO benefit. See the benefit sections below for a description of the covered services. The State is also considering including non-medical transportation services in the State's existing transportation broker contract and the amendment would provide the freedom of choice authority necessary for that contract amendment.
- For adults served in MCOs throughout the State who are not in the PROMISE target populations, the MCOs will integrate all covered services for mental illness, SUDs, and physical health conditions under this demonstration.

The demonstration services are available statewide. The provisions of this demonstration amendment are subject to approval by CMS.

Draft of Proposed 1115 Demonstration Waiver Amendment

A draft of Delaware's waiver amendment is accessible on both the Division of Medicaid and Medical Assistance (DMMA) website at: <http://dhss.delaware.gov/dmma/> and the Division of Substance Abuse and Mental Health (DSAMH) website at: <http://www.dhss.delaware.gov/dhss/dsamh/>.

Hard copies are available by contacting Kathlene Brittingham at Kathlene.Brittingham@state.de.us.

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

Public Comments

The public is invited to review and comment on the State's proposed waiver amendment. Written comments may be sent to: Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or via fax to 302-255-

4425. For consideration, written comments must be received by 4:30 p.m. on September 30, 2014. Please identify in the subject line: Proposed Diamond State Health Plan 1115 Waiver Amendment Covering PROMISE.

Public Hearings

As required by 42 CFR Part 431, Subpart G, the State agency is providing the following opportunities to the public to comment on the proposed waiver amendment in person. Three (3) public hearings are scheduled. The detailed information for each public hearing is shown below.

1. NEW CASTLE COUNTY**Tuesday, September 23, 2014****5:00 pm – 7:00 pm**

Delaware State Police

Troop 2

Robert Paris Community Room

100 Lagrange Avenue

Newark, Delaware 19702

Phone: 302-834-2620 - main line

(Visitor parking is in the front of the building)

2. SUSSEX COUNTY**Wednesday, September 24, 2014****1:00 pm – 3:00 pm**

Thurman Adams State Service Center

(Formerly, Georgetown State Service Center)

546 South Bedford Street

Georgetown, Delaware 19947

Phone: 302-856-5211 or 302-856-5574

(Visitor parking is designated by signs and is close to the entrance of the building)

3. KENT COUNTY**Thursday, September 25, 2014****10:00 am - 12 noon**

Delaware Department of Transportation

Administration Center

800 Bay Road

Dover, Delaware 19901

Phone: 302-760-2000

(Visitor parking is in the front of the building)

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

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

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

Arlene Baal at (302) 255-9561

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

Fiscal Impact Statement

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

Delaware Waivers Page on CMS Website

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

Submission of Waiver Application to CMS

Delaware intends to submit the 1115 waiver amendment application to CMS in accordance with 42 CFR §431.412. Pursuant to 42 CFR §431.416, CMS has 15 (fifteen) days from the date of receipt to determine whether the application is complete. CMS will post the application on the 1115 website and allow a thirty (30)-day public comment period on the application. Information related to the waiver amendment will be available on the CMS website: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/public-comments.html>.

Stephen M. Groff, Director
Division of Medicaid and Medical Assistance
August 12, 2014

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 30D (16 Del.C. Ch. 30D)
16 DE Admin. Code 4454

PUBLIC NOTICE

4454 Tanning Facilities Regulations

Recently passed legislation, Senate Bill 94, adds to the current tanning bed restrictions a ban of all minors from using tanning devices in tanning facilities. It also mandates warning signs and statements in tanning facilities.

On September 1, 2014, the Department of Health and Social Services, Division of Public Health, plans to publish proposed regulations which amend Title 16 of the Delaware Code relating to tanning facilities. Due to the extensive number of amendments the Division has concluded that the current 4454 State of Delaware Tanning Facilities Regulations should be repealed and replaced in their entirety with the proposed regulations being published and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the September 1, 2014 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 Wednesday, October 1, 2014 at:

Deborah Harvey
Division of Public Health

417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us
Phone: (302) 744-4700

4454 Tanning Facilities Regulations

1.0 Definitions

The following words and terms, when used in this regulation, shall have the meaning set forth in 16 Del.C. § 3002D: "**Customer**", "**Department**", "**Minor**", "**Operator**", "**Person**", "**Tanning equipment or device**", "**Tanning facility**".

2.0 Requirements of a Consent Form:

2.1 The consent form to be used by a tanning facility shall include the following model language:

WHAT YOU SHOULD KNOW ABOUT TANNING:

AVOID UNNECESSARY EXPOSURE:

~~Repeated exposure may cause skin cancer and premature aging of the skin. As with natural sunlight, overexposure to ultraviolet light can cause burns, eye and skin injury, and allergic reactions. A person with a family or past medical history of skin cancer should avoid the use of a tanning device.~~

ULTRAVIOLET RADIATION SENSITIVITY

~~Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain cosmetics, foods or medications (including, but not limited to tranquilizers, diuretics, antibiotics, high blood pressure medicines or birth control pills). A person taking a prescription or over the counter drug should consult a physician before the use of a tanning device. A person with skin that burns easily in the sun or does not tan in the sun should avoid the use of a tanning device.~~

PROTECTIVE EYE WEAR

~~Failure to use protective eyewear may result in severe burns or long term injury to the eye.~~

2.2 A model consent form that a tanning facility may use is found at Appendix A.

3.0 Records

A tanning facility shall maintain at the facility records of consent forms for all minor customers for a period of at least 3 years from the date of signature on the consent form. The tanning facility shall make records of consent forms available, upon request, for review by the Department.

4.0 Compliance and Enforcement Procedures

4.1 Administrative Penalties

~~Whoever violates a provision of these regulations shall be subject to an administrative penalty of \$250.00 for the first violation, \$500.00 for the second violation and \$1,000.00 for the third and all subsequent violations.~~

4.2 Right to Administrative Hearing

~~Upon due notice that the Department intends to assess a tanning facility an administrative penalty, as indicated in section 4.1, the facility may submit to the Department, within thirty (30) days of the date of the notice of intent, a written request for an administrative hearing.~~

4.3 Orders of the Department

~~Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department, shall be fined not less than \$100.00 and not more than \$1,000.00, together with costs, unless otherwise provided by law.~~

5.0 Severability

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

**Appendix A: Model Consent Form
TANNING FACILITY
PARENT/GUARDIAN CONSENT FORM**

~~Delaware law states that a tanning facility may not allow a minor between the ages of 14 to 18 years to use a tanning device unless the minor provides a consent form signed by the parent or legal guardian at the time of first exposure, and the signature of the consent form is witnessed by an operator. (DE Code, Title 16, Chapter 30(D): Tanning Facilities).~~

~~WHAT YOU SHOULD KNOW ABOUT TANNING:
AVOID UNNECESSARY EXPOSURE:~~

~~Repeated exposure may cause skin cancer and premature aging of the skin. As with natural sunlight, overexposure to ultraviolet light can cause burns, eye and skin injury, and allergic reactions. A person with a family or past medical history of skin cancer should avoid the use of a tanning device.~~

~~ULTRAVIOLET RADIATION SENSITIVITY~~

~~Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain cosmetics, foods or medications (including, but not limited to tranquilizers, diuretics, antibiotics, high blood pressure medicines or birth control pills). A person taking a prescription or over the counter drug should consult a physician before the use of a tanning device. A person with skin that burns easily in the sun or does not tan in the sun should avoid the use of a tanning device.~~

~~PROTECTIVE EYE WEAR~~

~~Failure to use protective eyewear may result in severe burns or long term injury to the eye.~~

~~CONSENT~~

~~I have read and understood the above stated facts about tanning.~~

PROPOSED REGULATIONS

I am the _____ parent or _____ legal guardian (check one) of _____ a minor between the ages of 14 and not yet 18 years of age.
(Please print name of minor)

My child and I have been given adequate instruction in the operation of tanning devices.

My child and I have read and understand the contents of this form.

I give consent for my child to use the tanning devices in this facility.

Signature of parent/legal guardian _____ Date _____

Print name of parent/legal guardian _____

Signature of operator _____ Date _____

Print name of operator _____

~~The minor's parent or legal guardian may withdraw this consent form at any time. Unless so withdrawn, this consent form shall expire one year from the date of the signature.~~

1.0 Definitions

The following words and terms, when used in this regulation, shall have the meaning set forth in 16 Del.C. §3002D: "**Customer**", "**Department**", "**Minor**", "**Person**", "**Tanning device**", "**Tanning facility**", "**Phototherapy device**".

2.0 Minors Prohibited

A tanning facility shall not permit a minor to use a tanning device

3.0 Requirements of Warning Signs and Statements

3.1 Each tanning facility shall post at least 1 warning sign in a place readily visible to persons entering the facility. Lettering must be clear, legible, and at least ¼ inch in height, unless otherwise provided herein. The sign shall have dimensions not less than 11 inches by 17 inches and shall have the following statements:

3.1.1 "DANGER - ULTRAVIOLET RADIATION", in capital letters at least ½ inch in height;

3.1.2 "Follow the manufacturer's instructions for this device.";

3.1.3 "Avoid overexposure. As with sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure to ultraviolet radiation may cause chronic sun damage characterized by wrinkling, dryness, fragility, bruising of the skin, and skin cancer.";

3.1.4 "Avoid sunbathing before or after exposure to ultraviolet radiation from sunlamps.";

3.1.5 "Wear protective eyewear. Failure to do so may result in severe burns or permanent injury to the eyes."; and

3.1.6 "Medications or cosmetics may increase sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight.".

4.0 Requirements of Written Statement

4.1 Each customer shall be provided with a written warning statement prior to each use of the tanning equipment or device. The warning statement shall include the following statements:

4.1.1 "Failure to use eye protection may result in injury to the eyes.";

4.1.2 "Overexposure to ultraviolet light may cause burns.";

4.1.3 "Repeated exposure to ultraviolet light may result in skin cancer and premature aging of the skin.";

4.1.4 "Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain foods, cosmetics, or medications, including tranquilizers, diuretics, antibiotics, high blood pressure medications, and birth control pills.";

4.1.5 "Anyone taking a prescription or over-the-counter drug should consult a physician before using any tanning equipment or device."

5.0 Compliance and Enforcement Procedures

5.1 Administrative Penalties

Whoever violates a provision of these regulations shall be subject to an administrative penalty of \$250.00 for the first violation, \$500 for the second violation and \$1,000 for the third and all subsequent violations.

5.2 Right to Administrative Hearing

Upon due notice that the Department intends to assess a tanning facility an administrative penalty, as indicated in section 5.1, the facility may submit to the Department, within thirty (30) days of the date of the notice of intent, a written request for an administrative hearing.

5.3 Orders of the Department

Whoever refuses, fails or neglects to comply with an order of the Department, shall be fined not less than \$100.00 and not more than \$1,000.00, together with costs, unless otherwise provided by law.

6.0 Severability

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

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 1333 (18 **Del.C.** §§311 and 1333)

PUBLIC NOTICE

404 Derivative Instruments

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 404 relating to Derivative Instruments. The docket number for this proposed regulation is 2401.

The proposed regulation sets standards for the prudent use of derivative instruments by domestic insurers. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§311 and 1333 and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Tuesday, September 30, 2014. Any such requests should be directed to:

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

404 Derivative Instruments**1.0 Authority**

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311 and 1333 and is promulgated in accordance with 29 **Del.C.** Ch. 101.

2.0 Definitions

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

"Aggregate statement value" means the sum of the statement values of individual derivative instruments. In calculating this sum, an insurer shall assign absolute values to negative values.

"Cap" means an agreement obligating the seller to make payments to the buyer with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.

"Collar" means an agreement to receive payments as the buyer of an option, cap or floor and to make payments as the seller of a different option, cap or floor.

"Counterparty exposure" means the net amount of credit risk attributable to an over-the-counter derivative instrument determined as follows:

- (1) For an over-the-counter derivative instrument not entered into under or subject to a written master agreement which provides for netting of payments owed by the respective parties: (i) the market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or (ii) zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.
- (2) For over-the-counter derivative instruments entered into under or subject to a written master agreement which provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or if not within the United States, within a foreign (not United States) jurisdiction deemed by the SVO as eligible for netting, the greater of zero or the net sum payable to the insurer in connection with all derivative instruments subject to the written master agreement upon their liquidation in the event of default by the counterparty under the master agreement (assuming no conditions precedent to the obligations of the counterparty to make such a payment and assuming no setoff of amounts payable under any other instrument or agreement).
- (3) For the purposes of this definition, market value or the net sum payable, as the case may be, shall be determined at the end of the most recent quarter of the insurer's fiscal year and will be reduced by the market value of acceptable collateral held by the insurer or a custodian on the insurer's behalf.

"Credit rating" means with respect to a party or entity, the rating currently assigned to its unsecured and unsubordinated long-term debt, an issuer rating, financial strength rating or other similar rating which assesses the creditworthiness of a party to meet its financial or deposit obligations.

"Derivative instrument" means an agreement, instrument or a series or combination thereof: (a) to make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or (b) that has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one or more underlying interests or is dependent on the occurrence or nonoccurrence of any event associated with one or more potential financial, economic, or commercial consequences. The term "derivative instrument" includes, without limitation, options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, swaptions, forwards, futures and any other agreements or instruments substantially similar thereto or any series or combination thereof. The term "derivative instrument" does not include other categories of investments specifically authorized under 18 **Del.C.** Chapter 13.

"Derivative transaction" means a transaction involving the use of one or more derivative instruments.

"Derivatives clearinghouse" means a derivatives clearing organization registered with the Commodity Futures Trading Commission or the Securities Exchange Commission or regulated, supervised and examined by a foreign regulatory authority.

"Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance or value of one or more underlying interests.

"Foreign regulatory authority" means any foreign (non-United States) government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a derivative instrument matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a derivative instrument matter.

"Forward" means an agreement (other than a future) to make or take delivery in the future of one or more underlying interests, or effect a cash settlement, based on the actual or expected price, level, performance or value of such underlying interests, but shall not mean or include spot transactions effected within customary settlement periods, when-issued purchases, or other similar cash market transactions.

"Future" means an agreement traded on a futures exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance or value of, one or more underlying interests.

"Hedging transaction" is a derivative transaction which is entered into and maintained to manage or reduce:

- (1) The risk of change in the value, yield, price, cash flow or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring, or;
- (2) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring.

"Income generation transaction" is a transaction involving a derivative instrument set forth in Section 6.0 of this regulation that is intended to generate income or enhance return. Other types of derivative instruments may not be used in income generation transactions.

"Option" means an agreement giving the buyer the right but not the obligation to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend or terminate or effect a cash settlement based on the actual or expected price, spread, level, performance or value of one or more underlying interests.

"Over-the-counter derivative instrument" means a derivative instrument the use of which is authorized under this regulation other than a derivative instrument (i) cleared through a U.S. or foreign derivatives clearinghouse or (ii) traded on or through a U.S. or foreign exchange.

"Potential exposure" means a statistically derived measure of the potential increase in derivative instrument credit risk exposure, for derivative instruments which generally do not have an initial cost paid or consideration received, resulting from future fluctuations in the underlying interests upon which derivative instruments are based. For collars, swaps and forwards, the potential exposure = 0.5% x notional amount x square root of (remaining years to maturity). For futures, the potential exposure = (initial margin per contract on the valuation date, set by the exchange on which contract trades) x (the number of contracts open on the valuation date).

"Qualified counterparty" means a counterparty:

- (1) Which has a designation of "1" or "2" by the SVO, or an investment grade credit rating from at least one nationally recognized statistical rating organization; and
- (2) With which the insurer has entered into a master agreement, together with a credit support annex or other documentation providing for the collateralization of the counterparty's obligations to the insurer under the master agreement, if that collateral documentation provides for (i) daily margin and collateral settlement, (ii) a minimum transfer amount of no more than one million dollars, and (iii) a requirement that collateral be provided by the counterparty from the first dollar of exposure.

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subject to the minimum transfer amount. For this purpose "minimum transfer amount" means an amount below which a daily margin and collateral settlement is not required.

"Replication (synthetic asset) transaction" means a derivative transaction entered into in conjunction with other permissible investments under 18 Del.C. Chapter 13 in order to reproduce the investment characteristics of investments otherwise permissible under 18 Del.C. Chapter 13. A derivative transaction entered into by an insurer as a hedging transaction or income generation transaction shall not be considered a replication (synthetic asset) transaction.

"SVO" means the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners.

"Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, yield, level, performance or value of one or more underlying interests.

"Swaption" means an option to purchase or sell a swap at a given price and time or at a series of prices and times. A swaption does not mean a swap with an embedded option.

"Underlying interest" means the assets, liabilities, other interests or a combination thereof underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities or derivative instruments.

3.0 Purpose

The purpose of this regulation is to set standards for the prudent use of derivative instruments by domestic insurers under 18 Del.C. Chapter 13.

4.0 Permitted Usage

4.1 Insurers may utilize derivative instruments for the following purposes:

4.1.1 Hedging transactions, as defined in Section 2.0 and to the extent permitted by Section 5.0 of this regulation;

4.1.2 Income generation transactions, as defined in Section 2.0 and to the extent permitted by Section 6.0 of this regulation; and

4.1.3 Replication (synthetic asset) transactions, as defined in Section 2.0 and to the extent permitted by Section 7.0 of this regulation.

4.2 A derivative instrument that complies with this regulation is an eligible investment and does not need to otherwise qualify under another provision of 18 Del.C. Chapter 13. Derivative instruments shall not be included as miscellaneous investments for purposes of 18 Del.C. §1320.

5.0 Limitations on Hedging Transactions

5.1 An insurer may use derivative instruments for hedging transactions under this regulation if, as a result of and after giving effect to the transaction:

5.1.1 The aggregate statement value of options, swaptions, caps, floors and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one half percent (7.5%) of its admitted assets;

5.1.2 The aggregate statement value of options, swaptions, caps and floors written in hedging transactions does not exceed three percent (3%) of its admitted assets; and

5.1.3 The aggregate potential exposure of collars, swaps, forwards and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of its admitted assets.

5.2 Hedging transactions entered into to hedge currency risk of investments denominated in a currency other than United States dollars shall not be included in the above limits.

5.3 An insurer may purchase or sell one or more derivative instruments to offset, in whole or in part, any derivative instrument previously purchased or sold without regard to the above limits.

5.4 If an insurer holds one or more derivative instruments used for hedging transactions that complied with the applicable limit set forth in Section 5.1 of this regulation at the time that they were acquired, but that have subsequently exceeded such limit, the insurer shall provide written notice to the Department.

(i) if such limit is exceeded by an amount greater than 1% of admitted assets, within 10 days of exceeding such limit, or (ii) if such limit is exceeded by an amount less than or equal to 1% of admitted assets, within 30 days of exceeding such limit. Derivative instruments used for hedging purposes that were acquired in compliance with this regulation need not be divested by an insurer if they exceed the limits set forth in Section 5.1 of this regulation. In the event that such insurer desires to engage in additional hedging transactions while such limit has been exceeded, the insurer may request a waiver in accordance with Section 12.1 of this regulation. No further hedging transactions subject to such exceeded limit may be entered into without such waiver.

6.0 Limitations on Income Generation Transactions

6.1 An insurer may enter into the following types of income generation transactions:

6.1.1 Sales of covered call options on (i) non-callable fixed income securities, (ii) callable fixed income securities if the option expires by its terms prior to the end of the non-callable period, (iii) derivative instruments based on fixed income securities, or (iv) equity securities;

6.1.2 Sales of covered put options on investments that the insurer is permitted to acquire under 18 Del.C. Chapter 13; and

6.1.3 Sales of covered caps or floors.

6.2 For purposes of this Section 6.0, the term "covered" means that an insurer (i) owns or can immediately acquire, through the exercise of options, warrants or conversion rights already owned, the underlying interest in order to fulfill or secure its obligations under a call option it has sold, (ii) holds cash equivalents or segregated cash with a market value equal to the amount required to fulfill its obligations under a put option it has sold, or (iii) holds in its portfolio (A) investments generating the cash flow, or (B) cash equivalents or segregated cash with a market value, in each case, sufficient to make the required payments under a cap or floor it has sold.

6.3 In connection with an insurer's income generation transactions under Section 6.1, the sum total of the following items shall not exceed ten percent (10%) of an insurer's admitted assets: (i) the aggregate statement value of the equity or fixed income securities that are subject to covered call options, plus (ii) the aggregate statement value of the assets that generate the cash flows or are sufficient to make the required payments under covered caps and floors, plus (iii) the face value of fixed income securities underlying a derivative instrument subject to a covered call option, plus (iv) the aggregate amount of the purchase obligation under covered put options.

6.4 An insurer utilizing income generation transactions must at all times (i) be able to identify on its books and records, without duplication, its ownership of, or right to acquire, the investments, cash or cash equivalents required under Section 6.2 to be held in connection with the income generation transactions authorized under Section 6.1, and (ii) maintain a separate record that (A) lists all of the insurer's outstanding income generation transactions under Section 6.1, and (B) demonstrates how those transactions are "covered" as required under Section 6.2, by the insurer's ownership of, or right to acquire, underlying interests, designated investments, cash or cash equivalents. Such record shall be submitted to the Department upon its request.

7.0 Limitations on Replication (Synthetic Asset) Transactions

7.1 Any asset being replicated is subject to all of the provisions and limitations on the making thereof specified in 18 Del.C. Chapter 13 with respect to investments by the insurer as if the replication (synthetic asset) transaction constituted a direct investment by the insurer in the replicated asset.

7.2 The aggregate statement value of all assets being replicated shall not exceed ten percent (10%) of the insurer's admitted assets.

8.0 Counterparty Exposure

8.1 Counterparty exposure with respect to over-the-counter derivative instruments, other than with respect to a counterparty that is an affiliate of the insurer approved by the Commissioner in accordance with

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Section 8.2.3 of this regulation, shall be included in determining compliance with any single or aggregate quantitative limitation on investments made by an insurer under 18 Del.C. Chapter 13.

- 8.2 An insurer may enter into a transaction for any over-the-counter derivative instrument only with:
- 8.2.1 A qualified counterparty;
 - 8.2.2 A counterparty, other than a qualified counterparty, provided that (1) the aggregate counterparty exposure of the insurer to any single counterparty, other than a qualified counterparty, shall be limited to one percent (1%) of the insurer's admitted assets, and (2) the aggregate counterparty exposure of the insurer to all counterparties, other than qualified counterparties, shall be limited to three percent (3%) of the insurer's admitted assets; or
 - 8.2.3 A counterparty that is an affiliate of the insurer, if (a) the Commissioner has approved of the application of 18 Del.C. §5933 to such affiliate, in accordance with subsection (h) thereof, or (b) the Commissioner has approved of over-the-counter transactions with such affiliate in accordance with 18 Del.C. §5005.
- 8.3 If (i) a counterparty that met the definition of "qualified counterparty" (set forth in Section 2.0 of this regulation) at the time that an insurer entered into a derivative instrument with such counterparty subsequently ceases to satisfy the definition of "qualified counterparty" while such derivative instrument remains in effect, and (ii) as a result of such change in the status of the counterparty, such insurer will exceed the limits set forth in Section 8.2.2 of this regulation, such insurer shall, within 30 days of such change in the status of the counterparty, provide written notice to the Department. Derivative instruments entered into with such counterparty that were acquired in compliance with this regulation need not be divested by an insurer if they exceed the limits set forth in Section 8.2.2 of this regulation. In the event that such insurer desires to enter into additional derivative instruments with such counterparty while such limit has been exceeded, the insurer may request a waiver in accordance with Section 12.1 of this regulation. No further derivative instruments subject to such exceeded limit may be entered into without such waiver.

9.0 Guidelines

- 9.1 Each insurer utilizing derivative instruments shall establish written guidelines stating the policy objectives of management, applicable risk constraints and investment limitations, permissible strategies, the relationship of those strategies to the insurer's operations and how such strategies reduce or control the insurer's market risk or otherwise save transaction costs or substitute for investments or liabilities. The insurer's board of directors, or committee thereof charged with the responsibility of overseeing investments, shall approve the written guidelines and any amendment thereto and shall establish a procedure to determine, at least annually, that all derivative transactions were made in accordance with policy objectives, permissible strategies, the insurer's overall investment goals as outlined in its written guidelines, as well as adherence to and compliance with this regulation. The insurer's written guidelines shall address these requirements of the board or investment committee.
- 9.2 Insurers utilizing derivative instruments on or after the effective date of this regulation and prior to April 1, 2015 shall file a copy of such guidelines for informational purposes with the Department no later than April 1, 2015. Each other insurer shall file a copy of such guidelines for informational purposes with the Department prior to the use of any derivative instruments by such insurer. Any subsequent revisions to an insurer's written guidelines shall be filed with the Department as they become effective.

10.0 Documentation Requirements

- 10.1 An insurance company shall maintain documentation and records relating to each derivative transaction, such as:
- 10.1.1 The purpose or purposes of the transaction;
 - 10.1.2 The assets or liabilities to which the transaction relates;
 - 10.1.3 The specific derivative instrument used in the transaction;

10.1.4 For over-the-counter derivative instrument transactions, the name of the counterparty and the counterparty exposure; and

10.1.5 For derivative instruments traded on or through an exchange or derivative clearinghouse, the name of the exchange or derivative clearinghouse and the name of the relevant execution and clearing firms.

10.2 An insurer utilizing hedging transactions shall have a written methodology for determining whether derivative instruments used for hedging have been effective.

10.3 All guidelines and notices submitted by an insurer pursuant to Sections 5.4, 8.3 or 9.0 of this regulation that are in the possession of or control of the Department shall be confidential by law and privileged, shall not be subject to this State's Freedom of Information Act, 29 Del.C. §§10001, et. seq., shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

11.0 Accounting and Reporting

Derivative transactions permitted by this regulation shall be accounted for and reported in accordance with the NAIC manuals, including the National Association of Insurance Commissioners Accounting Practices and Procedures Manual and the Annual Statement Instructions Manuals.

12.0 Waiver

The Department may, in its discretion, from time to time waive one or more of the requirements contained in this regulation upon the written request of an insurer and a reasonable showing of the need for such waiver.

13.0 Existing Derivative Instruments

13.1 Notwithstanding any other requirement of this regulation, any particular derivative instrument held by an insurer on the effective date of this regulation which was a legal investment at the time it was made, and which the insurer was legally entitled to possess immediately prior to such date, shall be deemed to be an eligible investment for so long as it is held by such insurer.

13.2 Each insurer shall be permitted to use derivative instruments during the period from the effective date of this regulation until the date it is required to make its first informational filing pursuant to Section 9.2 of this regulation, provided that such insurer reasonably believes that such derivatives use is consistent with this regulation. Thereafter, insurers shall use derivative instruments in accordance with the guidelines filed with the Department pursuant to Section 9.2.

14.0 Severability

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

15.0 Effective Date

This regulation shall become effective on November 12, 2014.

PROPOSED REGULATIONS

DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION DIVISION INVESTOR PROTECTION UNIT

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

PUBLIC NOTICE

Rules and Regulations Pursuant to the Delaware Securities Act

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and section 73-102(b) of Title 6 of the Delaware Code, the Investor Protection Unit of the Delaware Department of Justice ("the Unit") hereby publishes notice of a proposed revision to the Rules and Regulations Pursuant to the Delaware Securities Act. The Unit hereby proposes numerous changes to the rules and regulations pertaining to administrative proceedings, Unit investigations, broker-dealers, investment advisers, securities registration, as well as a significant number of technical amendments.

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

Owen Lefkon
Investor Protection Director
Department of Justice, Investor Protection Unit
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19801
Investor.Protection@state.de.us

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

SUMMARY OF THE PROPOSED REVISION

The proposed revision makes substantial changes to the Rules and Regulations Pursuant to the Delaware Securities Act (the "Rules"). Generally, the Rules are proposed to be changed as follows:

1. to reflect the passage of amendments to the Delaware Securities Act, 6 Del.C. Ch. 73 (the "Act") in 2013. See, *An Act to Amend Title 6 of the Delaware Code Relating to the Delaware Securities Act*, 79 Del. Laws. c. 182, including
 - a. changing "Securities Division" and "Division" to "Investor Protection Unit" and "Unit," respectively,
 - b. changing "Securities Commissioner" and "Commissioner" to "Investor Protection Director" and "Director," respectively, and
 - c. adding flexibility to the Unit's administrative hearing process to allow for the Director to delegate authority to the hearing officer, who would now be referred to as the "presiding officer" (see changes throughout Part B of the Rules);
2. to increase the fee for written interpretive opinions from the Unit to \$300 (see Rule 102);
3. to clarify and adjust various aspects of the administrative hearing process, including
 - a. the rules for service and the form of papers to be filed (see Rules 210 and 212),
 - b. that the Unit may issue a complaint for any violation of an order, or any other lawful condition imposed upon the defendant by the Director (see Rules 220 and 221),
 - c. to extend the timing for disclosure of documents prior to a hearing and the disclosure of expert qualifications and opinions (see Rule 243),
 - d. to clarify that the Unit does not need to file findings of fact and law in default judgment (see Rule 252), and

- e. to clarify the respective roles of Unit and the Director with respect to summary orders, including that a summary order requires action by either the Unit or the Director, but not necessarily both (see Rules 260, 261, 262, and 264);
4. to clarify the process, authority, and parameters for issuing subpoenas in administrative proceedings and investigations (see Rules 203 and 304);
5. to add a fee for Form D notice filings required under Section 73-204(e) of the Act, which fee is proposed to be set at one half of one percent of the maximum aggregate offering price of securities to be offered in Delaware during the initial registration period, but not less than \$200.00 or more than \$1000.00 (see Rule 404);
6. to impose a late fee for failing to pay a required fee on time (see Rule 404);
7. to require Form D notice filings to be made earlier than the current 15 day period if an earlier filing is required by the SEC (see Rule 406);
8. to conform the Rules to existing practice for the processing of registration applications whereby applications for registration are not complete until processed through CRD or IARD (as the case may be) and the prerequisites of registration with the SEC, FINRA, and/or the applicant's home state (as the case may be) are met (see Rules 600, 601, 700 and 701);
9. to establish that the suitability standard for broker-dealers and investment advisers is revised to clarify that the standard applies to recommended investment strategies, as well as recommended purchase and sale transactions (see Rules 609(b)(3), 609(d)(4)-(6), and 709(a)(1));
10. to update the standards of practice for investment advisers having custody of client funds (see Rule 708);
11. to clarify the supervisory responsibility of investment adviser and broker-dealer firms (see Rules 609(b)(4) and 709(a)(4));
12. to clarify that a broker-dealer's violation of any conduct rule promulgated by FINRA is a dishonest and unethical practice (see Rule 609(b)(28));
13. to impose a requirement on broker-dealers and investment advisers with a place of business in Delaware to post a public notice of registration in such place of business, which public notice states:

Investment firms and professionals in Delaware must be registered with the Investor Protection Unit of the Delaware Department of Justice. This firm has been so registered. Registration does not mean this business has been approved or reviewed by the Investor Protection Unit.

To check the registration status of any investment firm or professional in Delaware, or to file a complaint with the Investor Protection Unit, please call (302)577-8424 or e-mail Investor.Protection@state.de.us.

(see Rules 611 and 712); and
14. to add an exemption from registration for certain investment advisers who are also exempt from federal registration as private fund advisers (see Rule 711).

The proposed revision also makes a variety of technical changes that correct stale citations, delete references to entities that no longer exist, modernize the use of language, eliminate inapplicable grandfathering provisions, and make stylistic changes for the sake of uniformity.

Securities Investor Protection Unit

Rules and Regulations Pursuant to the Delaware Securities Act

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

[Rules and Regulations Pursuant to the Delaware Securities Act](#)

PROPOSED REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

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

5101 Sediment and Stormwater Regulations

REGISTER NOTICE

SAN # 2014-06

1. TITLE OF THE REGULATIONS:

5101 Sediment and Stormwater Regulations

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

Sections 1.5, 1.7, 1.13, 1.14, 3.11, 4.1, 4.5, 5.1, 6.1 have been revised and definition of "functional equivalency" added to the regulations. These changes are made to clarify that the Technical Document that supports the regulations is guidance to be used as a reference for compliance and is not the only means of complying with the regulations. Functionally equivalent methods to those provided in the Technical Document may be considered on a case-by-case basis.

In addition, typographical errors have been addressed.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for this regulation.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7, Delaware Code, Chapter 40, the Sediment and Stormwater Law

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

No other regulations are affected by these proposed regulation revisions.

6. NOTICE OF PUBLIC COMMENT:

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship will conduct a public hearing on proposed revisions **Regulation No. 5101 Sediment and Stormwater Regulations** to clarify that the Technical Document that supports the regulations is guidance to be used as a reference for compliance and is not the only means of complying with the regulations. Functionally equivalent methods to those provided in the Technical Document may be considered on a case-by-case basis.

The public hearing on this proposed revision of **Regulation No. 5101 Sediment and Stormwater Regulations** will be held Thursday, September 25, 2014, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation revisions may be inspected at the Department's Richardson and Robbins Building office located at 89 Kings Highway, Dover, DE 19901 or on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website:

<http://www.dnrec.delaware.gov/swc/Drainage/Pages/Reg-Revisions-2014.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Elaine Webb, DNREC Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, Elaine.Webb@state.de.us.

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, October 10, 2014, to Elaine Webb and/or statements and testimony may be presented either

orally or in writing at the September 25, 2014 public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Elaine Webb
DNREC – Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

7. PREPARED BY:

Elaine Webb (302) 739-9921 August 13, 2014
Email address elaine.webb@state.de.us

5101 Sediment and Stormwater Regulations

1.0 General Provisions

(Break in Continuity Within Section)

1.3 Applicability

1.3.1 ~~On the effective date of these regulations~~ and after January 1, 2014, unless a particular activity is exempted by these regulations, a person shall not disturb land without an approved Sediment and Stormwater Management Plan from the Department or Delegated Agency. A Sediment and Stormwater Management Plan shall not be approved for a property unless it is consistent with the following items:

1.3.1.1 These regulations;

1.3.1.2 7 **Del.C.** Ch. 40, relating to erosion and sediment control and stormwater management;

1.3.1.3 7 **Del.C.** Ch. 60, relating to the development, utilization, and control of the land, water, underwater and air resources of the State, and;

1.3.1.4 *Regulations Governing the Control of Water Pollution*, Section 9.1.02, known as Special Conditions for Stormwater Discharges Associated with Construction Activities.

1.3.2 Applicability of these regulations for plans that have been approved to comply with previous regulations shall be consistent with the following:

1.3.2.1 Plans approved to comply with previous regulations where construction has not commenced on ~~the effective date of these regulations~~ January 1, 2014 may have the plan approval extended under the requirements of the previous regulations in subsequent three-year approval periods. Any plan approved to comply with previous regulations must commence construction no later than ~~six years following the effective date of these regulations~~ December 31, 2019. A plan approved to comply with previous regulations where construction has not commenced ~~within six years following the effective date of these regulations~~ by December 31, 2019 shall expire and a new plan in compliance with these regulations shall be submitted to the Department or Delegated Agency for review and approval before commencement of construction.

(Break in Continuity Within Section)

1.5 Variances

1.5.1 The Department may grant a variance from any requirement of these regulations in accordance with the provisions of 7 **Del.C.** §6011.

1.5.2 The Department may grant a temporary emergency variance from any requirement of these regulations in accordance with the provisions of 7 **Del.C.** §6012.

1.5.3 Excluding items covered by 1.7 Offset Provisions, the Department shall consider and decide applications for a variance from the provisions of these Regulations ~~or the technical documents~~ if all of the following are established by the applicant.

PROPOSED REGULATIONS

- 1.5.3.1 The variance sought will not be detrimental to the environment or contrary to law, or these Regulations, ~~or the technical documents.~~
- 1.5.3.2 Owing to special conditions or an unusual situation, a literal interpretation of these Regulations ~~or the technical documents~~ will result in hardship to the owner of the property in question.

(Break in Continuity Within Section)

1.7 Offset Provisions

- 1.7.1 The Department may require an offset as an alternative to full or partial compliance with the Resource Protection Event requirements as provided in Sections 5.2 and 5.6.3 of these regulations.
- 1.7.2 Offset requirements shall be subject to Departmental review and approval as well as to the public notice requirements of 7 **Del.C.** §6004.
- 1.7.3 Procedures for determining offset ~~requirements shall~~ options may be developed by the Department and published in the technical document supplement to these regulations.

(Break in Continuity Within Section)

- 1.13 The Department is responsible for the implementation and supervision of the sediment and stormwater program which is established by 7 **Del.C.** Ch. 40. The program shall be administered pursuant to these regulations. The Department may also develop and maintain a Technical Document to serve as a guide for the regulated community and Delegated Agencies in complying with Chapter 40 and these regulations.

1.14 Technical Document

- 1.14.1 The Technical Document may include policies, procedures, technical specifications and other advisory documents as deemed necessary by the Department to carry out implementation and supervision of the sediment and stormwater program.
- 1.14.2 The Technical Document, as well as any revisions or subsequent updates, shall be adopted following public notice requirements in accordance with 7 **Del.C.** §6004.
- 1.14.3 The Technical Document may be utilized as a reference for all activities subject to these regulations. Alternative measures that provide functional equivalency to the policies, procedures, technical specifications and other advisory provisions contained in the Technical Document and meet the provisions of these regulations may be considered on a case-by-case basis following Departmental review and approval.

- 1.14 All activities ~~subject to these regulations shall comply with the design criteria and meet the minimum standards developed and published by the Department and shall follow Department policy, procedures and guidelines as set forth in accompanying technical documents. Revisions or updates to any of these documents shall be adopted following public notice requirements in accordance with 7 **Del.C.** §6004.~~

2.0 Definitions

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

(Break in Continuity Within Section)

“**Functional Equivalency**” means alternative measures that are consistent with the policies, procedures, technical specifications, and advisory provisions found in the Technical Document, and which satisfy these Regulations.

(Break in Continuity Within Section)

3.0 Plan Approval Procedures and Requirements

(Break in Continuity Within Section)

- 3.5 Review Procedures for Plan Submittals

(Break in Continuity Within Section)

- 3.5.6 Administratively complete sediment and stormwater management plans, as determined by Department policy, that have been submitted for review and ultimate approval before ~~the effective date of these regulations January 1, 2014~~ shall be subject to the regulations in effect at the time that the plan was first submitted to the Department or Delegated Agency. Unless administratively extended by the Department, a plan undergoing the review process on ~~the effective date of these regulations January 1, 2014~~ but is not approved within eighteen months of ~~the effective date of these regulations January 1, 2014~~ shall be subject to these regulations.

(Break in Continuity Within Section)

3.8 Plan Certifications

- 3.8.1 All detailed plans submitted for review shall be prepared, signed, dated, and sealed by a Licensed Professional in the State of Delaware. It is the obligation of the Licensed Professional in the State of Delaware to ensure that the design of construction site stormwater management ~~implements~~ best management practices (BMPs) and post construction stormwater management systems meet the requirements in these regulations.

(Break in Continuity Within Section)

3.11 ~~Post Construction Verification Documents~~

- ~~3.11.1~~ Post construction verification documents shall be submitted to the Department or Delegated Agency within 60 calendar days of completion for stormwater management systems. The post construction verification documents shall compare the designed and constructed elements of the stormwater management system, ~~meet the criteria for post construction verification documents in the Department or Delegated Agency checklist,~~ and bear the seal of a Licensed Professional in the State of Delaware. A final construction review and approval by the Department or Delegated Agency is required before a financial guarantee shall be released, and before a Notice of Completion may be issued.
- ~~3.11.2 Only these post construction verification documents that comply with the Department or Delegated Agency policies, procedures and guidelines shall be considered acceptable.~~

4.0 Performance Criteria for Construction Site Stormwater Management

- 4.1 ~~All construction site stormwater management implements shall conform to the design criteria and meet the minimum standards and specifications contained in the Delaware Erosion and Sediment Control Handbook, and approved supplements. Revisions or updates to any of these documents shall be adopted in compliance with public notice requirements in accordance with 7 Del.C. §6004. The Technical Document may be utilized as a reference for the design and preparation of construction site stormwater management plans. Alternative measures that provide functional equivalency may be considered on a case-by-case basis in accordance with Section 1.14 of these Regulations.~~

(Break in Continuity Within Section)

4.5 Stabilization

- 4.5.1 Following soil disturbance or re-disturbance, Permanent or Temporary Stabilization shall be completed for perimeter sediment controls, topsoil stockpiles, and all other disturbed or graded areas on the project site within 14 calendar days unless more restrictive Federal requirements apply.
- 4.5.2 Documentation of soil testing and materials used for temporary or permanent stabilization including but not limited to soil test results, seed tags, soil amendment tags, etc. shall be provided to the Department or Delegated Agency to verify that the permanent or temporary stabilization has been completed in accordance with the approved plan ~~and the standards and specifications of the Delaware Erosion and Sediment Control Handbook.~~
- 4.5.3 The Department or Delegated Agency ~~shall have the discretion to~~ may require additional soil testing and reapplication of permanent or temporary stabilization in accordance with the ~~specification provided~~ specifications in the Delaware Erosion and Sediment Control Handbook, or alternative measures that provide functional equivalency.

PROPOSED REGULATIONS

- 4.5.4 Release of either a financial guarantee or issuance of Notice of Completion or both shall not occur until final stabilization of exposed areas is achieved.

5.0 Performance Criteria for Post Construction Stormwater Management

- 5.1 ~~All items under this section, including design and construction of stormwater management systems, shall conform to the design criteria and meet the minimum standards and specifications established by Department policy, procedures and guidelines as set forth in accompanying technical documents. Revisions or updates to any of these documents shall be adopted in compliance with public notice requirements in accordance with 7 Del.C. §6004. The Technical Document may be utilized as a reference for the design and preparation of post construction stormwater management plans. Alternative measures that provide functional equivalency may be considered on a case-by-case basis in accordance with Section 1.14 of these Regulations.~~

(Break in Continuity Within Section)

5.6 Redevelopment Criteria

- 5.6.1 The Department recognizes the benefits of redevelopment. The requirements under this section are intended to encourage redevelopment while establishing compliance criteria that meet the overall goals and intent of these regulations.
- 5.6.2 In the case of Brownfield development of a contaminated site or Brownfield, a remediation plan approved by the Department may meet the stormwater management goals and the intent of these regulations with prior consent and subsequent approval by the Department.

(Break in Continuity Within Section)

6.0 Construction Review of Sediment and Stormwater Management Plan

6.1 Owner Responsibilities

- 6.1.1 The Owner shall ensure that all elements of the approved Sediment and Stormwater Management Plan are implemented and construction site stormwater management BMPs and post construction stormwater management systems are installed and maintained in accordance with that plan. All construction sites shall comply with these regulations.
- 6.1.2 The Owner shall may refer to the specifications contained in the Handbook or take functionally equivalent measures to install and maintain construction site stormwater management BMPs in accordance with the standards and specifications contained in the Delaware Erosion and Sediment Control Handbook, and approved supplements the approved plan.

(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:**

5101 Sediment and Stormwater Regulations

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Statutory Authority: 4 Delaware Code, Section 304(a) (4 Del.C. §304(a))

PUBLIC NOTICE

Alcoholic Beverage Control Regulations

A. Type of Regulatory Action Required

Amendments to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Office of the Alcoholic Beverage Control Commissioner intends to amend Title 4 of the Delaware Administrative Code by revising the existing regulations to reflect the current regulatory environment. These amendments will update the regulations to control the manner of the sale of alcoholic beverages to protect the public safety and insure that the sales are in the best interest of the public.

Persons wishing to present their views regarding this matter may do so at public hearings to be held in each county. The hearings will be held as follows:

- Wednesday, September 24, 2014 at 10:00 a.m. in the third floor conference room of the Carvel Building, 820 N. French Street, Wilmington, DE;
- Tuesday, September 30, 2014 at 1:00 p.m. in the DNREC auditorium, 89 Kings Highway, Dover, DE; or
- Wednesday, October 1, 2014 at 2:00 p.m. in the Sussex County Council Chambers, Administrative Building, The Circle, Georgetown, DE.

Written comments will be accepted until close of business on October 20, 2014. Written comments should be submitted to Lauren Shinault, Regulation Review, Office of the Alcoholic Beverage Control Commissioner, Carvel Building 3rd Floor, 820 N. French Street, Wilmington, Delaware 19801. A copy of these regulations may be viewed at the above address.

*** Please Note: Due to the size and extent of the revisions they are not printed here. A PDF version is available at the following link.**

[Alcoholic Beverage Control Regulations](#)

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Statutory Authority: 4 Delaware Code, Section 304(a) (4 **Del.C.** §304(a))

PUBLIC NOTICE**1407 A Rule Pertaining to Movie Theaters****A. Type of Regulatory Action Required**

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Office of the Alcoholic Beverage Control Commissioner intends to amend Title 4 of the Delaware Administrative Code by adding a new regulation governing the dispensing and consumption of alcoholic liquors in movie theaters. This regulatory addition is required due to passage of House Bill 299, which was effective on July 15, 2014. The legislation required the Commissioner to promulgate such rules and regulations with respect to the enforcement, including procedures to prevent the consumption of alcohol in movie theaters by those under 21 years old, or furtherance of the objectives and provisions of the legislation as the Commissioner may deem necessary.

Persons wishing to present their views regarding this matter may do so at public hearings to be held in each county. The hearings will be held as follows:

- Wednesday, September 24, 2014 at 10:00 a.m. in the third floor conference room of the Carvel Building, 820 N. French Street, Wilmington, DE;
- Tuesday, September 30, 2014 at 1:00 p.m. in the DNREC auditorium, 89 Kings Highway, Dover, DE; or
- Wednesday, October 1, 2014 at 2:00 p.m. in the Sussex County Council Chambers, Administrative Building, The Circle, Georgetown, DE.

Written comments will be accepted until close of business on October 20, 2014. Written comments should be submitted to Lauren Shinault, Regulation Review, Office of the Alcoholic Beverage Control Commissioner, Carvel Building 3rd Floor, 820 N. French Street, Wilmington, Delaware 19801. A copy of these regulations may be viewed at the above address.

1407 A Rule Pertaining to Movie Theaters**1.0 Purpose**

This rule is promulgated pursuant to the Commissioner's authority to regulate the time, place, and manner in which alcoholic liquors are sold and dispensed (4 Del.C. §304). In addition, it is the purpose of this rule to implement and clarify the Commissioner's authority to license a movie theater to sell alcoholic liquors for consumption on any portion of the premises approved by the Commissioner (4 Del.C. §512 (f)). In accordance with these statutes alcoholic liquors may be sold or dispensed in a manner consistent with Title 4 of the Delaware Code and Commissioner Rules.

By the promulgation of this rule, the Commissioner finds that alcoholic liquors may be sold and consumed on the premises of a movie theater that has been approved by the Commissioner in accordance with the provisions of this rule.

2.0 Definitions

For purposes of this regulation, the following definitions shall apply.

"Alcoholic beverage" means a beverage consisting of no more than sixteen (16) ounces of beer, eight (8) ounces of wine, or two (2) ounces of spirits.

"Movie theater" means an indoor facility used to host showings of motion pictures which:

- a. has a capacity of at least 500 patrons for any single movie showing or for showing of multiple movies in separate theaters at the same time;
- b. shall host a minimum of 250 movie showings in any calendar year and shall be open at least 5 days a week;
- c. has video cameras in each theater auditorium that allows supervision of movie patrons from a centralized or remote location during a movie showing; and
- d. has a separate bar or location where alcohol is sold, served or dispensed that is separated from where food and non-alcoholic drink are sold.

3.0 Approved Course Required

All movie theater managers and employees involved in serving alcohol must successfully complete within 30 days from employment an approved course on the responsible service of alcoholic beverages.

4.0 Minors Prohibited

No minors are permitted to stand or sit at the bar or counter where alcoholic beverages are sold, served or consumed.

5.0 Dispensing Limitations

No more than one (1) alcoholic beverage may be sold to a patron at a time who is at least twenty-one (21) years old and no more than two (2) alcoholic beverages may be sold per patron per movie showing. The alcoholic beverage must be dispensed in a container that is clearly different from other non-alcoholic drinks and the patron purchasing the alcoholic beverage must be identified by a wrist band or similar means.

6.0 Inspection Required

A server trained individual must physically inspect each theater at least once during each movie showing to ensure that persons under the age of twenty-one (21) are not consuming alcohol.

DIVISION OF STATE POLICE

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304)
24 DE Admin. Code 1300

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 Del.C. Ch. 13 proposes to amend Rule 4.0 - Training Requirements - requiring all instructors to take the class and pass the test; Rule 6.0 - Criminal Offenses - gives Professional Licensing Section the authority to deny applicants; Rule 10.0 - Uniforms, Patches, Badges, Seals, Vehicular Markings - general housekeeping. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by September 30, 2014, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903.

1300 Board of Examiners of Private Investigators & Private Security Agencies (Break in Continuity of Sections)

4.0 Training Requirements

(Break in Continuity Within Section)

4.5 Instructors for the sixteen (16) hours of training must take a Train the Trainer session through the Professional Licensing Section. Updates to the training curriculum will be sent out as approved and shall be implemented into the course of instruction. An instructors test shall be mandatory with a passing grade of 75%. If this test is failed, the instructor shall re-take the session and the test until receiving a passing grade before being approved.

4.5.1 Instructors that have previously taken the class and the test must take the instructors test with a passing grade to maintain their instructor approval.

4.5.2 The instructor certification approval may be suspended or revoked as deemed necessary by the Board.

(Break in Continuity of Sections)

6.0 Criminal Offenses

6.1 In addition to those qualifications set forth in 24 Del.C. Ch. 13, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III within the last three (3) years.

6.2 For the purposes of 24 Del.C. Ch. 13, the ~~Board~~ Professional Licensing Section may deny an application for a license or suspend or revoke a license if the applicant or licensee has been convicted of a misdemeanor crime involving moral turpitude. A misdemeanor crime involving moral turpitude includes, but is not limited to, the following crimes in the Delaware Code (or similar crimes under the laws of other jurisdictions):

(Break in Continuity of Sections)

10.0 Uniforms, Patches, Badges, Seals, Vehicular Markings

10.1 No person licensed under 24 Del.C. Ch. 13 shall wear or display any uniform, patch, ~~or~~ badge, seal, vehicle and the markings, letterhead, business card, advertisement, or other form of publication unless first approved by the Board of Examiners.

PROPOSED REGULATIONS

- ~~10.2~~ The use of "patrol" and/or "officer" ~~on any type of uniform, patch, badge, seal, vehicular marking or any type of advertisement~~ shall first be preceded by the word "security". Under no circumstances shall a uniform, patch, badge, seal, vehicular marking, letterhead, business card or any type of advertisement any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.
- ~~40.2~~ ~~Advertisement and other forms of publications:~~
- ~~40.2.1~~ ~~10.3~~ No letterhead, business card, advertisement, or other form of publication including but not limited to uniforms, patches, badges, seals, vehicular markings and similar items may be used or displayed unless first approved by the Board of Examiners. No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.
- ~~40.2.2~~ ~~10.4~~ All uniforms displaying a patch must contain an approved patch that is not generic in nature. The patch must have the name of the agency printed on it.
- ~~40.3~~ ~~10.5~~ Vehicle Identification
- ~~40.3.1~~ No person or entity licensed under 24 ~~Del.C.~~ Ch. 13 shall utilize any vehicle in the course of activities covered by said Chapter 13, unless the appearance of the vehicle, including any identifying marking, shall have been first approved by the Board of Examiners using the standards and criteria set forth in this Rule.
- ~~40.3.2~~ The content of any vehicle marking shall be governed by the standards and criteria set forth in Rule 5.1 above.
- ~~40.3.3~~ ~~10.5.1~~ No vehicle utilized for purposes covered by 24 ~~Del.C.~~ Ch. 13 shall have an appearance that creates a reasonable likelihood of confusion with a police vehicle used by the Delaware State Police or a law enforcement agency of any state or governmental subdivision. The Board of Examiners shall have discretion to review the appearance of vehicles, and to make comparisons with known law enforcement vehicles, in order to enforce this Rule.
- ~~40.3.4~~ ~~10.5.2~~ In the event that a vehicle is not approved by the Board of Examiners pursuant to this Rule, the Board may indicate what changes to the vehicle appearance would be sufficient to satisfy the standard and criteria set forth above.
- ~~40.3.5~~ ~~10.5.3~~ Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

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

1300 Board of Examiners of Private Investigators and Private Security Agencies

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 ~~Del.C.~~ §105(a)(1))
24 ~~DE Admin. Code~~ 100

PUBLIC NOTICE

100 Board of Accountancy

Pursuant to 24 ~~Del.C.~~ §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The rules pertaining to firm ownership are amended to clarify that all non-licensee owners of firms must be individuals and must be active participants in the firm.

A public hearing will be held on October 15, 2014 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments

A public hearing will be held on October 15, 2014 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until October 31, 2014 in accordance with 29 **Del.C.** §10118(a).

100 Board of Accountancy
(Break in Continuity of Sections)

10.0 Firm Permits to Practice

(Break in Continuity Within Section)

- 10.4 Each applicant for issuance or renewal of a firm permit to practice certified public accountancy for a firm with an office or offices in this State shall be required to show that: 1) each principal who performs services in this State, who performs services for a client(s) located in this State, or who is responsible for the accounting work in this State, holds a valid Delaware individual permit to practice certified public accountancy; ~~and~~ 2) each employee holding a certificate who performs services in this State or who performs services for a client(s) located in this State, except for employees who have not as yet accumulated sufficient experience to qualify for a permit under 24 **Del.C.** §107, holds a valid Delaware individual permit to practice certified public accountancy. ~~For purposes of 24 **Del.C.** §111 and this Rule, employees of a firm with its principal offices outside of Delaware that work in excess of eighty (80) hours in this State or who work for a client(s) in this State must have an individual permit to practice.~~ and 3) a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a permit who are licensed in some state, and such partners, officers, shareholders, members or managers, whose principal place of business is in this state, and who perform services in this state hold a valid permit under 24 **Del.C.** §107. Firms may include non-licensee owners provided that all non-licensee owners are individuals of good moral character and are active individual participants in the firm.

(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:**

100 Board of Accountancy

DIVISION OF PROFESSIONAL REGULATION

BOARD OF CHIROPRACTIC

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

24 DE Admin. Code 700

PUBLIC NOTICE

700 Board of Chiropractic

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

The Board will hold a public hearing on the rule change on October 2, 2014 at 8:30 a.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent

to LaTonya Brown, Administrator of the Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, DE 19904.

700 Board of Chiropractic

1.0 Chiropractic Defined; Limitations of Chiropractic License

- 1.1 An adjunctive procedure not otherwise prohibited by Chapter 7 which aids and or assists the chiropractor in providing chiropractic care and includes by way of example and is not limited to:
Acupuncture Procedures
Physiological Therapeutics
Diet and Nutritional Programs
Rehabilitation/Exercise Programs
- 1.2 Practice of chiropractic includes treatment by hand or instrument assisted.

(Break in Continuity of Sections)

3.0 Renewal Requirements

- 3.1 The biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed sixty days; however, it is illegal to practice Chiropractic in the State of Delaware beyond the expiration date. Licensees who do not renew their license within sixty days of the expiration date must reapply under the licensure requirements of a new licensee and have 24 credits of continued education from the previous licensing period.
- 3.2 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.~~
- 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 of attendance or completion that must be signed by the course presenter or by a designated official of the sponsoring organization. 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. All licensees renewing during the late renewal period shall be audited.

(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:**

700 Board of Chiropractic

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 930

REGULATORY IMPLEMENTING ORDER

930 Supportive Instruction (Homebound)

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend Title 14 of the Delaware Administrative Code by amending 14 **DE Admin. Code** 930 Supportive Instruction (Homebound). This amendment is related to supportive instruction for students who are pregnant.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on July 1, 2014, in the form hereto attached as *Exhibit "A"*. Support letters with minimal changes related to further clarifying the meaning of supportive instruction, as well as conditions that warrant a student eligible for homebound instruction were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. General support letters with no changes noted to the proposed regulation were received from the National Women's Law Center and the American Civil Liberties Union.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) to state that students are eligible for supportive instruction in a homebound setting for conditions related to pregnancy, or childbirth.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) 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** 930 Supportive Instruction (Homebound) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) 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 August 21, 2014. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of August 2014.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 21st day of August 2014

930 Supportive Instruction (Homebound)

1.0 Definition

"Supportive Instruction" [is means] an alternative educational program provided at home, in a hospital or at a related site for a student temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition ~~[or accident considered to be of a temporary nature, accident, or pregnancy, childbirth, or related medical condition to pregnancy or childbirth]~~. Subject to 14 **Del.C.**, §1604(8), this may also include an alternative educational program provided at home to a student that has been suspended, expelled or subject to expulsion based upon the student's local school district or charter school policy.

- 1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.
- 1.2 Services for children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C 1400 et.seq), and its regulations (34 CFR parts 300 and 301), 14 **Del.C.**, Ch. 31, and the Department of Education's regulations on Children with Disabilities (14 **DE Admin. Code** 922 through 929) shall be provided in accordance with these laws and shall be processed under the district's or charter school's special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and its regulations, 14 **Del.C.**, Chapter 31, and the Department of Education's regulations on Children with Disabilities.
- 1.3 Nothing in this regulation shall alter a district's or charter school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

2.0 Eligibility for Conditions other than Suspension, Expulsion or Subject to Expulsion

- 2.1 A student enrolled in a school district or charter school is eligible for supportive instruction when the district or charter school receives the required certification that ~~[an accident, injury, sudden illness or episodic flare up of a chronic condition one or more of the following conditions]~~ will prevent the student from attending school for at least ten (10) school days[=:
- 2.1.1 **Sudden illness,**
 - 2.1.2 **Accident,**
 - 2.1.3 **Episodic flare up of a chronic condition,**
 - 2.1.4 **Injury, or**
 - 2.1.5 **Pregnancy, childbirth or related medical condition.**
- ~~2.1.4 2.2]~~ A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician must certify absences due to a medical condition.
- ~~[2.1.4.1 2.2.1]~~ A student qualifies for supportive instruction during absences because of pregnancy, childbirth, or related medical conditions, which shall be excused absences for as long as deemed medically necessary by a physician or an advanced practice nurse, employed by and who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.
- ~~[2.1.4.2 2.2.2]~~ A student who remains enrolled in school is eligible for supportive instruction during a postpartum period for as long as deemed medically necessary. Postpartum absences shall be certified by a physician or an advanced practice nurse, employed by and who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.
- ~~[2.1.2 2.3]~~ Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.
- ~~2.1.3~~ ~~A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician must certify absences due to pregnancy complicated by illness or other abnormal conditions.~~
- ~~2.1.3.1~~ ~~A student does not qualify for supportive instruction for normal pregnancies unless there are complications.~~
 - ~~2.1.3.2~~ ~~A student who remains enrolled in school is eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.~~
- ~~[2.1.4.2 2.4]~~ Supportive instruction can be requested as an in school transitional program that follows a period of supportive instruction that was provided outside of the school setting. If the supportive instruction is provided as an in school transitional program, it must be approved through a staff conference.

3.0 Implementation

- 3.1 Supportive instruction for a student shall begin as soon as the documentation required by 2.0 is received. Supportive instruction may continue upon the return to school setting only in those exceptional cases where it is determined that a student needs a transitional program to guarantee a successful return to the school setting in accordance with 2.4 ~~[2.2 2.4]~~.
- 3.1.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.
- 3.1.1.1 The school shall provide a minimum of 3 hours of supportive instruction each week of eligibility for a K to 5th grade student, and a minimum of five hours each week of eligibility for a 6 to 12th grade student. There is no minimum for in school transition.

3.1.1.2 Nothing in this regulation shall prevent a school district or charter school from providing additional hours of supportive instruction to an eligible student from other available funding sources.

3.1.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school setting the following school year.

4.0 Eligibility and Implementation for Suspension, Expulsion, or Subject to Expulsion

If a local school district or charter school provides for supportive instruction (homebound) for students that have been suspended or expelled, the local school district or charter school shall have a written policy, which conforms with 14 **Del.C.** §1604(8), and any of its implementing regulations, regarding eligibility and implementation.

PROFESSIONAL STANDARDS BOARD

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

REGULATORY IMPLEMENTING ORDER

1510 Issuance of Initial License

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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).

Notice of the proposed adoption of the regulation was published in the Delaware *Register of Regulations* on October 1, 2013. The notice invited written comments. As of close of business, May 31, 2014, no public comment was received. After May 31, 2014, written comments were received from the Governor's Advisory Council For Exceptional Citizens and the State Council For Persons With Disabilities and were considered. Some of the comments were technical or clerical. The suggested comments were considered by the Board and all necessary edits were made. The regulation was brought forward for the primary purpose of aligning licensure requirements and timelines to amended 14 **Del.C.** §1210 effective July 1, 2014, and to add additional examinations of general knowledge due to the anticipated discontinuance of Praxis I. In the public comments, specific concerns were raised regarding the deletion of Praxis I from the regulation. The draft regulation was based on the information that Praxis I would be discontinued and no longer available as of June 1, 2014. However, Praxis I was not discontinued on that date and the concern raised was understandable. Additional statutory changes effective July 1, 2014 were made to 14 **Del.C.** §1210 after the publication of the regulation including the complete deletion of Praxis I and the addition of a grace period for the examination of general knowledge of one calendar year for school nurse applicants. After the passage of SB247as amended by SA 1 and subsequent enactment, additional changes were necessary and have been made to make the regulation consistent with the newly enacted changes in 14 **Del.C.** §1210.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby adopted. Pursuant to the provision of 11 **Del.C.** §122(e), the regulation hereby adopted 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 the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1510 of the Administrative Code of Regulations of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 7th DAY OF AUGUST, 2014

Bryon Murphy, Chair
Diane Albanese
Linda Brown
Jennifer Burton
Michael Casson
Stephanie DeWitt
Nelia Dolan
Cristy Greaves

Darren Guido
David Kohan
Rosaria Macera
Wendy Murray
Darlene O'Neill
Mary Pinkston
Stephanie Smith

IT IS SO ORDERED the 21st day of JUNE, 2014.

Department of Education
Mark Murphy, Secretary of Education

Approved 21st day of June, 2014

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
Terry M. Whittaker, Ed.D.

1510 Issuance of Initial License**1.0 Content**

This regulation shall apply to the issuance of an Initial License for educators, pursuant to 14 **Del.C.** §1210.

2.0 Definitions

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

(Break in Continuity Within Section)

"**Mentoring**" means activities prescribed by the Department and other employing authority in pursuant to regulations promulgated by the Standards Board and approved by the State Board **[in]** which a holder of an Initial License, Continuing license, or Advanced License must engage during the three year term of the Initial License license.

*(Break in Continuity of Sections)***4.0 Application requirements**

- ~~3.34.1~~ In addition to an Initial License, applicants must also apply for a Standard Certificate to practice in the particular area, to teach a particular subject, or to instruct a particular category of students **[in which they wish to be employed,]** and must verify that they possess the prescribed knowledge, skill or education to practice in that area, subject, or category. (See 14 DE Admin. Code 1505). An initial license will not be issued if the applicant does not meet the requirements for certification.
- 4.1.1 If an applicant is applying for a Standard Certificate to instruct a particular category of students including but not limited to special education, the applicant must also obtain certification in a particular area or to teach a particular subject. Unless specifically stated in the standard certificate, certification to instruct a particular category of students does not include certification to teach a particular subject and the educator must also obtain certification to teach a particular subject.
- ~~3.44.2~~ An applicant for an Initial License shall **must** submit the completed application form, official transcripts, and official scores on an approved all required examinations and assessments of general knowledge to the Department.
- ~~3.4.14.2.1~~ Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

*(Break in Continuity of Sections)***6.07.0 Examination of General Knowledge and Assessment Requirements**

- ~~6.7.1~~ To qualify for an initial license, an applicant must receive a passing score on an approved examination of general knowledge, such as PRAXIS I, or such other alternative as may be established by the Standards Board, with the approval of the State Board. In addition to the examinations specifically recognized in this regulation, examinations of general knowledge are also approved when adopted by the Standards Board with the approval of the State Board. In adopting examinations of general knowledge the Standards Board acts in consultation and cooperation with the Department in selecting tests and setting cut scores.
- ~~6.27.1.1~~ An applicant must provide the Department with official test scores for one or more of the required assessments approved examinations of general knowledge of essential skills in the three required components of reading, writing, and mathematics as set forth in the table in section ~~48-0~~ 19.0.
- ~~6.2.47.1.2~~ Unless otherwise stated in this regulation, an applicant may submit the official test scores of an approved alternative assessment examination of general knowledge to satisfy one or more of the three required essential skills components of reading, writing, and mathematics as set forth in the table in section ~~48-0~~ 19.0.
- ~~6.2.1.47.1.3~~ Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST or PRAXIS I, shall be submitted within the same timeline as that required for PRAXIS I and scores must predate the employment application date.
- 7.1.4 There is no limit on the number of times an individual may take an examination of general knowledge. Once passed, a section need not be taken again.
- 7.1.5 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.
- 7.1.6 Notwithstanding the requirements of this regulation, an applicant applying for an initial license may meet the requirements for passage of examination of general knowledge by submitting test scores

that were approved and in effect on the date the test was taken including any permitted composite scores.

7.2 To qualify for an initial license, an applicant must receive a passing score on an approved content-readiness exam when applicable and available as may be established by the Standards Board, with the approval of the State Board. Content-readiness exams are applicable and available when adopted by the Standards Board with the approval of the State Board. In adopting content-readiness exams the Standards Board acts in consultation and cooperation with the Department in selecting tests and setting cut scores.

7.3 To qualify for an initial license, an applicant must receive a passing score on an approved performance assessment applicable and available as may be established by the Standards Board, with the approval of the State Board. Performance assessments are applicable and available when adopted by the Standards Board with the approval of the State Board. In adopting performance assessments the Standards Board acts in consultation and cooperation with the Department in selecting tests and setting cut scores.

[7.4 Timeline for Examination of General Knowledge for School Nurse Applicant

7.4.1 Notwithstanding the requirements of this regulation, an applicant for school nurse may be issued an initial license prior to the passage of an approved examination of general knowledge. However, the applicant must pass an approved examination of general knowledge within once calendar year from the date of hire.

7.4.2 Suspension

7.4.2.1 If proof of passage of an approved examination is not provided within one calendar year from the date of hire, the Initial License shall be suspended.

7.4.2.2 Evidence of passage of an approved examination within the time period of the suspension shall result in the reinstatement of the Initial License.

7.4.2.3 An applicant who does not pass an approved examination of general knowledge during the time period of the suspension, and whose Initial License expires, must reapply and meet the requirements for initial licensure then in effect.

7.4.2.4 Notwithstanding the foregoing, an applicant may submit a request for review pursuant to section 17.0 Secretary of Education Review.]

(Break in Continuity of Sections)

9.0 Skilled and Technical Sciences Teacher Educational and Experience Requirements.

9.1 Notwithstanding any other requirements within this regulation, an applicant applying for an initial license and certification in a Skilled and Technical Sciences specific career area may be issued an initial license for a period of up to 6 years to complete specified college course work or **[their its]** equivalent in professional development or technical training required for certification. Applicants must pass an approved examination of general knowledge within six (6) years of the date of employment or before the expiration of the Initial License, whichever is later. A bachelor's degree equivalent for a Skilled and Technical Sciences teacher shall be two (2) years of college or technical training, plus six (6) years of work experience. The requirement for two (2) years of college or technical training may be satisfied through the satisfactory completion of any one of the following options in the specific career area to be taught:

9.1.1 An associate's degree with a major in the specific career area; or

9.1.2 Two years of college majoring in the specific career area with at least 50% of the major courses required for a bachelor's degree satisfactorily completed; or

9.1.3 A state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers) in the specific career area; or

9.1.4 Completion of four (4) years of sequential Delaware Trade Extension courses in the specific career area; or

9.1.5 Completion of four (4) years of National Center for Construction Education and Research's Contren documented training in the specific career area; or

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- 9.1.6 A 70% or above score on both the written and performance elements of a Delaware Apprentice-related Education Provider's National Center for Construction Education and Research's *Contren*-derived full Apprentice Equivalency test-out covering all Apprentice-related Education years in the specific career area; or
- 9.1.7 Passage of the State of Delaware Licensing test in the specific career area, offered through the Division of Professional Regulation; or
- 9.1.8 576 hours of military training in the specific career area; or
- 9.1.9 576 hours postsecondary trade school training in the specific career area; or
- 9.1.10 A 70% or above score on both the written and performance teacher tests for the National Occupational Competency Testing Institute in the specific career area; or
- 9.1.11 An industry recognized certification of technical competence or journeyperson status in the specific career area; or
- 9.1.12 DOE approved equivalents of any one of the above including but not limited to equivalents from any combination of the above options.

(Break in Continuity of Sections)

18.0 Reporting

The Department shall provide quarterly reports to the Professional Standards Board regarding implementation of this regulation. The Department shall also provide upon request specific data reports regarding licensure, certification, and professional development.

~~1819.0 Required Assessments or Approved Alternatives for Examination of General Knowledge~~

Required Assessment	Cut Score	Effective Date-Tests taken	Provider & Test#
[Assessment adopted by the Standards Board with the approval of the State Board pursuant to section 7.1]	[As adopted by the Standards Board with the approval of the State Board]	[As adopted by the Standards Board with the approval of the State Board]	
CORE Core The Praxis Series Core Academic Skills for Educators	Reading-156 Writing- 162 Math- 150	Sept. 1, 2013* and thereafter	ETS-5712, 5722, 5732
Praxis I - Computerized Pre Professional Skills Test (Praxis I CPPST) Paper and Pencil Test (PPST)	Reading-175 Writing- 173 Math- 174	Jan. 1, 2002- [May 31 June 30] , 2014* *Overlap from Sept. 1, 2013 to [May 31 June 30] for either Praxis I or CORE	ETS-
Praxis I - CBT Computer Based Test	Reading- 322 Writing- 319 Math- 319	Oct. 23,1993- Dec.31,2001	ETS Praxis Series
Pre Professional Skills Test	Reading- 175 Writing- 172 Math- 175	July 1, 1983- Oct. 22, 1993	ETS Praxis Series

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CBEST-California Test of Basic Skills	Total Scores 123 With a minimum of at least 37 in <u>each category</u>	Accepted if test was taken as a condition of <u>meeting certification or licensure requirements</u> <u>in another state.</u>	
Approved Alternative Assessment Examination of General Knowledge by Component			
Accepted in lieu of the Praxis I Reading Component (**See 6-2.4 7.1.3 for restrictions)			
<u>Exam/Assessment</u>	Cut Score / Component	Effective Date – test taken	Provider & Test info
SAT-Scholastic Aptitude Test	Verbal- 560	After April 1, 1995 <u>and thereafter</u>	ETS College Board
SAT-Scholastic Aptitude Test	Verbal- 480	Prior to April 1, 1995	ETS College Board
<u>ACT- American College Testing</u>	<u>English - 24</u>	<u>Date taken</u>	<u>ACT</u>
<u>GRE- [Revised] Graduate Record Examination</u>	<u>Verbal - 152</u>	<u>August 1, 2011 and thereafter</u>	<u>ETS</u>
GRE-Graduate Record Examination	Verbal- 490	Date Taken** Prior to <u>August 1, 2011</u>	ETS
<u>Exam/Assessment</u>	Cut Score	Effective Date Range	Provider & Test info
SAT-Scholastic Aptitude Test	Math- 540	After April 1, 1995 <u>and thereafter</u>	ETS College Board
SAT-Scholastic Aptitude Test	Math- 520	Prior to April 1, 1995	ETS College Board
<u>ACT- American College Testing</u>	<u>Mathematics - 24</u>	<u>Date taken</u>	<u>ACT</u>
<u>GRE- [Revised] Graduate Record Examination [Quantitative]</u>	[Quantitative - 145 540]	<u>August 1, 2011 and thereafter</u>	<u>ETS</u>
GRE-Graduate Record Examination <u>Quantitative</u>	[Quantitative - 145 540]	Date Taken** Prior to <u>August 1, 2011</u>	ETS
<u>Exam/Assessment</u>	Cut Score	Effective Date Range	Provider & Test info
NTE-National Teacher Exam Core Battery Communication Skills	670	**Scores must pre-date the application	ETS

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SAT-Scholastic Aptitude Test	Writing - * *As set by the Standards Board with the approval of the State Board	After April 1, 1995	ETS College Board
Approved Alternative Assessment — Accepted in lieu of PPST or Praxis I			
Exam/Assessment	Cut Score	Test information	
CTBS-California Test of Basic Skills	Total Scores 123 With a minimum of at least 37 in each category	Accepted if test was taken as a condition of meeting certification or licensure requirements in another state.	

*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2014 issue of the *Register* at page 1032 (17 DE Reg. 1032). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1510 Issuance of Initial License

PROFESSIONAL STANDARDS BOARD

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

Regulatory Implementing Order

1599 Delaware Educational Technology Standards

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to adopt regulation 14 **DE Admin. Code** 1599 Delaware Educational Technology Standards. The Department of Education has encouraged the adoption of this regulation in order to establish State-wide expectations for professional development and to meet the Delaware Race To The Top pledge of ensuring that all professional development and supports are effective, by creating a statewide professional development certification system for professional development, measuring student and participant outcomes, and continuously improving programs. This regulation sets forth the standards for educator's professional development in Delaware.

Notice of the proposed adoption of the regulation was published in the Delaware *Register of Regulations* on May 1, 2014. The publication invited written comments. Written comments were received from the Governor's Advisory Council For Exceptional Citizens and the State Council For Persons With Disabilities. The comments were of the technical or clerical in nature. The suggested comments were considered by the Board and all necessary edits were made. The regulation incorporates by reference standards that are subject to copyright; therefore any changes that would alter the original work were not made. No additional comments were received regarding the proposed amendments to this regulation.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this

regulation to adopt State-wide standards for Educational Technology Standards for professional development.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §222(c), the regulation hereby adopted 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 the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1599 of Delaware Administrative Code of Regulations of the Department of Education.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 7th DAY OF AUGUST, 2014

Bryon Murphy, Chair
Diane Albanese
Linda Brown
Jennifer Burton
Michael Casson
Stephanie DeWitt
Nelia Dolan
Cristy Greaves

Darren Guido
David Kohan
Rosaria Macera
Wendy Murray
Darlene O'Neill
Mary Pinkston
Stephanie Smith

IT IS SO ORDERED the 21st day of JUNE, 2014.

Department of Education

Mark Murphy, Secretary of Education

Approved 21st day of June, 2014

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
Terry M. Whittaker, Ed.D.

1599 Delaware Educational Technology Standards

Non-regulatory note: Approval of Teacher Education programs is governed by 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs. Teacher evaluations are governed by 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

1.0 Content

- 1.1 The International Society for Technology in Education (ISTE) developed The National Educational Technology Standards (NETS©) as standards for learning, teaching, and leading in the digital age.
- 1.2 In accordance with 14 Del.C. §1205(b), the NETS© are hereby incorporated by reference and adopted as Delaware's Educational Technology Standards. NETS© shall serve as the foundation for professional development, instructional practice or leadership, for all Delaware educators, and as indicators that guide the learning, teaching, and leading with technology in education. The standards make explicit the skills and knowledge needed in an increasingly connected global and digital society.
- 1.3 A summary of the standards is set forth within. In-depth descriptions, contextual explanations, examples and more specific criteria and guidance are provided in the complete set of standards as published in National Education Technology Standards© (iste.org/nets, 2012). [Although the excerpts from the standards use the terms "Educational Administrators" and "Teachers" the standards are applicable to all educators including specialists and paraeducators as appropriate within the context of their specific assignments.]

2.0 Delaware Educational Technology Standards for Leaders

- 2.1 The standards for evaluating the skills and knowledge school administrators and leaders need to support digital age learning, implement technology, and transform the instruction landscape.
- 2.2 Visionary Leadership
- 2.2.1 Educational Administrators inspire and lead development and implementation of a shared vision for comprehensive integration of technology to promote excellence and support transformation throughout the organization [in the following ways:]
- 2.2.1.1 Inspire and facilitate among all stakeholders a shared vision of purposeful change that maximizes use of digital-age resources to meet and exceed learning goals, support effective instructional practice, and maximize performance of district and school leaders;
- 2.2.1.2 Engage in an ongoing process to develop, implement, and communicate technology-infused strategic plans aligned with a shared vision;
- 2.2.1.3 Advocate on local, state and national levels for policies, programs, and funding to support implementation of a technology-infused vision and strategic plan.
- 2.3 Digital Age Learning Culture
Educational Administrators create, promote, and sustain a dynamic, digital-age learning culture that provides a rigorous, relevant, and engaging education for all students.
- 2.4 Excellence in Professional Practice
Educational Administrators promote an environment of professional learning and innovation that empowers educators to enhance student learning through the infusion of contemporary technologies and digital resources.
- 2.5 Systemic Improvement
Educational Administrators provide digital age leadership and management to continuously improve the organization through the effective use of information and technology resources.
- 2.6 Digital Citizenship
Educational Administrators model and facilitate understanding of social, ethical and legal issues and responsibilities related to an evolving digital culture.

3.0 Delaware Educational Technology Standards for Teachers

- 3.1 The standards define the skills and knowledge educators need to teach, work, and learn in an increasingly connected global and digital society. Effective teachers model and apply the NETS-S© as they design, implement, and assess learning experiences to engage students and improve learning; enrich professional practice; and provide positive models for students, colleagues, and the community. All teachers should meet the following standards and performance indicators.
- ~~[3-2]~~ 3.1.1 Facilitate and Inspire Student Learning and Creativity

-
- [3.1.1.1] Teachers use their knowledge of subject matter, teaching and learning, and technology to facilitate experiences that advance student learning, creativity, and innovation in both face-to-face and virtual environments.
- ~~[3.3]~~ 3.1.2] Design and Develop Digital Age Learning [Experiences and Assessments]
- [3.1.2.1] Experiences and Assessments-Teachers design, develop, and evaluate authentic learning experiences and assessment incorporating contemporary tools and resources to maximize content learning in context and to develop the knowledge, skills, and attitudes identified in the NETS©.
- ~~[3.4]~~ 3.1.3] Model Digital Age Work and Learning
- [3.1.3.1] Teachers exhibit knowledge, skills, and work processes representative of an innovative professional in a global and digital society.
- ~~[3.5]~~ 3.1.4] Promote and Model Digital Citizenship and Responsibility
- [3.1.4.1.] Teachers understand local and global societal issues and responsibilities in an evolving digital culture and exhibit legal and ethical behavior in their professional practices.
- ~~[3.6]~~ 3.1.5] Engage in Professional Growth and Leadership
- [3.1.5.1.] Teachers continuously improve their professional practice, model lifelong learning, and exhibit leadership in their school and professional community by promoting and demonstrating the effective use of digital tools and resources.
-

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

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

ORDER

Telemedicine

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to submit a state plan amendment regarding telemedicine, specifically, *to clarify provider types authorized to deliver medically necessary services via telemedicine*. 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 July 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2014 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/Division of Medicaid and Medical Assistance (DHSS/DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding telemedicine *to clarify provider types authorized to deliver medically necessary services via telemedicine*.

Statutory Authority

- 42 CFR 410.78, *Telehealth services*
- 42 CFR Part 440, *Services*

Background

For the purposes of Medicaid, telemedicine seeks to improve a patient's health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site. This electronic communication means the use of interactive telecommunications equipment that includes, at a minimum, audio and visual equipment. This definition is modeled on Medicare's definition of telehealth services (42 CFR §410.78).

According to the Centers for Medicare and Medicaid Services (CMS), the Medicaid program and the federal Medicaid statute (Title XIX of the Social Security Act) does not recognize telemedicine as a distinct service. CMS does note, however, that "telemedicine is viewed as a cost-effective alternative to the more traditional face-to-face way of providing medical care" (e.g., face-to-face consultations or examinations between provider and patient) that states can choose to cover under Medicaid and that there is "flexibility inherent in federal law to create innovative payment methodologies for services that incorporate telemedicine technology."

Summary of Proposal

Effective July 2, 2012, the Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to use the telemedicine delivery system for providers enrolled under the Delaware Medical Assistance Program (DMAP).

The Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 3.1-A of the Medicaid State Plan to clarify that qualifying provider services include any covered state plan services that would typically be provided to an eligible individual in a face-to-face setting by an enrolled provider.

The provisions of this state plan amendment are subject to approval by CMS.

Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund as current policy allows for the use of telemedicine.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

GACEC and SCPD

As background, CMS approved a Delaware Medicaid Plan in 2012 to use a telemedicine delivery system for providers enrolled in the Delaware Medical Assistance Program (DMAP). A July 23, 2012 memo was issued endorsing the concept of using telemedicine and prompted adoption of an amendment to include accommodations, including interpreter and audio-visual modification, where required by the ADA. See 16 DE Reg. 314, 317 (September 1, 2012).

We endorse the proposed amendment. Consistent with the attached June 16, 2014 *Delaware News Journal* article, telemedicine offers a useful option for individuals with disabilities seeking specialty care, particularly downstate residents. The attached April 12, 2014 *Delaware News Journal* article also reinforces the merits of telemedicine and predicts that Smartphone applications and body sensors will evolve to support telemedicine. The article notes the advantage of avoiding a doctor's office "only to wait in line with patients who have other diseases that we may catch."

Agency Response: DMMA thanks both Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 1, 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation telemedicine, specifically, *to clarify provider types authorized to deliver medically necessary services via telemedicine* is adopted and shall be final effective September 10, 2014.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #14-35**REVISION:**

*Please note that no changes were made to the regulation as originally proposed and published in the July 2014 issue of the *Register* at page 9 (18 DE Reg. 9). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

Telemedicine

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Increased Medicaid Payment for Primary Care Services – Section 1202 of the Affordable Care Act

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding Increased Medicaid Payment for Primary Care, specifically, *Additional Codes Eligible for Enhanced Primary Care Payments*. 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 July 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan regarding Increased Medicaid Payment for Primary Care, specifically, *Additional Codes Eligible for Enhanced Primary Care Payments*.

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*
- 42 CFR 447.405, *Amount of required minimum payments*
- 42 CFR 447.410, *State plan requirements*
- 42 CFR 447.415, *Availability of Federal financial participation (FFP)*

Background

In compliance with Section 1202 of the Patient Protection and Affordable Care Act, Delaware Health and Social Services/Division of Medicaid and Medical Assistance increased certain Medicaid primary care and vaccine administration payments made to designated providers to 100% of the Medicare physician fee schedule in effect as of January 1, 2013 through December 31, 2014. To implement this increase, the Centers for Medicare and Medicaid Services approved Delaware's state plan amendment on June 24, 2013 with an effective date of the increase retroactive to January 1, 2013. The services eligible for the rate increase are billed under the Healthcare Common Procedures Coding System (HCPCS) Evaluation and Management (E & M) codes and also apply to the administration of vaccines under the Vaccines for Children Program.

Summary of Proposal

Recent guidance from the Centers for Medicare and Medicaid Services (CMS), dated April 14, 2014, advises that if a state uses vaccine product codes to pay for vaccine administration that it must submit a new section 1202

of the Affordable Care Act (ACA) state plan amendment (SPA) when those product codes change. Also, a state must submit a revised SPA page updating that list of codes eligible for higher payment if it chooses to provide coverage for a new Current Procedural Terminology (CPT) billing code that is within the range of Evaluation and Management (E & M) codes specified in the law and regulation.

Therefore, pursuant to public notice requirements of 42 CFR §447.205, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives notice of a significant proposed change in its method and standards for setting payment rate for services.

DHSS/DMMA intends to submit a SPA to CMS to comply with certain provisions in the Affordable Care Act. With an effective date of the increase retroactive to January 1, 2014, this SPA includes the following additional Evaluation and Management (E & M) and vaccine product codes to the list of eligible codes for enhanced primary care payments:

Additional Evaluation and Management Codes

99481

99482

Additional Vaccine Code

90673

The provisions of this state plan amendment relating to methodology and payment of the enhanced Medicaid rates are subject to approval by CMS.

Fiscal Impact Statement

Due to the availability of 100% FMAP for these primary care services, the DMMA projects no fiscal impact on the General Fund in Calendar Year 2014.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

GACEC and SCPD

As background, the Affordable Care Act authorized an increase in Medicaid payments for certain primary care and vaccine administration. CMS approved a Delaware DMMA Medicaid Plan amendment in 2013 to implement the authorization. However, CMS issued April 14, 2014 guidance which is prompting DMMA to propose another "housekeeping" amendment to specify eligible CPT codes, including vaccine codes and evaluation and management codes.

We endorse the proposed regulation since it is designed to conform to CMS guidance.

Agency Response: DMMA thanks both Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding Increased Medicaid Payment for Primary Care, *specifically, Additional Codes 99481, 99482 and 90673 Eligible for Enhanced Primary Care Payments*, is adopted and shall be final effective September 10, 2014.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #14-34

REVISION:

***Please note that no changes were made to the regulation as originally proposed and published in the July 2014 issue of the *Register* at page 11 (18 DE Reg. 11). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Increased Medicaid Payment for Primary Care Services

DIVISION OF SOCIAL SERVICES

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

ORDER

Food Supplement Program Determining Income Deductions

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Determining Income Deductions*. 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 July 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Determining Income Deductions*.

Statutory Authority

- Agricultural Act of 2014, P.L. 113-79, enacted February 7, 2014
- 7 USC 2014(e)(6)(C), *Standard utility allowance*
- 7 CFR §273.9(d), *Income and deductions*

Background

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

Please note that the Supplemental Nutrition Assistance Program (SNAP) is the federal name for the food benefit program. State programs may have different names.

Low Income Home Energy Assistance Program (LIHEAP) and Supplemental Nutrition Assistance Program (SNAP)

The connection between the Low Income Home Energy Assistance Program (LIHEAP) and Supplemental Nutrition Assistance Program (SNAP) was originally established in 1985 in order to provide a simpler way for States and applicants to determine household utility costs. Receipt of LIHEAP benefits is intended to serve as a reasonable proxy for the actual utility costs that a household incurs. As a result, in lieu of demonstrating actual utility costs, receipt of LIHEAP benefits may be used to trigger the higher heating and cooling Standard Utility Allowance (HCSUA), and thereby increase the SNAP deductions for which households may be eligible.

On February 7, 2014, President Obama signed the Agriculture Act of 2014 ("Act") referenced as the Farm Bill. Section 4006 of the Act requires that households receive a payment greater than twenty dollars (\$20.00) annually in Low Income Heating Assistance Program (LIHEAP) benefits or in other similar energy assistance benefits in the current month or in the immediately preceding twelve (12) months in order to automatically qualify for the HCSUA based on receipt of LIHEAP. This change took effect thirty (30) days after enactment (March 10, 2014) and applies to certification periods that begin on or after that date.

This provision was intended to prevent the issuance of nominal LIHEAP payments in order to automatically qualify SNAP households for the SUA.

Summary of Proposed Changes

Food and Nutrition Service (FNS) regulations allow that States may accept receipt of Low Income Home Energy Assistance Program (LIHEAP) benefits or other similar energy assistance benefits as verification of a utility expense. Verification of a utility expense allows a SNAP household to claim the Heating Cooling Standard Utility Allowance (HCSUA). For many households, claiming the HCSUA increases the amount of monthly food benefits the household receives.

The Agriculture Act of 2014, section 4006, created additional conditions households must meet to be able to claim the HCSUA as a result of receipt of LIHEAP. Specifically the LIHEAP payment must be greater than twenty dollars (\$20.00), and the household member must have received the LIHEAP benefit in the current month or in the immediately preceding twelve (12) months.

FNS issued the following memorandum, dated April 7, 2014, to serve as formal guidance for use by State agencies as they implement the provisions of Section 4006:

[http://www.fns.usda.gov/sites/default/files/LIHEAP Questions and Answers.pdf](http://www.fns.usda.gov/sites/default/files/LIHEAP%20Questions%20and%20Answers.pdf)

DSSM 9060, *Determining Income Deductions*: To be compliant with section 4006 of the Agriculture Act of 2014 the Division of Social Services (DSS) is amending policy 9060 to include that the LIHEAP payment must be greater than twenty dollars (\$20.00), and the household member must have received the LIHEAP benefit in the current month or in the immediately preceding twelve (12) months.

The applicable federal citation is also revised to be more precise.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

GACEC and SCPD

As background, §4006 of the Agriculture Act of 2014 provides that households which receive a payment greater than \$20 in Low Income Heating Assistance Program benefits in the current month or in the immediately preceding 12 months qualify for an allowance/deduction when determining eligibility for Food Supplement benefits. Based on the attached April 7, 2014 USDA guidance, the Division of Social Services is revising its standards to incorporate the change in the law. The proposed regulation also includes a few non-substantive revisions.

We endorse the proposed regulation since the regulatory amendments are required to conform to federal law.

Agency Response: DSS thanks both Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP), specifically, *Determining Income Deductions*, is adopted and shall be final effective September 10, 2014.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #14-36**REVISION:**

***Please note that no changes were made to the regulation as originally proposed and published in the July 2014 issue of the *Register* at page 14 (18 DE Reg. 14). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Food Supplement Program Determining Income Deductions

DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Subsidy Program; Prioritizing Service Needs

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Prioritizing Service Needs*. 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 July 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced July 30, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Prioritizing Service Needs*.

Statutory Authority

45 CFR §98.20, *A child's eligibility for child care services*

45 CFR §98.44, *Priority for child care services*

Background

Delaware Health and Social Services ("DHSS")/Division of Social Services ("DSS") is designated as the lead agency with primary responsibilities for the planning and administration of child care subsidies funded with the Child Care Development Fund.

The Child Care and Development Fund ("CCDF") Block Grant Act of 1990, as amended, 42 USC § 9858b (b)(1)(A), (the "Act") requires the Lead Agency to "administer, directly, or through other governmental or non-governmental agencies" the funds received. The regulations at 45 CFR 98.11 provide that, in addition to retaining "overall responsibilities" for the administration of the program, the Lead Agency must also (among other things) promulgate all rules and regulations governing the overall administration of the CCDF program.

Summary of Proposed Changes

DSSM 11004.3.1, *Service Priorities* *Prioritizing Service Needs*, is amended and updated to clarify priority for subsidized child care services to include teen parents enrolled in or attending middle school or high school and parent/caretakers enrolled in and participating in a General Education Diploma (GED) program.

Additionally, the following changes are made:

- the section title is changed to more accurately reflect the content of the policy;
- the applicable federal citations are added to the policy section;
- the outdated term (acronym) "Food Stamp (FS)" is removed and replaced with the current term (acronym) "Food Supplement Program (FSP)";
- the term "Family Services" is removed and replaced with the more precise term "Division of Family Services"; and,
- this section is relettered and renumbered to accommodate the new format.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

The Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with

Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

GACEC and SCPD

First, DSS indicates that it is replacing the acronym "FS" (Food Stamp) with the acronym "FSP" (Food Supplement Program) in the new regulation. However, the latter acronym does not appear in the regulatory text.

Agency Response: DSS will add the acronym "FSP" which was unintentionally omitted. This has been corrected to state: "Individuals receiving Food Supplement Program (FSP) who are mandatory E&T participants (Category 21);"

Second, DSS recites that it is adding a priority of "teen parents enrolled in or attending middle school or high school and parent/caretakers enrolled in and participating in a General Diploma (GED) program." In contrast, although Par.A.4 includes teens attending middle or high school, the regulation omits any reference to persons participating in a GED program. Moreover, consistent with the attached May 29 SCPD memo to DSS on a related regulation, the term "GED" is "underinclusive". Therefore, DSS should consider inserting the following Par. 5 (and renumbering the balance of the list) as follows:

5. Teen parents enrolled in and participating in a program to acquire a General Education Diploma (GED) or similar secondary credential approved by the Delaware Department of Education.

Agency Response: DSS will revise the final regulation to reference GED and similar secondary credential approved by the Delaware Department of Education. The final regulation will read as follows. "4. Teen parents who are enrolled in, or attending middle school or high school; or a program to acquire a General Education Diploma (GED) or similar secondary credential approved by the Delaware Department of Education;"

Additionally, at Paragraph 1, "on the list" is revised to read "in the circumstance" as a clearer directive, as follows: "Parents/Caretakers in the circumstance below will continue to receive Child Care Assistance as long as they meet all eligibility requirements."

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Prioritizing Service Needs*, is adopted and shall be final effective September 10, 2014.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #14-37

REVISION:

~~11004.3.1 Service Priorities~~ Prioritizing Service Needs

~~45 CFR 98.20~~

~~45 CFR 98.44~~

~~In addition to the eligibility questions in Section 11004.3, determine if the applicant meets a priority for service. If the applicant has a need, but is not a service priority, services may be delayed. Delay services by placing non-service priority applicants on a waiting list while authorizing service for those who are a priority. The following families qualify for priority service:~~

- ~~A. TANF recipients who are Workfare mandatory and not working (Category 11);~~
- ~~B. TANF recipients who are working; (Category 12);~~
- ~~C. Individuals receiving FS who are mandatory E&T participants; (Category 21);~~
- ~~D. Families in Category 31 with the following need for service:~~
 - ~~1. teen parents who attend high school or ABE or GED programs,~~
 - ~~2. special needs parent/caretaker or child, and~~
 - ~~3. homeless families as defined in Section 11003.7.2;-~~

4. families who meet the 40% of FPL criteria in Section 11004.7

protective children as referred by Family Services up to the number agreed upon between DSS and Family Services.

Parents/caretakers in the above circumstances will continue to receive child care services as long as they meet the service need and they continue to meet program requirements, e.g., they continue in Food Stamp Employment & Training (FS E&T).

This policy applies to all Child Care Assistance applicants who may experience a delay in service due to a wait list.

DSS Requires When There Is A Wait List That Certain Groups Be Given Priority. Applicants Will Be Referred To A Waitlist If Their Need For Child Care Does Not Meet One (1) Of The Requirements.

Parents/Caretakers [on the list in the circumstance] below will continue to receive Child Care Assistance as long as they meet all eligibility requirements.

A. The following groups are given priority:

1. TANF applicants and recipients who are Employment and Training (E&T) Mandatory and not working (Category 11);
2. TANF recipients who are working (Category 12);
3. Individuals receiving Food [Benefits (FB) Supplement Program (FSP)] who are mandatory E&T participants (Category 21);
4. Teen parents who are [enrolled in or] attending middle school or high school; [or a program to acquire a General Education Diploma (GED) or similar secondary credential approved by the Delaware Department of Education;]
5. Parent/Caretakers or child with special needs as defined in DSSM 11003.7.8;
6. Homeless families as defined in DSSM 11003.7.2;
7. Families who meet the 40% of FPL criteria as defined in DSSM 11004.7;
8. Division of Family Services (DFS) may refer children to DSS for protective Child Care up to the number agreed upon by both Divisions.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d) and 903(e)(2)a;
(7 Del.C. §§901(c & d) & 903(e)(2)a)
7 DE Admin. Code 3521

Secretary's Order No.: 2014-F-0017

Date of Issuance: August 11, 2014

Effective Date of the Amendment: September 11, 2014

3521 Weakfish Size Limits; Possession Limits; Seasons

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 regulatory amendments to Delaware Tidal Finfish Regulation No. 3521 regarding Weakfish. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2014-03. The Department published the proposed amendments in the May 1,

2014 *Delaware Register of Regulations* and held a public hearing on May 22, 2014. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 1, 2014 (Report). The Report recommends certain findings and the adoption of the proposed regulation amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed regulation amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation amendments. As a result of the regulatory development process, the Department received public comments supporting this proposed regulation, as discussed in the Report.

The proposed amendments to Delaware's existing regulations for this species are consistent with the Interstate Fisheries Management Plan for Weakfish as adopted by the ASMFC. Moreover, the proposed management strategy will better accommodate commercial fishing needs while continuing to protect the weakfish resource and providing bait for recreational anglers. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department.

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 regulation amendments as final;
- 2.) The Department provided adequate public notice of the aforementioned proposed amendments, and provided the public with an adequate opportunity to comment on said proposed amendments, including at a public hearing;
- 3.) The Department held a public hearing on the proposed regulation amendments in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended proposed regulation amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended final proposed amendments do not reflect any change from the initial proposed amendments as published in the May 1, 2014, *Delaware Register of Regulations*;
- 6.) Promulgation of the proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3521 will enable Delaware to remain consistent with the Interstate Fisheries Management Plan, as adopted by the ASMFC, to manage Weakfish in Delaware, to wit: (1) modification of the commercial weakfish management approach of intermittent net closures from May 1 through June 30 to an uninterrupted closure (all gears) from May 1 through June 2; (2) allowance of a weakfish bycatch during the closure of up to 100 pounds per day or trip for the commercial gill net fishery and accommodates commercial fishing for species other than weakfish (e.g., Atlantic menhaden and black drum); (3) no impact to the gill net restrictions as established in 7 **Del.C.** §923; (4) maintenance of existing recreational closures, as well as catch limits during the open season in all fisheries; and (5) elimination of mailed notices to netters, as the dates are annually published in the Delaware Fishing Guide, which is widely available in print, and is also posted online;
- 7.) The proposed regulation amendments are well supported by documents in the record; and that
- 8.) The Department shall submit this Order approving the final regulation amendments 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.

David S. Small, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the May 2014 issue of the *Register* at page 1040 (17 DE Reg. 1040). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3521 Weakfish Size Limits; Possession Limits; Seasons

DEPARTMENT OF STATE DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Statutory Authority: 30 Delaware Code, Section 1815(b) (30 **Del.C.** §1815(b))

ORDER

100 Historic Preservation Tax Credit Program

On Tuesday, July 1, 2014, the Division of Historical and Cultural Affairs published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 18, Issue 1, pages 24-30. The notice indicated that written comments would be accepted by the Director of the Division for thirty days thereafter. Notice of the proposed amendments to the regulations was also published in both the **News Journal** and **Delaware State News** on July 1, 2014.

FINDINGS OF FACT AND CONCLUSIONS

The Historic Preservation Tax Credit Act (30 **Del.C.** Ch. 18, Subch. II) was amended in the 147th General Assembly (79 **Del. Laws.** c. 240). The amendments to the legislation provide that 30% of the state's yearly allocation of Historic Preservation Tax Credits (HPTCs) will be reserved for projects in Downtown Development Districts (DDD), and also that any such credits not allocated to projects in DDDs by April 1 of each year will be made available to any eligible project statewide.

The public was given notice and an opportunity to provide the Division of Historical and Cultural Affairs with comments in writing on the proposed adoption of the changes to the regulations. There were no public comments received during the comment period.

Pursuant to 30 **Del.C.** §1815(b), the Division has the statutory authority to promulgate rules and regulations amending or clarifying specific sections of this statute. Additional regulatory clarifications have also been incorporated at this time to more efficiently administer the Program.

Since no public comments were received, the text of the regulation remains as proposed in the July 1, 2014 Delaware *Register of Regulations*.

DECISION AND ORDER REGARDING THE PROPOSED REGULATIONS

Pursuant to 30 **Del.C.** §1815(b), Timothy A. Slavin, Director, Division of Historical and Cultural Affairs, Department of State has proposed amendments to the regulations governing the Historic Preservation Tax Credit Act and has published these amendments in Delaware *Register of Regulations* 18 **DE Reg.** 24-30 (07/01/2014).

NOW THEREFORE, Jeffrey A. Bullock, Secretary of State, does hereby order that the proposed amendments be adopted and shall be final effective September 11, 2014, ten days after publication in the Delaware *Register of Regulations*.

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 15th day of August, 2014.

DEPARTMENT OF STATE

Jeffrey A. Bullock, Secretary of State

*Please note that no changes were made to the regulation as originally proposed and published in the July 2014 issue of the *Register* at page 24 (18 DE Reg. 24). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

100 Historic Preservation Tax Credit Program

FINAL REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

Board of Pilot Commissioners

Statutory Authority: 23 Delaware Code, Section 102 (23 Del.C. §102)
24 DE Admin. Code 1000

ORDER

1000 Board of Pilot Commissioners

The Delaware Board of Pilot Commissioners pursuant to 23 Del.C. §102(1), proposed to revise Regulations 11.2 and 6.0. The proposed change to Regulation 11.2 strikes that regulation in its entirety. The proposed change to Regulation 6.0 removes the 120 day limitation on annual physicals.

Summary of the Evidence and Information Submitted

Following publication in the *Delaware Register of Regulations* on April 1, 2014 a public hearing was held on May 16, 2014. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. No written comments were received and no public comments were made during the public hearing. At the public hearing, the Board marked as Exhibit 1 certifications of publication of the notice of public hearing, that ran in the *Delaware News Journal* and the *Delaware State News*.

Summary of the Findings of Fact

Pursuant to discussions held at open public Board meetings, the Board, pursuant to 23 Del.C. §102(1), proposed to revise regulation 11.2 by striking it in its entirety and revise regulation 6.0 by removing the 120 day limitation on annual physicals. The purpose for the removal of regulation 11.2 is that vessels of the size required to be piloted by this rule are no longer calling at the port, making compliance with this regulation difficult and unnecessary. The purpose for the removal of the 120 day limitation on annual physicals in regulation 6.0 is that the current constrictions of private health insurance often limit annual physicals to one per year, and this limitation is making compliance with insurance requirements difficult to impossible.

Decision of the Board

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the *Delaware Register of Regulations* on September 1, 2014.

IT IS SO ORDERED this 15th day of August, 2014 by the Delaware Board of Pilot Commissioners.
Bradford Schell, Professional Member
Stephen McGuinness Professional Member
Joseph Morrissey, Professional Member
Penelope Marshall, Public Member
Richard Cordrey, Public Member
Thomas Cook, Public Member

*Please note that no changes were made to the regulation as originally proposed and published in the April 2014 issue of the *Register* at page 967 (17 DE Reg. 967). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1000 Board of Pilot Commissioners

DIVISION OF PROFESSIONAL REGULATION

BOARD OF COSMETOLOGY AND BARBERING

Statutory Authority: 24 Delaware Code, Section 5106(a)(1) (24 **Del.C.** §5106(a)(1))
24 **DE Admin. Code** 5100

ORDER

5100 Board of Cosmetology and Barbering

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on June 30, 2014 at a scheduled meeting of the Delaware Board of Cosmetology and Barbering ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

The proposed revisions address the licensing of mobile cosmetology shops or salons. The amendments permit the licensing of such establishments while implementing requirements to provide protection to the public.

A public hearing was held on June 30, 2014, with deliberations conducted on July 28, 2014. The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 17, Issue 11, on May 1, 2014. Notice of the June 30, 2014 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 July 15, 2014, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on July 28, 2014.

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.

Mr. Stephen Wilkerson expressed his appreciation of the Board's efforts to create regulations pertaining to mobile salons.

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.** §5106(a)(1), the Board has the statutory authority to promulgate rules and regulations. The proposed revisions clarify that mobile salons may be licensed as cosmetology shops. Further, the rules and regulations set forth specific requirements to ensure that mobile salons are subject to inspections, as are all other establishments. The Board concludes that adoption of the rules and regulations as amended advances professional practice standards and is in the best interest of the public.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations remains as published in the *Register of Regulations*, Volume 17, Issue 11 on May 1, 2014.

IT IS SO **ORDERED** this 28th day of July, 2014 by the Delaware Board of Cosmetology and Barbering.
Carol Guilbert, Secretary, Public Member
Lauren Mosely
Derrick Reed, Professional Member
Hillary Reid

Albert Niezgoda, Professional Member
Marina Pini

Domonique Vicks
Linda Wilson, Professional Member

***Please note that no changes were made to the regulation as originally proposed and published in the May 2014 issue of the *Register* at page 1050 (17 DE Reg. 1050). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5100 Board of Cosmetology and Barbering

**DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING AND POLICY**

Statutory Authority: 17 Delaware Code, Sections 131, 146 and 508 (17 Del.C. §§131, 146 & 508)
2 DE Admin. Code 2309

ORDER

2309 Standards and Regulations for Subdivision Streets and State Highway Access

Summary of the Evidence and Information Submitted

In the August 2013 Delaware *Register* (17 Del. Reg. 198), the Delaware Department of Transportation's Planning Division proposed revisions to its regulations for access to State-maintained roads and for planning, design, construction, and acceptance for maintenance of subdivision streets.

This proposed revision to the Standards and Regulations for Subdivision Streets and State Highway Access related to two matters: guidance for Shared Use Paths/Sidewalks, and a new review process for low traffic-generating existing commercial projects expected to produce average daily traffic of 199 vehicles or less.

Written comments were to be accepted regarding these proposals until August 31, 2013; however, no comments were received. Nonetheless, after publication of the draft, Department staff rewrote the low traffic review process language, with the intent to set out its process and requirements in language similar to that used in other Department regulations. No substantive changes in the intent or effect of these provisions were made as part of this revision. No changes were made to the sections dealing with Shared Use Paths/Sidewalks.

Findings of Fact

The Secretary finds that it is appropriate to amend the existing Standards and Regulations for Subdivision Streets and State Highway Access as proposed and amended as discussed above.

Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the Standards and Regulations for Subdivision Streets and State Highway Access as described herein.

Text and Citation

The amended text of 2 **DE Admin. Code** 2309 shall be in the form attached as Exhibit "A".

Effective Date of Order

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

IT IS SO ORDERED this 8th day of August, 2014.
Shailen Bhatt, Secretary
Department of Transportation

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

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

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Tuesday, September 9, 2014 beginning at 1:30 p.m. A conference session and business meeting will be held on the following day, Wednesday, September 10, 2014 beginning at 12:15 p.m. The hearing, conference session and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, September 18, 2014 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE
OFFICE OF THE STATE LOTTERY
PUBLIC NOTICE**206 Internet Lottery Rules and Regulations**

Delaware Department of Finance, Office of the State Lottery, pursuant to 29 **Delaware Code**, Section 4826(c) is proposing to amend Regulations for the Delaware Lottery 10 **DE Admin. Code** 206 section 13.2 and 13.3, Internet Lottery.

Delaware Department of Finance ("Department"), Office of the State Lottery, pursuant to 29 **Delaware Code**, Section 4826 (29 **Del.C.** §4826) is proposing amendments to 10 **DE Admin. Code** 206 Section 13.2 and 13.3.

These amendments will update Internet Lottery regulations related to anonymous play and play for free requirements.

Interested persons may submit comments in writing to Rebecca Goldsmith, Delaware Lottery Office, 1575 McKee Road, Suite 102, Dover, Delaware 19904.

The comment period will close on September 30, 2014.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE**Title XXI Delaware Healthy Children Program State Plan - Cost Sharing and Payment**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, 42 CFR §457.65 and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*.

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 September 30, 2014.

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**Diamond State Health Plan 1115 Demonstration Waiver Amendment – Promoting Optimal Mental Health for Individuals through Supports and Empowerment**

In compliance with 42 U.S.C. §1315(d), 42 CFR Part 431, Subpart G, 42 CFR 447.205 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) notifies the public that it intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver to coordinate coverage of the new Home and Community-Based Services (HCBS) behavioral health program, identified as *PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment)*.

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 September 30, 2014. Please identify in the subject line: Proposed Diamond State Health Plan 1115 Waiver Amendment Covering PROMISE.

As required by 42 CFR Part 431, Subpart G, the State agency is providing the following opportunities to the public to comment on the proposed waiver amendment in person. Three (3) public hearings are scheduled. The detailed information for each public hearing is shown below.

1. NEW CASTLE COUNTY

Tuesday, September 23, 2014

5:00 pm – 7:00 pm

Delaware State Police

Troop 2

Robert Paris Community Room

100 Lagrange Avenue

Newark, Delaware 19702

Phone: 302-834-2620 - main line

(Visitor parking is in the front of the building)

2. SUSSEX COUNTY

Wednesday, September 24, 2014

1:00 pm – 3:00 pm

Thurman Adams State Service Center

(Formerly, Georgetown State Service Center)

546 South Bedford Street

Georgetown, Delaware 19947

Phone: 302-856-5211 or 302-856-5574

(Visitor parking is designated by signs and is close to the entrance of the building)

3. KENT COUNTY

Thursday, September 25, 2014

10:00 am - 12 noon

Delaware Department of Transportation

Administration Center

800 Bay Road

Dover, Delaware 19901
Phone: 302-760-2000
(Visitor parking is in the front of the building)

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

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

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

Arlene Baal at (302) 255-9561

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

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4454 Tanning Facilities Regulations

Recently passed legislation, Senate Bill 94, adds to the current tanning bed restrictions a ban of all minors from using tanning devices in tanning facilities. It also mandates warning signs and statements in tanning facilities.

On September 1, 2014, the Department of Health and Social Services, Division of Public Health, plans to publish proposed regulations which amend Title 16 of the Delaware Code relating to tanning facilities. Due to the extensive number of amendments the Division has concluded that the current 4454 State of Delaware Tanning Facilities Regulations should be repealed and replaced in their entirety with the proposed regulations being published and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the September 1, 2014 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 Wednesday, October 1, 2014 at:

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

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER
PUBLIC NOTICE
404 Derivative Instruments

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 404 relating to Derivative Instruments. The docket number for this proposed regulation is 2401.

The proposed regulation sets standards for the prudent use of derivative instruments by domestic insurers. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§311 and 1333 and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Tuesday, September 30, 2014. Any such requests should be directed to:

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

DEPARTMENT OF JUSTICE
FRAUD AND CONSUMER PROTECTION DIVISION
INVESTOR PROTECTION UNIT
PUBLIC NOTICE

Rules and Regulations Pursuant to the Delaware Securities Act

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and section 73-102(b) of Title 6 of the Delaware Code, the Investor Protection Unit of the Delaware Department of Justice ("the Unit") hereby publishes notice of a proposed revision to the Rules and Regulations Pursuant to the Delaware Securities Act. The Unit hereby proposes numerous changes to the rules and regulations pertaining to administrative proceedings, Unit investigations, broker-dealers, investment advisers, securities registration, as well as a significant number of technical amendments.

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

Owen Lefkon
Investor Protection Director
Department of Justice, Investor Protection Unit
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19801
Investor.Protection@state.de.us

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF WATERSHED STEWARDSHIP
PUBLIC NOTICE
5101 Sediment and Stormwater Regulations

Sections 1.5, 1.7, 1.13, 1.14, 3.11, 4.1, 4.5, 5.1, 6.1 have been revised and definition of "functional equivalency" added to the regulations. These changes are made to clarify that the Technical Document that supports the regulations is guidance to be used as a reference for compliance and is not the only means of complying with the regulations. Functionally equivalent methods to those provided in the Technical Document may

be considered on a case-by-case basis.

In addition, typographical errors have been addressed.

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship will conduct a public hearing on proposed revisions **Regulation No. 5101 Sediment and Stormwater Regulations** to clarify that the Technical Document that supports the regulations is guidance to be used as a reference for compliance and is not the only means of complying with the regulations. Functionally equivalent methods to those provided in the Technical Document may be considered on a case-by-case basis.

The public hearing on this proposed revision of **Regulation No. 5101 Sediment and Stormwater Regulations** will be held Thursday, September 25, 2014, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation revisions may be inspected at the Department's Richardson and Robbins Building office located at 89 Kings Highway, Dover, DE 19901 or on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website:

<http://www.dnrec.delaware.gov/swc/Drainage/Pages/Reg-Revisions-2014.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Elaine Webb, DNREC Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, Elaine.Webb@state.de.us.

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, October 10, 2014, to Elaine Webb and/or statements and testimony may be presented either orally or in writing at the September 25, 2014 public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Elaine Webb

DNREC – Sediment and Stormwater Program

89 Kings Highway

Dover, DE 19901

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

PUBLIC NOTICE

Alcoholic Beverage Control Regulations

The Office of the Alcoholic Beverage Control Commissioner intends to amend Title 4 of the Delaware Administrative Code by revising the existing regulations to reflect the current regulatory environment. These amendments will update the regulations to control the manner of the sale of alcoholic beverages to protect the public safety and insure that the sales are in the best interest of the public.

Persons wishing to present their views regarding this matter may do so at public hearings to be held in each county. The hearings will be held as follows:

- Wednesday, September 24, 2014 at 10:00 a.m. in the third floor conference room of the Carvel Building, 820 N. French Street, Wilmington, DE;
- Tuesday, September 30, 2014 at 1:00 p.m. in the DNREC auditorium, 89 Kings Highway, Dover, DE; or
- Wednesday, October 1, 2014 at 2:00 p.m. in the Sussex County Council Chambers, Administrative Building, The Circle, Georgetown, DE.

Written comments will be accepted until close of business on October 20, 2014. Written comments should be submitted to Lauren Shinault, Regulation Review, Office of the Alcoholic Beverage Control Commissioner, Carvel Building 3rd Floor, 820 N. French Street, Wilmington, Delaware 19801. A copy of these regulations may be viewed at the above address.

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**PUBLIC NOTICE****1407 A Rule Pertaining to Movie Theaters**

The Office of the Alcoholic Beverage Control Commissioner intends to amend Title 4 of the Delaware Administrative Code by adding a new regulation governing the dispensing and consumption of alcoholic liquors in movie theaters. This regulatory addition is required due to passage of House Bill 299, which was effective on July 15, 2014. The legislation required the Commissioner to promulgate such rules and regulations with respect to the enforcement, including procedures to prevent the consumption of alcohol in movie theaters by those under 21 years old, or furtherance of the objectives and provisions of the legislation as the Commissioner may deem necessary.

Persons wishing to present their views regarding this matter may do so at public hearings to be held in each county. The hearings will be held as follows:

- Wednesday, September 24, 2014 at 10:00 a.m. in the third floor conference room of the Carvel Building, 820 N. French Street, Wilmington, DE;
- Tuesday, September 30, 2014 at 1:00 p.m. in the DNREC auditorium, 89 Kings Highway, Dover, DE; or
- Wednesday, October 1, 2014 at 2:00 p.m. in the Sussex County Council Chambers, Administrative Building, The Circle, Georgetown, DE.

Written comments will be accepted until close of business on October 20, 2014. Written comments should be submitted to Lauren Shinault, Regulation Review, Office of the Alcoholic Beverage Control Commissioner, Carvel Building 3rd Floor, 820 N. French Street, Wilmington, Delaware 19801. A copy of these regulations may be viewed at the above address.

DIVISION OF STATE POLICE**1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES****PUBLIC NOTICE****1300 Board of Examiners of Private Investigators & Private Security Agencies**

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 **Del.C.** Ch. 13 proposes to amend Rule 4.0 - Training Requirements - requiring all instructors to take the class and pass the test; Rule 6.0 - Criminal Offenses - gives Professional Licensing Section the authority to deny applicants; Rule 10.0 - Uniforms, Patches, Badges, Seals, Vehicular Markings - general housekeeping. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by September 30, 2014, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****PUBLIC NOTICE****100 Board of Accountancy**

Pursuant to 24 **Del.C.** §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The rules pertaining to firm ownership are amended to clarify that all non-licensee owners of firms must be individuals and must be active participants in the firm.

A public hearing will be held on October 15, 2014 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware

19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until October 31, 2014 in accordance with 29 **Del.C.** §10118(a).

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

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

The Board will hold a public hearing on the rule change on October 2, 2014 at 8:30 a.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, DE 19904.