
Delaware Register of Regulations

Issue Date: APRIL 1, 2018

Volume 21 - Issue 10, Pages 756 - 824



IN THIS ISSUE:

Regulations:
Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before March 15, 2018.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
May 1	April 16	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 16	4:30 p.m.
September 1	August 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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

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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 HARNESS RACING COMMISSION

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

PUBLIC NOTICE

501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** 10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the "Lasix rules" thereby allowing rules more favorable to the welfare of the horse.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on January 16, 2018, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On February 20, 2018, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publicly noticed open meetings. Subsequent to a 30-day comment period from April 1 to May 1, 2018 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on May 8, 2018 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB May 1, 2018. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

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

[http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 768RFA 04-01-18.pdf](http://regulations.delaware.gov/register/april2018/proposed/21%20DE%20Reg%20768RFA%2004-01-18.pdf)

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 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.

(Break in Continuity Within Section)

8.3.5 Furosemide (Salix) and Aminocaproic Acid (Amicar)

(Break in Continuity Within Section)

8.3.5.9 Bleeder List

(Break in Continuity Within Section)

8.3.5.9.4 A horse which bleeds (EPIH) based on the criteria set forth in 8.3.5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.5.9.4.1 1st time - ~~40~~ 6 days suspension from racing;

(Break in Continuity Within Section)

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a ~~40~~ 5-day rest period following such request, and then re-qualifies. A horse may discontinue the use of Aminocaproic Acid without a ~~ten (10)~~ five (5) day rest period or having to ~~re-qualify~~ re-qualify provided the horse was on Aminocaproic Acid for thirty (34) days or more. In addition, once a horse discontinues the use of Aminocaproic Acid, it is prohibited from using said medication for ninety (90) days from the date of its last administration for Aminocaproic Acid.

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

501 Harness Racing Rules and Regulations

PROPOSED REGULATIONS

DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))

PUBLIC NOTICE

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

1504 Certificate of Eligibility

A. TYPE OF REGULATORY ACTION REQUESTED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Department of Education ("Department"), developed a new regulation, 14 DE Admin. Code 1504 Certificate of Eligibility. The regulation concerns certification under 14 Del.C. §1221(2) for educators of students with disabilities who are participating in a state-approved, appropriate alternative route for teacher licensure and certification program.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 2, 2018 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The new regulation does not address student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The new regulation will help to ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure all student's health and safety are adequately protected? The new regulation addresses certificates of eligibility and does not directly address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation addresses certificates of eligibility and does not directly address students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity.
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 new regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.
9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of the new regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation?

There is no expected cost to the state and to the local school boards of complying with the new regulation.

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

[http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 770RFA 04-01-18.pdf](http://regulations.delaware.gov/register/april2018/proposed/21%20DE%20Reg%20770RFA%2004-01-18.pdf)

1504 Certificate of Eligibility

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Certificate of Eligibility pursuant to 14 Del.C. §1221(2) for educators who are pursuing the following certifications:
- 1.1.1 14 DE Admin. Code 1570 Early Childhood Exceptional Children Special Education Teacher; or
 - 1.1.2 14 DE Admin. Code 1571 Special Education Teacher of Students with Disabilities; or
 - 1.1.3 14 DE Admin. Code 1573 Teacher of Students with Autism or with Severe Intellectual Disabilities;
or
 - 1.1.4 14 DE Admin. Code 1574 Teacher of Students Who Are Deaf or Hard of Hearing; or
 - 1.1.5 14 DE Admin. Code 1575 Teacher of Students with Visual Impairments.

2.0 Definitions

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

"Certificate of Eligibility" means a credential which may be issued to teachers of students with disabilities if the employing district or charter school establishes that the proposed recipient meets the requirements of 14 Del.C. §1221(2).

"Certification" means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

"Credentialed" means holding an active license and an active certificate in a specific content area at appropriate grade levels.

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.

3.0 Issuance of Certificate of Eligibility

- 3.1 Upon receipt of a completed application from the Employing Authority, the Department may issue a Certificate of Eligibility to an Educator who holds a valid Delaware Initial, Continuing, or Advanced License, but who is not eligible for Certification in the area of need for students with disabilities identified in Section 1.0 of this regulation.
- 3.1.1 A Certificate of Eligibility is valid for one school year subject to subsection 3.1.3 of this regulation.

PROPOSED REGULATIONS

- 3.1.2 The Certificate of Eligibility is issued for one school year and expires on June 30th.
- 3.1.3 The Department may grant a second-year Certificate of Eligibility and a third-year Certificate of Eligibility if the Educator has met the requirements outlined in Section 5.0 of this regulation.

4.0 Application Procedures

- 4.1 The Employing Authority shall:
 - 4.1.1 Establish that the proposed recipient of a Certificate of Eligibility is competent by submitting evidence of the Educator's License and other considerations; and
 - 4.1.2 Apply for the Certificate of Eligibility within sixty (60) calendar days of the Educator's hire or new job assignment; and
 - 4.1.3 Establish that the proposed recipient is participating in a state-approved alternative route for teacher licensure and certification program which is appropriate to the Certification identified in Section 1.0 of this regulation that the proposed recipient is pursuing; and
 - 4.1.4 Support and assist the Educator in achieving the skills and knowledge necessary to meet applicable Certification requirements; and
 - 4.1.5 Verify that the Educator understands the Standard Certificate requirements, the deadline in which to complete requirements, and the expectation to earn a Standard Certificate.
- 4.2 Failure by the Employing Authority to fulfill the conditions set forth shall result in denial of the Certificate of Eligibility.

5.0 Second Year and Third Year Reissue of Certificate of Eligibility

- 5.1 If the Educator does not meet all Standard Certificate requirements during the first school year, the Employing Authority may apply for a second-year Certificate of Eligibility in the same area.
- 5.2 If the Department grants an Educator a second-year Certificate of Eligibility and the Educator does not meet all Standard Certificate requirements during the second school year, the Employing Authority may apply for a third-year Certificate of Eligibility in the same area.
- 5.3 The Department may issue a second-year Certificate of Eligibility or a third-year Certificate of Eligibility if the following requirements are met:
 - 5.3.1 The Employing Authority submits a request for the Certificate of Eligibility within sixty (60) calendar days of the start of the next consecutive school year.
 - 5.3.2 The Employing Authority has established that the Educator has made documented progress toward earning the Standard Certificate by continuing to participate in a state-approved alternative route for teacher licensure and certification program which is appropriate to the Certification identified in Section 1.0 of this regulation that the Educator is pursuing.

6.0 Expiration of Certificate of Eligibility

- 6.1 Certificates of Eligibility shall expire on June 30th.
- 6.2 Certificates of Eligibility that have been issued for three consecutive school years may not be extended. The Educator shall meet the requirements for issuance of a Standard Certificate in the area of Certification identified in Section 1.0 of this regulation that the Educator is pursuing.
- 6.3 Educators holding an active License without a current or valid certificate are not considered Credentialed to teach.
- 6.4 A Certificate of Eligibility may not be renewed or extended for a leave of absence.

7.0 Transfer of Certificate of Eligibility to a New Employing Authority

The Department may approve the transfer of a Certificate of Eligibility from one Employing Authority to another if the new Employing Authority conducts an independent review of the Educator's progress towards a Standard Certificate and assumes the commitments and responsibilities of an Employing Authority within this regulation.

8.0 Revocation of Certificate of Eligibility

- 8.1 A Certificate of Eligibility shall be revoked in the event an Educator's Initial, Continuing, or Advanced License is revoked in accordance with 14 DE Admin. Code 1514 Revocation, Limitation, or Suspension of Licenses.
- 8.1.1 An Educator is entitled to a full and fair hearing before the Standards Board.
- 8.1.2 Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearings Procedures and Rules.
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PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1510

PUBLIC NOTICE

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

1510 Issuance of Initial License

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1510 Issuance of Initial License. The regulation applies to the issuance of an initial license for educators pursuant to 14 Del.C. §1210. The Board published proposed changes to the regulation on May 1, 2017. However, 14 Del.C. Ch. 12 was subsequently amended and further changes are necessary. The proposed changes include amending the definitions of "Alternative Routes to Licensure and Certification," "Mentoring," "Performance Assessment," and "Specialist in Section 2.0 so the definitions are consistent with the Delaware Code and relevant regulations; adding definitions of "Content Area" and "Teaching Experience" and striking "other employing authority" from the definition of "Date of Hire" in Section 2.0; striking the terms "Career and Technical Education," "Composite Score," "Examination of General Knowledge," "PRAXIS I or PPST," "PRAXIS I CBT," and "PRAXIS I CPPST" from Section 2.0 as the terms do not appear elsewhere in the regulation; amending Section 3.0, 5.0, 6.0, 7.0, 9.0, 11.0, 13.0, and 14.0 so that the sections are consistent with the amendments to 14 Del.C. §1210; clarifying the requirements for official electronic transcripts in subsection 4.1.1; clarifying the requirements for submitting scores in Section 8.0; clarifying the requirements for Section 16.0 Secretary of Education Review and Section 17.0 Reporting so that the requirements are consistent with 14 Del.C. Ch. 12; striking Section 19.0 Approved Examination of General Knowledge because educators are no longer required to pass an examination of general knowledge in order to obtain an initial license; adding Section 18.0 which sets forth approved performance assessments and minimum passing scores; and clarifying that the Department will recognize an Initial License issued before the effective date of this regulation in Section 19.0.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 2, 2018 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help 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 to ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure all student's health and safety are adequately protected? The amended regulation addresses an initial license for educators, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses an initial license for educators, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 Del.C. Ch. 12 relating to licensure and certification of educators.

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

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

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

***Please Note:**

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

<http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 773RFA 04-01-18.pdf>

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

1510 Issuance of Initial License

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))

14 DE Admin. Code 1511

PUBLIC NOTICE

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

1511 Issuance and Renewal of Continuing License

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License. This regulation concerns the requirements for issuance and renewal of a continuing license for educators pursuant to 14 **Del.C.** Ch. 12. Proposed changes to make the regulation consistent with amendments to 14 **Del.C.** Ch. 12 were initially published on September 1, 2017. Thereafter, the Board made additional substantive changes to the definitions in Section 2.0 and the professional development options. The proposed changes in this regulation include the changes that were initially published on September 1, 2017 and additional changes to Sections 2.0 and 13.0.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 2, 2018 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help 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 will help ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure all student's health and safety are adequately protected? The amended regulation addresses a continuing license for educators, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a continuing license for educators, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

*Please Note:

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

[http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 774RFA 04-01-18.pdf](http://regulations.delaware.gov/register/april2018/proposed/21%20DE%20Reg%20774RFA%2004-01-18.pdf)

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

1511 Issuance and Renewal of Continuing License

PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1565

PUBLIC NOTICE

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

1565 World Language Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board("Board"), acting in consultation and cooperation with the Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1565 World Language Teacher. The regulation concerns the requirements for a Standard Certificate for World Language Teacher. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a standard certificate in Section 3.0; specifying the knowledge, skill, and education requirements for obtaining a first and second or subsequent Standard Certificate for World Language Teacher in Section 4.0; specifying the application requirements in Section 5.0; adding Sections 6.0 and 7.0, which concern validity and revocation of a standard certificate; and adding Section 8.0, which concerns local school districts' requests for the Secretary of Education to review standard certificate applications.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 2, 2018 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve the quality of the Delaware educator workforce and to improve student performance.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help to ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to certification of educators.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state

educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

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

<http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 776RFA 04-01-18.pdf>

1565 World Language Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for World Language Teacher. This ~~certification~~ Certification is required for grades K to 12.
 - 1.1.1 This ~~certification~~ Certification is limited to the world language in which the Standard Certificate is requested.
- 1.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2-1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2-2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
 - "Certification" means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.
 - "Department" means the Delaware Department of Education.
 - "Educator" means a person licensed and certified by the State under 14 ~~Del.C.~~ Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.
 - "Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.
 - "Fifteen (15) Credits or the Equivalent in Professional Development" means college credits or an equivalent number of hours with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to a degree program from a regionally accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a regionally accredited college or university or other Department-approved provider.
 - "Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.
 - "License" means a credential which authorizes the holder to engage in the practice for which the license is issued.
 - "Major or Its Equivalent" means a minimum of thirty (30) semester hours of course work in a particular content area.

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"Passing score Score" means a minimum score as established by the Professional Standards Board, in consultation with the Department, and with the approval of the State Board of Education.

"Professional Development" means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and/or perspectives; and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

"Target language Language" means, for the purpose of this regulation, the specific world language, as defined in Section 1.0 of 14 **DE Admin. Code** 505, in which the Standard Certificate is requested. World language means any language other than English that is used by peoples around the world for communicating information and ideas and transmitting its culture(s), including American Sign Language (ASL), Latin, and Greek.

"Valid and Current License or Certificate from Another State" means a current full or permanent certificate or license issued by another state. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state.

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate ~~as a~~ for World Language Teacher to an ~~educator~~ Educator who ~~has met the following~~:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; ~~or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and; meets the requirements set forth in Section 4.0 of this regulation; or~~
 - 3.1.2 ~~Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~
 - 3.1.2 Has met the requirements for licensure and holds a Valid and Current License or Certificate from Another State in world language education; or
 - 3.1.3 Has met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 **Del.C.** §1203.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for Certification if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

4.0 Additional Requirements Prescribed Knowledge, Skill, and Education Requirements

- 4.1 ~~An educator~~ For applicants applying for their first Standard Certificate, the applicants shall also have satisfied each of the following requirements: the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 ~~Completion of a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent in the target language from an educator preparation program approved or recognized by National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the~~

~~state approval body employed the appropriate standards; and~~ The applicant shall have satisfied one of the following requirements:

4.1.1.1 The applicant shall have obtained a World Languages certificate from the National Board for Professional Teaching Standards; or

4.1.1.2 The applicant shall have completed a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a Major or Its Equivalent in the Target Language from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or

4.1.1.3 The applicant shall have satisfactorily completed an alternative routes for licensure or certification program to teach world language as provided in 14 DE Admin. Code 1507; or

4.1.1.4 The applicant shall have satisfactorily completed a Department-approved educator preparation program in world language education; or

4.1.1.5 The applicant shall have completed a bachelor's degree from a regionally accredited college or university in any content area and satisfactorily completed fifteen (15) credits or the equivalent in Department-approved Professional Development related to world language education of which at least 6 credits must focus on pedagogy.

4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the Fifteen (15) Credits or the Equivalent in Professional Development subject to the Department's approval.

4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the Fifteen (15) Credits or the Equivalent in Professional Development in consultation with the Department and subject to the Department's approval.

4.1.2 Demonstrated The applicant shall have demonstrated oral and written proficiency in the target language Target Language by either:

4.1.2.1 Achieving a passing score on a the Praxis Subject Assessment in the target language; or:

4.1.2.1.1 Chinese (Mandarin): World Language (ETS Test # 5665) a Passing Score of 164; or

4.1.2.1.2 French: World Language (ETS Test # 5174) a Passing Score of 162; or

4.1.2.1.3 German: World Language (ETS Test # 5183) a Passing Score of 163; or

4.1.2.1.4 Latin (ETS Test # 5601) a Passing Score of 152; or

4.1.2.1.5 Spanish: World Language (ETS Test # 5195) a Passing Score of 168; or

4.1.2.2 Based on the American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines:

4.1.2.2.1 Achieving a minimum level of Advanced Low on the ACTFL Oral Proficiency Interview (OPI) in the target language Target Language, and

4.1.2.2.2 Achieving a passing score Passing Score on the ACTFL Writing Proficiency Test (WPT) in the target language Target Language.

4.1.2.2.2.1 For tests using the Roman alphabet, a passing score Passing Score means achieving a minimum level of Advanced Low.

4.1.2.2.2.2 For tests using a non-Roman alphabet, a passing score Passing Score means achieving a minimum level of Intermediate High.

4.2 For applicants applying for their second or subsequent Standard Certificate, the applicants shall have satisfied the following requirement:

4.2.1 Demonstrated oral and written proficiency in the Target Language as provided in subsection 4.1.2 of this regulation.

4.3 Notwithstanding the requirements in subsections 4.1 and 4.2 of this regulation, applicants applying for a Standard Certificate in World Language - American Sign Language, shall have met the following requirements:

- 4.3.1 Completion of Fifteen (15) credits or Its Equivalent in Professional Development in American Sign Language related to teaching and learning American Sign Language as approved by the Department; and
- 4.3.2 Achieving on the American Sign Language Proficiency Interview a Passing Score of 3.

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For applicants who are applying for their first Standard Certificate, the following documentation is required with the application for a Standard Certificate for World Language Teacher:
 - 5.2.1 Evidence of obtaining a World Languages certificate from the National Board for Professional Teaching Standards, if applicable; and
 - 5.2.2 Official transcript from the applicant's regionally accredited college or university.
 - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's regionally accredited college or university; or
 - 5.2.2.2 Sealed paper transcripts may be submitted.
 - 5.2.2.3 The Department will not accept copies of transcripts; and
 - 5.2.3 If applicable, documents verifying successful completion of Professional Development; and
 - 5.2.4 Official scores on the Praxis Subject Assessment or ACTFL OPI and WPT as provided in subsection 4.1.2; and
 - 5.2.5 If applicable, an experience form must be completed in full and signed by the applicant; and
 - 5.2.6 Additional documentation as required by the Department.
- 5.3 For applicants who are applying for their second or subsequent Standard Certificate, the following documentation is required in the application for a Standard Certificate for World Language Teacher:
 - 5.3.1 Official scores on the Praxis Subject Assessment or ACTFL OPI and WPT as provided in subsection 4.2.1; and
 - 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate from Another State in a world language, the following documentation is required in the application for a Standard Certificate for World Language Teacher:
 - 5.4.1 An official copy of the valid and current educator license or certificate from another state or professional license.

6.0 Validity of a Standard Certificate

- 6.1 A Standard Certificate for World Language Teacher is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A Standard Certificate for World Language Teacher is not subject to renewal.

7.0 Revocation of a Standard Certificate

- 7.1 An Educator's Standard Certificate for World Language Teacher shall be revoked in the event the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's Standard Certificate application in accordance with 14 Del.C. §1222.
- 7.2 An Educator whose Standard Certificate is noticed for revocation is entitled to a full and fair hearing before the Standards Board.
 - 7.2.1 Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

8.0 Secretary of Education Review

The Secretary of Education may, upon the written request of the superintendent of a local school district, review credentials submitted in an application for a Standard Certificate for World Language Teacher on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate for World Language Teacher but whose effectiveness is documented by the local school district.

5-9 9.0 Past Certification Recognized

The Department shall recognize a Standard Certificate for World Language Teacher issued before ~~January 1, 2017~~ the effective date of this regulation. A teacher An Educator holding such a Standard Certificate issued by the Department before ~~January 1, 2017~~ the effective date of this regulation shall be considered certified as a World Language Teacher.

6-0 Effective Date

~~This regulation shall be effective on January 1, 2017.~~

DEPARTMENT OF HEALTH AND SOCIAL SERVICES **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE** Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PUBLIC NOTICE

Reimbursement Methodology for FQHCs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the reimbursement methodology for Federally Qualified Health Centers (FQHCs), specifically, to align DMMA reimbursement policy with the costs of operating Delaware FQHCs.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on May 1, 2018. Please identify in the subject line: Reimbursement Methodology for FQHCs

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the reimbursement methodology for Federally Qualified Health Centers (FQHCs), specifically, to align DMMA reimbursement policy with the costs of operating Delaware FQHCs.

Statutory Authority

1902(bb) of the Act

Background

In 2017, one of Delaware's Federally Qualified Health Centers (FQHCs) and the Division of Medicaid and Medical Assistance (DMMA) began a review of the FQHC's Medicaid reimbursement methodologies. At that time,

it became apparent that current DMMA reimbursement policy - based on a methodology developed years ago - was in need of an update to be more in line with the present, true costs incurred by FQHCs for serving Medicaid members. The proposed update to the FQHC reimbursement policy will allow for more flexibility around adjusting for future changes in the spectrum of services offered by the providers.

Summary of Proposal

Summary of Proposed Changes

Effective for services provided on and after July 1, 2018, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 4.19-B, Page 13 of Title XIX Medicaid State Plan regarding payment methodologies for FQHCs, specifically, *to align DMMA reimbursement policy with the costs of operating Delaware FQHCs.*

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on May 1, 2018.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

Updating the current methodology as intended could result in approximately \$251,830 in additional cost to the State in 2018, and approximately \$987,675 in 2019. Additionally, to completely implement the revised FQHC reimbursement methodology, independent auditing services will be necessary to validate the costs as reported by the FQHCs.

	Federal Fiscal Year 2018	Federal Fiscal Year 2019
General (State) funds	\$ 251,830	\$ 987,675
Federal funds	\$ 573,842	\$ 2,314,757

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

<http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 781RFA 04-01-18.pdf>

AMENDED

Attachment 4.19-B

Page 13

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

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

FEDERALLY QUALIFIED HEALTH CENTERS

The Centers for Medicare and Medicaid Services (CMS) requires that Federally Qualified Health Centers (FQHCs) be reimbursed in compliance with the Benefits Improvement and Protection Act (BIPA) of 2000. Effective ~~January 1, 2001~~ July 1, 2018, ~~Delaware will pay 100% of reasonable cost based on an average of the Fiscal Year 1999 and 2000 audited cost report~~ reimburse each FQHC per-visit through one of the following two (2) methodologies, whichever nets the greater result:

1. A prospective payment system (PPS) rate, where 100 percent of the reasonable costs based upon an average of their fiscal years 1999 and 2000 audited cost reports are inflated annually by the Medicare Economic Index (MEI).

or

2. The per-visit cost as reported by the FQHC in its most recent cost report, subject to an audit performed by a certified public accountant as to the reasonableness of the reported costs.

The Medicaid Managed Care Organizations are contractually required to include the same service array and the same payment methodology as the State Medicaid FFS contracts with FQHCs. ~~The Medicaid FFS rate is a prospective payment system (PPS) rate paid per FQHC visit.~~ The Delaware Medicaid Program will verify that the FQHC has received at least the PPS correct rate for every visit. If there is a discrepancy in payment amounts, DE will make a wraparound payment to the FQHC within 90 days.

~~FQHCs are assigned a prospectively determined rate per clinic visit based in actual costs reported on their audited cost reports, and they do not correspond with the Federal Fiscal Year, they would span more than one fiscal year. Starting July 1, 2001, the Medicare Economic Index will be used to inflate their rates. The computation is also adjusted each year to reflect any increase or decrease in the Center's Scope of Services.~~

The Delaware Medical Assistance Program (DMAP) requires that a new provider submit an estimated cost report so that a rate based on reasonable costs can be established. Any new FQHC will be capped at 100% of the highest rate that Medicaid pays to a FQHC for the initial rate year.

Primary Care costs are separated from Administrative and General costs for purposes of rate calculation. The Administrative and General component is capped at 40% of the highest cost. Each cost component is inflated by the current HCFA Medicare Economic Index

Medicaid will ensure 100% percent cost payments regardless of the payment mechanism.

The rate year for FQHC services is July 1 through June 30.

The payment methodology for FQHCs will conform to section 702 of the BIPA 2000 legislation.

The payment methodology for FQHCs will conform to the BIPA 2000 requirements Prospective Payment System.

For services provided on or after January 2, 2017 the cost of long-acting reversible contraceptives (LARCs) will be based on actual acquisition cost (AAC). The FQHC must submit a separate claim to be reimbursed for the AAC of a LARC.

TN No. SPA <u>18-002</u>	Approval Date
TN No. SPA <u>17-003</u>	Effective Date <u>April 1, 2017</u>

PROPOSED REGULATIONS

DIVISION OF PUBLIC HEALTH

Statutory Authority: 24 Del.C. §§5306(b) and 5314(b)

PUBLIC NOTICE

4471 Massage and Bodywork Facilities

The Division of Public Health, Department of Health and Social Services, is proposing new regulations for facilities that offer massage and body work services. The regulations are in response to the revisions to 24 Del.C. §§5306(b) and 5314(b) which provide the Division of Public Health the authority to promulgate these regulations. On April 1, 2018, DPH plans to publish as proposed the new regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the April 1, 2018 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the DPH at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Elisabeth Scheneman by Friday, May 4, 2018, at:

Elisabeth Scheneman
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: elisabeth.scheneman@state.de.us
Phone: (302) 744-4951

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

[http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 784RFA 04-01-18.pdf](http://regulations.delaware.gov/register/april2018/proposed/21%20DE%20Reg%20784RFA%2004-01-18.pdf)

4471 Massage and Bodywork Facilities

1.0 General Provisions

- 1.1 Preamble. The Secretary, Delaware Health and Social Services (DHSS), adopts these Regulations pursuant to the authority vested by 24 Del.C. §5306. These Regulations establish requirements for the practice of massage and bodywork in massage establishments and provide for the investigation of complaints involving unsanitary or unsafe practices or conditions in such facilities.
- 1.2 Purpose. These Regulations shall establish minimum requirements for public health assurance in the practice of massage and body work in massage establishments licensed by the Board of Massage and Bodywork (Board). License holders are encouraged to employ more stringent requirements. License holders must also comply with the Board's rules and regulations applicable to massage establishments.
- 1.3 Facilities - Existing and New. Facilities that are lawfully in existence and operating at the time of adoption of the Regulations shall be permitted to have their use and maintenance continued if the use, maintenance or repair of the physical establishment and structure is in accordance with the original design and no hazard to life or health is created by the existing establishment.
- 1.4 Variance
 - 1.4.1 A licensee may request a variance from these Regulations from DHSS. DHSS may grant a variance by modifying or waiving the requirements of these Regulations if in the opinion of DHSS a health hazard or nuisance will not result from the variance.
 - 1.4.2 A variance shall not be transferred from person to person, nor from location to location.

- 1.4.3 If a variance is granted, DHSS shall retain the information specified below in its records for the establishment:
- 1.4.3.1 statement of the proposed variance of the Regulations, citing the relevant Section of these Regulations;
 - 1.4.3.2 an analysis of the rationale for how the potential public health hazards or nuisance will be alternatively addressed by the proposal; and
 - 1.4.3.3 any other information requested by DHSS that may be deemed necessary to render judgment.
- 1.4.4 A variance, if granted, is rendered void upon occurrence of one or more of the following:
- 1.4.4.1 the physical establishment is demolished or sold;
 - 1.4.4.2 a remodeling project in the establishment includes area(s) addressed in the variance;
 - 1.4.4.3 the license or certificate holder granted the variance ceases to operate the establishment for a period exceeding thirty (30) consecutive days.
- 1.5 Severability. If any provision or application of any provision of these Regulations is held invalid, that invalidity shall not affect other provisions or applications, which can be given effect without the invalid provision.
- 1.6 Effective Date. These Regulations are effective July 1, 2018.

2.0 Definitions

For purposes of these Regulations the following definitions shall apply:

"Board" means and refers to the Delaware Board of Massage and Bodywork.

"Department" or "DHSS" means the Delaware Department of Health and Social Services.

"DNREC" means the Delaware Department of Natural Resources and Environmental Control.

"EPA" means the United States Environmental Protection Agency.

"Equipment" means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus used in connection with the operation of the establishment.

"FDA" means the United States Food and Drug Administration.

"Handwashing sink" means a permanent lavatory equipped with hot and cold running water, under pressure and used solely for washing hands, arms or other portions of the body.

"Hot water" means water which attains and maintains a temperature of at least 110^o F.

"Invasive" means any entry into the body either by incisions or insertion of an instrument or through the skin or mucosa, or by any other means intended to puncture, break or compromise the skin or mucosa.

"Licensee" means any person licensed by Board.

"Massage establishment" has the same meaning as 24 Del.C. §5302(4).

"Person" means an individual, any form of business or social organization or any other non-governmental legal entity including but not limited to a corporation, partnership, limited liability company, association, trust or incorporated organization.

"Professional in charge" means a licensee who is responsible for the operation of a massage establishment, including ensuring that all employees are licensed where required by law.

"Sanitize / Sanitization Procedure" means a process of reducing the numbers of microorganisms on cleaned surfaces and equipment to a safe level as judged by DHSS.

"Secretary" means the Secretary of DHSS or designee.

3.0 Inspections

The Secretary shall have right of entry without fee or hindrance, for the purpose of determining if the establishment is in compliance with these Regulations. The establishment shall allow for inspection and shall

provide information and records needed to determine compliance with these Regulations, whether or not the evidence exists that the establishment is in violation of these Regulations.

4.0 Operational Requirements

4.1 General Requirements

4.1.1 All areas shall be maintained in a safe and sanitary condition.

4.1.2 Licensed facilities including or connected to residential spaces shall be separate from living quarters and have their own entrance.

4.1.3 All doors to dressing rooms, toilet rooms, and massage therapy rooms or cubicles shall open inward. Draw drapes, curtain enclosures or accordion-pleated closures in lieu of doors are acceptable on all inner dressing rooms and massage therapy rooms or cubicles.

4.1.4 A massage table / chair shall be used for all massage therapy, with the exception of Thai, shiatsu and similar forms of massage therapy, which may be provided on a padded mat on the floor.

4.1.5 All locker facilities that are provided for the use of patrons shall be fully secured for the protection of the patron's valuables, and the patron shall be given control of the key or other means of access.

4.2 Equipment Construction and Design. All interior surfaces and fixtures of a licensed establishment shall be designed so as to be easily maintained and kept clean. Procedure surfaces shall be easy to clean and sanitize.

4.3 Floors, Walls and Ceilings. All floors, walls and ceilings shall be smooth, free of open holes or cracks, washable, maintained clean and in good repair.

4.4 Lighting. Artificial light sources shall be provided equivalent to at least 20 foot candles three (3) feet off the floor.

4.5 Ventilation. Licensed establishments shall be provided with adequate ventilation which draws air from employees and clients and vents to the outside. A minimum of fifty (50) cubic feet per minute (CFM) intermittent or twenty (20) CFM continuous shall be provided to protect the employees and clients. Ventilation units shall be kept in proper working condition. The use of filtering devices which merely remove odors and not gases, mists, dust and etc. shall not constitute ventilation.

4.6 Laundry. Soiled reusable cloth items may be mechanically washed with detergent and then dried on premises provided that washers and dryers are installed per local codes and are not included in the area used by clients.

4.7 Water Supply

4.7.1 Water shall be obtained from an approved source that is constructed, maintained and operated according to the requirements of DNREC and DHSS and other applicable codes and requirements.

4.7.2 The water source and system shall be of sufficient capacity and pressure to meet the demands of the establishment. Hot and cold water shall be provided at all sinks.

4.8 Plumbing. All plumbing systems shall be designed, constructed and installed according to all applicable laws, codes and regulations.

4.9 Handwashing sinks. A permanent handwashing sink which is convenient and accessible to all work stations shall be provided and separate from the sink provided in the restroom. This sink shall be supplied with liquid soap, disposable paper towels and a covered waste receptacle and shall be used for no other purpose. One handwashing sink per 40 people is required. The number of people will be determined by the occupant load.

4.10 Restrooms

4.10.1 Establishments shall provide the number of toilets and handwashing sinks required by the applicable plumbing code. Restrooms are required to be accessible during business hours and maintained in good working order, have adequate ventilation, and may not be used for storage of linen or supplies.

- 4.10.2 Restrooms shall be kept in a sanitary condition, maintained in a safe and orderly manner and be equipped with or directly adjacent to an operational handwashing sink, liquid soap dispenser, disposable towels, toilet paper and a covered waste receptacle.
- 4.11 Sewage. Sewage shall be disposed of through an approved public treatment sewage plant or private disposal system that is sized, constructed, maintained and operated according to the requirements of DNREC and DHSS.
- 4.12 Garbage and Refuse. A covered waste receptacle shall be provided in each client room and shall be emptied daily. Exterior refuse containers shall be cleanable with a tight fitting lid and collected weekly, at a minimum.
- 4.13 Animals. No animals shall be allowed in any licensed establishment except for those that assist persons with disabilities. Notwithstanding the foregoing, fish aquariums are allowed in the waiting area.
- 4.14 Insect and Rodent Control. Establishments shall be designed so as to prevent the entry and occurrence of insects and rodents. Pest control measures shall be provided and, if a problem occurs, professional pest control services shall be provided.

5.0 Safety and Sanitation Requirements

5.1 General Requirements

- 5.1.1 Instruments shall be sanitized in accordance with Section 7.0 of these Regulations.
- 5.1.2 An instrument that caused a skin abrasion or a cut to the skin shall be cleaned and sanitized immediately. If bleeding occurs, a tissue or cotton shall be used to collect the blood. Blood contaminated materials shall be disposed of immediately in a sealed, double-plastic bag.
- 5.1.3 Objects dropped on the floor may not be used until they are cleaned and sanitized.
- 5.1.4 Soiled combs, brushes, towels or other used material shall be removed from the client procedure area immediately after use.
- 5.1.5 All instruments that have been used on a client or soiled in any manner shall be placed in a properly labeled receptacle while awaiting cleaning and sanitizing.
- 5.1.6 All supplies or instruments which come in direct contact with a client and cannot be disinfected, for example examination paper, neck strips and cotton pads, shall be disposed of in a covered waste receptacle immediately after use.
- 5.1.7 Shower facilities shall be cleaned and sanitized after each client use in accordance with Section 7.0 of these Regulations.
- 5.1.7.1 No clients shall be allowed to use any shower facilities of the establishment unless clients are wearing slip-resistant sandals or flip flops while in the shower compartment.
- 5.1.8 All bathrobes, bathing suits and/or other garments that are provided for the use of clients shall be either disposable and shall not be used by more than one person or shall be laundered after each use.

6.0 Single Service

- 6.1 Only clean cloth towels or disposable paper towels shall be used on clients. A cloth towel that has been used on a client shall be immediately placed in a closed container for soiled linen. A disposable paper towel that has been used on a client shall be immediately discarded in a covered waste container.
- 6.2 The cushion, mat or table for procedures shall be covered with a clean cloth towel, sheet, disposable examination sheet or the similar before the start of each procedure.

7.0 Instruments, Equipment and Supplies

7.1 Non-electric Instruments and Equipment

- 7.1.1 Before use upon a client, all non-electrical instruments shall be sanitized in the following manner:
- 7.1.1.1 Cleaned with soap or detergent and water.

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7.1.1.2 Then totally immersed in one of the following:

7.1.1.2.1 Commercially marketed EPA approved and registered sanitizer agent sold for the purpose of sanitizing implements and tools used in the practice of beauty culture, provided that all manufacturer's instructions are carefully followed; or

7.1.1.2.2 A solution of one part commercial bleach to ten parts water for ten (10) minutes; or

7.1.1.2.3 Seventy (70) percent alcohol for a minimum of 20 minutes.

7.1.2 The sanitizing solutions required in subsection 7.1.1 shall:

7.1.2.1 Remain covered at all times.

7.1.2.2 Be changed per the manufacturer's instructions but at least once per week or whenever visibly cloudy or dirty; or

7.1.2.3 Be changed daily if bleach based.

7.2 Electrical Instruments and Equipment.

7.2.1 Electrical instruments shall be sanitized prior to each use by:

7.2.1.1 Removing all foreign matter; and

7.2.1.2 Using a commercially marketed EPA approved and registered sanitation agent(s) sold for the purpose of sanitizing implements and tools used in the practice of beauty culture, provided that all manufacturer's instructions are carefully followed.

7.3 Equipment Storage

7.3.1 Cleaned and sanitized implements and equipment shall be stored in a clean and dry cabinet or drawer.

7.3.2 Unused clean cloth towels and disposable towels shall be stored in a closed, clean cabinet or towel dispenser.

7.3.3 A closed cabinet or separate bin or hamper for the disposal of soiled towels is required as appropriate.

7.4 Supplies

7.4.1 Lotions, oils and any other type of liquid shall be poured into a disinfected container or cleaned hand. Any excess remaining after application shall be discarded immediately and not returned to the original container or applied to another client.

7.4.2 Creams and other semisolid substances shall be removed from their containers with a sanitized spatula or similar utensil. The spatula or similar utensil may not be permitted to come into contact with the skin of a client.

7.4.3 All liquids, creams and other preparations shall be kept in clean, closed and distinctly labeled containers. Poisonous substances shall be in marked containers. Powders may be kept in clean shakers.

8.0 Employees

8.1 Sanitary and Hygienic Practices

8.1.1 An employee performing services shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before serving each client.

8.1.2 Disposable gloves shall be worn if the employee has a cut or open wound.

8.1.3 An employee whose hands come in contact with blood shall wash them immediately.

8.1.4 Implements shall not be placed in the mouth.

8.2 Health

8.2.1 No employee shall knowingly permit a person afflicted with an infection or parasitic infestation capable of being transmitted to a client to serve clients, or instructor train in the licensed establishment.

8.3 Clothing

8.3.1 The employee and the employee's uniform or attire shall be clean at all times.

9.0 Infectious, Contagious or Communicable Diseases

- 9.1 No professional in charge shall knowingly require or permit an employee to work upon a person believed to have an infection or parasitic infestations capable of being transmitted to the employee unless the client can produce a physician's certification that the client does not have an infectious, contagious or communicable disease.
- 9.2 A person shall wear gloves when required to serve a client with skin that is inflamed, broken, abraded, cut or where a skin infection or eruption is present.
- 9.3 Infections or parasitic infestations capable of being transmitted to a client include but are not limited to:
 - 9.3.1 Cold, influenza or other respiratory illness accompanied by a fever, until twenty-four (24) hours after resolution of the fever;
 - 9.3.2 Streptococcal pharyngitis ("strep throat") until twenty-four (24) hours after treatment has been initiated and twenty-four (24) hours after resolution of fever;
 - 9.3.3 Purulent conjunctivitis ("pink eye") until examined by a physician and approved for return to work;
 - 9.3.4 Pertussis ("whooping cough") until five days of antibiotic therapy has been completed;
 - 9.3.5 Varicella ("chicken pox") until the sixth day after onset of rash or sooner if all lesions have dried and crusted;
 - 9.3.6 Mumps, until nine days after onset of parotid gland swelling;
 - 9.3.7 Tuberculosis, until a physician or local health department authority states that the person is noninfectious;
 - 9.3.8 Impetigo (bacterial skin infection) until twenty-four (24) hours after treatment has begun;
 - 9.3.9 Pediculosis (head lice) until the morning after first treatment; and
 - 9.3.10 Scabies ("crabs") until after treatment has been completed.
- 9.4 Blood-borne diseases such as HIV/AIDS and hepatitis B (HBV) shall not be considered infectious or communicable diseases for the purpose of this Regulation.

10.0 Prohibited Hazardous Substances / Use of Products

- 10.1 No establishment shall have on the premises products containing hazardous substances, which have been banned by federal, state or local law for use in products. Establishments permitted under these regulations may only use and store pesticides and cleaning products approved for use in compliance with subsection 10.2.
- 10.2 No product shall be used in a manner that is disapproved by the Board, DHSS or the FDA or is in violation of any applicable Federal or State statute or Regulation.

11.0 Invasive Procedures

- 11.1 No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:
 - 11.1.1 Application of electricity which contracts the muscle;
 - 11.1.2 Application of topical lotions, creams or other substances which affect living tissue, such as chemical peel preparations or bleaches;
 - 11.1.3 Penetration of the skin with any needle-like instrument for any purpose;
 - 11.1.4 Abrasion of the skin below the nonliving, epidermal layers; and
 - 11.1.5 Removal of skin by means of any razor-edged instrument or other device or tool.

12.0 Compliance and Enforcement

- 12.1 The professional in charge of a massage establishment shall be responsible for maintaining the Standards for Public Health Assurances established by these Regulations.
- 12.2 Refusal to permit, or interference with, an inspection by DHSS, or the Board, constitutes violation of the Regulations.

PROPOSED REGULATIONS

- 12.3 DHSS shall investigate all complaints for violations of these Regulations as herein regulated and shall refer any failure to comply with these Regulations to the Board for disciplinary sanctions as allowed by law.
- 12.4 When a professional in charge of a massage establishment is not in compliance with the provisions of these Regulations, the Department shall refer the matter to the Board for enforcement action. However, in the event there is an immediate risk to the public health, the Secretary, in accordance with 16 Del.C. §122(1), may take immediate action.
- 12.5 Penalties. Any person violating any of the requirements established by these Regulations is subject to be referred to the Board for disciplinary sanctions pursuant to 24 Del.C. Ch. 53.
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DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

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

PUBLIC NOTICE

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

SUMMARY

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

- Using plain language throughout the regulation;
- Clarification regarding the requirement for lead-paint risk assessments for centers that were built before 1978, including abatement for lead-paint hazards;
- Radon testing, including mitigation if necessary;
- Air quality testing for centers located in building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Comprehensive background checks for applicants, licensees, staff members, and volunteers before being alone with children;
- Certified staff at all times to administer medications, as needed;
- Reasonable accommodations for children's medical needs, including administering non-intravenous medication; and
- Suspension and expulsion policies.

Requiring centers to be free of lead and radon hazards and the additional requirement for centers located in a building/structure that contains or contained a business that may result in unacceptable air quality to have the air quality tested protects children's health. Comprehensive background checks and suspension and expulsion policies are required to comply with the Child Development Block Grant Act of 2014. Lastly, by amending these regulations, the needs of children requiring medication (with parent/guardian permission) while in child care will be met, consistent with the principles of the Americans with Disabilities Act.

COMMENTS

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them to the Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families, 3411 Silverside Road, Hagley Building, Wilmington, Delaware, 19810, Attention: Kelly McDowell or email them to Kelly McDowell at Kelly.McDowell@state.de.us by the close of business on May 31, 2018. Public hearings will be held in each county on the following dates: May 1,

2018, from 6:30 pm -7:30 pm, at the Bear Library, 101 Governor's Place, Bear, DE Room 1 A & B; April 30, 2018, from 6:30 pm -7:30 pm, at OCCL 821 Silver Lake Blvd. Dover, DE, and May 2, 2018, from 6:30 pm -7:30 pm, at the Milton Library 121 Union St. Milton, DE.

***Please Note:**

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

[http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 790RFA 04-01-18.pdf](http://regulations.delaware.gov/register/april2018/proposed/21%20DE%20Reg%20790RFA%2004-01-18.pdf)

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

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

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

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345 (29 Del.C. §9003(7) and 31 Del.C. §§341-345)
9 DE Admin. Code 103

PUBLIC NOTICE

103 Regulations for Family and Large Family Child Care Homes

SUMMARY

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

- Lead-paint risk assessments for family child care homes that were built before 1978, including abatement for lead-paint hazards;
- Radon testing for family and large family homes, including mitigation if necessary,
- Air quality testing for large family homes located in a commercially zoned building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Comprehensive background checks for applicants, licensees, adult household members, staff members, and volunteers;
- Qualified staff at all times to administer medications, as needed;
- Reasonable accommodations for children's medical needs, including administering non-intravenous medication; and
- Suspension and expulsion policies.

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

COMMENTS

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

the close of business on May 31, 2018. Public hearings will be held in each county on the following dates: May 1, 2018, from 6:30 pm -7:30 pm, at the Bear Library, 101 Governor's Place, Bear, DE Room 1 A & B; April 30, 2018, from 6:30 pm -7:30 pm, at OCCL 821 Silver Lake Blvd. Dover, DE, and May 2, 2018, from 6:30 pm -7:30 pm, at the Milton Library 121 Union St. Milton, DE.

***Please Note:**

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

[http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 791RFA 04-01-18.pdf](http://regulations.delaware.gov/register/april2018/proposed/21%20DE%20Reg%20791RFA%2004-01-18.pdf)

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

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

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

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

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

PUBLIC NOTICE

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

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 Del.C. §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with current law and remove outdated, redundant, and inconsistent provisions. The proposed regulations clarify what is acceptable supervision to the Board and creates regulations for licensed art therapists and licensed associate art therapists pursuant to 24 Del.C. §§3060-3064.

The Board will hold a public hearing on the proposed rule change on April 25, 2018 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Nicole Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until May 10, 2018.

***Please Note:**

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

[http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 792RFA 04-01-18.pdf](http://regulations.delaware.gov/register/april2018/proposed/21%20DE%20Reg%20792RFA%2004-01-18.pdf)

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

[3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals](#)

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 203E and 209(a) (26 Del.C. §§203E and 209(a))

PUBLIC NOTICE

3011 Rules for Certification of Electric Transmission Suppliers

IN THE MATTER OF DELAWARE PUBLIC
SERVICE COMMISSION STAFF TO ESTABLISH
REGULATIONS FOR CERTIFYING
NEW ELECTRIC TRANSMISSION UTILITIES
IN THE STATE OF DELAWARE
(OPENED March 13, 2018)

PSC DOCKET 18-0148

NOTICE OF PROCEEDINGS BY THE PUBLIC SERVICE COMMISSION TO PROMULGATE RULES AND REGULATIONS TO IMPLEMENT VARIOUS PROVISIONS OF HOUSE BILL 127 (81 DEL. LAWS ch. 205)

In February 2018, the General Assembly passed, and the Governor enacted into law, the "House Bill 127," 81 Del. Laws ch. 205 (February 14, 2018). HB 127 amended Chapter 1, Subchapter II, Title 26 of the Delaware Code by adding "§203E Certificate of public convenience and necessity for new electric transmission utilities." Section 203E provides that no person or entity shall begin the business of an electric transmission utility providing transmission facilities, as defined in § 1001(26) of this title, without having first made application to and obtained from the Commission a certificate of public convenience and necessity ("CPCN") approving the person or entity as an electric transmission utility authorized to provide transmission facilities. The enactment of HB 127 recognized that, due to recent changes in federal law, certain new electric transmission utility projects will now be available to in-state and out-of-state entities. The goal of the HB 127 Act was to provide the Commission the necessary authority to determine whether to grant a CPCN for such projects. HB 127 provides factors the Commission shall consider in determining whether to grant an applicant's CPCN. The goal of HB 127 Act was to provide the Commission the necessary authority to determine whether to grant a CPCN such projects. HB 127 provides factors the Commission shall consider in determining whether to grant an applicant's CPCN.

HB 127 charges the Public Service Commission (the "Commission") with the duty to adopt various rules and regulations to implement the new CPCN statute and to protect the state ratepayers and the state from any impact on the State's economy and the benefits to the State's ratepayers and on the health, safety, and welfare of the general public. In accordance with various provisions added by the HB 127, the Commission Staff has proposed rules and regulations pertaining to:

(1) Whether PJM Interconnection, L.L.C. (or its successor) ("PJM") has selected the applicant to develop or own transmission facilities included in the regional transmission expansion plan approved through PJM's Federal Energy Regulatory Commission-approved developer qualification and competitive procurement process, or if such PJM approval has not occurred: (26 Del.C. §203E(b)(1))

- a. The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company (26 Del.C. §203E(b)(1)a.)
- b. The need for and impact of any transmission facilities proposed by the applicant on the safe, adequate, and reliable operation or delivery of electric supply services (26 Del.C. §203E(b)(1)b.); and
- c. The engineering and technical design of any transmission facilities proposed by the applicant (26 Del.C. §203E(b)(1)c.);

(2) The impact of granting the certificate of public convenience and necessity application on the State's economy and the benefits to the State's ratepayers (26 Del.C. §203E(b)(2)); and

(3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.

By PSC Order No. 9193 (March 13, 2018), the Commission opened this docket to solicit comments concerning

these proposed rules and regulations. The Commission intends to adopt rules and regulations pertaining to the above topics prior to implementing the CPCN requirements set forth in 26 **Del.C.** §203E.

Copies of the proposed rules and regulations are not available in the *Delaware Register of Regulations* until April 1, 2018. You may obtain a copy of the proposed rules and regulations from the Commission at its Dover office at the address set out below during normal business hours. You may also obtain an electronic copy of the proposed rules and regulations by accessing the State of Delaware's Internet website at: <http://www.state.us.de.us/govern/agencies/pubserv/major/major1.htm>.

The Commission solicits suggestions, compilations of data, briefs, or other written materials concerning the proposed rules and regulations and any additional rules or regulations which may be necessary or desirable to implement the provisions of 26 **Del.C.** §203E. If you wish to submit such materials, you must e-mail such materials to Joseph DeLosa at Joseph.DeLosa@state.de.us on or before Tuesday, May 1, 2018. In addition, two (2) copies of all filed materials should be served upon the Division of the Public Advocate, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801.

The Commission Staff is available to answer any questions concerning this proceeding. The Commission's toll-free telephone number in Delaware is (800) 282-8574. You may also make inquiries by voice telephone at (302) 736-7500 or by Internet e-mail to Joseph.DeLosa@state.de.us.

ORDER NO. 9193

AND NOW, this 13th day of March 2018, the Commission determines and Orders the following:

1. On February 14, 2018, House Bill 127 as amended by House Amendment No. 1 ("HB 127") (81 Del. Laws ch. 205) became law. HB 127 amended Chapter 1, Subchapter II, Title 26 of the Delaware Code by adding "§203E Certificate of public convenience and necessity for new electric transmission utilities." Section 203E provides that no person or entity shall begin the business of an electric transmission utility providing transmission facilities, as defined in §1001(26)¹ of this title, without having first made application to and obtained from the Commission a certificate of public convenience and necessity ("CPCN") approving the person or entity as an electric transmission utility authorized to provide transmission facilities. The enactment of HB 127 recognized that, due to recent changes in federal law, certain new electric transmission utility projects will now be available to in-state and out-of-state entities. The goal of the HB 127 Act was to provide the Commission the necessary authority to determine whether to grant a CPCN for such projects. HB 127 provides factors the Commission shall consider in determining whether to grant an applicant's CPCN.²

2. In several provisions, the Act obligates the Commission to adopt implementing rules and regulations in order to assess the impact that certain new electric transmission utility projects will have on the State of Delaware and on its citizens. In particular, the Commission must adopt rules and regulations pertaining to the following factors required in determining whether to grant the CPCN:

1. HB 127 amends 26 **Del.C.** §1001(26) as follows: "Transmission facilities" means electric facilities located in Delaware, including those in offshore waters and integrated with onshore electric facilities, and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to customers (including any customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the customer. (Underlined language shows insertion amendment).
2. "Public utility" includes every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this state, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the production, sale or distribution of propane gas or heating oil), any natural gas, electric (excluding electric suppliers as defined in § 1001 of this title), electric transmission by other than a public utility over which the Commission has no supervisory or regulatory jurisdiction pursuant to Section 202(a) or (g) of this title, water, wastewater (which shall include sanitary sewer charge), telecommunications (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment. (Underlined language shows insertion amendment).

- (1) Whether PJM Interconnection, L.L.C. (or its successor) (“PJM”) has selected the applicant to develop or own transmission facilities included in the regional transmission expansion plan approved through PJM’s Federal Energy Regulatory Commission-approved developer qualification and competitive procurement process, or if such PJM approval has not occurred: (26 **Del.C.** §203E(b)(1))
 - a. The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company (26 **Del.C.** §203E(b)(1)a.)
 - b. The need for and impact of any transmission facilities proposed by the applicant on the safe, adequate, and reliable operation or delivery of electric supply services (26 **Del.C.** §203E(b)(1)b.); and
 - c. The engineering and technical design of any transmission facilities proposed by the applicant (26 **Del.C.** §203E(b)(1) c.);
- (2) The impact of granting the certificate of public convenience and necessity application on the State’s economy and the benefits to the State’s ratepayers (26 **Del.C.** §203E(b)(2); and
- (3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.

3. The Commission Staff has proposed rules and regulations pertaining to each of these areas. Consequently, the Commission opens this docket to allow interested persons to comment upon those proposed rules and regulations.

4. Interested persons may submit written comments by May 1, 2018 to Joseph DeLosa at Joseph.DeLosa@state.de.us.

NOW, THEREFORE, IT IS ORDERED:

5. That this docket is opened to adopt the rules and regulations **Exhibit “B”** required by the provisions of 26 **Del.C.** §203E and in furtherance of the enactment into law of House Bill 127 as amended by House Amendment No. 1 (81 Del. Laws ch. 205).

6. That the Secretary shall give public notice of this docket and Staff’s proposed rules and regulations by publishing notice in the form attached as **Exhibit "A"** in the legal classified sections of *The News Journal* and the *Delaware State News* newspapers in two column format, outlined in black by the following dates:

Thursday, March 22, 2018 (*The News Journal*)

Thursday, March 22, 2018 (*Delaware State News*)

In addition, the Secretary shall forward a copy of such notice to the Delaware Registrar of Regulations requesting that the notice be published in the April, 2018 edition of the Delaware Register of Regulations. The Secretary shall promptly file proof of such newspaper publication in the record of this proceeding.

7. That Thomas D. Walsh, Esquire is designated Counsel for this matter.

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

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair (absent)

Joann T. Conaway, Commissioner

Harold B. Gray, Commissioner (absent)

K. F. Drexler, Commissioner

Manubhai C. Karia, Commissioner

ATTEST: Donna Nickerson, Secretary

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

<http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 793RFA 04-01-18.pdf>

3011 Rules for Certification of Electric Transmission Suppliers

1.0 Definitions

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

PROPOSED REGULATIONS

"Applicant" means a person or entity seeking to obtain an Electric Transmission Supplier Certificate.
"Business Day" means any calendar day except Saturdays, Sundays, or legal holidays as defined in 1 Del.C. §501.

"Commission" means the Delaware Public Service Commission.

"Delmarva" or "DPL" means Delmarva Power & Light Company or its successor(s).

"DPA" means the Delaware Division of the Public Advocate.

"Electric Transmission Facility" or "Transmission facility" means electric facilities that are located in Delaware, including those in offshore waters and integrated with onshore electric facilities, and owned by a public utility that operate at voltages above 34,500 volts, and used to transmit and deliver electricity to customers, including any customers taking electric service under interruptible rate schedules as of December 31, 1998, up through and including the point of physical connection with electric facilities owned by DPL.

"Electric Transmission Supplier Certificate" means a certificate of public convenience and necessity under 26 Del.C. §203E granted by the Commission to an Applicant which fulfilled the Commission's certification requirements and which authorizes the Applicant to construct, operate, own and maintain transmission facilities. The Commission Order approving an Applicant's application for certification as an Electric Transmission Utility shall serve as the Electric Transmission Supplier Certificate.

"Electric Transmission Utility" means a person or entity granted an Electric Transmission Supplier Certificate by the Commission, or otherwise exempt under 26 Del.C. §203A(a)(3), which owns and/or physically operates an Electric Transmission Facility in Delaware.

"Person" means a natural person, a corporation, partnership, association, public trust, joint stock company, joint venture, or other group of persons, whether incorporated or not; a trustee or receiver of the foregoing; a municipality or other political subdivision of the State of Delaware; and any other governmental agency or any officer, agent, or employee of such agency.

"PJM Interconnection, L.L.C." or "PJM" means the Regional Transmission Organization ("RTO") with functional control over Electric Transmission Facilities throughout a multi-state area including Delaware, or its successor(s).

"Public Utility" means every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this state, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the production, sale, or distribution of propane gas or heating oil), any natural gas, electric (excluding electric suppliers as defined in §1001 of this title), water, wastewater (which shall include sanitary sewer charge), telecommunications, (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment.

"Regional Transmission Expansion Plan" or "RTEP" means the process by which PJM approves new transmission projects.

"Regulations" means the Commission's Regulations for Certification of an Electric Transmission Utility. (26 DE Admin. Code 3011, et seq.)

"Secretary" means the Secretary of the Commission, or any employee of the Commission designated as such by the Secretary and authorized by the Executive Director.

"Staff" means full-time professional employees of, and outside counsel and consultants retained by, the Commission who render advice to the Commission.

"State" means the State of Delaware.

2.0 Certification of Electric Transmission Suppliers

- 2.1** Before an Applicant may begin the business of providing Electric Transmission Facilities, such Applicant must obtain an Electric Transmission Supplier Certificate from the Commission.

- 2.2 Certification Requirement. All Applicants shall file with the Commission an original and five (5) copies of an application for an Electric Transmission Supplier Certificate or comply with the electronic filing requirements of 26 **DE Admin. Code** 1001. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial, and operational ability to adequately serve the public consistent with applicable State laws. Applications shall contain at least the following information:
- 2.2.1 Identifying Information. The legal name and, if applicable, tax identification number or employer identification number of the Applicant, as well as the trade name(s) under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant or its Affiliated Interests have previously done business in Delaware;
 - 2.2.2 Certifications. Certification(s) issued by the state of formation or incorporation certifying that the Applicant is in good standing and qualified to do business in that state;
 - 2.2.3 Authorization. Documentation from the Delaware Secretary of State and the Delaware Division of Revenue, issued within ninety (90) days of filing, that the Applicant is legally authorized and qualified to do business in the State;
 - 2.2.4 Registered Agent. The name and post office address of a Registered Agent, pursuant to 26 **Del.C.** §401, within the State upon whom service of any notice, order or process may be made;
 - 2.2.5 Leadership. The names, titles, addresses, and telephone numbers of the Applicants' principal officers, directors, partners, or other similar officials;
 - 2.2.6 Corporate Structure. A description of the Applicant's corporate structure, including all parent, affiliated, and subsidiary companies. Include a graphical depiction of such structure;
 - 2.2.7 Contact Information. The name, title, e-mail address (if applicable), mailing address and telephone number of the Applicants and the regulatory contact person responsible for the Applicant's Delaware operations;
 - 2.2.8 Attorney. The name, address, telephone number, and e-mail address of the Applicant's attorney. If the Applicant is not using an attorney, explicitly state so;
 - 2.2.9 Consent to Jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Applicant's and its Agent's activities in the State;
 - 2.2.10 Criminal Activities. A statement detailing any criminal activities, except for misdemeanors or lesser violations, of which the Applicant or any of its Affiliated Interests, officers, and directors (and prior officers and directors who left the Applicant's employ less than three months before the filing of the application) have been convicted. Any criminal activity disclosure shall include a copy of any order of conviction and restitution.
 - 2.2.11 Project Description. A complete description of any projects that the Applicant intends to develop in Delaware to include:
 - 2.2.11.1 A detailed description of the Electric Transmission Facilities for which the applicant seeks a Certificate
 - 2.2.11.2 One-line diagrams showing all Electric Transmission Facilities to be constructed
 - 2.2.11.3 A description of the construction design to include a pictorial representation of design type;
 - 2.2.11.4 An aerial map showing the proposed location and route of planned Electric Transmission Facilities;
 - 2.2.11.5 A cost estimate for the project;
 - 2.2.11.6 Copies of any analysis undertaken by the Applicant or of which Applicant is aware that demonstrates the reliability-based or economics-based need for the Electric Transmission Facilities and any impacts on electricity costs, including transmission, energy, capacity, and ancillary services charges within Delaware.
 - 2.2.12 Entity Designation. A copy of documentation certifying the Applicant as the PJM entity designated to construct new Electric Transmission Facilities. If the Applicant is not a PJM designated entity, the Applicant must submit additional information under subsections 2.2.13, 2.2.14 and 2.2.15.

PROPOSED REGULATIONS

- 2.2.13 Financial Information. If the Applicant is not a PJM Designated Entity, evidence of long-term financial viability of the Applicant to provide service in the State, including:
- 2.2.13.1 If publicly traded, the Applicant's: (1) certified financial statements current within twelve (12) months of the filing, and (2) its most recent annual report to shareholders and SEC Form 10-K (or a link to the report on the SEC website);
 - 2.2.13.2 If not publicly traded, the Applicant's accounting statements, including balance sheet and income statements, audited financial statements, bank account statements, tax returns or other indicia of financial capability, or, if applicable, the certified financial statements of a publicly traded parent;
 - 2.2.13.3 Applicants submitting European-style financial statements shall include a statement of similarity;
 - 2.2.13.4 Staff may request other indicia of financial capability.
- 2.2.14 Bankruptcy. If the Applicant is not a PJM Designated Entity, the Applicant shall disclose whether it, or any of its Affiliated Interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past 24 months;
- 2.2.15 Operational Experience. If the Applicant is not a PJM Designated Entity, evidence of technical and operational fitness to construct and operate Electric Transmission Facilities, including:
- 2.2.15.1 A description of the entity's experience:
 - 2.2.15.1.1 A description of the entity's experience in constructing and operating electric transmission facilities in other states and an assessment of its long-term viability as an Electric Transmission Utility; and
 - 2.2.15.1.2 A description of the entity's experience with any transmission project in the PJM region.
 - 2.2.15.2 Documentation on the need for and the impact of the proposed transmission facility on the safe, adequate and reliable operation or delivery of electric supply services; and
 - 2.2.15.3 Detailed information on the engineering and technical design of the proposed transmission facility.
 - 2.2.15.4 Staff may request other indicia of technical or operational fitness.
- 2.2.16 Economic Impact. The Applicant's assessment of the impact of granting the Electric Transmission Supplier Certificate on the State's economy and the benefits to the State's ratepayers.
- 2.2.17 The Applicant's assessment of the impact of granting the Certificate of Public Convenience and Necessity on the health, safety and welfare of the general public.
- 2.2.18 Other Proceedings.
- 2.2.18.1 A list of states or federal jurisdictions in which the Applicant or any of its Affiliated Interests has:
 - 2.2.18.1.1 Been denied approval to construct or operate electric transmission;
 - 2.2.18.1.2 Been found to be in violation of a state's laws, rules, or regulations;
 - 2.2.18.1.3 Had its electric transmission authority revoked, modified, or suspended; or
 - 2.2.18.1.4 Had any other adverse judicial or regulatory action pertaining to the provision of electric transmission, including any formal docketed complaints filed against (i) the Applicant; (ii) any of the Applicant's Affiliated Interests; (iii) any officer, principal or director of the Applicant; or (iv) any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action; and
 - 2.2.18.1.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past five years concerning its electric transmission construction or operation in which the entity agreed to pay a civil penalty, provide any restitution, or make changes to operations;
- 2.2.19 The Applicant shall provide a copy of any document, order, or decree identified in response to subsection 2.2.18;

- 2.2.20 A copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or U.S. Department of Justice concerning the Applicant's participation in electric transmission projects:
- 2.2.21 Other Information. The Commission or its Staff may consider any other information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant.
- 2.2.22 Verification of Application. The application must be accompanied by a signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 2.2.23 Notice. Each Applicant shall publish notice of the filing of its application in two (2) newspapers of general circulation throughout the State in a Commission-approved form, which will be provided to the Applicant after receipt of the application.
- 2.2.24 Application Fee. An Applicant for a Certificate of Public Convenience and Necessity to operate as a Public Utility shall submit a non-refundable application fee of \$750 with the application.
- 2.2.25 Incomplete or Abandoned Applications. The Commission may reject an application that is not complete or that does not contain subsequent information requested by the Staff within four months of a failure by the Applicant to respond to such requests.
- 2.2.26 Waiver of Certification Requirements. Upon the request of any Applicant, the Commission, upon notice and opportunity for comment, may, for good cause, waive any of the requirements of these Regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these Regulations or 26 Del.C. §1001 et seq.
- 2.2.27 Review of the Application. After the close of the comment period, Staff shall make a recommendation to the Commission to approve, conditionally approve or deny the application. The Commission may choose to approve, approve with conditions, modify, or deny a Certificate of Public Convenience and Necessity to an Applicant where it finds that doing so is in the public interest. The application may be denied if the Commission finds the applicant is unwilling or unable to provide safe, adequate and reliable services.
- 2.2.28 Timing of Application Decision. The Commission shall act on an application within ninety (90) Business days of the submission of a completed application as defined by PSC Staff. At Commission discretion, the application time period may be extended an additional ninety (90) Business days.
- 2.2.29 Material Change in Application Information. Applicants shall inform Staff of any material changes in any information submitted in the application that occur from the time the application is submitted to the time the Commission considers the application. The failure to provide such notice within ten (10) Business Days after the change may be grounds for rejection of the application.
- 2.2.30 Accuracy of Information. Failure to provide accurate and factual information, or the submission of false or misleading information, or the omission of material information in any communication with Staff or the Commission, may be grounds for rejection of the application. Nothing in this section shall preclude the Commission or the State of Delaware from undertaking any action to address the provision of false information in an application.
- 2.2.31 Terms of Electric Transmission Supplier Certificate are valid until revoked by the Commission or relinquished by the Applicant after the requisite notice to the Commission.
- 2.2.31.1 The transfer of an Electric Transmission Supplier Certificate to other than a Delaware approved Public Utility is prohibited. Any requested transfer to a Delaware approved Public Utility requires application, notice and approval of the Commission.
- 2.2.31.2 No Electric Transmission entity shall cease operation of its facilities within the State without providing at least sixty (60) days Written Notice to the Commission.
- 2.2.32 Revocation or Suspension. The Commission may, for good cause, undertake to suspend or revoke an Electric Transmission Supplier Certificate held by an Electric Transmission Utility. Good cause includes:

PROPOSED REGULATIONS

- 2.2.32.1 Material noncompliance by the holder of the Certificate with any conditions imposed by the Commission or any Commission order or rule; or
- 2.2.32.2 A finding by the Commission that the holder of the Certificate failed in a material manner to provide safe, adequate and reliable transmission service; or
- 2.2.32.3 A finding by the Commission that the Certificate is resulting in material adverse impacts on the State's economy, ratepayers, health, safety, or welfare.

3.0 Reports to be Provided to the Commission and DPA

If an Applicant is granted an Electric Transmission Supplier Certificate, the Applicant shall provide semi-annual reports to the Commission and the DPA regarding the status of construction of the Applicant's projects in the State of Delaware until such projects are placed in service. Such updates shall include budgeted vs. actual costs and the expected in-service date of the project.

4.0 Other General Rules

These regulations shall not be construed to require any public utility to secure an Electric Transmission Supplier Certificate for any construction, modifications, upgrades, or extensions within the perimeter of any territory already served by it.

OFFICE OF THE STATE TREASURER DIVISION OF DEBT AND CASH MANAGEMENT

Statutory Authority: 29 Delaware Code, Section 2716 (29 Del.C. §2716)
1 DE Admin. Code 1201

PUBLIC NOTICE

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION

In accordance with the procedures set forth in 29 Del.C. Ch. 11, Subch. III, and 29 Del.C. Ch. 101, the Cash Management Policy Board (the "Board") is proposing to amend previously adopted regulations governing the deposit and investment of State funds, as permitted by 29 Del.C. §2716.¹

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

29 Del.C. §2716.

OTHER REGULATIONS AFFECTED

None.

HOW TO COMMENT ON THE PROPOSED REGULATION

Members of the public may receive a copy of the proposed regulations at no charge by U.S. Mail by writing or calling Mr. Stephen McVay at the Office of the State Treasurer, 820 Silver Lake Boulevard, Suite 100, Dover, DE 19904, (302) 672-6711. Members of the public may present written comments on the proposed regulations by submitting such written comments to Mr. Stephen McVay at the address above. Written comments must be received on or before May 2, 2018.

¹The Board believes that it has authority to promulgate deposit and investment policies for complying with the formal requirements of Delaware's Administrative Procedures Act, 29 Del.C. Ch. 101 (the "APA"). The Board is promulgating amended regulations under the APA out of an abundance of caution, consistent with prior practices.

SUMMARY OF PROPOSED REGULATION

The Board is authorized to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any State pension fund or the State deferred compensation program, and (b) to determine the terms, conditions, and other matters relating to those investments including the designation of permissible investments. See 29 **Del.C.** §2716(a). The regulations, among other things, require collateralization of State deposits and establish maturity restrictions for securities purchased with State funds. See 1 **DE Admin. Code** §1201. The proposed amendments modify existing collateralization requirements for depository banks and remove a seven-year cap on the maximum average maturity for reserve accounts managed by the State's investment managers. The regulations apply to and govern the conduct of depository banks, custodians and investment managers and will have no direct impact on individuals or businesses that do not serve in one of those capacities.

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

[http://regulations.delaware.gov/register/april2018/proposed/21 DE Reg 800RFA 04-01-18.pdf](http://regulations.delaware.gov/register/april2018/proposed/21%20DE%20Reg%20800RFA%2004-01-18.pdf)

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds (*Break in Continuity of Sections*)

5.0 Collection and Disbursement Accounts

- 5.1 **Investment Objectives.** The funds in the Collection and Disbursement Accounts must be immediately available to support the State's daily governmental programs and activities. The primary investment objectives are therefore safety and liquidity of such funds; return is a secondary priority. OST may, consistent with these investment objectives, minimize credit risk associated with demand deposit account balances at Cash Management Banks through same-day money market mutual fund sweep products in accordance with subsection 5.2.2 and/or banking services arrangements offering "daylight overdraft" or similar privileges. End-of-day ledger balances shall be fully secured as provided in subsection 5.2.
- 5.2 **Permissible Investments.** Cash Management Banks shall maintain State Funds in either collateralized demand deposit accounts or open-end money market mutual funds, in each case, subject to the provisions of subsections 5.2.1 and 5.2.2, respectively, in order to mitigate the risk of State Funds being exposed to the credit risk of such financial institution.
- 5.2.1 **Demand Deposit Accounts.** ~~State Funds held by Cash Management Banks in demand deposit accounts shall be collateralized by the pledge and transfer by such financial institution of one or more of following approved methods: (a) pledges of government securities that meet the definitions set out in subsections 6.3.1 and 6.3.2 ("Eligible Collateral") to a custody account held for the benefit of the State at a Federal Reserve Bank for the benefit of the State, or held by an independent trust company, bank or similar financial institution rated in the highest rating category by at least one Nationally Recognized Statistical Rating Organizations approved by OST ("NRSRO"); ("Fed Custody Account") (b) irrevocable standby letters of credit ("LOCs") issued by a Federal Home Loan Bank or financial institution rated in the highest rating category by at least one NRSRO; and (c) surety bonds issued by insurance companies rated in the highest rating category by at least one NRSRO (collectively, "Eligible Collateral"). The terms of any pledge or custody agreement, LOC, or surety bond shall be reviewed and approved by OST. The market-aggregate value of Eligible Collateral in a Fed Custody Account shall be set at a level equivalent to the highest daily intra-day shall equal or exceed the total average monthly closing ledger balances of State Funds held or expected to be held at such financial institution by Cash Management Banks during the prior month, plus such additional amount of Eligible Collateral as OST may request such bank require Cash Management Banks to pledge and transfer as may be required to ensure against volatility in daily balances provide to protect against volatility and ensure that all uninsured ledger balances are fully secured at the close of each business day. Eligible Collateral in the form of government securities shall be marked to market at the close of each business day using an independent pricing service. A Cash Management Bank may adjust collateral levels at a Fed Custody Account as frequently as may be required to comply with the substitute or reduce Eligible~~

PROPOSED REGULATIONS

~~Collateral provided that Eligible Collateral levels meet or exceed the foregoing requirements, so long as OST is shall be provided with same-day notice of any additions to or reductions such substitutions or reductions of Eligible Collateral in the Custody Account. In addition, a Cash Management Bank shall provide OST with a detailed report of the Eligible Collateral held in any Fed Custody Account by 5:00 P.M. on the close of each business day a custody account as requested by OST.~~

- 5.2.2 **Money Market Mutual Funds.** State Funds held by Cash Management Banks in money market mutual funds shall be invested solely in government securities that meet the definitions set out in subsections 6.3.1 and 6.3.2 and which are rated in the highest rating category by at least one ~~Nationally Recognized Statistical Rating Organization ("NRSRO" defined as Fitch, Moody's, Morningstar and S&P)~~ NRSRO.

(Break in Continuity of Sections)

7.0 Reserve Accounts

(Break in Continuity Within Section)

- 7.2 **Maturity Restrictions.** The maximum maturity for any investment of State Funds in the Reserve Accounts shall be ten years from the date of settlement; ~~provided that, the maximum average maturity of each account managed by a Reserve Manager shall be seven years.~~

(Break in Continuity of Sections)

10.0 Restrictions & Violations

(Break in Continuity Within Section)

- 10.5 **Mutual or Commingled Fund Exceptions to Guidelines.** The Board recognizes that (i) mutual funds and other types of commingled investment vehicles can provide, under some circumstances, lower costs and better diversification than can be obtained with a separately managed fund pursuing the same investment objectives and (ii) such funds cannot customize their investment policies to conform to the guidelines set out herein. In such cases, the policies of such funds shall supersede these guidelines and are exempt from the policies and restrictions specified herein.

Originally adopted January 18, 1982

Revised December 12, 2014

Revised August 12, 2015

Revised August 10, 2016

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

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(14 **Del.C.** §122(b))
14 **DE Admin. Code** 286

REGULATORY IMPLEMENTING ORDER

286 Application Fee For Educator Licensure

Background: Title 14 of the Delaware Administrative Code governs Department of Education matters. House Bill 51 (149th General Assembly), "An Act to Amend Title 14 of the Delaware Code Relating to Fees for Educators," was signed into law by the Governor on May 18, 2017 and became effective immediately. The Act amends 14 Delaware Code, Section 122(b)(27) and changes the terminology of "teacher" to "educator".

Under the provisions of 29 **Del.C.** §10113(b)(5), this regulation is being amended to make it consistent with the above described change in basic law and the amendments do not otherwise alter the substance of the regulation.

The amendments that the Department are making are exempt from the requirement of public notice and comment and are adopted informally pursuant to 29 **Del.C.** §10113(b)(5), because the changes in the existing regulation make it consistent with statutory law.

It is so ordered. This 15th day of March 2018.

Department of Education

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

Approved this 15th day March of 2018

286 Application Fee For Educator Licensure

1.0 Purpose

The purpose of this regulation is to comply with 14 **Del.C.** §122(b)(27) related to educator licensure. This regulation sets forth the rules and guidelines related to fees for educator licensure. Specifically, the Department of Education will implement a one-time, non-refundable fee of not more than \$100 for an educator's first application for licensure in Delaware. However, the fee shall be reimbursed for any applicant who becomes employed as a ~~teacher~~ an educator in a Delaware Public School. This application may be for an Initial, Continuing or Advanced License.

2.0 Definitions

"Advanced License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §121(c) and 14 **Del.C.** Ch. 12, subchapter II.

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

"Continuing License" means a license issued as part of the three tiered licensure system set forth in and 14 **Del.C.** §121(c) and 14 **Del.C.** Ch. 12, subchapter II.

"Department" means the Delaware Department of Education.

"Educator Licensure Application Fee" means the one-time, non-refundable fee of not more than \$100 an individual pays for a first educator license in Delaware.

"Eligible Educator for Reimbursement" or **"Eligible Educator"** means an educator who has paid the one-time \$100 educator licensure fee and who has become employed as a ~~teacher~~ an educator in a Delaware public school.

"Initial License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §121(c) and 14 **Del.C.** Ch. 12, subchapter II.

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

3.0 Application Process

3.1 Applicants seeking an educator licensure in Delaware shall:

- 3.1.1 Establish an online account in the electronic licensure and certification system in Delaware;
- 3.1.2 Submit official documents to the Department to support their application;
- 3.1.3 Pay a one-time, non-refundable \$100 application fee via debit or credit card through the electronic licensure and certification system when applying for an Initial, Continuing, or Advanced License; and
- 3.1.4 Meet all statutory and regulatory requirements.

3.2 An application will not be processed until all conditions of subsection 3.1 are met.

3.3 Submission of an online fee and application does not entitle the applicant to the requested license.

4.0 Exemptions From Application Fee

An applicant who is already licensed and certified in Delaware shall be exempt from the application fee.

5.0 Fee Payment and Collection

5.1 No installment or partial payments of the fee will be accepted. Only full payment of the fee, to be made as part of the online electronic application, is permitted.

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- 5.2 No appeals, exceptions, or waivers shall be granted for the fee.
- 5.3 All fees collected pursuant to this regulation shall be deposited in the General Fund, with the exception of \$90,000, which shall be retained annually by the Department in a special fund to be established for the sole purpose of reimbursing Eligible Educators.

6.0 Reimbursement

- 6.1 An Eligible Educator For Reimbursement shall receive a reimbursement of the one-time \$100 educator licensure fee. The reimbursement shall be processed by the Department of Education in coordination with the Division of Accounting for those Eligible Educators for Reimbursement identified November 1 and March 1 of each fiscal year.
- 6.2 Eligible Educators for Reimbursement shall receive their reimbursement check through either a direct deposit transaction or live check.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XXI CHIP Compliance with MHPAEA

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XXI CHIP Plan regarding MHPAEA specifically, to align the Delaware CHIP Plan with new Federal Requirements. 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 February 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 2, 2017 Delaware Health and Social Services/ Division of Medicaid and Medical Assistance proposes to amend Title XXI CHIP Plan sections 6.2, 8.2, 8.4, and 8.5 regarding MHPAEA specifically, to align the Delaware CHIP Plan with new Federal Requirements.

Background

The Centers for Medicare & Medicaid Services (CMS) issued a final rule that applies requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA) to Medicaid managed care organizations (MCOs), the Children's Health Insurance Program (CHIP), and Medicaid alternative benefit plans (ABPs). Delaware and its contracted Medicaid/CHIP MCOs were required to be in compliance with the final Medicaid/CHIP parity rule on or before October 2, 2017.

The State and its MCOs conducted a review of the State's Medicaid/CHIP delivery system to assess compliance with the final Medicaid/CHIP parity rule.

Additionally, CMS released a CHIP Plan template to document this compliance as it relates specifically to CHIP.

Statutory Authority

- Mental Health Parity and Addiction Equity Act (MHPAEA)
- Patient Protection and Affordable Care Act

Purpose

The purpose of this proposed regulation is to ensure that coverage provided to CHIP beneficiaries for mental health and substance use disorders be no more restrictive than coverage for medical/surgical conditions.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on March 2, 2018.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There will be no or minimal fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the February 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XXI CHIP Plan regarding MHPAEA specifically, to align the Delaware CHIP Plan with new Federal Requirements, is adopted and shall be final effective April 11, 2018.

Kara Odom Walker, MD, MPH, MSHS
DHSS Secretary
3/20/18

Final Regulation Text

The text for the four final regulations may be viewed here:

DMMA CHIP Reg 6.2 <http://regulations.delaware.gov/register/april2018/final/DMMA CHIP Reg 6.2.pdf>

Final text for the attachments may be viewed here:

<http://regulations.delaware.gov/register/april2018/final/DMMA CHIP Attachment 1.pdf>

<http://regulations.delaware.gov/register/april2018/final/DMMA CHIP Attachment 2.pdf>

<http://regulations.delaware.gov/register/april2018/final/DMMA CHIP Attachment 3.pdf>

<http://regulations.delaware.gov/register/april2018/final/DMMA CHIP Attachment 4.pdf>

DMMA CHIP Reg 8.2 <http://regulations.delaware.gov/register/april2018/final/DMMA CHIP Reg 8.2.pdf>

DMMA CHIP Reg 8.4 [http://regulations.delaware.gov/register/april2018/final/DMMA CHIP Reg 8.4.pdf](http://regulations.delaware.gov/register/april2018/final/DMMA%20CHIP%20Reg%208.4.pdf)
DMMA CHIP Reg 8.5 [http://regulations.delaware.gov/register/april2018/final/DMMA CHIP Reg 8.5.pdf](http://regulations.delaware.gov/register/april2018/final/DMMA%20CHIP%20Reg%208.5.pdf)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)v (16 **Del.C.** §122(3)v)
16 **DE Admin. Code** 4453

ORDER

4453 Cosmetology and Barbering

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Cosmetology and Barbering (4453). The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, § 122(v).

On September 1, 2017 (Volume 21, Issue 3), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 6, 2017, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period.

FINDINGS OF FACT:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Cosmetology and Barbering (4453) is adopted and shall become effective April 11, 2018, after publication of the final regulation in the Delaware *Register of Regulations*.

Kara Odom Walker, MD, MPH, MSHS
DHSS Cabinet Secretary
3/25/18

4453 Cosmetology and Barbering (Break in Continuity of Sections)

1.0 General Provisions

(Break in Continuity Within Section)

1.6 Effective Date. These Regulations are effective on ~~May 11, 2015~~ **April 11, 2018**.

***Please note that no additional changes were made to the regulation as originally proposed and published in the September 2017 issue of the *Register* at page 190 (21 DE Reg. 190). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

4453 Cosmetology and Barbering

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11002.4 &11004

ORDER

Child Care Assistance

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual regarding Child Care Assistance specifically, *to clarify policy related to determination of eligibility*. 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 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2018, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after April 11, 2018, Delaware Health and Social Services/Division of Social Services proposes to amend sections 11004 and 11002.4 of the Division of Social Services Manual to clarify policy related to determination of eligibility.

Statutory Authority

- Child Care Development Fund (CCDF)
- CFR 98.40 - Child Care Development Block Grant

Background

The policy has been amended to explain eligibility criteria for child care in text that will be understandable, and the focus is on eligibility of the child and the parent/caretaker. The amended policy removed information that referenced the Personal Responsibility and Work Opportunity Act of 1996 and the listing of the different child care categories, as this information is not relevant to determination of eligibility.

Purpose

The purpose of this proposed regulation is to clarify policy related to determination of eligibility.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 2018.

Fiscal Impact Statement

This policy change is to clarify the text and formatting of the existing policy and to remove text that is no longer applicable. This policy is currently in place and there are no new financial responsibilities.

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: One commenter was concerned that current regulations do not take into consideration the eligibility status of full-time students.

Agency Response: Child care policy establishes guidelines for all families that apply for assistance. The goal of the Child Care Subsidy Program is to assist families who are unable to pay a part or the full cost of child care. The child care policies currently in place do address education. In order to qualify for child care assistance while

obtaining an education, families need to comply with one of the DSS employment and training vendors under the Temporary Assistance for Needy Families (TANF) Program or the Supplemental Nutrition Assistance Program (SNAP).

No changes were made to the regulation as a result of this comments.

Comment: Another commenter had three separate comments.

First, "...the amendment of 11002.4... extends eligibility to children who are in need of protective services, homeless or in foster care; however, it is unclear whether this is irrespective of age or alien status. The regulation would benefit from language clarifying that this group of children is eligible irrespective of age or immigration status, if that is the case."

Agency Response: DSS appreciates your request for clarity regarding the section referencing children in need of protective care, children who are homeless, or in foster care. This section focuses on the eligibility of the children. The first section outlines age and immigration status, while the second section outlines different placement situations. Children would still need to meet the criteria in the first section in reference to their age and immigration status.

Second, Subsection 2 lists the eligibility requirements for parents and Caretakers which includes those who "report a special need". It might be beneficial to cross-reference the definition of "special need" in 11003.7.8.

Agency Response: The agency agrees and the policy was amended to add a cross-reference to policy 11003.7.8 under the "Related policies" section.

Third, "...the proposed language in paragraph 2 indicates that "Parents and caretakers who appears to be eligible may complete a formal application process". Unfortunately, case handlers make mistakes and potential applicants can be erroneously and unnecessarily discouraged from filing applications that would trigger a formal decision and a right to appeal. Some of the eligibility rules are complex (such as alien status) and some aspects of eligibility, such as having a special need, are subjective and not suitable for an informal decision by a case worker. Families who are told they probably not eligible by a case worker are not likely to pursue an application. The policy needlessly and unfairly skews the process against families.

These provisions violate due process requirements and also make erroneous denials of services much more likely. The Councils may wish to recommend that DSS revise the regulation to require an application be processed for each family that asks for services. This would be consistent with other benefits programs and also with due process requirements.

Agency Response: DSS encourages all Delaware residents to apply for available programs offered through the Division. During the interview process all applicants are screened. Case workers are trained to address individual needs and to advise families of any and all available services. The policy further explains the process the worker must take when reviewing informal inquiries leading into the application process.

DSS is pleased to provide the opportunity to receive public comments and appreciates the thoughtful input.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the January 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual regarding Child Care Assistance specifically, *to clarify policy related to determination of eligibility* is adopted and shall be final effective April 11, 2018.

Kara Odom Walker, MD, MPH, MSHS
DHSS Secretary
3/20/18

FINAL

11002.4 Determining Persons Eligible for Child Care Assistance

45 CFR 98.20

DSS provides child care services to eligible Delaware families with children who need child care ~~and who are under the age of 13, or children 13 through 18 years of age who are physically or mentally incapable of caring for themselves or who are in need of protective services.~~

Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, asylee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction. For more detailed child care policy on citizenship, aliens and refugee's see DSSM 3024, these policies apply to the Child Care Subsidy Program.

~~The Division can provide Child Care services for **eligible** families where there is at least one U.S. citizen, legal alien or qualified refugee in the family. If one member of the family is a U.S. citizen, legal alien or qualified refugee and he/she meets both technical and financial eligibility criteria, Child Care services can be provided. The Division will evaluate non-US citizen cases on an individual basis.~~

~~Non-US citizens referred to the Child Care Subsidy Program through the Division of Family Services, due to a protective need, are eligible to receive services regardless of their citizenship status.~~

~~This policy must also be read in accordance with Section 11003, Eligibility Requirements. DSS provides a guarantee for certain forms of Child Care (Categories 11, 12, and 21). This guarantee means that eligible families will receive child care services under these programs. Eligibility for other child care services (Categories 31, 41 and 51) does not come with this same guarantee. Funding for child care services in these programs is capped. Though families may have an eligible child for whom they need care, and though families may meet other requirements of need and income, this does not guarantee that DSS will provide child care. DSS reserves the right for its capped programs to limit, where appropriate, its child care services based on available resources and funding.~~

~~Eligible families generally include:~~

- ~~A. TANF recipients who work, attend school or are participating in TANF Employment and Training activities.~~
- ~~B. Families with low incomes, who work.~~
- ~~C. Families with low incomes who attend a job training or education program as defined in section 11002.9.~~
- ~~D. Families who receive Food Stamps and who must participate in E&T.~~
- ~~E. Families who receive or need to receive protective services through the Division of Family Services.~~
- ~~F. Eligible families with a special need (either a child or parent).~~

1. Eligibility Criteria for Children

- A. To be determined eligible for child care services, children must be:
 - Under 13 years of age or 13 through 18 years of age and physically or mentally incapable of self-care as determined by a medical professional, and
 - U.S. citizens or qualified aliens or non-U.S. citizens referred through the Division of Family Services.
- B. Children are also eligible for child care services if they are:
 - In need of protective services,
 - Homeless, or
 - In foster care or awaiting foster care placement.

2. Eligibility Criteria for Parents and Caretakers

- A. To be determined eligible for child care services, parents and caretakers must meet at least one of the following requirements:

- Participate in a TANF or Food Benefit Employment and Training program.
- Receive wages from employment.
- Attend approved job training or educational programs.
- Receive protective services from the Division of Family Services.
- Report a special need.

Related policies:

~~11003 Determining Technical Eligibility for Child Care Assistance~~ DSSM 11003, 11003.7.8]

FINAL

11004 ~~Application Processing~~ Applying for Child Care Assistance

45 CFR 98.1 (b) (1)

~~Any parent/caretaker who expresses a desire for child care services may apply by contacting a DSS office. The process to actually obtain child care services starts when parents/caretakers contact a Case Manager. Consider this an informal inquiry unless or until it results in the completion of a written application.~~

~~An informal inquiry typically involves a parent/ caretaker's phone call or unannounced child care office visit to seek information about eligibility for child care services. Process all informal inquiries by doing a simple review of the parent/caretaker's need in the creation of a child care case in the DCIS II Child Care Sub system. Following this simple screening, parents/caretakers are told they either appear eligible or ineligible for service. For those applicants who appear to be eligible, proceed with the formal application process, schedule an appointment or send them the application and outline the necessary information to be returned with the signed application. Case Managers will inform those parents/caretakers who do not appear eligible of their right to file a formal application if they still so choose.~~

~~During the informal process, no obligation exists to provide parents/caretakers with a written decision of the eligibility finding nor are parents/caretakers able to appeal an informal decision. In either case, however, Case Managers will always conduct or schedule a formal interview for parents/caretakers who appear eligible or those who assert their right to make a formal request.~~

~~The formal application process is detailed below, including the requirements for authorizing child care services, the minimum requirements for verifying eligibility information, the standards for determining child care fees, and conditions for when and why a child care case should either continue or close.~~

Parents and caretakers who are interested in receiving child care assistance may inquire about services by contacting a DSS office.

1. Parents and caretakers may informally inquire about child care eligibility by contacting a DSS office by phone call or unannounced office visit.

2. Each informal inquiry for child care services will be reviewed by a DSS eligibility case worker at the time of inquiry. Parents and caretakers who appear to be eligible may complete the formal application process on the same day as the informal inquiry.

3. Eligibility case workers who are assessing informal child care inquiries shall:

- Review each applicant's need for child care based on the information that the applicant provides.
- Review current case information in ASSIST Worker Web (AWW), if applicable.
- Notify parents and caretakers whether they are potentially eligible for services. A written decision is not required for an informal inquiry.
- Inform all parents and caretakers of their right to file a formal application.
- Proceed with the formal application process for potentially eligible parents and caretakers on the same day as the informal inquiry.
- Provide the applicant with Form 105 "Appointment and Request for Verification" when additional information is needed to complete the eligibility process.

FINAL REGULATIONS

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

2600 EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 **Del.C.** §2604(a)(1))
24 **DE Admin. Code** 2600

ORDER

2600 Examining Board of Physical Therapists and Athletic Trainers

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 23, 2018 at a regularly scheduled meeting of the Delaware Examining Board of Physical Therapists and Athletic Trainers ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

The Board proposed revisions to Section 9.0 to amend the requirements for physical therapist and physical therapist assistant applicants who were trained outside of the United States. Pursuant to the amendments, most such applicants will need to provide the Board with an evaluation of professional education and training prepared by a Board approved credentialing agency. For initial applicants, that is, applicants who are not applying by reciprocity, the evaluation must be based on the most recent Course Work Tool adopted by the Federation of State Boards of Physical Therapy. However, for applicants who are applying by reciprocity, the evaluation must be based on the Course Work Tool corresponding to the applicant's year of graduation. This change will facilitate licensure for applicants who were trained outside of the United States, but who have already been evaluated and licensed by another State. Where an applicant received a degree from a school accredited by an accrediting agency recognized by the Board, the school is considered equivalent to a domestic accredited school and the applicant is exempt from the requirement of evaluation by a credentialing agency. Finally, a new subsection 7.2 requires licensees to update addresses on a timely basis.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 21, Issue 7, on January 1, 2018. Notice of the January 23, 2018 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 February 7, 2018, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on February 27, 2018.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

There was no public comment presented in the form of testimony at the January 23, 2018 hearing. Further, no written comment was submitted either before the hearing or during the 15 day period following the hearing.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §2604(a)(1), the Board has the statutory authority to promulgate rules and regulations.

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations. There was no verbal testimony or written comment submitted. In these circumstances, the Board finds no reason to amend the rules and regulations as proposed.

Decision and Effective Date

The Board finds that the rules and regulations shall be adopted as final in the form set forth in Exhibit A attached hereto. These changes will become effective ten days following publication of this Final Order in the Delaware *Register of Regulations*.

Text and Citation

The exact text of the rules and regulations, as amended, is attached to this Final Order as Exhibit A.

IT IS SO ORDERED this 27th day of February, 2018 by the Delaware Examining Board of Physical Therapists and Athletic Trainers.

Robert Price, Professional Member, Chairperson (absent)	Joan Couch, Professional Member
Angela Smith, Professional Member, Vice Chairperson	Paul Schweizer, Professional Member
Kimberly Lewis, Professional Member, Secretary	Prameela Kaza, Public Member (absent)
Amy Blansfield, Professional Member (absent)	Andrea Godfrey, Public Member
Mary Mundrane-Zweiacher, Professional Member	Monique Johns, Public Member (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the January 2018 issue of the *Register* at page 556 (21 DE Reg. 556). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2600 Examining Board of Physical Therapists and Athletic Trainers

DIVISION OF PROFESSIONAL REGULATION

3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID DISPENSERS

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 **Del.C.** §3706(a)(1))
24 **DE Admin. Code** 3700

ORDER

3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 19, 2017 at a scheduled meeting of the Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("the Board") to receive comments regarding the Board's proposed revisions to its rules and regulations pertaining to telepractice.

The board first promulgated regulations addressing telepractice pursuant to proposed amendments published in the Delaware *Register of Regulations* on October 1, 2015. The hearing on these proposed regulations took place on November 17, 2015. After deliberations on January 19, 2016, the Board made substantive revisions to the proposed regulations. Specifically, the board amended the new Section 10.2.4.2 to specify that only initial evaluations must be performed face to face. The board also struck the last sentence of Section 10.1, which identified various forms of telepractice, as unnecessary. The remaining regulations were unchanged from the proposal published October 1, 2015.

A second public hearing took place on February 21, 2017 and the Board deliberated on March 21, 2017. Once again, the Board made substantive changes to the proposed rules and regulations. The Board decided to strike "only after an initial face to face evaluation," at the end of subsection 10.2.4.1, and subsection 10.2.4.2 in its entirety.

These proposed changes to the rules and regulation were originally published in the Delaware *Register of Regulations*, Volume 20, Issue 11 on May 1, 2017. The hearing was scheduled for June 20, 2017. However, the hearing was rescheduled to September 19, 2017, and notice of this hearing was published in the Delaware *Register of Regulations* on August 1, 2017. Notice of the September 19, 2017 hearing was also 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 October 4, 2017, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on October 17, 2017.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

Board Exhibit 3: Comments from Dr. Yell Inverso.

Board Exhibit 4: Comments from J. Heather Northam.

In addition, Dr. Inverso and Ms. Northam read their written comments to the Board. Both Dr. Inverso and Ms. Northam stated that they supported the proposed regulations.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §3706(a)(1), the Board has the statutory authority to promulgate rules and regulations.

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations. As noted, Dr. Inverso and Ms. Northam submitted written comments, which were marked as exhibits. Dr. Inverso, Director of the Nemours Center for Pediatric Communication, supported the proposed regulations, which would permit first audiological evaluations to be conducted by telemedicine. She noted that there is a significant need for access to audiological evaluations, and the new regulations should allow more children and adults to be able to receive these evaluations. Ms. Northam, speech therapist at the Nemours/A.I. DuPont Hospital for children commented that the new regulations would permit a licensed speech pathologist to make a determination as to whether an initial evaluation can be performed by telehealth. She further stated that speech pathologists are educated to make these types of decisions and should be afforded the opportunity to do so. Allowing initial evaluations to be performed by telehealth would increase access to services.

The Board finds that the proposed changes will not require licensees to perform evaluations by telehealth. The decision will be up to the clinician using her or his education, experience and professional judgment. Further, the proposed changes will increase access to needed speech and hearing services.

Decision and Effective Date

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

Text and Citation

The exact text of the rules and regulations, as amended, is attached to this Final Order as Exhibit A.

IT IS SO ORDERED this 20th day of February, 2018 by the Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.

Meredith Sullivan, Professional Member, President

Dr. Yell Inverso, Professional Member

Dr. Kiiijuana Cann, Professional Member

Tonya Coats, Professional Member

Natalie Sparks, Professional Member (absent)

Brian Whitaker, Public Member (dissenting)

***Please note that no changes were made to the regulation as originally proposed and published in the May 2017 issue of the *Register* at page 885 (20 DE Reg. 885). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

DIVISION OF PROFESSIONAL REGULATION 5300 BOARD OF MASSAGE AND BODYWORK

Statutory Authority: 24 Delaware Code, Section 5306(a)(1) (24 **Del.C.** §5306(a)(1))
24 **DE Admin. Code** 5300

ORDER

5300 Board of Massage and Bodywork

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 18, 2018 at a scheduled meeting of the Delaware Board of Massage and Bodywork ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

The proposed changes serve to implement recent amendments to the Board's Practice Act, Chapter 53 of Title 24 of the Delaware Code, which authorize the Board to regulate and license massage establishments. The new Section 12.0 sets forth licensure standards, application procedures, and advertising requirements. Section 12.0 also provides for inspection of any location representing itself as a place where massage and bodywork services will be offered and sets forth specific prohibitions against illegal activity at massage establishments. Together, Chapter 53 and the proposed rules and regulations serve the interests public protection and the protection of the individuals working at massage establishments.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 21, Issue 6, on December 1, 2017. Notice of the January 18, 2018 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 February 2, 2018, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on February 15, 2018.

Summary of the Evidence and Information Submitted

The following exhibits were made part of the record:

Exhibit 1: *News Journal* Affidavit of Publication.

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

Exhibit 3: January 12, 2018 letter from Laura Embleton, from Associated Bodywork & Massage Professionals ("ABMP").

Exhibit 4: January 18, 2018 letter from Christopher Asay.

Exhibit 5: Letter submitted January 25, 2018 from James Specker, from American Massage Therapy Association ("AMTA").

Exhibit 6: January 26, 2018 email from Barbara Williams.

Exhibit 7: January 31, 2018 letter from Joan Gennarini.

Exhibit 8: January 31, 2018 email from Linda Lowry.

Exhibit 9: February 1, 2018 email from Linda Lowry.

Exhibit 10: February 2, 2018 letter from Laura Embleton of ABMP.

In addition, testimony was presented at the January 18, 2018 hearing by Christopher Asay, Laura Embleton and Joan Gennarini.

Findings and Conclusions

Pursuant to 24 **Del.C.** §5306(a)(1), the Board has the statutory authority to promulgate rules and regulations. In addition, pursuant to 24 **Del.C.** §5306(a)(15), the Board has the authority to adopt rules and regulations "setting forth the requirements pertaining to the licensure, maintenance, and standards of massage establishments."

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's rules and regulations. In deliberations, the Board considered all comments presented by the public.

The Board addressed comments from Laura Embleton of ABMP. Ex. 3 and Ex. 10. Ms. Embleton objected to

the sexually explicit language included in Section 12.0, particularly the definition of "sexual activity" in subsection 12.1 and the prohibitions on attire in subsection 12.6.6. Ms. Embleton argued that the explicit language is demeaning to the profession of massage and bodywork and duplicative of licensee standards of conduct set forth in Section 11.0. For example, subsection 11.2.9 prohibits sexual intimacies during a professional relationship.

The Board disagreed with Ms. Embleton and concluded that, for ease of reference, all standards pertaining to massage establishments should be included in one regulation. Further, although Section 12.0 includes certain prohibitions set forth in Section 11.0, Section 12.0 is broader and more comprehensive. For example, subsection 12.7.1 provides that "[s]exual activity in a massage establishment is absolutely prohibited." In addition, the Board found that the explicit nature of certain language was necessary to close any loopholes and ensure that all inappropriate sexual conduct is captured by the regulations. The Board anticipated a scenario where, in the absence of the specifics in Section 12.0, a licensee will be able to argue that his or her conduct did not fall within the regulations' prohibitions. The Board declined to make the revisions requested by Ms. Embleton.

Ms. Embleton expressed concern regarding subsection 12.2.3, which provides that a "massage establishment license shall issue for a single, identified location." The Board verified that, as stated, a license will be required for each location, regardless of business ownership. Ms. Embleton also requested a possible tiered fee structure to assist practitioners with multiple practice locations. The Board noted that fees are determined by the Division of Professional Regulation ("Division") and are not a Board issue. Ms. Embleton also commented on subsection 12.2.4.2, which states that the Board *may* issue a temporary operating permit for up to ninety days pending disposition of the application. Ms. Embleton requested that the term "may" be changed to "shall" due to her concern that the Board might not be able to finalize applications and issue licenses within a 90 day period. Processing and issuance of licenses is a Division function. Further, the Board may delegate authority to the Division to issue licenses to facilitate and expedite the licensure process. The Board determined that Ms. Embleton's comments did not warrant a change to subsection 12.2.4.2.

Ms. Embleton requested revision to the waiver provision, subsection 12.11.1, which gives the Board discretion to grant a waiver of any of Section 12.0's requirements upon a showing of "extreme and undue hardship." Ms. Embleton suggested that the standard be "undue hardship" only. The Board found that requests for a waiver will be handled on a case by case basis and revision to the waiver provision is not warranted at this time. Ms. Embleton commented that fees are not specified in the proposed regulations. The Board noted that fee setting is a matter for the Division and, as a general matter, fees are not included in regulations.

Ms. Embleton inquired about HIPAA compliance and the required client intake forms, as set forth in subsection 12.6.5. The Board deferred discussion of HIPAA until later in deliberations. Ms. Embleton commented that some practitioners maintain records at home and asked whether inspectors will conduct unannounced inspections at their homes. Inspections will be conducted at massage establishments. The objective of inspections is to verify licensure and that the establishment is conducting a legitimate massage business and reviewing and copying client records will not be part of the inspection process.

The Board addressed comments from Christopher Asay pertaining to subsection 12.6.5, which sets forth the information to be included on the required client intake forms. Ex. 4. Mr. Asay requested striking of the "dated signatures" requirement on the basis that records may be maintained electronically. The Board declined to make this requested amendment on the basis that nothing in the subsection prohibits electronic signatures. Mr. Asay also raised the issue of a cap on the licensing fees and the Board noted once again that fees are an issue for the Division. Finally, in response to Mr. Asay's request that proposed public health regulations go through a notice and hearing process, the Board stated that the regulations in question were promulgated by the Division of Public Health, not the Board, but they would be published in the *Register of Regulations* at some time in the future.

Mr. Specker of AMTA objected to the definitions of "sexual activity" and "sexually oriented business" in subsection 12.1 and argued that these definitions are not necessary as they are duplicative of the standards set forth in Section 11.0. Having previously addressed this topic, the Board declined to make the requested revisions. Mr. Specker also presented the option of a tiered fee structure for practitioners with multiple locations. The Board noted once again that fees are a matter for the Division. Mr. Specker requested that, in subsection 12.2.4.2, pertaining to temporary permits, "may" be amended to "shall." This request was previously raised by Ms. Embleton and the Board noted that issuance of licenses may be delegated to the Division to facilitate and expedite the process. Mr. Specker also expressed concern regarding subsection 12.4.3, which states that a licensee may only serve as professional-in-charge for one establishment at any given time. Mr. Specker commented that he wanted to be sure that a waiver will be extended so that businesses with more than one location aren't limited. As noted, requests for a waiver will be determined on a case by case basis. Mr. Specker referenced a previous version of

subsection 12.6.5 regarding client records and questioned whether record maintenance would implicate HIPAA. The Board deferred a discussion of HIPAA for later in deliberations. Finally, Mr. Specker requested that "without notice" be stricken from subsection 12.9 regarding inspections. Because the term "without notice" is part of the statute, the Board doesn't have discretion to make the requested change. 24 **Del.C.** § 5321(a).

The Board considered Ms. Williams' email requesting that the Board keep the regulations as flexible and minimal as possible. Ex. 6. In particular, she requested that inspections be limited to a request to see licenses, to see a log of clients and client intake forms and determine if anyone is living on the premises. The Board found that Ms. Williams' comments did not warrant amendment to the proposed regulations.

The Board addressed Ms. Gennarini's comments, which were presented by testimony and in writing. Board Ex. 7. Ms. Gennarini questioned why cosmetology businesses offering massage services will not be required to hold massage establishment licenses. The Board noted that cosmetology shops are licensed and subject to inspection, and, therefore, another license requirement would be duplicative. Further, cosmetology shops are exempt from massage establishment licensing pursuant to 24 **Del.C.** §5302(4) as a "business establishment licensed pursuant to another chapter of this title." Ms. Gennarini repeated the concerns expressed by other commenters regarding the "sexual activity" definition and the attire requirements, concerns which the Board had already considered and determined did not warrant revisions to the proposed regulations.

Ms. Gennarini requested clarification of certain terms in the proposed regulations, specifically "corporate charter" and "explicitly communicate" as used in reference to advertising in subsection 12.8.3. The Board found that amendments to the regulations to define these terms are not warranted. Ms. Gennarini objected to subsection 12.6.5, pertaining to client records, as not reflecting prior committee discussions. The Board noted that the proposed regulations as published had been reviewed and approved at a Board meeting. With respect to Ms. Gennarini's concerns regarding subsection 12.8.1, which addresses the requirements for advertising, the Board found that all of the identified pieces of information, including establishment license number, are significant and needed on all forms of advertising, including business cards.

Ms. Gennarini requested amendment to subsection 12.9.2, which provides that an agent conducting an inspection "shall not interrupt an in-progress treatment session," to add "as indicated by signage on the door." The Board declined to make this change and found that subsection 12.9.2 is clear and offers protection to the individual receiving a massage. Ms. Gennarini expressed concern for practitioners who keep records at home and questioned whether home inspections would be conducted. The Board noted again that a home office is not a "massage establishment" and would not be subject to inspection. With respect to Ms. Gennarini's request that renewals for practitioner licenses and establishment licenses be staggered to alleviate the financial burden on practitioners, the Board noted that the renewal process is conducted by the Division, not the Board. Ms. Gennarini repeated a concern expressed by Ms. Embleton with respect to the term "extreme and undue hardship" in the waiver provision, subsection 12.11.1. The Board again declined to make the requested change.

The Board considered written comments submitted by Ms. Lowry. Ms. Lowry submitted two documents, Exhibits 8 and 9, which are virtually identical. The submissions consist of email exchanges between Ms. Lowry and Board Liaison Gina Bloom and Division Director David Mangler. The Board reviewed Exhibits 8 and 9 considered outstanding areas of concern expressed by Ms. Lowry.

Ms. Lowry's most significant concern appears to be Division inspectors' access to client records located at massage establishments. Ms. Lowry's concern is based on her assumption that massage and bodywork is "recognized as a Healthcare Profession in the State of Delaware." Exhibit 9. This assertion is based on the circumstance that, on the Division website, "Massage and Bodywork" is listed under "Health Care" rather than under "Commerce" or "Construction." Based on her assumption that massage and bodywork is a health care profession, Ms. Lowry argues that massage practitioners are required to comply with federal laws applicable to health care professionals and questioned whether Delaware law pertaining to massage establishments "supersede[s] Federal law in search and HIPPA [sic] protected records." Exhibit 9.

Ms. Lowry suggested that massage establishment licensing in Delaware may conflict with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The objective of HIPAA's Privacy Rule is to ensure that individuals' health information is protected while allowing access to health information needed to provide quality health care and protect the health and well-being of the public. "Summary of the HIPAA Privacy Rule" found at <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>. Delaware's massage establishment licensing scheme doesn't implicate HIPAA in that clients' health information isn't at issue.

Inspections of massage establishments are subject to the parameters of Chapter 53 of Title 24 of the Delaware Code. Specifically, as set forth in Section 5319, the objective of the establishment licensing is to ensure that

individuals providing services are licensed, are supervised by a licensee who is responsible for the establishment, and are working in a licensed location that is not being used as living quarters. The fact that client records exist are indicative of a legitimate business. There is no expression of legislative intent in the language of Chapter 53 to authorize Division agents to search through and read client records maintained by massage licensees.

Further, as a threshold matter, HIPAA's applicability to the practice of massage and bodywork is unclear. In addition, the protection afforded health information is not absolute and is subject to certain exceptions. For example, the "required by law" exception provides that a "covered entity" may disclose protected health information to the extent that such disclosure is required by law and the disclosure complies with and is limited to the requirements of such law. 45 C.F.R. 164.512(a). Consequently, any incidental access to client records during inspections would be authorized by Delaware law and would fall within the "required by law" exception. See *Ohio Legal Rights Service v. The Buckeye Ranch, Inc.*, 365 F. Supp. 2d 877, 889 (S.D. Ohio 2005) (applying "required by law" exception to permit access to health records).

In short, the Board finds that Ms. Lowry's concerns regarding the applicability of HIPAA to massage establishment licensing do not warrant amendments to the regulations as proposed.

Ms. Lowry expressed several other concerns in her emails. The Board found that those concerns were appropriately addressed by Mr. Mangler and there was no need to revise the regulations as proposed. Specifically, Ms. Lowry posed a question as to verification of inspectors' credentials at the time of inspection. Mr. Mangler explained that inspectors will present a law enforcement badge and a State-issued photo identification card. Ms. Lowry also inquired about streamlining of the application process. As explained by Mr. Mangler, processing applications is an operational function of the Division, and pursuant to 29 **Del.C.** §8735(w), the Board can delegate to the Division the authority to issue licenses administratively. ("Any board, commission, committee or council listed in subsection (a) of this section shall have the authority to delegate to the Director or his or her designee the authority to issue permits and licenses administratively using specific criteria agreed upon by each such entity and the Director"). The Board may also delegate the authority to grant waivers to the Division. Ms. Lowry further inquired as to how the public will be advised of the revocation of establishment licenses. As Mr. Mangler explained, this information will be available on the Board's website.

Ms. Lowry also objected to subsection 12.5 which sets forth permissible hours of operation, 7:00 a.m. - 9:00 p.m. She questioned why hours of operation aren't restricted for other professions regulated by the Division. As noted by Mr. Mangler, the Board has been legislatively directed to "establish by regulation the permissible operating hours of establishments, as well as the mechanisms to apply for a waiver." 24 **Del.C.** §5319(e). Subsection 12.11 sets forth the procedures for requesting a waiver. Further, in drafting Subsection 12.11, the Board did not contemplate that a licensee will be required to ask for a waiver for every massage that may take place outside of the prescribed time frame.

Finally, Ms. Lowry requested revisions to the Board's continuing education rules and regulations. These regulations are not at issue with respect to the proposed revisions under consideration, but will be considered by the Board at a later date.

The proposed regulations implement amendments to the Board's Practice Act, Chapter 53 of Title 24 of the Delaware Code, which went into effect on January 22, 2018. The statutory amendments provide a framework for licensure of massage establishments, set certain standards for the operation of these businesses and provide for inspections by agents of the Division. The Board met in subcommittee over several months to discuss and revise draft regulations. Members of the public attended and were able to participate in those subcommittee meetings. The draft regulations were amended to incorporate some of the comments from the public. During deliberations, the Board carefully considered and discussed the testimony and written comments from the public.

The Board appreciates the comments and concerns voiced by members of the public and remains open to further discussion about the important issues presented in the proposed regulations. However, the Board finds that the rules and regulations as proposed thoroughly and appropriately implement the amendments to Chapter 53 of Title 24 of the Delaware Code pertaining to massage establishment licensing and that further revision is not warranted at this time.

Decision and Effective Date

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

Text and Citation

The exact text of the rules and regulations, as amended, is attached to this Final Order as Exhibit A.

IT IS SO ORDERED this 15th day of March, 2018 by the Delaware Board of Massage and Bodywork.
Danielle DiFonzo, Professional Member, President Sandra Jachimowski, Professional Member
Jermaine Cannon, Professional Member (absent) Frank Beebe, Public Member
Kathy Sherwin, Public Member, Secretary (absent) Ethel Loesche, Public Member
Holly Overmyer, Professional Member

***Please note that no changes were made to the regulation as originally proposed and published in the December 2017 issue of the *Register* at page 487 (21 DE Reg. 487). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5300 Board of Massage and Bodywork

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

PUBLIC NOTICE

501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** 10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the "Lasix rules" thereby allowing rules more favorable to the welfare of the horse.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on January 16, 2018, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On February 20, 2018, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publicly noticed open meetings. Subsequent to a 30-day comment period from April 1 to May 1, 2018 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on May 8, 2018 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB May 1, 2018. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, April 19, 2018 at 5:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Reimbursement Methodology for FQHCs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the reimbursement methodology for Federally Qualified Health Centers (FQHCs), specifically, to align DMMA reimbursement policy with the costs of operating Delaware FQHCs.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on May 1, 2018. Please identify in the subject line: Reimbursement Methodology for FQHCs

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

DIVISION OF PUBLIC HEALTH

PUBLIC NOTICE

4471 Massage and Bodywork Facilities

The Division of Public Health, Department of Health and Social Services, is proposing new regulations for facilities that offer massage and body work services. The regulations are in response to the revisions to 24 **Del.C.**

§§5306(b) and 5314(b) which provide the Division of Public Health the authority to promulgate these regulations. On April 1, 2018, DPH plans to publish as proposed the new regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the April 1, 2018 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the DPH at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Elisabeth Scheneman by Friday, May 4, 2018, at:

Elisabeth Scheneman
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: elisabeth.scheneman@state.de.us
Phone: (302) 744-4951

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING PUBLIC NOTICE

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

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

- Using plain language throughout the regulation;
- Clarification regarding the requirement for lead-paint risk assessments for centers that were built before 1978, including abatement for lead-paint hazards;
- Radon testing, including mitigation if necessary,
- Air quality testing for centers located in building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Comprehensive background checks for applicants, licensees, staff members, and volunteers before being alone with children;
- Certified staff at all times to administer medications, as needed;
- Reasonable accommodations for children's medical needs, including administering non-intravenous medication; and
- Suspension and expulsion policies.

Requiring centers to be free of lead and radon hazards and the additional requirement for centers located in a building/structure that contains or contained a business that may result in unacceptable air quality to have the air quality tested protects children's health. Comprehensive background checks and suspension and expulsion policies are required to comply with the Child Development Block Grant Act of 2014. Lastly, by amending these regulations, the needs of children requiring medication (with parent/guardian permission) while in child care will be met, consistent with the principles of the Americans with Disabilities Act.

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them to the Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families, 3411 Silverside Road, Hagley Building, Wilmington, Delaware, 19810, Attention: Kelly McDowell or email them to Kelly McDowell at Kelly.McDowell@state.de.us by the close of business on May 31, 2018. Public hearings will be held in each county on the following dates: May 1, 2018, from 6:30 pm -7:30 pm, at the Bear Library, 101 Governor's Place, Bear, DE Room 1 A & B; April 30, 2018, from 6:30 pm -7:30 pm, at OCCL 821 Silver Lake Blvd. Dover, DE, and May 2, 2018, from 6:30 pm -7:30 pm, at the Milton Library 121 Union St. Milton, DE.

CALENDAR OF EVENTS/HEARING NOTICES

DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING
PUBLIC NOTICE

103 Regulations for Family and Large Family Child Care Homes

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

- Lead-paint risk assessments for family child care homes that were built before 1978, including abatement for lead-paint hazards;
- Radon testing for family and large family homes, including mitigation if necessary,
- Air quality testing for large family homes located in a commercially zoned building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Comprehensive background checks for applicants, licensees, adult household members, staff members, and volunteers;
- Qualified staff at all times to administer medications, as needed;
- Reasonable accommodations for children's medical needs, including administering non-intravenous medication; and
- Suspension and expulsion policies.

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

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them to the Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families, 3411 Silverside Road, Hagley Building, Wilmington, Delaware, 19810, Attention: Kelly McDowell or email them to Kelly McDowell at Kelly.McDowell@state.de.us by the close of business on May 31, 2018. Public hearings will be held in each county on the following dates: May 1, 2018, from 6:30 pm -7:30 pm, at the Bear Library, 101 Governor's Place, Bear, DE Room 1 A & B; April 30, 2018, from 6:30 pm -7:30 pm, at OCCL 821 Silver Lake Blvd. Dover, DE, and May 2, 2018, from 6:30 pm -7:30 pm, at the Milton Library 121 Union St. Milton, DE.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY
PROFESSIONALS
PUBLIC NOTICE

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with current law and remove outdated, redundant, and inconsistent provisions. The proposed regulations clarify what is acceptable supervision to the Board and creates regulations for licensed art therapists and licensed associate art therapists pursuant to 24 **Del.C.** §§3060-3064.

The Board will hold a public hearing on the proposed rule change on April 25, 2018 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Nicole Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until May 10, 2018.

PUBLIC SERVICE COMMISSION

PUBLIC NOTICE

3011 Rules for Certification of Electric Transmission Suppliers

In February 2018, the General Assembly passed, and the Governor enacted into law, the "House Bill 127," 81 Del. Laws ch. 205 (February 14, 2018). HB 127 amended Chapter 1, Subchapter II, Title 26 of the Delaware Code by adding "§203E Certificate of public convenience and necessity for new electric transmission utilities." Section 203E provides that no person or entity shall begin the business of an electric transmission utility providing transmission facilities, as defined in § 1001(26) of this title, without having first made application to and obtained from the Commission a certificate of public convenience and necessity ("CPCN") approving the person or entity as an electric transmission utility authorized to provide transmission facilities. The enactment of HB 127 recognized that, due to recent changes in federal law, certain new electric transmission utility projects will now be available to in-state and out-of-state entities. The goal of the HB 127 Act was to provide the Commission the necessary authority to determine whether to grant a CPCN for such projects. HB 127 provides factors the Commission shall consider in determining whether to grant an applicant's CPCN. The goal of HB 127 Act was to provide the Commission the necessary authority to determine whether to grant a CPCN such projects. HB 127 provides factors the Commission shall consider in determining whether to grant an applicant's CPCN.

HB 127 charges the Public Service Commission (the "Commission") with the duty to adopt various rules and regulations to implement the new CPCN statute and to protect the state ratepayers and the state from any impact on the State's economy and the benefits to the State's ratepayers and on the health, safety, and welfare of the general public. In accordance with various provisions added by the HB 127, the Commission Staff has proposed rules and regulations pertaining to:

(1) Whether PJM Interconnection, L.L.C. (or its successor) ("PJM") has selected the applicant to develop or own transmission facilities included in the regional transmission expansion plan approved through PJM's Federal Energy Regulatory Commission-approved developer qualification and competitive procurement process, or if such PJM approval has not occurred: (26 **Del.C.** §203E(b)(1))

- a. The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company (26 **Del.C.** §203E(b)(1)a.)
- b. The need for and impact of any transmission facilities proposed by the applicant on the safe, adequate, and reliable operation or delivery of electric supply services (26 **Del.C.** §203E(b)(1)b.); and
- c. The engineering and technical design of any transmission facilities proposed by the applicant (26 **Del.C.** §203E(b)(1)c.);

(2) The impact of granting the certificate of public convenience and necessity application on the State's economy and the benefits to the State's ratepayers (26 **Del.C.** §203E(b)(2)); and

(3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.

By PSC Order No. 9193 (March 13, 2018), the Commission opened this docket to solicit comments concerning these proposed rules and regulations. The Commission intends to adopt rules and regulations pertaining to the above topics prior to implementing the CPCN requirements set forth in 26 **Del.C.** §203E.

Copies of the proposed rules and regulations are not available in the Delaware *Register of Regulations* until April 1, 2018. You may obtain a copy of the proposed rules and regulations from the Commission at its Dover office at the address set out below during normal business hours. You may also obtain an electronic copy of the proposed rules and regulations by accessing the State of Delaware's Internet website at: <http://www.state.us.de.us/govern/agencies/pubservc/major/major1.htm>.

The Commission solicits suggestions, compilations of data, briefs, or other written materials concerning the proposed rules and regulations and any additional rules or regulations which may be necessary or desirable to implement the provisions of 26 **Del.C.** §203E. If you wish to submit such materials, you must e-mail such materials to Joseph DeLosa at Joseph.DeLosa@state.de.us on or before Tuesday, May 1, 2018. In addition, two (2) copies of all filed materials should be served upon the Division of the Public Advocate, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801.

The Commission Staff is available to answer any questions concerning this proceeding. The Commission's toll-free telephone number in Delaware is (800) 282-8574. You may also make inquiries by voice telephone at (302) 736-7500 or by Internet e-mail to Joseph.DeLosa@state.de.us.

OFFICE OF THE STATE TREASURER
DIVISION OF DEBT AND CASH MANAGEMENT
PUBLIC NOTICE

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

In accordance with the procedures set forth in 29 **Del.C.** Ch. 11, Subch. III, and 29 **Del.C.** Ch. 101, the Cash Management Policy Board (the "Board") is proposing to amend previously adopted regulations governing the deposit and investment of State funds, as permitted by 29 **Del.C.** §2716.

Members of the public may receive a copy of the proposed regulations at no charge by U.S. Mail by writing or calling Mr. Stephen McVay at the Office of the State Treasurer, 820 Silver Lake Boulevard, Suite 100, Dover, DE 19904, (302) 672-6711. Members of the public may present written comments on the proposed regulations by submitting such written comments to Mr. Stephen McVay at the address above. Written comments must be received on or before May 2, 2018.

The Board is authorized to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any State pension fund or the State deferred compensation program, and (b) to determine the terms, conditions, and other matters relating to those investments including the designation of permissible investments. See 29 **Del.C.** §2716(a). The regulations, among other things, require collateralization of State deposits and establish maturity restrictions for securities purchased with State funds. See 1 Del. Admin. Code §1201. The proposed amendments modify existing collateralization requirements for depository banks and remove a seven-year cap on the maximum average maturity for reserve accounts managed by the State's investment managers. The regulations apply to and govern the conduct of depository banks, custodians and investment managers and will have no direct impact on individuals or businesses that do not serve in one of those capacities.
