

---

# Delaware Register of Regulations

---

Issue Date: April 1, 2015  
Volume 18 - Issue 10, Pages 742 - 799

---

## IN THIS ISSUE:

Regulations:  
Emergency  
Proposed  
Final

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before March 16, 2015.

Cover Photo by  
Dolores Michels



---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

743

## 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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 17	4:30 p.m.

---

## DIVISION OF RESEARCH STAFF

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

---

---

# TABLE OF CONTENTS

---

745

Cumulative Tables..... 747

---

## EMERGENCY

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Fish and Wildlife

3304 Creel Limits, Size Limits and Seasons..... 754

---

## PROPOSED

### DEPARTMENT OF AGRICULTURE

#### Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations, Section 15.0..... 758

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

1105 School Transportation..... 759

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Long Term Care Residents Protection

3325 Financial Capability Reporting..... 761

#### Division of Medicaid and Medical Assistance

Draft 1115 Waiver Medicaid Managed Care Comprehensive Quality Strategy Plan..... 767

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Waste and Hazardous Substances

1375 Regulations Governing Hazardous Substance Cleanup..... 770

### DEPARTMENT OF SAFETY AND HOMELAND SECURITY

#### Division of State Police

5500 Bail Enforcement Agents, Sections 7.0 and 11.0..... 776

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

#### Division of Family Services

101 Regulations for Early Care and Education and School-Age Centers..... 778

### DEPARTMENT OF STATE

#### Division of Professional Regulation

3800 Board of Dietetics/Nutrition..... 779

### DEPARTMENT OF TRANSPORTATION

#### Division of Transportation Solutions

2402 Delaware Manual on Uniform Traffic Control Devices..... 779

---

## FINAL

### DEPARTMENT OF AGRICULTURE

#### Harness Racing Commission

501 Harness Racing Rules and Regulations, Section 7.0..... 781

501 Harness Racing Rules and Regulations, Section 8.0..... 782

---

---

# TABLE OF CONTENTS

---

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### Division of Medicaid and Medical Assistance

Freestanding Inpatient Rehabilitation Hospital Services.....	784
--	-----

## DEPARTMENT OF LABOR

### Division of Industrial Affairs

1341 Workers' Compensation Regulations.....	787
---	-----

## DEPARTMENT OF STATE

### Division of Professional Regulation

1770 Respiratory Care Practice Advisory Council.....	788
--	-----

2900 Real Estate Commission.....	789
----------------------------------	-----

4100 Board of Home Inspectors, Sections 4.0 and 10.0.....	794
---	-----

---

## CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Agriculture, Thoroughbred Racing Commission, Notice of Public Comment Period.....	796
--	-----

Dept. of Education, Notice of Monthly Meeting.....	796
--	-----

Dept. of Health and Social Services, Div. of Long Term Care Residents Protection; Div. of Medicaid and Medical Assistance, Notices of Public Comment Periods.....	796 - 797
---	-----------

Dept. of Natural Resources and Environmental Control, Div. of Waste and Hazardous Substances, Notice of Public Hearing and Comment Period.....	797
--	-----

Dept. of Safety and Homeland Security, Div. of State Police, Notice of Public Comment Period.....	797
---	-----

Dept. of Services for Children, Youth and Their Families, Div. of Family Services, Notice of Public Comment Period.....	798
---	-----

Dept. of State, Div. of Prof. Regulation, Board of Registration for Professional Land Surveyors; Council on Real Estate Appraisers; Board of Dietetics/Nutrition, Notices of Public Hearings.....	798 - 799
---	-----------

Dept. of Transportation, Div. of Maintenance and Operations, Notice of Public Comment Period.....	799
---	-----

---

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

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

**CASH MANAGEMENT POLICY BOARD**

Objectives and Guidelines for the Investment of State of Delaware Funds.....	18 <b>DE Reg.</b> 257 (Prop.) 18 <b>DE Reg.</b> 462 (Final)
Objectives and Guidelines for the Investment of State of Delaware Funds Designated as the Delaware Land and Water Conservation Trust Fund.....	18 <b>DE Reg.</b> 416 (Prop.)

**DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM**

**Office of the Director**

Guidelines Governing the Administration of the Neighborhood Building Blocks Fund.....	18 <b>DE Reg.</b> 273 (Prop.)
1301 Delaware Criminal Justice Information System Rules and Regulations...	18 <b>DE Reg.</b> 552 (Prop.)

**DELAWARE ECONOMIC DEVELOPMENT OFFICE**

Guidelines Governing the Administration of the Neighborhood Building Blocks Fund	18 <b>DE Reg.</b> 273 (Prop.) 18 <b>DE Reg.</b> 464 (Final)
--	--

**DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY**

202 Rent Increase Dispute Resolution Procedures.....	18 <b>DE Reg.</b> 637 (Prop.)
--	-------------------------------

**DEPARTMENT OF AGRICULTURE**

**Harness Racing Commission**

501 Harness Racing Rules and Regulations, Sections 1.0 and 5.0.....	18 <b>DE Reg.</b> 418 (Prop.)
501 Harness Racing Rules and Regulations, Sections 6.0 and 7.0.....	18 <b>DE Reg.</b> 466 (Final)
501 Harness Racing Rules and Regulations, Section 7.0.....	18 <b>DE Reg.</b> 6 (Prop.) 18 <b>DE Reg.</b> 490 (Errata) 18 <b>DE Reg.</b> 491 (Prop.)
501 Harness Racing Rules and Regulations, Section 8.0.....	18 <b>DE Reg.</b> 492 (Prop.)
502 Delaware Standardbred Breeders' Fund Regulations.....	18 <b>DE Reg.</b> 493 (Prop.) 18 <b>DE Reg.</b> 691 (Final)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

101 State Assessment System.....	18 <b>DE Reg.</b> 279 (Prop.) 18 <b>DE Reg.</b> 556 (Final)
106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	18 <b>DE Reg.</b> 31 (Final)
107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	18 <b>DE Reg.</b> 40 (Final)
108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	18 <b>DE Reg.</b> 48 (Final)
235 Teacher of the Year Award.....	18 <b>DE Reg.</b> 494 (Prop.) 18 <b>DE Reg.</b> 692 (Final)
245 Michael C. Ferguson Achievement Awards Scholarship.....	18 <b>DE Reg.</b> 340 (Prop.)
275 Charter Schools.....	18 <b>DE Reg.</b> 177 (Prop.) 18 <b>DE Reg.</b> 366 (Final)
290 Approval of Educator Preparation Programs.....	18 <b>DE Reg.</b> 57 (Final)
401 Major Capital Improvement Programs.....	18 <b>DE Reg.</b> 95 (Prop.)

401 Major Capital Improvement Programs.....	18 DE Reg. 300 (Final)
405 Minor Capital Improvement Programs.....	18 DE Reg. 180 (Prop.)
415 Voluntary School Assessment.....	18 DE Reg. 368 (Final)
	18 DE Reg. 100 (Prop.)
505 High School Graduation Requirements and Diplomas.....	18 DE Reg. 304 (Final)
610 Limitations on Use of Seclusion and Restraint.....	18 DE Reg. 127 (Final)
727 Credit for Experience for Educators and for Secretarial Staff.....	18 DE Reg. 130 (Final)
817 Medications and Treatments.....	18 DE Reg. 679 (Prop.)
	18 DE Reg. 419 (Prop.)
	18 DE Reg. 639 (Final)
851 K to 12 Comprehensive Health Education Program.....	18 DE Reg. 104 (Prop.)
	18 DE Reg. 369 (Final)
902 Gifted or Talented Education Plan.....	18 DE Reg. 616 (Prop.)
915 James H. Groves High School.....	18 DE Reg. 343 (Prop.)
	18 DE Reg. 561 (Final)
923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies.....	18 DE Reg. 280 (Prop.)
	18 DE Reg. 562 (Final)
	18 DE Reg. 618 (Prop.)
925 Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	18 DE Reg. 281 (Prop.)
	18 DE Reg. 564 (Final)
	18 DE Reg. 621 (Prop.)
930 Supportive Instruction (Homebound).....	18 DE Reg. 7 (Prop.)
	18 DE Reg. 215 (Final)
<b>Professional Standards Board</b>	
1507 Alternative Routes to Teacher Licensure and Certification Program.....	18 DE Reg. 496 (Prop.)
1510 Issuance of Initial License.....	18 DE Reg. 218 (Final)
1512 Issuance and Renewal of Advanced License.....	18 DE Reg. 346 (Prop.)
1513 Denial of Licenses.....	18 DE Reg. 347 (Prop.)
1514 Revocation, Limitation, or Suspension of Licenses.....	18 DE Reg. 349 (Prop.)
1572 Teacher of Students Who Are Gifted and Talented.....	18 DE Reg. 350 (Prop.)
	18 DE Reg. 566 (Final)
1599 Delaware Educational Technology Standards.....	18 DE Reg. 224 (Final)
<b>DEPARTMENT OF ELECTIONS</b>	
<b>Kent County</b>	
1602 Policies and Procedures Regarding FOIA Requests.....	18 DE Reg. 58 (Final)
<b>DEPARTMENT OF FINANCE</b>	
<b>Office of the State Lottery</b>	
206 Internet Lottery Rules and Regulations.....	18 DE Reg. 182 (Prop.)
	18 DE Reg. 370 (Final)
<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES</b>	
<b>Division of Long Term Care Residents Protection</b>	
3315 Rest (Family) Care Homes.....	18 DE Reg. 282 (Prop.)
	18 DE Reg. 569 (Final)
3325 Financial Capability Reporting.....	18 DE Reg. 497 (Prop.)
<b>Division of Medicaid and Medical Assistance</b>	
Diamond State Health Plan 1115 Demonstration Waiver Amendment – Promoting Optimal Mental Health for Individuals through Supports and Empowerment (P.R.O.M.I.S.E.).....	
	18 DE Reg. 186 (Prop.)
	18 DE Reg. 371 (Final)
Freestanding Inpatient Rehabilitation Hospital Services.....	18 DE Reg. 509 (Prop.)

Medicaid 1915(i) Home and Community-Based Services Waiver Programs - Statewide Transition Plan.....	18 DE Reg. 681 (Prop.)
Nursing Facility Services – Preadmission Screening and Resident Review.....	18 DE Reg. 106 (Prop.)
Standards for the Coverage of Organ Transplant Services.....	18 DE Reg. 115 (Prop.)
Title XIX Medicaid State Plan, Attachment 3.1-A, Introductory Page 2 - Telemedicine.....	18 DE Reg. 310 (Final)
Title XIX Medicaid State Plan, Attachment 3.1-A, Introductory Page 2 - Telemedicine.....	18 DE Reg. 9 (Prop.)
Title XIX Medicaid State Plan, Attachment 3.1-A, Introductory Page 2 - Telemedicine.....	18 DE Reg. 227 (Final)
Title XIX Medicaid State Plan, Attachment 4.19B, Introduction - Page 4, Increased Medicaid Payment for Primary Care Services.....	18 DE Reg. 11 (Prop.)
Title XIX Medicaid State Plan, Attachment 4.19B, Introduction - Page 4, Increased Medicaid Payment for Primary Care Services.....	18 DE Reg. 229 (Final)
Title XIX Medicaid State Plan, Methods and Standards for Establishing Payment Rates - Primary Care Service Payment.....	18 DE Reg. 424 (Prop.)
Title XIX Medicaid State Plan, Methods and Standards for Establishing Payment Rates - Primary Care Service Payment.....	18 DE Reg. 642 (Final)
Title XIX Medicaid State Plan, State Plan Rehabilitative Services - Coverage and Reimbursement for Community Support Services.....	18 DE Reg. 429 (Prop.)
Title XXI Delaware Healthy Children Program State Plan - Cost Sharing and Payment, Premium Requirements.....	18 DE Reg. 183 (Prop.)
70000 Certification and Regulation of Medicaid Managed Care Organizations	18 DE Reg. 375 (Final)
70000 Certification and Regulation of Medicaid Managed Care Organizations	18 DE Reg. 504 (Prop.)
70000 Certification and Regulation of Medicaid Managed Care Organizations	18 DE Reg. 693 (Final)
<b>Division of Public Health</b>	
4201 Cancer Registry.....	18 DE Reg. 63 (Final)
4203 Cancer Treatment Program.....	18 DE Reg. 67 (Final)
4405 Free Standing Surgical Centers.....	18 DE Reg. 14 (Prop.)
4407 Hospital Standards (Construction, Maintenance, and Operation).....	18 DE Reg. 378 (Final)
4407 Hospital Standards (Construction, Maintenance, and Operation).....	18 DE Reg. 119 (Prop.)
4408 Facilities That Perform Invasive Medical Procedures.....	18 DE Reg. 390 (Final)
4408 Facilities That Perform Invasive Medical Procedures.....	18 DE Reg. 613(Emer.)
4410 Skilled Home Health Agencies (Licensure).....	18 DE Reg. 623 (Prop.)
4410 Skilled Home Health Agencies (Licensure).....	18 DE Reg. 133 (Final)
4451 Body Art Establishments.....	18 DE Reg. 352 (Prop.)
4453 Cosmetology and Barbering.....	18 DE Reg. 645 (Final)
4453 Cosmetology and Barbering.....	18 DE Reg. 512 (Prop.)
4454 Tanning Facilities Regulations.....	18 DE Reg. 191 (Prop.)
4468 Delivery of Hospice Services.....	18 DE Reg. 392 (Final)
4468 Delivery of Hospice Services.....	18 DE Reg. 135 (Final)
<b>Division of Social Services</b>	
Child Care Subsidy Program, Child Support Policies and Procedures.....	18 DE Reg. 514 (Prop.)
Delaware’s Temporary Assistance for Needy Families (TANF) State Plan Renewal.....	18 DE Reg. 697 (Final)
DSSM: 2000 Case Processing Procedures - Applications.....	18 DE Reg. 354 (Prop.)
2013 & 9037 Food Supplement Program - Income and Eligibility .....Verification System.....	18 DE Reg. 646 (Final)
2013 & 9037 Food Supplement Program - Income and Eligibility .....Verification System.....	18 DE Reg. 139 (Final)
3011 Delaware TANF Employment and Training Program Requirements.	18 DE Reg. 142 (Final)
9013.1 Food Supplement Program - Household Definition.....	18 DE Reg. 143 (Final)
9060, Determining Income Deductions.....	18 DE Reg. 147 (Final)
11003 Determining Technical Eligibility for Child Care.....	18 DE Reg. 14 (Prop.)
11004.3.1, Service Priorities.....	18 DE Reg. 231 (Final)
11004.3.1, Service Priorities.....	18 DE Reg. 148 (Final)
11004.3.1, Service Priorities.....	18 DE Reg. 9 (Prop.)
11004.3.1, Service Priorities.....	18 DE Reg. 233 (Final)

**DEPARTMENT OF INSURANCE****Office of the Commissioner**

403 Sale and Purchase of Options [Formerly Regulation 28], Repeal of.....	18 DE Reg. 283 (Prop.)
	18 DE Reg. 467 (Final)
404 Derivative Instruments.....	18 DE Reg. 195 (Prop.)
	18 DE Reg. 393 (Final)
607 Defensive Driving Course Discount (Automobiles and Motorcycles).....	18 DE Reg. 519 (Prop.)
	18 DE Reg. 700 (Final)
1003 Credit for Reinsurance.....	18 DE Reg. 355 (Prop.)
	18 DE Reg. 574 (Final)

**DEPARTMENT OF JUSTICE****Fraud and Consumer Protection Division**

Rules and Regulations Pursuant to the Delaware Securities Act.....	18 DE Reg. 202 (Prop.)
	18 DE Reg. 394 (Final)
	18 DE Reg. 575 (Final)

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

1341 Workers' Compensation Regulations.....	18 DE Reg. 357 (Prop.)
	18 DE Reg. 577 (Final)
	18 DE Reg. 609 (Errata)
	18 DE Reg. 675 (Errata)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****Division of Air Quality**

1124 Control of Volatile Organic Compound Emissions.....	18 DE Reg. 121 (Prop.)
--	------------------------

**Division of Energy and Climate**

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions.....	18 DE Reg. 432 (Prop.)
---	------------------------

**Division of Fish and Wildlife**

3502 Striped Bass Spawning Season and Area Restrictions.....	18 DE Reg. 624 (Prop.)
3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.....	18 DE Reg. 624 (Prop.)
3504 Striped Bass Possession Size Limit; Exceptions.....	18 DE Reg. 624 (Prop.)
3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.....	18 DE Reg. 624 (Prop.)
3506 Striped Bass; Total Length Measurement.....	18 DE Reg. 624 (Prop.)
3521 Weakfish Size Limits; Possession Limits; Seasons.....	18 DE Reg. 235 (Final)
3541 Atlantic Sharks.....	18 DE Reg. 525 (Prop.)
	18 DE Reg. 701 (Final)
3801 Shellfish Aquaculture.....	18 DE Reg. 151 (Final)

**Division of Waste and Hazardous Substances**

1301 Regulations Governing Solid Waste (DRGSW).....	18 DE Reg. 530 (Prop.)
	18 DE Reg. 629 (Prop.)
1302 Regulations Governing Hazardous Waste (DRGHW).....	18 DE Reg. 631 (Prop.)

**Division of Watershed Stewardship**

5101 Sediment and Stormwater Regulations.....	18 DE Reg. 204 (Prop.)
	18 DE Reg. 396 (Final)
7401 Surface Water Quality Standards.....	18 DE Reg. 312 (Final)
7408 TMDLs for Nutrients for the Murderkill River Watershed.....	18 DE Reg. 316 (Final)

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

1300 Board of Examiners of Private Investigators & Private Security Agencies	18 DE Reg. 154 (Final)
	18 DE Reg. 211 (Prop.)

1300 Board of Examiners of Private Investigators & Private Security Agencies	18 DE Reg. 436 (Final)
	18 DE Reg. 648 (Prop.)
	18 DE Reg. 468 (Final)
2400 Board of Examiners of Constables.....	18 DE Reg. 675 (Errata)
	18 DE Reg. 684 (Prop.)
5500 Bail Enforcement Agents.....	18 DE Reg. 21 (Prop.)
	18 DE Reg. 318 (Final)
	18 DE Reg. 285 (Prop.)
	18 DE Reg. 578 (Final)
	18 DE Reg. 610 (Errata)
<b>Office of the Alcoholic Beverage Control Commissioner</b>	
Alcoholic Beverage Control Regulations.....	18 DE Reg. 208 (Prop.)
1407 A Rule Pertaining to Movie Theaters.....	18 DE Reg. 209 (Prop.)
	18 DE Reg. 398 (Final)
<b>Office of the Secretary</b>	
101 Regulations Governing the Relief from Disabilities Board.....	18 DE Reg. 649 (Final)
<b>DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES</b>	
<b>Division of Family Services, Office of Child Care Licensing</b>	
101 Rules for Early Care and Education and School-Age Centers.....	18 DE Reg. 438 (Prop.)
105 Residential Child Care Facilities and Day Treatment Programs.....	18 DE Reg. 122 (Prop.)
<b>DEPARTMENT OF STATE</b>	
<b>Division of Historical and Cultural Affairs</b>	
100 Historic Preservation Tax Credit Program.....	18 DE Reg. 24 (Prop.)
	18 DE Reg. 237 (Final)
<b>Division of Professional Regulation</b>	
<b>Controlled Substance Advisory Committee</b>	
Uniform Controlled Substances Act Regulations.....	18 DE Reg. 92 (Emer.)
100 Board of Accountancy.....	18 DE Reg. 155 (Final)
	18 DE Reg. 212 (Prop.)
	18 DE Reg. 320 (Final)
	18 DE Reg. 685 (Prop.)
	18 DE Reg. 157 (Final)
103 Regulations Governing Charitable Gambling Other Than Raffles	
200 Board of Landscape Architecture, Section 7.0, Continuing Education as a Condition of Biennial Renewal.....	18 DE Reg. 287 (Prop.)
300 Board of Architects.....	18 DE Reg. 321 (Final)
500 Board of Podiatry.....	18 DE Reg. 124 (Prop.)
700 Board of Chiropractic.....	18 DE Reg. 213 (Prop.)
	18 DE Reg. 579 (Final)
	18 DE Reg. 238 (Final)
1000 Board of Pilot Commissioners.....	
1100 Board of Dentistry and Dental Hygiene, Section 6.0, Continuing Professional Education.....	18 DE Reg. 399 (Final)
1400 Board of Electrical Examiners.....	18 DE Reg. 439 (Prop.)
	18 DE Reg. 704 (Final)
1725 Polysomnography Advisory Council.....	18 DE Reg. 633 (Prop.)
1770 Respiratory Care Practice Advisory Council.....	18 DE Reg. 444 (Prop.)
1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners.....	18 DE Reg. 686 (Prop.)
1900 Board of Nursing, Section 6.0 Requirements & Procedures for Licensure	18 DE Reg. 322 (Final)
1900 Board of Nursing, Sections 8.0, 9.0 and 10.0.....	18 DE Reg. 445 (Prop.)
	18 DE Reg. 705 (Final)
2000 Board of Occupational Therapy Practice.....	18 DE Reg. 532 (Prop.)
2500 Board of Pharmacy.....	18 DE Reg. 536 (Prop.)
	18 DE Reg. 707 (Final)
2600 Examining Board of Physical Therapists and Athletic Trainers.....	18 DE Reg. 290 (Prop.)

# CUMULATIVE TABLES

2600 Examining Board of Physical Therapists and Athletic Trainers.....	18 DE Reg. 447 (Prop.)
	18 DE Reg. 469 (Final)
2700 Board of Professional Land Surveyors.....	18 DE Reg. 126 (Prop.)
	18 DE Reg. 634 (Prop.)
	18 DE Reg. 651 (Final)
2900 Real Estate Commission.....	18 DE Reg. 447 (Prop.)
2930 Council on Real Estate Appraisers.....	18 DE Reg. 538 (Prop.)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	18 DE Reg. 451 (Prop.)
3500 Board of Examiners of Psychologists.....	18 DE Reg. 323 (Final)
4100 Board of Home Inspectors, Sections 4.0 and 10.0.....	18 DE Reg. 358 (Prop.)
4100 Board of Home Inspectors, Sections 4.0 and 18.0.....	18 DE Reg. 158 (Final)
4400 Delaware Manufactured Home Installation Board.....	18 DE Reg. 400 (Final)
5100 Board of Cosmetology and Barbering.....	18 DE Reg. 239 (Final)
<b>Office of the State Bank Commissioner</b>	
1114 Alternative Franchise Tax.....	18 DE Reg. 291 (Prop.)
2101 Operating Regulation.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2102 Minimum Records.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2104 Minimum Disclosure and Agreement Requirements.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2201 Operating Regulation.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2202 Minimum Records.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2207 Exemption of Licensed Lenders.....	18 DE Reg. 159 (Final)
2302 Exemptions.....	18 DE Reg. 159 (Final)
2701 Operating Regulation.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2901 Operating Regulation.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2902 Minimum Records.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
3401 Regulations.....	18 DE Reg. 159 (Final)
3402 Surety Bond or Irrevocable Letter of Credit.....	18 DE Reg. 159 (Final)
<b>Public Service Commission</b>	
1001 Rules of Practice and Procedure of the Delaware Public Service Commission.....	18 DE Reg. 160 (Final)
4001 Rules for the Provision of Telecommunication Services (Docket Nos. 10 and 45).....	18 DE Reg. 296 (Prop.)
	18 DE Reg. 653 (Final)
4002 Regulations Governing Payphone Service Providers in Delaware.....	18 DE Reg. 687 (Prop.)
4003 Regulations Governing the Minimum Service Requirements for the Provision of Telephone Service for Public Use within the State of Delaware (Docket No. 20), Repeal of.....	18 DE Reg. 296 (Prop.)
	18 DE Reg. 653 (Final)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Maintenance and Operations</b>	
2310 Outdoor Advertising.....	18 DE Reg. 690 (Prop.)
<b>Division of Motor Vehicles</b>	
2224 Defensive Driving Course, Providers, and Instructors.....	18 DE Reg. 540 (Prop.)
	18 DE Reg. 708 (Final)
2228 Special Group or Organization Registration Plates for Persons With Disabilities.....	18 DE Reg. 635 (Prop.)

<b>Division of Planning and Policy</b>	
2309 Standards and Regulations for Subdivision Streets and State Highway Access.....	18 DE Reg. 240 (Final) 18 DE Reg. 455 (Prop.) 18 DE Reg. 709 (Final)
<b>Division of Transportation Solutions</b>	
2406 Policies and Procedures for Acquisition of Certain Real Property Interests	18 DE Reg. 456 (Prop.) 18 DE Reg. 733 (Final)
2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property Interests.....	18 DE Reg. 545 (Prop.) 18 DE Reg. 734 (Final)
<b>DIVISION OF RESEARCH</b>	
<b>Office of the Registrar of Regulations</b>	
Regulation Governing Administrative Rulemaking Procedures.....	18 DE Reg. 161 (Final)
<b>EXECUTIVE DEPARTMENT</b>	
<b>Office of Management and Budget</b>	
<b>Division of Facilities Management</b>	
Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	18 DE Reg. 550 (Prop.)
4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program.....	18 DE Reg. 547 (Prop.) 18 DE Reg. 736 (Final)
<b>State Employees Benefits Committee</b>	
2001 Group Health Care Insurance Eligibility and Coverage Rules.....	18 DE Reg. 79 (Final)
<b>Statewide Benefits Office</b>	
2007 Disability Insurance Program Rules and Regulations.....	18 DE Reg. 79 (Final)
<b>Office of State Planning Coordination</b>	
Guidelines Governing the Administration and Review of Applications for Designation as Downtown Development Districts.....	18 DE Reg. 359 (Prop.)

**Symbol Key**

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

**Emergency Regulations**

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

**§ 10119. Emergency regulations.**

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

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

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

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

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

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

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, §103 and 7 Delaware Code, Chapter 60  
(7 **Del.C.** §103 and 7 **Del.C.**, Ch. 60)  
7 **DE Admin. Code** 3304

**EMERGENCY REGULATION ORDER 2015-F-0007****3304 Creel Limits, Size Limits and Seasons****AUTHORITY**

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is adopting amendments to Non-Tidal Finfish Regulation 3304 Creel Limits and Seasons for trout (7 **DE Admin. Code** 3304, Sections 3.1.2 and 3.4.2) without prior notice or public hearing in the interest of public safety.

**REASON FOR THE EMERGENCY REGULATION ORDER**

Delaware's trout season on the designated trout ponds (Newton Pond in Sussex County and Tidbury Pond in Kent County) is established in 7 **DE Admin. Code** 3304 as the first Saturday in March (March 7, 2015). However, Delaware is presently under a winter storm warning with predicted snow accumulations of four to ten inches through 1900 Hrs. on Thursday March 5, 2015 (National Weather Service Mount Holly, NJ), the scheduled trout stocking date for the ponds. Furthermore, the two ponds are presently covered in several inches of ice. These unusual circumstances preclude safe trout stocking and present an imminent safety risk to hatchery personnel, Department staff, and the fishing public, who may venture onto unsafe ice in pursuit of trout. As such, for the 2015

---

calendar year only, the Department hereby amends 7 **DE Admin. Code** 3304, Section 3.1.2 to postpone the opening day of the trout season until the second Saturday in March (March 14, 2015) at 0700 Hrs. (7:00 a.m.). The designated trout ponds will remain closed to all fishing until that time.

In addition, the requirement to possess a valid trout stamp to fish in a designated trout pond will also be extended through April 8, 2015 through this action. Accordingly, for the 2015 calendar year only, the Department hereby amends 7 **DE Admin. Code** 3304, Section 3.4.2 from “the first Saturday in March through April 1” to “the second Saturday in March through April 8”.

**EFFECTIVE DATE OF ORDER**

This Emergency Order shall take effect at 12:01 a.m. on March 5, 2015 and shall remain in effect for 60 days.

**PETITION FOR RECOMMENDATIONS**

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to Stewart Michels, Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware, 19901. Comments can also be emailed to: [stewart.michels@state.de.us](mailto:stewart.michels@state.de.us).

**ORDER**

It is hereby ordered, the 4<sup>th</sup> day of March 2015 that the above referenced amendments to Non-Tidal Finfish Regulation 3304 (7 **DE Admin. Code** 3304, Sections 3.1.2 and 3.4.2), a copy of which is hereby attached, are adopted pursuant to 29 **Del.C.** §10119 and supported by the evidence contained herein.

David S. Small, Secretary  
Department of Natural Resources and Environmental Control

**3304 Creel Limits, Size Limits and Seasons**

(Penalty Section 7 **Del.C.** §1304)

- 1.0 Closed Seasons. Unless otherwise provided by law or regulation of the Department, there is no closed season, size limits or possession limits on any species of fish taken by hook and line in any non-tidal waters of this State.
- 2.0 Bass.
  - 2.1 Statewide limits.
    - 2.1.1 It is unlawful for any person to have in possession more than six (6) largemouth bass or to have in possession more than six (6) smallmouth at or between the place where said largemouth and/or smallmouth bass were caught and said person’s personal abode or temporary or transient place of lodging.
    - 2.1.2 Unless otherwise authorized in this regulation, it is unlawful for any person to possess any largemouth bass that measure less than twelve (12) inches in total length. Any largemouth bass taken which is less than the twelve (12) inches in total length must be immediately returned to the water with the least possible injury.
    - 2.1.3 It is unlawful for any person to possess any smallmouth bass measuring from twelve (12) inches to and including (17) inches in total length. Any smallmouth bass taken which is greater than twelve (12) inches and less than seventeen (17) inches must be immediately returned to the water with the least possible injury.
    - 2.1.4 Notwithstanding 2.1.1 of this section, it is unlawful for any person to have in possession more than one (1) smallmouth bass measuring more than seventeen (17) inches in total length at or between the place where said smallmouth bass was caught and said person’s personal abode or temporary or transient place of lodging.

---

**EMERGENCY REGULATIONS**

---

- 2.1.5 It is lawful for any person to have in possession while fishing up to six (6) smallmouth bass that are less than twelve (12) inches in total length.
- 2.2 Becks Pond.
- 2.2.1 Notwithstanding 2.1.1 of this section, it is unlawful for any person to have in possession while fishing on Becks Pond more than two (2) largemouth bass.
- 2.2.2 Notwithstanding 2.1.2 of this section, it is unlawful for any person to have in possession while fishing on Becks Pond any largemouth bass less than fifteen (15) inches in total length. Any largemouth bass less than fifteen (15) inches in total length must be immediately returned to Becks Pond with the least possible injury.
- 3.0 Trout.
- 3.1 Pond and Stream Seasons.
- 3.1.1 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout streams, except between and including the first Saturday of April and the second Saturday of March of each succeeding year.
- 3.1.2 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout ponds, except between and including the ~~first~~ second Saturday of March and the second Saturday of February of each succeeding year.
- 3.2 Hours of Fishing.
- 3.2.1 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout streams on the opening day of the trout season before 7:30 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.
- 3.2.2 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout ponds on the opening day of the trout season before 7 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.
- 3.3 Possession. It is unlawful for any person to possess in any one day during the prescribed open season more than six (6) rainbow trout, brown trout brook trout or any hybrids of these species in any combination. On any day after a person takes his or her legal limit of trout, said person is prohibited from fishing in a designated trout stream or a designated trout pond on the same day, unless otherwise authorized by law or this regulation.
- 3.4 Trout Stamp.
- 3.4.1 It is unlawful for any person to fish in a designated trout stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30, unless said person has in his or her possession a valid trout stamp, or unless said person is exempted by law from having a trout stamp.
- 3.4.2 It is unlawful for any person to fish in a designated trout pond from the ~~first~~ second Saturday in March through April ~~4<sup>g</sup>~~, unless said person has in his or her possession a valid trout stamp, or unless said person is exempted by law from having a trout stamp.
- 3.5 Restricted Trout Stream.
- 3.5.1 It is unlawful for any person to fish in a restricted trout stream with more than two (2) flies on a line at any one time.
- 3.5.2 It is unlawful for any person to use any metallic, wooden, plastic or rubber spinners, spoons, lures, plugs, or any natural or synthetic bait on any restricted trout stream.
- 3.5.3 It is unlawful for any person to have in his or her possession more than four (4) trout within 50 feet of any restricted trout stream. On the restricted trout stream only, trout may be caught and released as long as the four (4) trout possession limit is not exceeded. All trout released must be returned to the water as quickly as possible with the least possible injury.
- 3.6 Closure of Designated Trout Streams and Ponds.

- 
- 3.6.1 It is unlawful for any person to fish in a designated trout stream two weeks (14 days) prior to the scheduled opening of the stream trout season.
- 3.6.2 It is unlawful for any person to fish in a designated trout pond two weeks (14 days) prior to the scheduled opening of the pond trout season.
- 4.0 Striped Bass and Hybrid Striped Bass
- 4.1 It is unlawful for any person to have in his or her possession while fishing in the non-tidal waters of this State more than two (2) striped bass (*Morone saxatilis*) or striped bass hybrids (*Morone saxatilis* x *M. chrysops*).
- 4.2 It is unlawful for any person to possess any striped bass or any striped bass hybrid under the length of fifteen (15) inches measured from the tip of the snout to the tip of the tail while fishing in the non-tidal waters of this State.
- 5.0 Panfish Limits. It is unlawful for any person to have in possession while fishing in any State-owned non-tidal water more than fifty (50) panfish in aggregate to include bluegill, pumpkinseed, redear sunfish, black crappie, white crappie, white perch or yellow perch, provided no more than twenty-five (25) of the fifty (50) allowed in possession are of any one species.
-

**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 AGRICULTURE  
THOROUGHBRED RACING COMMISSION**

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

**PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations****Summary**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to adopt by reference the Association of Racing Commissioners International Non-Steroidal Anti-Inflammatory Drug Stacking rule (ARCI-011-020, Part E.(1)(C)). Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

**Comments**

A copy of the proposed regulations is being published in the April 1, 2015 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before May 1, 2015. Written materials submitted will be available for inspection at the above address.

## Adoption of Proposed Regulation

On or after May 1, 2015, following review of the public comment, the Thoroughbred Racing Commission will determine whether to adopt the proposed amended Regulations or make additional changes because of the public comments received.

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

#### 15.0 Medication; Testing Procedures

##### 15.1 Prohibition and Control of Medication:

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

##### 15.1.3 Foreign Substances:

##### 15.1.3.1 No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.1.3.1.3:

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

15.1.3.1.4 Except as provided in DTRC Rule 15.20, ~~the~~ only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxyphenobutazone in the level stated in 15.1.3.1.5 or 15.1.3.1.6. The presence of any other NSAID at any test level is forbidden.

Revised: 1/6/92.

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

#### 15.20 ARCI NSAID Stacking Rule

15.20.1 The Commission hereby adopts by reference the Association of Racing Commissioners International Non-Steroidal Anti-Inflammatory Drug Stacking rule (ARCI-011-020, Part E.(1)(C)), version 5.9 approved December 12, 2014.

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

**1001 Thoroughbred Racing Rules and Regulations**

---

## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 1105

### PUBLIC NOTICE

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

### 1105 School Transportation

#### 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** 1105 School Transportation. This regulation is being amended to align with changes in Title 14 of the **Delaware Code**, including, but not limited to the maximum age of a school bus for use on a regular route, criminal background checks, and the process for training school bus drivers. Additionally, it will establish a mandatory in-service training program for school bus drivers and aides, it will require an annual physical for school bus aides and will direct districts to make disbursements on a prorated basis when they fund a portion of the transportation costs.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **May 5, 2015** 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 not intended to improve 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 helps ensure that students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments specifically address students' health and safety as it relates to school bus transportation.

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 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.

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

**1105 School Transportation**

---

---

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 **Del.C.** §7903(10))

### PUBLIC NOTICE

#### **3325 Financial Capability Reporting**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the Delaware Code, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to create Regulation 3325, Financial Capability Reporting.

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 Thomas Murray, Deputy Director, Division of Long Term Care Resident Protection, 3 Mill Road, Suite 308, Wilmington, Delaware 19806 by April 30, 2015.

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.

#### **Background**

For some time there have existed various interpretations of the requirement for facilities to submit financial documents to allow staff to effectively assess the financial capability of the facilities. This regulation details the information that must be submitted and the circumstances under which it must be submitted. It will establish consistency in the application of 16 **Del.C.** §§1104(b)(2) and 1104(e).

#### **Summary of Proposal**

This regulation details the level of information that must be provided by the facility under various circumstances. It also details when and in what form the department will require the submission of audited financial statements.

#### **Statutory Authority**

16 **Del.C.** §1119C, Nursing Facilities and Similar Facilities

29 **Del.C.** §7903(10), Powers, duties and functions of the Secretary

#### **3325 Financial Capability Reporting**

##### **1.0 Authority**

This regulation is promulgated and adopted pursuant to 29 **Del.C.** §7971(d).

##### **2.0 Purpose and Scope**

2.1 The purpose of this regulation is to detail the Department of Health and Social Services' authority to monitor the financial capability of licensed long term care (LTC) providers. It details the level of information that must be provided by the licensee, or potential licensee, under various circumstances. It also defines when and in what form the Department will require the submission of audited financial statements reporting the financial position and the results of operations of facilities by independent certified public accountants.

2.2 Every facility (as defined in 16 **Del.C.** §1102(4)) licensed to provide care for more than three (3) residents shall be subject to this regulation. Facilities licensed to provide care for 3 or fewer residents

# PROPOSED REGULATIONS

shall be required to submit documentation demonstrating financial capability as required by the Department.

- 2.3 This regulation shall not prohibit, preclude or in any way limit DHSS from ordering, conducting or performing examinations of facilities under the rules and regulations of the Delaware Department of Health and Social Services and the practices and procedures of its regulations.

## 3.0 **Definitions**

**“Accountant”** means a practitioner of accounting or accountancy, which is the measurement, disclosure or provision of assurance about financial information that helps managers, investors, tax authorities and others make decisions about allocating resources.

An **“Affiliate”** of, or person **“Affiliated”** with, means a person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control of the facility specified.

**“Audited Financial Report”** means and includes those items specified in subsection 7.4 of this regulation.

**“Controlling Organization”** means an entity that has a majority ownership interest in the licensed facility.

**“Department”** means the Delaware Department of Health and Social Services (DHSS).

**“Division”** means the DHSS Division of Long Term Care Residents Protection (DLTCRP).

**“Domicile”** means the location of the headquarters of the business.

**“Facility”** means a long term care facility as defined in 16 **Del.C.** §1102(4) which is licensed under 16 **Del.C.** §1103 to provide care and services to more than three (3) residents.

**“Financial Distress”** means a finding by the Department following the analysis of an audit, complaint or data indicating that the financial condition of the facility threatens the health or safety of a resident(s) of a facility.

**“Generally Accepted Accounting Principles (GAAP)”** means those principles that are recognized as the standard framework of guidelines for financial accounting.

**“Independent Certified Public Accountant”** means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice.

**“Material Adverse Change”** means a change in the financial position of the facility or the controlling organization that threatens the health or safety of a resident(s) of a facility.

## 4.0 **Requirements for the Submission of Financial Documents Upon Application for Renewal of a License.**

- 4.1 All annual applications for renewal of a license shall be submitted at least thirty (30) calendar days prior to the expiration date of the license. The application must include a transmittal letter containing:

4.1.1 The type of ownership for the facility as well as senior, subordinate and affiliated organizations, i.e. proprietorship, partnership, corporation, Subchapter S Corporation or Limited Liability Company and;

4.1.2 The place of incorporation/registration, including names and addresses for all persons/entities with a 5% or greater ownership;

4.1.3 Year-end financial statement(s) – balance sheet, income statement, and statement of cash flows for the facility (most-recent year at year-end). If the year-end statement that is provided is three (3) or more months old when it is received by the Department a supplemental statement through the most recent month must be submitted. If the supplemental statement(s) is not prepared by independent accountants, it is to be attested to by the treasurer and a second officer;

4.1.4 A list of officers with addresses;

4.1.5 Organization charts with names and titles (personnel – facility and controlling organization);

4.1.6 Organization chart (corporate structure), delineating senior, subordinate and affiliated organizations, lines of authority/ownership, and domicile;

4.1.7 Facility address (domicile), all aliases and E.I.N. (employer identification number);

- 4.1.8 Information on the ownership of the real estate on which the facility is located including: name of the organization, address (domicile), E.I.N and principals with 5% or greater ownership;
- 4.1.9 Name, address (domicile, and E.I.N. of the management entity involved in the operation of the facility, if any;
- 4.1.10 All items submitted separately must bear the signed certification statement: "I certify, under penalty of perjury, the attached statement is true, complete and correct";
- 4.1.11 Information on the controlling organization to include:
  - 4.1.11.1 The most recent year-end financial statements for the controlling organization;
  - 4.1.11.2 The most recent year-end personal financial statements of the proprietors or partners if the Controlling Organization is a proprietorship or partnership; and
  - 4.1.11.3 The most recent year-end personal financial statement for guarantors of a corporate transaction if the Controlling Organization is a proprietorship or partnership.
- 4.2 Any material adverse change to the facility's financial position must be reported to the Department by the facility in writing within five (5) business days of its occurrence or discovery.

## **5.0 Requirements for the Submission of Financial Documents Upon Application for New/Change of Ownership**

- 5.1 All applications for a license for a new facility or for a change of ownership for an existing facility shall include with the application a transmittal letter to include all the items listed in subsection 4.1 except 4.1.3 and;
- 5.2 Transaction Documents to include:
  - 5.2.1 Sale/Purchase Agreement
  - 5.2.2 Closing Statement
  - 5.2.3 Notes (must include all terms and conditions, including but not limited to balance, payment amount, payment period, interest rate and mandated ratios)
  - 5.2.4 Mortgages (see 5.2.3)
  - 5.2.5 Leases (Complete)
- 5.3 Financial Documents to include:
  - 5.3.1 Projected statement of Revenue and Expenses for thirty-six (36) months;
  - 5.3.2 Projected statement of Revenue and Expenses converted to cash flow (for 36 months);
  - 5.3.3 Beginning Pro Forma Balance Sheet. (end of first, second and third years);
  - 5.3.4 Ending Pro Forma Balance Sheets (end of first year, second and third years);
  - 5.3.5 Any newly established Facility without a parent, or any new or newly owned facility with a newly established parent without a financial history of at least thirty-six (36) months will provide evidence of capital availability equal to four (4) months of anticipated facility expenses as evidenced on the pro forma profit and loss statement. Said capital availability shall be maintained at a local financial institution for the first twenty-four (24) months of operation of the facility and the facility will provide a copy of a letter from it to the local financial institution instructing it to notify the Department immediately if the agreed upon balance is not maintained;
  - 5.3.6 Information on the controlling organization to include:
    - 5.3.6.1 The most recent three (3) years of audited year-end financial statements for the controlling organization;
    - 5.3.6.2 The most recent three (3) years of audited personal financial statements for the proprietors or partners if the Controlling Organization is a proprietorship or partnership;
    - 5.3.6.3 The most recent three (3) years of audited personal financial statements for guarantors of a corporate transaction if the Controlling Organization is a proprietorship or partnership;
  - 5.3.7 The Department may accept draft transaction documents and unaudited financial statements pending the receipt of executed transaction documents and audited financial statements and reserves the right to require the submission of additional information upon initial review; and

---

# PROPOSED REGULATIONS

---

5.3.8 Additional materials which will facilitate analysis are encouraged.

5.4 Effective upon the date of purchase or change of ownership the facility will provide monthly financial information to DHSS as required. All in-house prepared financial information is to include the following certification signed by the Chief Financial Officer: "All financial information provided herewith is certified to be true and correct to the best of my knowledge and belief, under penalty of perjury." The information will include:

5.4.1 Balance sheet;

5.4.2 Profit/Loss statement;

5.4.3 Statement of cash flow; and

5.4.4 Current resident census.

5.5 Any material adverse change to the facility's cash flow or financial position must be reported to the Department by the facility in writing within five (5) business days of its occurrence or discovery.

## **6.0 Resident Trust Funds**

6.1 Every facility that receives, holds or disburses funds belonging to the residents shall maintain and retain the below listed documentation. The documentation must be provided to DHSS upon request.

6.1.1 Copy of the current Surety Bond covering Resident Trust Funds.

6.1.2 Copies of appropriate account statements for the Fund (bank statements) for the most recent month.

6.1.3 Copies of ledger account records for each resident having funds in the account corresponding to the most recent account statement.

6.1.4 If reconciliations are performed, copies of the statement of reconciliation for the appropriate month.

6.1.5 A record of all residents for whom the facility held funds discharged from the facility during the previous twelve (12) months. For each such discharged resident the facility shall document the following:

6.1.5.1 Date of departure;

6.1.5.2 Reason for departure;

6.1.5.3 Resident balance in trust fund at date of departure;

6.1.5.4 Date and disposition of resident funds.

## **7.0 Audited Financial Disclosure Requirement**

7.1 When the Department determines that financial conditions exist which threaten the health or safety of a resident(s) in a facility, the Department may require the facility to submit certified in-house financial statements within 15 days of request and an audited financial report prepared by an Independent Certified Public Accountant within 60 days. The foregoing time frames may be extended by the Department upon written request.

7.2 Conditions which may prompt the Department to require audited financial disclosure include but are not limited to:

7.2.1 Substandard Quality of Care due to an adverse financial condition.

7.2.2 A material adverse change to the facility's financial position.

7.2.3 Facility/Equipment maintenance inadequacies due to an adverse financial condition.

7.2.4 Repeated or frequent payroll interruptions or shortages.

7.2.5 Confirmed delinquencies on invoices from suppliers or attendant court actions.

7.2.6 Personnel shortages (understaffing and /or under-qualification of staff) due to an adverse financial condition.

7.2.7 Delinquent tax payments.

7.2.8 Bankruptcy, reorganization or closure.

- 7.3 Audits may initially be transmitted to the Department by electronic means. The electronic submission must be followed by an original, bound, signed audit, prepared by an independent certified public accountant.
- 7.4 Contents of an Audited Financial Report:
- 7.4.1 The audited financial report shall indicate the current financial position of the facility and the results of its operations, cash flows and changes in capital. The report shall conform to GAAP practices. It shall include:
- 7.4.1.1 Report of independent certified public accountant;
  - 7.4.1.2 Balance sheet reporting assets, liabilities, and capital;
  - 7.4.1.3 Statement of operations;
  - 7.4.1.4 Statement of cash flows;
  - 7.4.1.5 Statement of changes in capital; and
  - 7.4.1.6 Notes to financial statements. These notes shall be those required by GAAP.

## **8.0 Qualifications of Independent Certified Public Accountant**

- 8.1 In order for the Department to recognize a person or firm as a qualified independent certified public accountant the person or firm must meet or exceed the following qualifications:
- 8.1.1 Is in good standing with the AICPA and in all states in which the accountant is licensed to practice;
  - 8.1.2 Has neither directly nor indirectly entered into an agreement of indemnification with respect to the audit of the facility; and
  - 8.1.3 He or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Delaware State Board of Accountancy, or similar code.

## **9.0 Consolidated Financial Statements**

- 9.1 A facility may make written application to DHSS for approval to file consolidated financial statements in lieu of separate annual financial statements if the facility is part of a group. Consolidated statements must meet the following requirements:
- 9.1.1 Amounts shown on the consolidated audited financial report shall be shown on the worksheet;
  - 9.1.2 Amounts for each separately licensed facility subject to this section shall be stated separately;
  - 9.1.3 Non-facility operations may be shown on the worksheet on a consolidated or individual basis;
  - 9.1.4 Explanations of consolidating and eliminating entries shall be included;
  - 9.1.5 A reconciliation of any differences between the amounts shown in the individual facility columns of the worksheet and comparable amounts shown on the annual statements of the facilities shall be included;
  - 9.1.6 Notes on each facility included in a consolidated financial statement will be included with the notes of the consolidation with each separate facility clearly identified; and
  - 9.1.7 Any statements completed in excess of 30 days after the closing of the audited period will be accompanied by an in-house prepared financial statement for each separately licensed facility. The period covered by the in-house statement will be from the audit end-date through the most recent facility monthly statement. The statement will be dated and certified as correct by the signature of the Chief Financial Officer.

## **10.0 Scope of Audit and Report of Independent Certified Public Accountant**

Financial statements furnished pursuant to subsection 7.4 shall be examined by the independent certified public accountant. The audit of the facility's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, *Consideration of Internal Control in a Financial Statement Audit*, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit.

---

# PROPOSED REGULATIONS

---

## **11.0 Notification of Adverse Financial Condition**

- 11.1 A facility that is required to furnish an annual audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the facility has materially misstated its financial condition to the Department. A facility that receives a report pursuant to this paragraph shall forward a copy of the report to the Department within five (5) business days of receipt of the report accompanied by any amended or corrected audit generated as a result of the misstatement.
- 11.2 No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with subsection 10.1.
- 11.3 If the accountant, subsequent to the date of the audited financial report filed pursuant to this regulation, becomes aware of facts that might have affected his or her report, the Department notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

## **12.0 Conduct of Facility in Connection with the Preparation of Required Reports and Documents**

- 12.1 No director or officer of a facility shall, directly or indirectly:
- 12.1.1 Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this regulation; or
- 12.1.2 Fail to accurately report any material fact or information to the accountant in connection with any audit or review required under this regulation; or
- 12.1.3 Directly or indirectly coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this regulation that results in the submission of materially misleading financial statements.

## **13.0 Enforcement and Oversight Authority**

- 13.1 The Department is authorized to impose the below listed actions to monitor the financial capability of a facility it has determined to be in financial distress. Noncompliance with any imposed action may result in the imposition of civil penalties or other remedies for compliance as authorized by 16 Del.C., Chapter 11, Sub-Chapter I.
- 13.1.1 Monthly submission within thirty (30) calendar days of the end of the month of monthly financial information from the facility to include:
- 13.1.1.1 Balance Sheet, Profit and Loss Statement, Statement of Cash Flows, Census Information; and
- 13.1.1.2 Certification by the Chief Financial or Corporate Officer with the following statement: "All financial information provided herein is certified to be true and correct to the best of my knowledge and belief, under penalty of perjury."
- 13.1.2 Submission of monthly certifications from the facility that all required licenses, taxes and insurances are paid-to-date, are current and in effect.
- 13.1.3 Attendance of facility and corporate staff at periodic meetings with the Department to discuss past performance and expectations for future performance, to include:
- Facility Administrator
  - Regional/Corporate CFO/Controller
  - Regional Administrator
- 13.1.4 Requirement of a written plan from the facility indicating how it will return to profitability.
- 13.1.5 Reclassification of the facility license from annual to provisional status.
- 13.1.6 Requirement that the Controlling Organization (if any) of the facility provide a written assurance to the Department that the Controlling Organization will step in to provide financial support to ensure

that the residents continue to receive quality care. The written assurance is to include text as provided by the Department.

- 13.1.7 Query courts of local jurisdiction for pending or past legal actions or judgments against the facility by suppliers and/or government agencies
- 13.1.8 Notification to The Centers for Medicare and Medicaid Services of the facility's financial difficulty (federally certified facilities).
- 13.1.9 The issuance of an emergency order temporarily transferring the management of the facility to another qualified entity in cases where the physical health or safety of a resident(s) is in imminent risk.
  - 13.1.9.1 The terms and conditions of the emergency order including costs of implementation are to be determined by the Department. The terms and conditions of the emergency order are effective until the Department conducts an administrative hearing to determine the facility management's ongoing licensure status, which hearing must be conducted within 60 days from the date of the issuance of the order unless the facility requests a continuance of the hearing date. At the conclusion of the hearing the Department will make a final determination regarding the costs of implementation of such management and the facility's ongoing licensure status.
  - 13.1.10 Require written notification from the facility, to each individual resident and, if known, a family member or legal representative that the financial capability of the facility is under review by the Department. The notification must be written in a language and manner that is easily understood by the individual resident and/or individual resident's representative.
  - 13.1.10.1 Provide a copy of the notice to the DHSS; the State Long Term Care Ombudsman; managed care organization (MCO), as appropriate; any Departmental DHSS agency involved in the resident placement in the facility, including Adult Protective Services; and the protection and advocacy agency as defined in 16 Del.C. §1102 if the resident is an individual with a developmental disability or mental illness.

## **14.0 Confidentiality of Facility Financial Records**

- 14.1 The Department shall maintain the financial documents submitted by facilities in a secure and confidential manner.
- 14.2 The Department will consider financial documents submitted pursuant to these regulations as exempt from public disclosure consistent with 29 Del.C. §10002(l)(2).

## **15.0 Severability Provision**

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

---

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

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

#### **PUBLIC NOTICE**

#### **Draft 1115 Waiver Medicaid Managed Care Comprehensive Quality Strategy Plan**

In compliance with the public notice requirements of the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 U.S.C. §1315(d), 42 CFR Part 431, Subpart G and 42 CFR 447.205, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA), Division of Substance Abuse and Mental Health (DSAMH) is seeking public comment on Delaware's Draft 1115 Waiver

Comprehensive Quality Strategy Plan that will be submitted to the Centers for Medicare and Medicaid Services (CMS).

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 and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2015.

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**

This regulatory posting is to provide public notice and to receive public comments for consideration regarding the Delaware Medicaid Managed Care *Quality Strategy Plan*. Delaware Health and Social Services/Division of Medicaid and Medical Assistance is modifying and updating the current Diamond State Health Plan Medicaid managed care strategy as required by 42 CFR Part 438, Subparts D and E (relating to quality assessment and performance improvement; and external quality review) to incorporate the PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment) Section 1115 demonstration waiver amendment.

#### **Statutory Authority**

- 42 U.S.C. §1315, *Demonstration projects*
- Social Security Act §1115, *Demonstration projects*
- 42 CFR 431 Subpart G, *Section 1115 Demonstrations*
- Section 1932(c)(1) of the Social Security Act, *Quality Assurance Standards, Quality Assessment and Improvement Strategy*
- 42 CFR 438, Subpart D, *Quality Assessment and Performance Improvement*
- 42 CFR 438, Subpart E, *External Quality Review*

#### **Background**

Federal regulations at 42 CFR §438.200 et seq. require all States contracting with a managed care organization (MCO) to have a written strategy for assessing and improving the quality of managed care services offered within the State. This is what the Centers for Medicare and Medicaid Services (CMS) refers to as the "State Quality Strategy".

#### *State Responsibilities*

Each State must obtain the input of beneficiaries and other stakeholders in the development of the State Quality Strategy, and make the State Quality Strategy available for public comment before adopting it final.

Currently, States are required to submit to CMS a copy of the initial quality strategy and a copy of the revised strategy whenever significant changes are made. Additionally, per 42 CFR §438.202(e), States are required to submit regular reports on the implementation and effectiveness of the quality strategy. This requirement may be satisfied one of two ways:

1. By means of the State's annual External Quality Review (EQR) technical report. If a State chooses to use this method, the State must ensure that its EQR technical report includes a section that addresses the effectiveness of the State's quality strategy and determine whether any updates to the quality strategy are necessary based on the EQR assessment.

2. By means of a separate report on the implementation and effectiveness of the quality strategy. This State must submit this separate report to CMS on at least an annual basis.

#### *Elements of State Quality Strategies*

In accordance with 42 CFR §438.204, at a minimum, State Quality Strategies must include:

- The MCO contract provisions that incorporate the standards of Part 438, subpart D;
- Procedures that assess the quality and appropriateness of care and services furnished to all Medicaid enrollees under the MCO contracts, and to individuals with special health care needs;
- Procedures that identify the race, ethnicity, and primary language spoken of each Medicaid enrollee;
- Procedures that regularly monitor and evaluate the MCO compliance with the standards of Part 438, Subpart D;
- Arrangements for annual, external independent reviews of the quality outcomes and timeliness of, and access to, the services covered under each MCO contract;
- For MCOs, appropriate use of intermediate sanctions that, at a minimum, meet the requirements of Subpart I of this Part 438;
- An information system that supports initial and ongoing operation and review of the State's quality strategy; and,
- Standards, at least as stringent as those in Part 438, Subpart D, for access to care, structure and operations, and quality measurement and improvement.

## **Summary of Proposal**

### *Purpose*

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is making available for public review and comment a draft proposed Quality Strategy for the State's section 1115 Medicaid demonstration waivers, Diamond State Health Plan and Diamond State Health Plan Plus. This process has been undertaken to fulfill the requirements of the Code of Federal Regulations, specifically 42 CFR §438.202(b) which requires states to obtain the input of recipients and other stakeholders in the development of the strategy and the Waiver's associated Special Terms and Conditions, specifically STC 47, to make the strategy available for public comment. The purpose of this notice is to fulfill that requirement. Comments on public notices and comments received at public hearings will be used to formulate Delaware's Final Quality Strategy that will be submitted to CMS by May 1, 2015.

### *Draft 2015 Managed Care Quality Strategy Summary*

The Quality Management Strategy (QMS) is a comprehensive plan which incorporates quality assurance monitoring and ongoing quality improving processes to coordinate, assess and continually improve the delivery of quality care to the Medicaid beneficiaries. The proposed draft Comprehensive Quality Strategy addresses and incorporates the development of and integration of the Promoting Optimal Mental Health for Individuals through Supports and Employment (PROMISE) Program. The PROMISE program is an effort to improve clinical and recovery outcomes for beneficiaries with behavioral health needs.

### *Public Comment Submission Process*

Under the provisions of 42 CFR §441.301(c)(6)(iii), DHSS/DMMA gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the Proposed Draft 1115 Waiver Medicaid Managed Care Comprehensive Quality Strategy Plan. Comments must be received by 4:30 p.m. on March 31, 2015. Comments and input regarding the draft quality strategy plan may be submitted in the following ways:

By email: [Sharon.Summers@state.de.us](mailto:Sharon.Summers@state.de.us)

By fax: 302-255-4425 to the attention of Sharon L. Summers

By written comments sent to:

Sharon L. Summers  
Division of Medicaid and Medical Assistance  
Planning, Policy & Quality Unit  
1901 North DuPont Highway  
P.O. Box 906  
New Castle, Delaware 19720-0906

Delaware utilized two (2) prior public input procedures by 1) publishing the Comprehensive Quality Strategy Plan in two (2) major Delaware newspapers for a thirty-day public comment period on March 1, 2015: *The News Journal* and the *Delaware State News*; and, 2) holding two public hearings on Monday, March 23, 2015 in Kent County and on Friday, March 27, 2015 in New Castle County.

*Draft of Proposed Medicaid Managed Care Comprehensive Quality Strategy Plan*

The Comprehensive Quality Strategy Plan is accessible on both the Division of Medicaid and Medical Assistance (DMMA) website: <http://dhss.delaware.gov/dmma/> and the Division of Substance Abuse and Mental Health (DSAMH) website:

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

Hard copies are available by contacting Arlene Baal at [Arlene.Baal@state.de.us](mailto:Arlene.Baal@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 am – 4:30 pm.

**Fiscal Impact Statement**

There is no increase in cost on the General Fund. Section 1115 demonstration waivers 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.

---

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL**

**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

Statutory Authority: 7 Delaware Code, Chapter 91 (7 Del.C. Ch. 91)  
7 DE Admin. Code 1375

**REGISTER NOTICE**

**SAN # 2013-29**

**1375 Regulations Governing Hazardous Substance Cleanup**

**1. TITLE OF THE REGULATIONS:**

1375 Regulations Governing Hazardous Substance Cleanup

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

The Hazardous Substance Cleanup Act was enacted in 1990, and the Regulations implementing the Act were completed in 1996. There was a revision to the Regulations in 2002 that established criteria for designating a Brownfield property. There was another revision in 2012 that addressed many issues, including, but not limited to, participation in the new brownfields program, consultant certification, notification requirements, investigation procedures, long term stewardship, facility closure, and natural resource damage assessment. Since the 2012, changes have been necessary to meet current practices. The major proposed changes create new regulations for determination of Conditional No Further Action, update the procedures for providing notice in land records, and clarify certain definitions.

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

N/A

---

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

Title 7 Delaware Code, Chapter 91

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

N/A

#### 6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to the Regulations Governing Hazardous Substance Cleanup will be open April 1, 2015, and it will close on May 14, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302)739-9042. A public hearing on the proposed amendment will be held on April 29, 2015 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

#### 7. PREPARED BY:

Kathryn Durant / [kathryn.durant@state.de.us](mailto:kathryn.durant@state.de.us) / 302-396-2680

### 1375 Regulations Governing Hazardous Substance Cleanup

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

## 2.0 Definitions and Usage

- 2.1 Definitions – The following words, terms and phrases, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise.

“**Acceptable risk**” means a probability of one additional lifetime incidence of cancer in 100,000 ( $1 \times 10^{-5}$ ) or less for carcinogens, and a hazard index of one (1) or less for non-carcinogens, as applicable. For certain contaminants, ~~including lead~~, where cancer or non-cancer risk does not apply, the Department may approve or require other methods that it determines are appropriate for determining risk.

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

“**Brownfields Development Program**” means the remedial process established by the ~~Department~~ Department under 7 Del.C. Ch. 91, Subchapter II.

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

“**Cleanup level**” means the concentration of hazardous substances in the environment that cumulatively meet the acceptable risk for the land use intended by the owner or developer, or the background level established by the Department.

“**Conditional No Further Action**” means that based on the information available following an initial investigation or facility evaluation, the Department determines that: (a) there has been no release or there is no imminent threat of release; (b) a release has occurred which does not pose a threat to public health or welfare or the environment above the acceptable site specific risk under current conditions; or (c) action by another authority is appropriate. The Conditional No Further Action (CNFA) Determination lists all the conditions that have to be met in order to maintain the CNFA Determination under current and future land use scenarios and should be placed in the property record.

“**Consultant**” means a contractor who is hired to provide professional services for remedies with regard to a facility.

“**Contaminant of concern**” means a hazardous substance identified during a remedy, which exceeds the HSCA screening level and contributes to the unacceptable site specific risk where the concentration exceeds the cleanup level.

“**Contaminant of Potential Concern**” means a hazardous substance identified during a remedy where the concentration exceeds the Department’s HSCA screening levels.

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

## PROPOSED REGULATIONS

“**Hazardous substance**” means: (a) any hazardous waste as defined in 7 **Del.C.** Ch. 63 or any hazardous waste designated by regulation promulgated pursuant to 7 **Del.C.** Ch. 63; (b) any hazardous substance as defined in CERCLA or regulations promulgated pursuant thereto; (c) any substance determined by the Secretary through regulation to present a risk to the public health or welfare or the environment if released into the environment; (d) any ~~polychlorinated biphenyl substance included in the HSCA screening level table that will be updated semiannually;~~ or (e) petroleum, including crude oil or any fraction thereof; however any release of hazardous substances from a storage tank which is regulated by 7 **Del.C.** Ch. 74 or 7 **Del.C.** Ch. 74A or regulations promulgated pursuant thereto is not subject to these Regulations except as provided for in Section 1.2. Notwithstanding the Department’s determination under Section 1.2 of these Regulations, any release of petroleum, including crude oil or any fraction thereof, is eligible for funding under the Act.

“**Hourly rate of wages**” means the total annual wages of a State employee divided by 1,650 hours or the monthly wages of an employee divided by the actual number of hours worked by the employee during the month.

“**HSCA Reporting levels**” means the concentrations of hazardous substances in the environment that are at or above the levels established by the Department, ~~except for groundwater for which the reporting level shall be equivalent to the levels contained in the Delaware and federal drinking water standards.~~

“**HSCA Screening levels**” means the concentrations of hazardous substances in the environment that are the background levels established by the Department, ~~or ten times lower than the cleanup levels.~~

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

“**Initial screening**” means the process of comparison of the maximum observed concentrations of analytes found in environmental samples to background levels ~~or risk-based values approved by the Department based on~~ and performance of a preliminary risk assessment based on the maximum observed concentrations found in each environmental medium from the results of the a facility evaluation or equivalent investigation to determine whether a release poses a threat to human health, welfare or the environment above the acceptable site specific risk.

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

“**Long-term Stewardship**” means the long-term management of contaminated environmental media at sites that is necessary to protect human health and the environment. Long-term stewardship generally includes the establishment and maintenance of physical and legal controls, implementation entities, authorities, accountability mechanisms, information and data management systems, long-term monitoring, operation and maintenance, and/or resources that are necessary to ensure that these sites remain protective of public health or welfare or the environment.

“**Maximum Contaminant Level**” or “**MCL**” means the maximum permissible level of a specific chemical promulgated contaminant in water which is delivered to any user of a public water system, as defined by the EPA pursuant to under the Safe Drinking Water Act, 42 U.S.C. Sec 300(f), et seq., as amended, and/or the State of Delaware under 16 DE Admin. Code 4462.

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

“**Remedy**” ~~or “Remedial Activity”~~ means any action, response or expenditure consistent with the purposes of the Act, or any regulations or guidance developed pursuant thereto to identify, minimize or eliminate any imminent threat posed by any hazardous substances to public health or welfare or the environment including preparation of any plans, conducting of any studies and any investigative, oversight of remedy or monitoring activities with respect to any release or imminent threat of release of a hazardous substance and any health assessments, risk assessments, health effect studies or natural resource damage assessments conducted in order to determine the risk or potential risk to public health or welfare or the environment.

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

“**Reporting levels**” means the concentrations of hazardous substances in the environment that are at or above the levels established by the Department, ~~except for groundwater for which the reporting level shall be equivalent to the levels contained in the Delaware and federal drinking water standards.~~

*(Break in Continuity Within Section)*

~~“Screening levels” means the concentrations of hazardous substances in the environment that are the background levels established by the Department, or ten times lower than the cleanup levels.~~

*(Break in Continuity Within Section)*

### **3.0 Facility Identification & Prioritization**

#### **3.1 Notification Requirements**

- 3.1.1 An owner ~~of~~ or operator of a facility who has knowledge of a release of a hazardous substance at concentrations at or above the reporting levels must notify the SIRS in writing of the release prior to undertaking land disturbing activities in any area potentially affected by the release.

*(Break in Continuity Within Section)*

#### **3.2 The Department shall establish an inventory of hazardous substance release facilities.**

- 3.2.1 Facilities with a release or imminent threat of release of hazardous substances may be identified by the Department through a variety of mechanisms including any of the following:

*(Break in Continuity Within Section)*

- 3.2.1.2 Reports ~~to~~ to or from, or investigations by, local, state and federal government agencies including the Delaware Department of Health and Social Services, Delaware Department of Transportation, Delaware Emergency Management Agency, State Police or other law enforcement agencies, State Fire Marshal’s Office or any Fire Department, United States Environmental Protection Agency, Department of Defense or other Federal agencies.

*(Break in Continuity Within Section)*

#### **3.4 Brownfields Certification and Funding**

*(Break in Continuity Within Section)*

##### **3.4.3 Criteria for Brownfields Property Certification**

- 3.4.3.1 The Department may certify all or part of a parcel of real property as a Brownfield if the property meets the following criteria:

*(Break in Continuity Within Section)*

- 3.4.3.1.3 All or part of the property meets any one (1) of the following conditions:

*(Break in Continuity Within Section)*

- 3.4.3.1.3.2 The property is or has been used in whole or part as:

*(Break in Continuity Within Section)*

- 3.4.3.1.3.2.4 A historical tannery;

- 3.4.3.1.3.2.5 A RCRA (Subtitle C) treatment, storage, or disposal facility for which the US EPA or the State RCRA program has expressed in writing no further interest in remediating under these programs;

- 3.4.3.1.3.2.56 A permitted or non-permitted landfill or dump;

- 3.4.3.1.3.2.67 The land contains potentially contaminated material;

- 3.4.3.1.3.2.78 A known hazardous substance release site that has not been remediated to the standard applicable to the intended land use, including those facilities previously identified by the Department; or

- 3.4.3.1.3.2.89 A National ~~Priority~~ Priorities List (NPL) or Federal CERCLIS site that has a “No Further Interest” designation from the US EPA.

*(Break in Continuity of Sections)*

### **5.0 Settlement Agreements & Brownfields Development Agreements**

- 5.1 Settlement agreements and Brownfields Development Agreements shall include the following:

# PROPOSED REGULATIONS

- 5.1.1 The name and address of the potentially responsible party, the prospective purchaser, or the Brownfield Developer, and any other affiliated corporation, entity, or other person that will perform or pay for remedial activity ~~at a facility~~ a remedy at the facility;

*(Break in Continuity of Sections)*

## 7.0 Analytical Procedures

- 7.1 Analytical procedures must be conducted in accordance with all applicable provisions of the Standard Operating Procedures of the ~~Hazardous Substance Cleanup Act~~ for Chemical Analytical Programs (SOPCAP) under the Hazardous Substance Cleanup Act, as amended by the Department. Other analytical methods, including screening, not addressed under the SOPCAP, which may be necessary to perform the remedy, must be approved by the Department.

*(Break in Continuity Within Section)*

## 8.0 Public Notification related to Remedial Activities under the Act

### 8.1 Public Notification – Land Records

- 8.1.1 A notice shall be placed in the property record for any facility at which a release of a hazardous substance determined by the Department to be a threat to human health, welfare or the environment has occurred pursuant to 7 Del.C. §9115(a).

- 8.1.2 The Department will determine a release to be a threat to human health, welfare or the environment when:

8.1.2.1 A Department approved risk assessment indicates that a remedy must occur on a facility to meet the acceptable risk; or,

8.1.2.2 At any time determined by the Department during the remedy to meet the intent of 7 Del.C. §9115(a).

- 8.1.3 The owner of the facility on which there is a release that the Department has determined to be a threat to human health, welfare or the environment shall place a notice in the records of real property kept by the Recorder of Deeds in the county in which the property is located. The notice shall:

8.1.3.1 Identify the facility;

8.1.3.2 Identify the owner of the facility and the person causing the notice to appear;

8.1.3.3 State that a release occurred at or from the facility;

8.1.3.4 State the date the release occurred. If the date of the release is not known, then the date of the Department approved risk assessment will be used as the date of the release;

8.1.3.5 Record the Conditional No Further Action determination or the Environmental Covenant from the Department, if necessary; and,

8.1.3.6 Direct further inquiries to the Department.

- 8.1.4 In the event that the owner does not place the notice within a defined time frame established by the Department, the Department shall follow the provisions of 7 Del.C. §9109.

- 8.1.5 In the event that the Department determines the release at the facility or property no longer poses a threat to human health, welfare or the environment, the Department shall place a notice revoking and rescinding the notice specified in 7 Del.C. §9115(a).

### 8.2 Public Notification – Newspapers

- 8.2.1 Whenever public notice is required by the Act or these Regulations, the Department shall, at a minimum, provide or require notice as described in this Section. Public notice shall be published in a newspaper circulated in the county of the proposed action by display advertisement, legal notice, or any other appropriate format, as determined by the Department.

- 8.2.2 Public notice, as required by the Act, shall be provided within twenty (20) days of the following:

8.2.2.1 Commencement of negotiations for a Brownfields Development Agreement (BDA). The date of Brownfields certification by the Department shall be deemed to be the commencement of negotiations for a BDA.

- 8.2.2.2 Commencement of negotiations for a Voluntary Cleanup Program (VCP) Agreement. The date of receipt of a VCP Application by the Department shall be deemed to be the commencement of negotiations for a VCP Agreement.
- 8.2.2.3 Determination by the Department that there has been a release or imminent threat of a release of a hazardous substance which will require a remedy.
- 8.2.3 Public notice, as required by the Act, shall be provided to establish a twenty (20) day comment period for the following:
  - 8.2.3.1 Issuance of a Proposed Plan of Remedial Action;
  - 8.2.3.2 Execution of a Consent Decree; and
  - 8.2.3.3 Execution of a BDA.
- 8.2.4 Public notice shall be provided upon the adoption of the Final Plan of Remedial Action (FPRA), including a brief description of the selected remedy and where a copy of the FPRA may be obtained.
- 8.2.5 Public notice shall be provided twenty (20) days prior to public hearings.

**9.0 Investigation**

## 9.1 Initial Investigation

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

- 9.1.4 Based on the information obtained about the facility during the initial investigation ~~or initial hazard ranking of the facility~~, the Department may:
  - 9.1.4.1 Require a facility evaluation or a remedial investigation;
  - 9.1.4.2 Require an interim action;
  - 9.1.4.3 Place the facility on the priority list prepared by the Department;
  - 9.1.4.4 Take any other action, or no action, as determined by the Department to be appropriate; or

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

## 9.2 Facility Evaluation

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

- 9.2.6 Based on the information obtained about the facility during the FE and the initial screening, the Department will:

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

- 9.2.6.5 Conduct or require any other action, or no action, as determined by the Department; or
- 9.2.6.6 Issue a Conditional No Further Action Determination.

- 9.2.7 A Conditional No Further Action Determination pursuant to 9.2.6.6 of these Regulations does not preclude the Department from requiring further action based on additional information or other circumstances as it deems appropriate.

## 9.3 Initial Screening

- 9.3.1 The methodology described in this Section shall apply to a facility evaluation (FE) or equivalent investigation as specified in Section 9.2 of these Regulations.
- 9.3.2 The purpose of the initial screening shall be to determine whether, based on available data, a release at a facility poses a potential risk to human health, welfare, or the environment above the acceptable site specific risk.

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

**13.0 Remedy Completion and Site Closure**

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

## 13.2 Facility Closure

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

# PROPOSED REGULATIONS

13.2.2 Facility closure is achieved through the issuance of a facility closure determination by the Department under the following conditions:

- 13.2.2.1 The Final Plan of Remedial Action requires no remedial activities at the facility; ~~or~~
- 13.2.2.2 A Certification of Completion of Remedy is issued or amended by the Department and the Department determines that the remedial action, as described in the Final Plan of Remedial Action, is completed and no restrictions remain on the facility; ~~or~~
- 13.2.2.3 Based on the information obtained about a facility during an initial investigation or facility evaluation, the Department determined that no action is necessary.

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

**1375 Regulations Governing Hazardous Substance Cleanup**

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### DIVISION OF STATE POLICE

#### 5500 Bail Enforcement Agents

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

24 DE Admin. Code 5500

### PUBLIC NOTICE

#### 5500 Bail Enforcement Agents

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 Del.C. Ch. 55 proposes to amend Adopted Rule 7.0 – Continuing Education and Training, changes the continuing education to add on-line training and clarifies how any missed training can be made up; Adopted Rule 11.0 – Criminal Offenses, gives the Director the authority to take action when necessary and changes the title names to match the Delaware Code changes. 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 April 30, 2015, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Friday, May 15, 2015, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

#### 5500 Bail Enforcement Agents (Break in Continuity of Sections)

### 7.0 Continuing Education and Training

- 7.1 ~~Continuing education/training shall be 32 hours every four (4) years with the breakdown being eight (8) hours per year, which must include at least two (2) hours each year in training on the use of deadly force every year. Odd years will be done by completing an on-line modular and test through Delaware Technical Community College (DTCC). Even years will be eight hours of classroom training through DTCC.~~
- 7.2 All continuing education/training courses must be approved by the Board.
- 7.3 ~~Failure to have complete the eight hours of training every year shall be grounds for suspension or revocation of a current identification card, license and badge or the rejection of a renewal application. Any licensed Bail Enforcement Agent (BEA) not obtaining the continuing education for a given year by the last class offered shall be placed on emergency suspension immediately. Once the continuing education class has been taken for the following year, Professional Licensing may administratively re-~~

~~instate the BEA. Any training missed, or not completed, by a BEA must be completed before the emergency suspension may be administratively lifted. On-line training must be made up on-line and classroom instruction must be made up in person in the classroom. Notwithstanding the foregoing, the Board may consider extenuating circumstances for reinstatement at its discretion.~~

- 7.4 Any continuing education test must be passed with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the individual to take the training again.

*(Break in Continuity of Sections)*

## 11.0 Criminal Offenses

- 11.1 For the purposes of 24 **Del.C.** Ch. 55, the ~~Board~~ Director of the Professional Licensing Section may deny an application, ~~for a license or suspend,~~ or revoke a an identification card, license and badge 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):

11.1.1 Title 11 Crimes and Criminal Procedures Ch. 5 Specific Offenses:

- 11.1.1.1 §763 Sexual harassment;
- 11.1.1.2 §764 Indecent exposure in the second degree;
- 11.1.1.3 §765 Indecent exposure in the first degree;
- 11.1.1.4 §766 Incest;
- 11.1.1.5 §767 Unlawful sexual contact in the third degree;
- 11.1.1.6 §781 Unlawful imprisonment in the second degree;
- 11.1.1.7 §840 Shoplifting;
- 11.1.1.8 §861 Forgery;
- 11.1.1.9 §871 Falsifying Business Records
- 11.1.1.10 §881 Bribery
- 11.1.1.11 §907 Criminal Impersonation
- 11.1.1.12 §1101 Abandonment of a Child;
- 11.1.1.13 §1102 Endangering the Welfare of a Child;
- 11.1.1.14 §1105 ~~Endangering the Welfare of an Incompetent Person~~ Crime Against a Vulnerable Adult;
- 11.1.1.15 §1106 Unlawfully Dealing with a Child;
- 11.1.1.16 §1107 Endangering Children;
- 11.1.1.17 §1245 Falsely Reporting an Incident;
- 11.1.1.18 §1341 Lewdness;
- 11.1.1.19 §1342 Prostitution;
- 11.1.1.20 §1343 Patronizing a Prostitute; and
- 11.1.1.21 §1355 Permitting Prostitution

11.1.2 Title 16 Health and Safety Ch. 11 Nursing Facilities and Similar Facilities

- 11.1.2.1 ~~§1166 Patient Neglect or Abuse~~ §1136 Violations.

11.1.3 Title 31 Welfare Ch. 39 Adult Protective Services:

- 11.1.3.1 ~~§3913 Abuse/Neglect/Exploitation/Mistreatment of an Infirm Adult~~ Violations.

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

**5500 Bail Enforcement Agents**

---

# PROPOSED REGULATIONS

---

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

### DIVISION OF FAMILY SERVICES

#### OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Section 343  
(29 **Del.C.** §9003(7); 31 **Del.C.** §343)  
9 DE Admin. Code 101

#### PUBLIC NOTICE

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

#### SUMMARY

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Rules for Early Care and Education and School-Age Centers. A comprehensive review process was held in which all providers were asked to participate as part of the public hearing process for Executive Order 36 and a preliminary draft was created. The proposed regulations were posted in the June 2014 *Register of Regulations* and many comments were received. These comments led to a revised version being posted in the December 2014 *Register of Regulations*.

Numerous comments, both in support of proposed changes as well as additional recommendations for further revision were received during the previous formal comment period that ended January 31, 2015. Each comment requesting additional revision was reviewed by a team for possible inclusion into the revised document. Recognized subject matter experts were consulted and the diverse opinions of all individuals providing comments were considered, as well as reviewing printed best practice resources such as *Caring for Our Children* in the review of comments received. Comments accepted for revising the regulations are reflected in the document printed here. Recommendations reviewed but not accepted by the panel for regulation revision are not included in this publication. Each comment submitted was reviewed for possible changes to the proposed document.

#### COMMENTS

Interested parties wishing to offer comments on these proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit them to Kelly McDowell, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by email to [Kelly.McDowell@state.de.us](mailto:Kelly.McDowell@state.de.us) by the close of business on April 30, 2015. It is anticipated that this will be the final opportunity to offer comments on these proposed regulations.

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

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

---

---

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

### 3800 BOARD OF DIETETICS/NUTRITION

Statutory Authority: 24 Delaware Code, Section 3805(11) (24 **Del.C.** §3805(11))  
24 **DE Admin. Code** 3800

#### PUBLIC NOTICE

#### 3800 State Board of Dietetics/Nutrition

The Delaware Board of Dietetics/Nutrition, pursuant to 24 **Del.C.** §3805(11), proposes to revise its regulations. The proposed amendments to the regulations seek to further clarify the scope of practice of a Dietitian/Nutritionist by defining various terms set forth in the Board's enabling statute.

The Board will hold a public hearing on the proposed rule change on May 8, 2015 at 1:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until May 23, 2015.

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

**3800 State Board of Dietetics/Nutrition**

---

## DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 134 and 141; 21 Delaware Code, Chapter 41  
(17 **Del.C.** §134, 141 and 21 **Del.C.** Ch. 41)  
2 **DE Admin. Code** 2402

#### PUBLIC NOTICE

#### 2402 Delaware Manual on Uniform Traffic Control Devices

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to the Delaware MUTCD. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware MUTCD from April 1, 2015 through April 30, 2015. Copies of the Draft Delaware MUTCD Revisions can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/default.shtml>

Questions or comments regarding these proposed changes should be directed to: Adam Weiser, P.E., PTOE, Safety Programs Manager, Traffic Section, Division of Transportation Solutions, Delaware Department of Transportation 169 Brick Store Landing Road, Smyrna, DE 19977 (302) 659-4073 (telephone) (302) 653-2859 (fax) adam.weiser@state.de.us

# PROPOSED REGULATIONS

The following is a summary of proposed changes to be incorporated into Revision 2, dated March 2015 of Part 2 of the DE MUTCD.

Page	Sec/Fig/Table	Para.	DeIDOT Comment / Proposed Change	Modification
2B-5	Table 2B-1	-	Remove NO TURN ON RED (ARROW symbol) (R10-11-DE) sign from the table	<i>Table updated to remove the sign.</i> <b>Justification:</b> The red symbolic arrow is not MUTCD-compliant
2B-68	Figure 2B-27	-	Remove NO TURN ON RED (ARROW symbol) (R10-11-DE) sign	<i>Figure updated to remove the sign.</i> <b>Justification:</b> The red symbolic arrow is not MUTCD-compliant
2B-69	Section 2B.54	08A	Delete the paragraph providing an option to use the NO TURN ON RED (ARROW symbol) (R10-11-DE) sign	<i>Paragraph deleted.</i> <b>Justification:</b> The red symbolic arrow is not MUTCD-compliant
2H-1	Table 2H-1	-	Revise the table to update the sign sizes for the modified Welcome to Delaware (SI-1-DE) sign	<i>Table update to reflect the modified sign sizes.</i> <b>Justification:</b> Welcome to Delaware sign has been modified in coordination with DEDO
2H-2	Figure 2H-1	-	Replace the Welcome to Delaware (SI-1-DE) sign with a new sign layout	<i>Figure update to depict the new sign layout.</i> <b>Justification:</b> Welcome to Delaware sign has been modified in coordination with DEDO
2J-1 – 2J-2	Section 2J.01	01B, 01C, 05A, 07B, 07C, 10, 10B	Revise the Specific Service eligibility requirements to be consistent with the recently updated Delaware Logo Sign Program and Tourist Attractions Sign Program Policy	<i>Text modified according.</i> <b>Justification:</b> The Delaware Logo Sign Program and Tourist Attractions Sign Program Policy were recently updated in coordination with DEDO
2J-11	Section 2J.11	01A, 01B	Revise the text to reflect the recently updated Delaware Logo Sign Program and Tourist Attractions Sign Program Policy	<i>Text modified according.</i> <b>Justification:</b> The Delaware Logo Sign Program and Tourist Attractions Sign Program Policy were recently updated in coordination with DEDO

**\*Please Note: Due to the size of the proposed regulation, the Delaware Manual on Uniform Traffic Control Devices is not being published here.**

PDF Versions of proposed amendments to Part 2 are available at the following locations:

[DE MUTCD Part 2 - Signs - Revisions Only](#)

[DE MUTCD Part 2 - Signs](#)

---

## Symbol Key

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

## Final Regulations

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

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

---

## DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)  
3 DE Admin. Code 501

### ORDER

#### 501 Harness Racing Rules and Regulations

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on December 2, 2014, the Commission makes the following findings and conclusions:

#### SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 7.6.13.14.1.3 and Rule 7.6.13.14.1.4 in the January 1, 2015 *Register of Regulations*.
2. The Commission received no written comments. The Commission held the public comment period open until close of business on February 9, 2015. The Delaware Harness Racing Commission finalized the regulations at its regularly scheduled monthly meeting on March 10, 2015. Monthly meetings are noticed public meetings.

#### FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.
4. After considering the rule changes as proposed, the Commission hereby adopts the rule changes to DHRC Rule 7.6.13.14.1.3 as proposed and rejects the changes to DHRC Rule 7.6.13.14.1.4. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately

reflect current policy and procedures.

5. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on April 1, 2015.

**IT IS SO ORDERED** this 10th day of March 2015.

Beverly H. (Beth) Steele, Chairman

Jack Berberian, Commissioner

Stephanie Liguori, Commissioner (absent)

Patt Wagner, Vice Chairman

George P. Staats, Commissioner

## 501 Harness Racing Rules and Regulations (Break in Continuity of Sections)

### 7.0 Rules of the Race

*(Break in Continuity Within Section)*

#### 7.6 Racing Rules

*(Break in Continuity Within Section)*

##### 7.6.13 Conduct of the Race

*(Break in Continuity Within Section)*

##### 7.6.13.14 Impelling of a Horse

*(Break in Continuity Within Section)*

7.6.13.14.1 Whips: Drivers will be allowed whips not to exceed 4 feet, plus a snapper not longer than 6 inches. Modification of a whip is prohibited.

*(Break in Continuity Within Section)*

7.6.13.14.1.3 From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes, but must pause after each strike (NO REPETITIVE WHIPPING).

7.6.13.14.1.4 Once the lead horse has reached the 7/8 mile pole, the driver may, in a one handed motion, strike the shaft of the sulky or the saddlepad in a reasonable and responsible manner, ~~[(approximately 6 strikes) but must pause after 2 strikes (NO REPETITIVE WHIPPING FOR MORE THAN 2 STRIKES)]~~.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2015 issue of the *Register* at page 491 (18 DE Reg. 491). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**501 Harness Racing Rules and Regulations**

### HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)  
3 DE Admin. Code 501

### ORDER

### 501 Harness Racing Rules and Regulations

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on December 2, 2014, the Commission makes the following findings and conclusions:

---

## SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 8.3 and 8.3.1 in the January 1, 2015 *Register of Regulations*.

2. The Commission received no written comments. The Commission held the public comment period open until close of business on February 9, 2015. The Delaware Harness Racing Commission finalized the regulations at its regularly scheduled monthly meeting on March 10, 2015. Monthly meetings are noticed public meetings.

## FINDINGS OF FACT AND CONCLUSIONS

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

4. After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

5. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on April 1, 2015.

**IT IS SO ORDERED** this 10th day of March 2015.

Beverly H. (Beth) Steele, Chairman

Jack Berberian, Commissioner

Stephanie Liguori, Commissioner (absent)

Patt Wagner, Vice Chairman

George P. Staats, Commissioner

## 501 Harness Racing Rules and Regulations (Break in Continuity of Sections)

### 8.0 Veterinary Practices, Equine Health Medication

#### (Break in Continuity Within Section)

8.3 Medications and Foreign Substances. Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the Presiding Judge or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the DHRC Uniform Classification Guidelines found in subsection 8.3.1 of this section, and may consider the most recent recommendations by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International. In addition, the Presiding Judge or other designee of the Commission ~~and~~ shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The Presiding Judge may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

8.3.1 DHRC Uniform Classification Guidelines. The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the Commission ~~Veterinarian(s)~~ and the racing secretary entry areas.

**\*Please note that no changes were made to the regulation as originally proposed and published in the**

January 2015 issue of the *Register* at page 492 (18 DE Reg. 492). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**501 Harness Racing 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)

#### ORDER

##### Inpatient Hospital Services

##### **Freestanding Inpatient Rehabilitation Hospital Services**

#### 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 Inpatient Hospital Services, specifically, *Freestanding Inpatient Rehabilitation Hospital Services*. 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 January 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2015 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 Inpatient Hospital Services, specifically, *Freestanding Inpatient Rehabilitation Hospital Services*.

#### Statutory Authority

- Section 1886(j) of the Social Security Act, *Prospective Payment for Inpatient Rehabilitation Services*
- 42 CFR §412.604, *Conditions for payment under the prospective payment system for inpatient rehabilitation facilities*
- 42 CFR §440.10, *Inpatient hospital services, other than services in an institution for mental diseases*
- 42 CFR §447, Subpart C - *Payment for Inpatient Hospital and Long-Term Care Facility Services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

#### Background

Delaware Medicaid reimburses enrolled providers for services provided to Medical Assistance recipients, including hospitals, under the authority of Title XIX of the Social Security Act. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services.

Inpatient hospital services means services that are ordinarily furnished in a hospital for the care and treatment of inpatients; are furnished under the direction of a physician or dentist; and, are furnished in an institution that (i) is maintained primarily for the care and treatment of patients with disorders other than mental diseases; (ii) is licensed or formally approved as a hospital by an officially designated authority for State standard-setting; (iii) meets the requirements for participation in Medicare as a hospital; and (iv) has in effect a utilization review plan, applicable to all Medicaid patients, that meets the requirements of 42 CFR §482.30, unless a waiver has been granted by the Secretary. Inpatient hospital services do not include skilled nursing facility (SNF) and intermediate

care facility (ICF) services furnished by a hospital with a swing-bed approval.

Inpatient hospital services are paid for Medicaid recipients by means of rates determined in accordance with the following principles, methods and standards which comply with Federal regulations at 42 CFR §447.250 through 42 CFR §447.299 and 1902(a)(13)(A), 1902(a)(30), and 1923 of the Social Security Act.

### *Inpatient Rehabilitation Hospital Services*

In accordance with 42 CFR §485.58, an inpatient rehabilitation hospital must provide a coordinated rehabilitation program that includes, at a minimum, physicians' services, physical therapy services, and social or psychological services. These services must be consistent with the plan of treatment and the results of comprehensive patient assessments.

## **Summary of Proposal**

### *Purpose*

To establish payment methodology for freestanding inpatient rehabilitation hospital services reimbursement in the Delaware Medicaid State Plan.

### *Payment Methodology for Freestanding Rehabilitation Hospital Services*

For claims with dates of discharge on or after December 1, 2014, the Delaware Medical Assistance Program (DMAP) shall reimburse freestanding inpatient rehabilitation hospital services using the Medicare Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS).

The Medicare IRF PPS is based on a Patient Assessment Instrument (PAI). The PAI contains patient clinical and demographic information. The PAI classifies the patient into distinct groups based on their clinical characteristics and what the patient's expected resource needs will be. Separate payment rates are then calculated for each group.

Medicare rates are updated annually to reflect changes in local wages using the hospital wage index. Delaware Medicaid will follow Medicare policy on local wage rate increases.

### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) published notice of proposed amendment to the methods and standards governing reimbursement methodology for freestanding inpatient rehabilitation hospitals participating in the Delaware Medical Assistance Program (DMAP) before the proposed effective date of December 1, 2014 on November 15, 2014 in *The News Journal* and on November 17, 2014 in the *Delaware State News*.

To satisfy *state* public notice requirements established at Title 29, Chapter 101 of the Delaware Code, notice appeared in the January 1, 2015 issue of the *Delaware Register of Regulations*.

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

## **Fiscal Impact Statement**

The Title XIX Medicaid State Plan will be amended to add information about the payment methodology for freestanding inpatient rehabilitation hospital services to clarify that the Delaware Medical Assistance Program (DMAP) uses the Medicare Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS) methodology.

DMAP's proposal involves no change in the definition of those eligible to receive the inpatient rehabilitation hospital services benefit under Medicaid, and the inpatient rehabilitation hospital services benefit to eligible recipients remains the same. There is no estimated fiscal impact.

## **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 comments summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

#### **GACEC and SCPD**

GACEC and SCPD have reviewed DMMA's proposal to amend the Medicaid State Plan in the context of Freestanding Inpatient Hospital Services. The proposed standards would apply to patients discharged on or after December 1, 2014. DMMA is adopting the Medicare payment standards and rates. The Medicare system classifies patients into distinct groups based on their clinical characteristics and what each patient's expected resource needs will be. At p. 512, the Division notes that "Medicare rates are updated annually to reflect changes in local wages using the hospital wage index." At pp. 511 and 512.

The Councils **endorse** the proposed standards. We would like to note however that covered facilities may benefit from using a similar reimbursement system for both Medicaid and Medicare patients.

**Agency Response:** DMMA thanks both councils for the endorsement. Regarding a similar reimbursement system for both Medicaid and Medicare patients, DMMA will take this recommendation into consideration once we have had some experience with this facility.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the January 2015 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding Inpatient Hospital Services, specifically, *Freestanding Inpatient Rehabilitation Hospital Services*, is adopted and shall be final effective April 10, 2015.

Rita M. Landgraf, Secretary, DHSS

#### **DMMA FINAL ORDER REGULATION #15-07**

#### **REVISION:**

ATTACHMENT 4.19-A.2

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

#### METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES FOR INPATIENT HOSPITAL SERVICES CONTINUED

#### Freestanding Inpatient Rehabilitation Hospital Services

For claims with dates of discharge on or after December 1, 2014, the Delaware Medical Assistance Program (DMAP) shall reimburse freestanding inpatient rehabilitation hospital services using the Medicare Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS).

The Medicare IRF PPS is based on a Patient Assessment Instrument (PAI). The PAI contains patient clinical and demographic information. The PAI classifies the patient into distinct groups based on their clinical characteristics and what the patient's expected resource needs will be. Separate payment rates are then calculated for each group.

Medicare rates are updated annually to reflect changes in local wages using the hospital wage index. Delaware Medicaid will follow Medicare policy on local wage rate increases.

The fee schedule and any annual/periodic adjustments to the fee schedule and effective dates are available on the Delaware Medical Assistance Program (DMAP) website at: <http://www.dmap.state.de.us/downloads/feeschedules.html>

---

Except as otherwise noted in the plan, payment for these services is based on State-developed fee schedule rates, which are the same for both governmental and private providers of freestanding inpatient rehabilitation hospital services.

---

## DEPARTMENT OF LABOR

### DIVISION OF INDUSTRIAL AFFAIRS

#### OFFICE OF WORKERS' COMPENSATION

Statutory Authority: 19 Delaware Code, Section 2322B4(19 Del.C. §§2322B4)  
19 DE Admin. Code 1341

#### ORDER

#### 1341 Workers' Compensation Regulations

Pursuant to 29 Del.C. §10113, the Secretary of the Department of Labor (DOL) issues this Order adopting an amendment to the Fee Schedule Instructions and Guidelines regarding Ambulatory Surgery Center (ASC) payment of CPT and HCPCS codes not covered in the fee schedule.

Effective April 10, 2015, the Department of Labor (DOL) will put in place changes to subsection 4.6.7.8 of 19 DE Admin. Code 1341 to clarify the reimbursement percent ages for non-covered medical codes in this section only apply to Ambulatory Surgery Centers. This change will correct a technical error.

Pursuant to 29 Del.C. §10113(b)(4),

(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally:

(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors;

#### DEPARTMENT OF LABOR

John McMahon, Secretary

#### 1341 Workers' Compensation Regulations

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

#### 4.0 Workers' Compensation Health Care Payment Rates for Physicians, Other Qualified Health Care Professionals, Hospitals and Hospital Outpatient Facilities, as well as Ambulatory Surgery Centers (the "Fee Schedule"). Instructions and Guidelines

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

#### 4.6 Hospital Outpatient and Ambulatory Surgical Treatment Methodology

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

#### 4.6.7 The following represents the Hospital Outpatient and Ambulatory Surgery Center (ASC) Fee Schedule Methodology:

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

4.6.7.8 CPT and HCPCS medical codes for treatment in an ambulatory surgery center and not covered in this schedule shall be reimbursed at 64.02% for geozip 197 and 66.5% for geozip 199.

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

#### 1341 Workers' Compensation Regulations

---

---

# FINAL REGULATIONS

---

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

### 1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL

Statutory Authority: 24 Delaware Code, Section 1775(c) (24 Del.C. §1775(c))  
24 DE Admin. Code 1770

#### ORDER

#### 1770 Respiratory Care Practice Advisory Council

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 14, 2015 before the Respiratory Care Practice Advisory Council ("the Council"), which functions under the auspices of the Board of Medical Licensure and Discipline ("the Board"), to consider amendment of the Council's rules and regulations pertaining to renewal of licenses.

Pursuant to 24 Del.C. §1775(c), the Council has proposed revisions to Rule 10.0, pertaining to renewal of licenses. In particular, Rule 10.3 is amended to state that a license that has expired may be renewed within one year after the expiration date. Currently, Rule 10.0 provides for a three year period for late renewal. Revisions to Rule 10.3.1 add the requirement that a license in expired status as of December 31, 2014 must be renewed no later than November 30, 2015. Finally, Rule 10.3.2 is revised to address a licensee whose license has lapsed for more than a year and who claims to have been working in another state. Such person must supply the Board with proof of a certain level of experience.

A public hearing was held on January 14, 2015, with deliberations conducted on February 11, 2015. The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 18, Issue 6, on December 1, 2014. Notice of the January 14, 2015 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 January 29, 2015, 15 days following the public hearing. The Council deliberated on the proposed revisions at its regularly scheduled meeting on February 11, 2015.

#### Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

The Council received no written or public comment.

#### Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Council with comments in writing and by testimony on the proposed amendments to the Council's rules and regulations. The Council did not receive any written comments and no members of the public attended the hearing to offer verbal comment.

The proposed amendments address the process whereby licensees renew their licenses. Currently, there is a three year late renewal period, which is inconsistent with procedures for other Title 24 boards, and which creates administrative difficulties for the Division of Professional Regulation. Further, Rule 10.3.2 is revised to address a licensee whose license has lapsed for more than a year and who claims to have been working in another state. Such person must supply the Board with proof of a certain level of experience.

Pursuant to 24 Del.C. §1775(c), the Council has the statutory authority to promulgate rules and regulations governing the practice of respiratory care after a public hearing and subject to the approval of the Board. The Council finds that the proposed amendments to the rules and regulations will create greater efficiency and clarity in the renewal process for the benefit of both licensees and the Division of Professional Regulation. The proof of experience requirement in Rule 10.3.2 will serve to ensure that individuals who are renewing late have maintained their skills.

The Council recommends to the Board that it approve the rules and regulations as published and attached hereto as Exhibit A.

---

## RECOMMENDATION TO THE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

By the unanimous affirmative vote of the undersigned members, the Respiratory Care Practice Advisory Council hereby adopts the rules and regulations as published in the *Register of Regulations* of December 1, 2014, Volume 18, Issue 6 and recommends approval of such rules and regulations to the Board of Medical Licensure and Discipline.

If approved by the Board, these rules and regulations will be effective ten days after publication of the Board's final order in the *Register of Regulations*.

Respectfully submitted this 11<sup>th</sup> day of February, 2015:

Juanita Bernard, Chairperson

Christina Cipolla, Vice Chairperson

Joel M. Brown

Crystal Cordrey

Michael Eddy

**AND NOW**, this 3<sup>rd</sup> day of March, 2015;

**WHEREAS**, the Board of Medical Licensure and Discipline has considered the attached recommendation of the Respiratory Care Practice Advisory Council for approval of amended rules and regulations related to licensure renewal; and

**WHEREAS**, the Board has determined to approve the aforesaid rules and regulations as proposed by the Respiratory Care Practice Advisory Council and attached hereto as Exhibit A.

**NOW THEREFORE IT IS ORDERED by the Board of Medical Licensure and Discipline:**

1. The rules and regulations recommended by the Respiratory Care Practice Advisory Council governing licensure renewal are hereby approved by the Board of Medical Licensure and Discipline.

2. The rules and regulations shall be effective ten days after publication of this Final Order in the *Register of Regulations*.

**IT IS SO ORDERED this 3<sup>rd</sup> day of March, 2015:**

Barry Bakst, D.O.

Mary Lomax

Vonda Calhoun

Joseph Parise, D.O.

Garrett Colmorgen, M.D.

Malvine Richard, Ed.D.

Stephen Cooper, M.D.

Mary K. Ryan

Georges Dahr, M.D.

Daryl Sharman, M.D.

Stephen Lawless

Sharon Williams-Mayo

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2014 issue of the *Register* at page 444 (18 DE Reg. 444). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1770 Respiratory Care Practice Advisory Council**

---

### DIVISION OF PROFESSIONAL REGULATION

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

### ORDER

### 2900 Real Estate Commission

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on January 15, 2015 at a scheduled meeting of the Delaware Real Estate Commission ("the Commission") to receive comments regarding proposed amendments to the Commission's Rules and Regulations. The Commission proposed a new Rule 1.4.1 and revisions to Rule 8.0 which are designed to implement and clarify the auctioneer

exemption set forth in 24 **Del.C.** §2901(e)(4). A new Rule 8.5.5.6 is added to provide advertising requirements for on-site unlicensed salespeople. Finally, Rule 13.0 is amended to clarify the continuing education pro-ratio requirements.

Pursuant to the Administrative Procedure Act, 29 **Del.C.** §10115, notice of the proposed amendments to the Rules and Regulations was published on December 1, 2014 in the *Delaware Register of Regulations*, Volume 18, Issue 6. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was January 30, 2015, 15 days following the public hearing. The Commission deliberated on the proposed revisions at its regularly scheduled meeting on February 12, 2015.

### Summary of the Evidence and Information Submitted – Public Hearing

The Commission received written and verbal comments at the public hearing on January 15, 2015. The following notices, written comments and documents were admitted as exhibits and made part of the record:

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

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

**Exhibit 3:** December 30, 2014 letter from David S. Swayze, Esquire and Elio Battista, Jr., Esquire, submitted on behalf of the Delaware Auctioneers Association, opposing the rule revisions concerning auctioneers. Specifically, counsel for the Auctioneers Association asserted that the Commission lacked statutory authority to adopt these proposed rules.

**Exhibit 4:** January 15, 2015 letter from Rob Harmon, President of the Delaware Association of Realtors, requesting that the Commission close a “loophole” in the regulations and prohibit the unlicensed sale of real property by auctioneers, as 48 other states have done.

**Exhibit 5:** Written documentation from Christopher J. Whitfield, former member and Chairperson of the Commission, urging the Commission to adopt the proposed rule changes pertaining to auctioneers to clarify that the exemption extends to the business of crying sales and that a blanket exemption is dangerous for the public.

The following individuals provided verbal comment at the public hearing:

The first witness to address the Commission was Elio Battista, Jr., Esquire, representing the Delaware Auctioneer Association. Mr. Battista reviewed the content of his correspondence to the Commission (Exhibit 3). He argued that the proposed regulations pertaining to auctioneers must be withdrawn. While the regulations purport to clarify statutory provisions, they instead flatly contradict the clear and unambiguous language of the auctioneer exemption. Mr. Battista further stated that, as an administrative agency, the Commission’s role is to administer the law, not make it. Mr. Battista argued that the Commission can’t make substantive changes to the statute by adopting rules and regulations. The proposed regulations would create a new category of oversight that contradicts the unequivocal exemption for auctioneers in the Commission’s licensing law. Mr. Battista stated that by attempting to adopt the proposed regulations, the Commission is circumventing the legislative process. Mr. Battista added that if the Commission adopts the proposed rules and regulations as written, an appeal will be filed.

The next witness to address the Commission was Rob Harmon, the President of the Delaware Association of Realtors. Mr. Harmon stated that there is a loophole in the law which permits auctioneers to negotiate for the sale of real property after the gavel drops. Negotiating the sale of real property is the practice of real estate, which requires licensure. Mr. Harmon further offered that Delaware is out of sync with the law in other states.

Christopher J. Whitfield, former Commissioner and Chairperson of the Commission, addressed the Commission. Mr. Whitfield explained that he was a Commissioner from 2008 – 2014 and was the Chairperson of the committee addressing the Joint Sunset Review of the Commission. Mr. Whitfield is also a current public member of the Commission’s standing legislative committee. Mr. Whitfield offered that the auctioneer exemption in the licensing law is ambiguous. The language pertaining to the exemption incorporates the definition of “auctioneer” in Title 30. Pursuant to this definition, the exemption is limited to the “crying of sales.” The purpose of the proposed regulations is to clarify that “crying of sales” is limited to the day of auction. Mr. Whitfield further stated that the issue concerns public protection. Mr. Whitfield also offered that he would support a decision by the Commission to strike the proposed amendments to Rule 8.0, concerning cooperation agreements.

Glenn Watson, Jr. next addressed the Commission. Mr. Watson stated his view that the proposed amendments to the regulations would encompass the sale of both real and personal property. The sale of personal property is not the practice of real estate.

David Villabona addressed the Commission, stating that the debate around the auctioneer exemption has been going on a long time and there is misunderstanding on both sides. The auctioneer exemption is absolute and can't be changed by an administrative body. Mr. Villabona further stated that this is not a public protection issue. Rather it is an issue of the real estate profession losing business. The auctioneers wanted to be regulated for protection. Their proposed bill included licensure and continuing education requirements. DAR [Delaware Association of Realtors] fought the bill. DAR didn't want the auctioneers to sell real estate the day after the auction, which was unfair to the seller and buyer because there would not be the opportunity to put the deal together. Mr. Villabona offered that the interested parties should work together. The proposed regulations would stifle competition and affect the auctioneers' ability to make a living.

Andrew Taylor, Esquire was the next witness to address the Commission. Mr. Taylor stated that attorneys are exempt from licensure pursuant to the Commission's licensing act, at Section 2901(e)(3). However, an Attorney General's opinion from 1978 states that the attorney exemption doesn't permit attorneys to sell real estate. Similarly, the auctioneer exemption doesn't exempt auctioneers completely and needs clarification in the Commission's regulations. Mr. Taylor offered that technology has broadly expanded what auctioneers can do. An auction used to be limited to the day of sale. Now, if the property doesn't sell at auction, the auctioneer can get in touch with other bidders after the auction. The regulations need to catch up with technology. Mr. Taylor stated that brokers and salespeople have education and experience which serve public protection. At auctions, there are no disclosures, such as radon and lead. Mr. Taylor asked that the Commission clarify that the auctioneer exemption is limited to the "day of sale." Mr. Taylor also suggested that the second line of proposed regulation 1.4.1.3 be amended to state *bona fide* auction.

Joe Fitzgerald, of Fitzgerald Consulting, addressed the Commission. Mr. Fitzgerald stated that the best way to address the auctioneer exemption would be to work out a compromise through the appropriate channels, and regulatory amendment is not the appropriate channel. If the Commission does not intend to regulate the sale of real property, that should be clarified. Mr. Fitzgerald noted that the auctioneers have been voluntarily seeking regulation.

Maria Evans, from DAR, addressed the Commission by stating that she always assumed auctioneers held real estate licenses and that is the public's perception. Ms. Evans stated that 37 states require that auctioneers either have a real estate license or affiliate with a broker. Ms. Evans offered her view that the auction ends when the gavel drops.

Mr. Whitfield addressed the Commission for a second time to express his understanding that the proposed regulations are intended to apply to real property only and should be amended accordingly.

Mr. Battista addressed the Commission a final time to note that the auctioneer exemption is obviously a legislative issue.

## Summary of the Written Comments Submitted After the Public Hearing

The Commission received written comments during the 15 day public comment period after the public hearing on January 15, 2015. The following written comments were admitted as exhibits and made part of the record at the time of deliberations on February 12, 2015:

**Exhibit 1 (2/12/15):** January 27, 2015 email from Andrew Taylor, Esquire listing points in support of Rule 1.4 revisions pertaining to auctioneers and attachments consisting of HB 438 from 1990 pertaining to the statutory auctioneer exemption and an Attorney General opinion from 1978 concerning the statutory exemption for attorneys.

**Exhibit 2 (2/12/15):** Written comments and questions from Michele Twilley objecting to the proposed rule revisions pertaining to auctioneers and stating in particular that the auctioneer exemption is clear as written and does not require clarification.

**Exhibit 3 (2/12/15):** January 27, 2015 letter from Michael Dunning, President of the New Castle County Board of Realtors voicing support for the proposed rules pertaining to auctioneers, stating in particular that auctioneers use a "perceived loophole" to negotiate sales of real property "after the gavel has dropped."

## Findings of Fact and Conclusions

The Commission considered the written and verbal comments provided at the public hearing and the exhibits submitted during the written comment period.

As a threshold matter, the Commission considered the legal argument presented by several members of the public that the Commission does not have the authority to promulgate and adopt the proposed rule revisions pertaining to the auctioneer exemption. (See, for example, Exhibit 3 and testimony of Mr. Battista). The argument is that the auctioneer exemption is a clear, unambiguous, blanket exemption, and the Commission does not have the legal authority to limit the exemption through rule-making. Rather, this is an issue for the legislature.

Review of the language in the exemption shows that it is *not* a blanket exemption. In fact, the exemption is limited by explicit incorporation of the statutory definition of "auctioneer" in Section 2301(a)(3) of Title 30. The auctioneer exemption, set forth in 29 **Del.C.** §2901(e)(4) provides as follows:

(e) This chapter shall not apply to:

(4) An "auctioneer" as defined in §2301(a)(3) of Title 30.

In Section 2301(a)(3) of Title 30, "auctioneer" is defined as follows:

§2301 Occupations requiring licenses; definitions; fees; exemptions.

(a) "Persons" as defined in § 2701 of this title engaged in the occupations listed and defined in this section shall pay annual license taxes at the rates specified below. In addition to the license fee indicated below, each such person shall pay a fee of \$25 for each additional branch or business location, except that a finance or small loan agency as defined in this section shall pay the basic annual fee for each place of business.

(3) *Auctioneer*, \$75. "Auctioneer" includes *every person engaged in the business of crying sales* of real or personal property on behalf of other persons for profit, except as otherwise provided by the provisions of this chapter.

It is meaningful that the legislature limited the auctioneer exemption to the "business of crying sales" by explicit incorporation of the definition of "auctioneer" from 30 **Del.C.** §2301(a)(3). This language makes it clear that the exemption is not an unambiguous, blanket exemption. Rather, the exemption is unambiguously limited to the "crying of sales."

As set forth in the Commission's list of "Powers and Duties" the Commission has the authority to promulgate rules and regulations that "implement or clarify" a specific statutory provision:

§2906 Powers and duties.

(a) The Commission shall have the authority to:

(1) Formulate rules and regulations, with appropriate notice to those affected; all rules and regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act, Chapter 101 of Title 29. Each rule or regulation shall implement or clarify a specific section of this chapter.

As set forth in the proposed Rule 1.4.1, the purpose of the amendments pertaining to auctioneers is to implement and clarify the term "business of crying sales" with respect to the auctioneer exemption only. In short, the Commission is acting within its statutory authority in promulgating the rules and regulations pertaining to the auctioneer exemption.

During deliberations, the Commission addressed each proposed rule revision individually and in sequence. First, the Commission discussed Rule 1.4 – "Exemptions." Finding that Rule 1.4.1 simply states the auctioneer definition found in Section 2301(a)(3) of Title 30, the Commission considered Rule 1.4.1.1 which presents the point of disagreement with respect to the proposed regulations. Specifically, Rule 1.4.1.1 clarifies and implements the term "the business of crying sales" as follows:

1.4.1.1 For the purpose of the Auctioneer exemption set forth in 24 Del. C. § 2901(e)(4), the "business of crying sales of real or personal property" shall mean the public event or sale occurring on an advertised date, when an auctioneer engages in the act of crying or calling for, the recognition of, and the acceptance of bids where the sale price of the property offered is determined by the increasing of competitive bids until the highest accepted bidder becomes the purchaser. The exemption shall only apply to the day of the auction.

The issue presented in Rule 1.4.1.1 is whether an auctioneer needs a real estate license if he or she conducts negotiations after the auction. The last sentence of proposed Rule 1.4.1.1 states that the auctioneer exemption "shall only apply to the day of auction." The Commission found that this provision served to protect the public while permitting the auctioneer the opportunity to complete the transaction by the end of the day. In support of this conclusion, the Commissioners discussed that public perception is that the auction encompasses the actual day of the auction. Once the highest bidder is selected, the auction is over. If the auctioneer is permitted to negotiate with other bidders after the actual auction, the auctioneer will be practicing real estate without a license. Requiring licensure for the practice of real estate ensures accountability pursuant to the jurisdiction of the Commission. Thirty-seven states require an auctioneer to have either a real estate license or broker affiliation. The proposed rule will put Delaware in line with the majority of other states. The Commission agreed that the "day of

auction” would conclude at midnight and that the auctioneer exemption shall only encompass acceptance of the highest bid. The “day of auction” language will permit the auctioneer and purchaser to wrap up the details of the transaction by the end of the day. Further, Rule 1.4.1.1.1 explicitly permits an auctioneer to advertise the auction prior to the date of the auction.

With respect to Rule 1.4 the Commission also addressed proposed Rule 1.4.1.2:

1.4.1.2 Notwithstanding the Auctioneer exemption set forth in 24 Del.C. §2901(e)(4), a Licensee acting or providing service under this exemption, may be subject to discipline for violation of 24 Del.C. §2912.

The intent of this Rule is to clarify the language in 24 Del.C. §2912(e) to the effect that a licensee acting as an auctioneer is still a real estate licensee and is subject to the range of disciplinary sanctions available under Section 2912.

The Commission found that Rule 1.4.1.3 was confusing in terms of the wording and needed grammatical revision in the interests of clarity. The Commission approved the following revised language which merely provides clarity and is therefore a non-substantive change that does not require further rule-making:

1.4.1.3 An Auctioneer actively engaged by written agreement with an owner of real property to sell real property at auction may enter into a written cooperation agreement with a licensed Broker to cooperate in selling the property pursuant to the terms of a written Listing Agreement between the Broker and the property owner. In the event the property is sold by the broker, either before or after the auction date, the Auctioneer may be paid compensation from the sale of the property according to the terms of the written cooperation agreement, where an Auctioneer is actively engaged by written agreement with an owner of real property to sell real property at auction.

Having reviewed and deliberated on Rule 1.4, the Commission unanimously voted to approve the proposed additions to the rules and regulations, with the non-substantive revision to Rule 1.4.1.3 noted herein.

The Commission next considered the proposed revisions to Rule 8.0. The Commission found that Rule 8.3 is added to specify that cooperation agreements between Brokers and Auctioneers, referenced in Rule 1.4.1.3, must be in writing. Further, Rule 8.4.1 is amended to state that executed copies of such cooperation agreements must be provided to all parties to the agreement. Rule 8.7.1 is amended to state that, while generally licensees can't pay fees to non-licensees, such fees may be paid pursuant to a written cooperation agreement signed by the parties.

Rule 8.5.5.6 is added to address unlicensed salesperson conducting on-site sales. This rule requires that in this situation, any advertising shall disclose that “On-site unlicensed salespeople represent the seller only.” This proposed rule will serve to enhance public protection by ensuring that consumers understand that the unlicensed salespeople do not represent such consumers.

Having reviewed and deliberated on the changes and additions to Rule 8.0, the Commission voted unanimously to approve such changes and additions as proposed.

Finally, the Commission considered proposed changes to Rule 13.0. These changes serve to clarify the standards for pro ration of continuing education completed by new licensees. The Commission voted unanimously to approve these changes.

### **The Law**

The Commission's rulemaking authority is provided by 24 Del.C. §2906(a)(1).

### **Decision and Effective Date**

The Commission hereby adopts the proposed amendments to the Rules and Regulations, with the non-substantive amendment to Rule 1.4.1.3 noted herein, as effective 10 days following publication of this Order in the *Delaware Register of Regulations*.

### **Text and Citation**

The text of the revised Rules and Regulations is attached hereto as “Exhibit A.”

**SO ORDERED this 12th day of March 2015.**

### **DELAWARE REAL ESTATE COMMISSION**

Andrew Staton, Professional Member, Chairperson

Justin Healy, Professional Member, Vice-Chairperson

Joseph F. McCann, Public Member

Lynne Newlin, Public Member

Jason Giles, Professional Member, Secretary

Lynn Rogers, Public Member

## 2900 Real Estate Commission

### 1.0 Introduction

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

#### 1.4 Exemptions [24 Del.C. §2901(e)(4)]

1.4.1 Pursuant to 24 Del.C. §2901(e)(4), Auctioneers are exempt from the Commission's licensing law, as the term "Auctioneer" is defined in 30 Del.C. §2301(a)(3): "every person engaged in the business of crying sales of real or personal property on behalf of others for profit."

1.4.1.1 For the purpose of the Auctioneer exemption set forth in 24 Del.C. §2901(e)(4), the "business of crying sales of real or personal property" shall mean the public event or sale occurring on an advertised date, when an auctioneer engages in the act of crying or calling for, the recognition of, and the acceptance of bids where the sale price of the property offered is determined by the increasing of competitive bids until the highest accepted bidder becomes the purchaser. The exemption shall only apply to the day of the auction.

1.4.1.1.1 Rule 1.4.1.1 does not prohibit an Auctioneer from advertising the auction prior to the date of the event.

1.4.1.2 Notwithstanding the Auctioneer exemption set forth in 24 Del.C. §2901(e)(4), a Licensee acting or providing service under this exemption, may be subject to discipline for violation of 24 Del.C. §2912.

1.4.1.3 ~~[An Auctioneer actively engaged by written agreement with an owner of real property to sell real property at auction may enter into a written cooperation agreement with a licensed Broker to cooperate in selling the property pursuant to the terms of a written Listing Agreement between the Broker and the property owner.]~~ In the event the property is sold by the broker, either before or after the auction date, the Auctioneer may be paid compensation from the sale of the property according to the terms of the written cooperation agreement[, where an Auctioneer is actively engaged by written agreement with an owner of real property to sell real property at auction].

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2014 issue of the *Register* at page 447 (18 DE Reg. 447). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**2900 Real Estate Commission**

### DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 4106(a)(1) (24 Del.C. §4106(a)(1))  
24 DE Admin. Code 4100

### ORDER

**4100 Board of Home Inspectors**

### NATURE AND STAGE OF THE PROCEEDINGS

On November 1, 2014, the Delaware Board of Home Inspectors published proposed regulations in the Delaware *Register of Regulations*, Volume 18, Issue 5. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted

for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 10, 2015 at a regularly scheduled meeting of the Delaware Board of Home Inspectors to receive verbal comments regarding the Board's proposed amendments to its regulations.

## SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on February 10, 2015. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

## FINDINGS OF FACT AND CONCLUSIONS

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

2. There were no public comments provided to the Board during the initial written public comment period, public hearing or fifteen day period following the public hearing.

3. Pursuant to 24 **Del.C.** §4106(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The proposed rules and regulations decrease the number of supervised inspections a trainee inspector must complete prior to being eligible for full licensure and decreases the number of inspections an experience applicant must complete to be eligible for licensure. The changes are being proposed in light of a recent statutory change that decreased the number of inspections endorsement candidates are required to complete to be eligible for licensure. The changes also eliminate INTERNACHI membership as a qualification for licensure as an experience applicant as the Board believes that INTERNACHI membership is not as strong an indicator of an applicant's qualifications as ASHI and NAHI membership.

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

## DECISION AND EFFECTIVE DATE

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

**SO ORDERED** this 10<sup>th</sup> day of March, 2015.

**BY THE DELAWARE BOARD OF HOME INSPECTORS**

Donald Pyle, Sr., Chairman

Timothy Harriger

Dennis Theoharis, Vice Chairman

J. Wes Mast

Joyce Edwards

\*Please note that no changes were made to the regulation as originally proposed and published in the November 2014 issue of the *Register* at page 358 (18 DE Reg. 358). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**4100 Board of Home Inspectors**

**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION****PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to adopt by reference the Association of Racing Commissioners International Non-Steroidal Anti-Inflammatory Drug Stacking rule (ARCI-011-020, Part E.(1)(C)). Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the April 1, 2015 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before May 1, 2015. Written materials submitted will be available for inspection at the above address.

On or after May 1, 2015, following review of the public comment, the Thoroughbred Racing Commission will determine whether to adopt the proposed amended Regulations or make additional changes because of the public comments received.

---

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

The State Board of Education will hold its monthly meeting on Thursday, April 16, 2015 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

---

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF LONG TERM CARE RESIDENTS PROTECTION****PUBLIC NOTICE****3325 Financial Capability Reporting**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the Delaware Code, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to create Regulation 3325, Financial Capability Reporting.

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 Thomas Murray, Deputy Director, Division of Long Term Care Resident Protection, 3 Mill Road, Suite 308, Wilmington, Delaware 19806 by April 30, 2015.

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****Draft 1115 Waiver Medicaid Managed Care Comprehensive Quality Strategy Plan**

In compliance with the public notice requirements of the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 U.S.C. §1315(d), 42 CFR Part 431, Subpart G and 42 CFR 447.205, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA), Division of Substance Abuse and Mental Health (DSAMH) is seeking public comment on Delaware's Draft 1115 Waiver Comprehensive Quality Strategy Plan that will be submitted to the Centers for Medicare and Medicaid Services (CMS).

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 and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2015.

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

---

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF WASTE AND HAZARDOUS SUBSTANCES****1375 Regulations Governing Hazardous Substance Cleanup****PUBLIC NOTICE**

The Hazardous Substance Cleanup Act was enacted in 1990, and the Regulations implementing the Act were completed in 1996. There was a revision to the Regulations in 2002 that established criteria for designating a Brownfield property. There was another revision in 2012 that addressed many issues, including, but not limited to, participation in the new brownfields program, consultant certification, notification requirements, investigation procedures, long term stewardship, facility closure, and natural resource damage assessment. Since the 2012, changes have been necessary to meet current practices. The major proposed changes create new regulations for determination of Conditional No Further Action, update the procedures for providing notice in land records, and clarify certain definitions.

The hearing record on the proposed changes to the Regulations Governing Hazardous Substance Cleanup will be open April 1, 2015, and it will close on May 14, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302)739-9042. A public hearing on the proposed amendment will be held on April 29, 2015 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

---

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY****DIVISION OF STATE POLICE****5500 Bail Enforcement Agents****PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to amend Adopted Rule 7.0 – Continuing Education and Training, changes the continuing education to add on-line training and clarifies how any missed training can be made up; Adopted Rule 11.0 – Criminal Offenses, gives the Director the authority to take action when necessary and changes the title names to match the Delaware Code changes. 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 April 30, 2015, to Delaware State Police, Pro-

Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Friday, May 15, 2015, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

---

**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES****DIVISION OF FAMILY SERVICES****OFFICE OF CHILD CARE LICENSING****101 Rules for Early Care and Education and School-Age Centers****PUBLIC NOTICE**

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Rules for Early Care and Education and School-Age Centers. A comprehensive review process was held in which all providers were asked to participate as part of the public hearing process for Executive Order 36 and a preliminary draft was created. The proposed regulations were posted in the June 2014 *Register of Regulations* and many comments were received. These comments led to a revised version being posted in the December 2014 *Register of Regulations*.

Numerous comments, both in support of proposed changes as well as additional recommendations for further revision were received during the previous formal comment period that ended January 31, 2015. Each comment requesting additional revision was reviewed by a team for possible inclusion into the revised document. Recognized subject matter experts were consulted and the diverse opinions of all individuals providing comments were considered, as well as reviewing printed best practice resources such as *Caring for Our Children* in the review of comments received. Comments accepted for revising the regulations are reflected in the document printed here. Recommendations reviewed but not accepted by the panel for regulation revision are not included in this publication. Each comment submitted was reviewed for possible changes to the proposed document.

Interested parties wishing to offer comments on these proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit them to Kelly McDowell, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by email to [Kelly.McDowell@state.de.us](mailto:Kelly.McDowell@state.de.us) by the close of business on April 30, 2015. It is anticipated that this will be the final opportunity to offer comments on these proposed regulations.

---

**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****2700 BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS****PUBLIC NOTICE**

The Delaware Board of Professional Land Surveyors, in accordance with 24 **Del.C.** §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to automatically approve, for continuing education credit, courses sponsored or offered by other states' surveying societies and to clarify the statutory definition of "responsible charge." The Board will hold a public hearing on the proposed rule changes on May 21, 2015 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

---

**DIVISION OF PROFESSIONAL REGULATION****2930 COUNCIL ON REAL ESTATE APPRAISERS****PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to continuing education and the responsibilities of state licensed supervisory appraisers and appraiser trainees are amended to conform to new Appraisal Qualifications Board

criteria.

A public hearing will be held on April 21, 2015 at 9:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments 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 Council on Real Estate Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a).

---

**DIVISION OF PROFESSIONAL REGULATION**  
**3800 BOARD OF DIETETICS/NUTRITION**  
**PUBLIC NOTICE**

The Delaware Board of Dietetics/Nutrition, pursuant to 24 **Del.C.** §3805(11), proposes to revise its regulations. The proposed amendments to the regulations seek to further clarify the scope of practice of a Dietitian/Nutritionist by defining various terms set forth in the Board's enabling statute.

The Board will hold a public hearing on the proposed rule change on May 8, 2015 at 1:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until May 23, 2015.

---

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF TRANSPORTATION SOLUTIONS**  
**2402 Delaware Manual on Uniform Traffic Control Devices**  
**PUBLIC NOTICE**

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to the Delaware MUTCD. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware MUTCD from April 1, 2015 through April 30, 2015. Copies of the Draft Delaware MUTCD Revisions can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/default.shtml>

Questions or comments regarding these proposed changes should be directed to: Adam Weiser, P.E., PTOE, Safety Programs Manager, Traffic Section, Division of Transportation Solutions, Delaware Department of Transportation 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-4073 (telephone) (302) 653-2859 (fax) adam.weiser@state.de.us

---