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# Delaware Register of Regulations

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Issue Date: August 1, 2010

Volume 14 - Issue 2, Pages 63 - 125

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## 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 July 15, 2010.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

- Governor's Executive Orders
  - Governor's Appointments
  - Agency Hearing and Meeting Notices
  - Other documents considered to be in the public interest.
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## CITATION TO THE DELAWARE REGISTER

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

13 **DE Reg.** 24-47 (07/01/09)

Refers to Volume 13, pages 24-47 of the *Delaware Register* issued on July 1, 2009.

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

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

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

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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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2307 Delaware Safe Routes to School Regulations.....	14 DE Reg. 56 (Final)
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**Symbol Key**

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

**Proposed Regulations**

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

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**DELAWARE RIVER BASIN COMMISSION****NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING****Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for Toxic Pollutants in the Delaware Estuary and Extend These Criteria to Delaware Bay**

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

**Summary:** The Delaware River Basin Commission (DRBC or “Commission”) will hold a public hearing to receive comments on proposed amendments to the Commission’s Water Quality Regulations, Water Code and Comprehensive Plan to update many of the Commission’s stream quality objectives (also called water quality criteria) for human health and aquatic life for toxic pollutants in the Delaware Estuary (DRBC Water Quality Zones 2 through 5) and to extend application of the criteria to Delaware Bay (DRBC Water Quality Zone 6). The proposed changes will bring the Commission’s criteria for toxic pollutants into conformity with current guidance published by the U.S. Environmental Protection Agency (EPA) and provide a more consistent regulatory framework for managing the tidal portion of the main stem Delaware River.

**Dates:** The public hearing will take place on Thursday, September 23 at 2:30 p.m. and will continue on that day until all those who wish to testify are afforded an opportunity to do so. Written comments will be accepted through 5:00 p.m. on Friday, October 1, 2010.

**Addresses:** The public hearing will take place in the Goddard Room at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission's Web site,



www.drbc.net. Please do not rely on Internet mapping services as they may not provide accurate directions to this location.

Written comments may be submitted by e-mail to [regs@drbc.state.nj.us](mailto:regs@drbc.state.nj.us); by fax to Regulations at 609-883-9522; by U.S. Mail to Regulations c/o Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by private mail carrier to Regulations c/o Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. In all cases, please include the commenter's name, address and affiliation if any in the comment and include "Water Quality Criteria" in the subject line.

**Further Information, Contact:** The current rule and the full text of the proposed amendments are posted on the Commission's Web site, [www.drbc.net](http://www.drbc.net), along with the report entitled "Water Quality Criteria for Toxic Pollutants for Zones 2-6 of the Delaware Estuary: Basis and Background Document" (DRBC, June 2010) and a set of PowerPoint slides presented to the Commission at the latter's public meeting on December 9, 2009 by the chair of the Commission's Toxics Advisory Committee. Hard copies of these materials may be obtained for the price of postage by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. For questions about the technical basis for the rule, please contact Dr. Ronald MacGillivray at 609-477-7252. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

### Supplemental Information:

*Background.* At the request of the states of Delaware, New Jersey and Pennsylvania, which border the Delaware Estuary (hereinafter, "the Estuary States"), the Commission in 1996 adopted water quality criteria for human health and aquatic life for Water Quality Zones 2 through 5 (Trenton, New Jersey to Delaware Bay) of the main stem Delaware River and the tidal portions of its tributaries for a set of pollutants that included the list of Priority Pollutants published by the EPA in accordance with section 307 of the federal Clean Water Act (CWA); other pollutants for which EPA had published national recommended criteria in accordance with section 304(a) of the CWA; and additional pollutants for which one or more of the Estuary States had adopted criteria. See 40 C.F.R. 401.15 (consisting of a list of 65 toxic pollutants, including categories of pollutants, for which effluent limitations are required in accordance with section 307(a)(1) of the Clean Water Act, 33 U.S.C. § 1317(a)(1)); Appendix A of 40 C.F.R. Part 423 (consisting of a list of 129 "Priority Pollutants," individual chemicals and forms of chemicals for which EPA has established national criteria); and 33 U.S.C. §1314(a) (providing for criteria development and publication by EPA).

Managing an interstate waterway that is simultaneously an industrial and commercial hub, a source of drinking water for urban and suburban populations in three states and a fragile tidal ecosystem is a complex task. After nearly fifteen years of applying uniform human health and aquatic life criteria in the Delaware Estuary, the Commission has determined that maintaining a uniform set of criteria in a single regulatory code is an essential predicate to measuring and managing the ecological health of this vital interstate resource.

Since 1996, EPA has updated its guidance for the development of human health water quality criteria and its list of national recommended water quality criteria for many toxic pollutants to reflect advances in scientific knowledge. Although the states have independently amended some of their criteria to conform to the current guidance and national recommended criteria, the Commission has not yet done so. The result is that many of DRBC's estuary toxics criteria are not currently consistent with state criteria, best available science, or current EPA guidance. Moreover, because the Bay and Estuary comprise a single tidal system in which each water quality zone is at times downstream and at times upstream of the adjacent zone or zones, regulators, dischargers and other stakeholders have determined that they are ill-served by excluding the Bay from application of uniform criteria in the Estuary. Amending the criteria at this time is necessary to restore consistency and fairness in the regulation of discharges, to facilitate coordination among state and federal programs and to continue to ensure that regulation of water quality in the shared interstate waters of the Estuary and Bay is based on the best science available.

The proposed amendments to the Commission's human health and aquatic life criteria for the Estuary and Bay were developed by the Commission's standing Toxics Advisory Committee (TAC), comprised of representatives of the four basin states – Delaware, New Jersey, New York and Pennsylvania – and members of the academic, agricultural, public health, industrial and municipal sectors and non-governmental environmental community. The TAC in 2007 adopted as its objectives (a) evaluating recent data and current methodologies for establishing water

quality criteria for toxic pollutants and (b) developing recommendations for revising the Commission's 1996 criteria to reflect current science and risk assessment procedures and provide for consistency across interstate waters. The TAC's recommendations were formally presented to the Commissioners at a public meeting on December 9, 2009 by then TAC chair, Christopher S. Crocket of the Philadelphia Water Department. Dr. Crockett's PowerPoint presentation is available on the Commission's website.

*No Change Proposed to Criteria for PCBs and Taste and Odor.* The amendments proposed by the Commission in this rulemaking do not include changes to the Commission's criteria for polychlorinated biphenyls (PCBs), currently listed in Table 6 (criteria for carcinogens) and Table 7 (criteria for systemic toxicants) of Article 3 of the Commission's Water Quality Regulations and Water Code, or to the criteria to protect the taste and odor of ingested water and fish, set forth in Table 4 of the same Article. The Commission initiated a separate rulemaking in August of 2009 to update its human health criteria for carcinogenic effects for PCBs in the Delaware Estuary (see 74 FR 41100). The comment period for that proposal ended on October 19, 2009 and the Commission has not yet approved a final rule. The current PCB criteria will continue in effect pending completion of the Commission's separate rulemaking for PCBs. The Commission's Toxics Advisory Committee has not yet taken up the matter of revisions to the criteria to protect taste and odor.

*Proposed Changes.* The Commission's criteria for human health and aquatic life in the Delaware Estuary are listed in tables 3, 5, 6 and 7 of section 3.30 "Interstate Streams – Tidal" of the Water Quality Regulations and Water Code. In addition to extending these criteria to Water Quality Zone 6, two major types of changes to the criteria are proposed: (1) compounds are proposed to be added to or deleted from the four tables and (2) numeric criteria for many of the compounds currently listed in the tables are proposed to be revised. In addition, to assist users sub-headings have been added for categories of pollutants (metals, pesticides, etc.) and the sequence of the parameters has been modified to arrange them within these categories. Minor changes for consistency in spelling and capitalization are also proposed. The additions, deletions and criteria changes are proposed in order to make the list of regulated compounds consistent with current EPA guidance and to ensure the criteria are uniform throughout the shared waters. The Basis and Background Document cited above sets forth in detail the policies and technical assumptions on which the TAC relied in developing the revised criteria.

The proposed changes to tables 3, 5, 6 and 7 are described briefly below:

For Table 3, "Maximum Contaminant Levels ["MCLs"] to be Applied as Human Health Stream Quality Objectives in Zones 2 and 3":

- Antimony, Cadmium, 1,2 – Dichloropropane, Ethylbenzene and 1,2,4 –Trichlorobenzene are proposed to be removed because the proposed updates to Table 7 (criteria for systemic toxicants) would establish DRBC criteria for these compounds more stringent than the MCLs.
- Nickel is proposed to be removed because the MCL for nickel was withdrawn by the EPA.
- Chromium (total) is proposed to be replaced by Chromium III for consistency with current EPA guidance.
- Current MCL values for Beryllium, Copper, Lead, alpha-BHC, beta-BHC, 2,4-Dichloro-phenoxyacetic acid (2,4-D), Methoxychlor, Toxaphene, Dioxin (2,3,7,8-TCDD), 2,4,5 – Trichloro-phenoxypropionic acid (2,4,5-TP-Silvex), Benzene, Carbon Tetrachloride, 1,2-Dichloroethane, 1,1-Dichloroethylene, Dichloromethane (methylene chloride), Tetrachloroethylene (PCE), Toluene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, Trichloroethylene, Vinyl Chloride, Benzo(a)pyrene, Asbestos, Bis(2-Ethylhexyl) Phthalate, Flouride, Nitrate, and Pentachlorophenol are proposed to be added because these MCL values were developed by EPA after 1996 in accordance with the Safe Drinking Water Act, 42 U.S.C.A. § 1412g-1(b).

As to Table 5, "Stream Quality Objectives for Toxic Pollutants for the Protection of Aquatic Life", Table 6, "Stream Quality Objectives for Carcinogens" and Table 7, "Stream Quality Objectives for Systemic Toxicants," nearly all of the freshwater and marine criteria are proposed to be updated to conform to current EPA guidance, resulting in minor changes in most instances and substantial changes in some. Most but not all of the proposed criteria are more stringent than the existing criteria.

Proposed changes to Table 6 (criteria for carcinogens) also include the following:

- Beryllium and 1,1 – Dichloroethene are proposed to be removed because EPA no longer lists these compounds as carcinogens.
- 1,1,1,2 – Tetrachloroethane is proposed to be removed because it is no longer recommended by the EPA for water quality criteria development.
- Arsenic, beta-BHC, N-Nitrosodi-N-butylamine, N-Nitrosodiethylamine, and N-Nitrosopyrrolidine are proposed to be added because EPA and an Estuary State have adopted criteria for them.
- Dinitrotoluene mixture (2, 4 & 2, 6) is proposed to be replaced by 2, 4-Dinitrotoluene to be consistent with current EPA guidance.
- Hexachlorobutadiene is proposed to be moved to Table 6 (criteria for carcinogens) from Table 7 because its toxicity is based on carcinogenicity.

Proposed changes to Table 7 (criteria for systemic toxicants) also include the following:

- 1,1,1,2 – Tetrachloroethane is proposed to be removed because it is no longer recommended by the EPA for water quality criteria development.
- Chromium (Total), Methylmercury, alpha-Endosulfan, beta-Endosulfan, Endosulfan Sulfate, Endrin Aldehyde, Benzene, 2-Chloronaphthalene, Cyanide, 2-Methyl-4,6-dinitrophenol, Pentachlorobenzene, 1,2,4,5-Tetrachloro-benzene, 2,4,5-Trichlorophenol, and Vinyl Chloride are proposed to be added to Table 7 because EPA and an Estuary State adopted criteria for them.
- DDT is proposed to be replaced with “DDT and Metabolites (DDD and DDE)” to conform to current EPA guidance relating to the systemic toxicity of DDT and its degradation products, DDD and DDE. DDT, DDD and DDE, which are also deemed to be carcinogens, continue to be listed individually in Table 6.
- Hexachlorobutadiene has been moved from Table 7 to Table 6 because its toxicity is based on carcinogenicity.
- The column identifying EPA classifications is proposed to be removed from Table 7 because this information is not needed for application of the criteria for systemic toxicants. Detailed information on derivation of the criteria, including EPA classifications, is presented in the Basis and Background Document posted on DRBC’s website.

*Extension of Criteria to Delaware Bay (Zone 6).* A new section 3.10.6 C.11. is proposed to be added to make tables 3 through 7 of Article 3 of the Water Quality Regulations and Water Code applicable to Water Quality Zone 6, Delaware Bay.

It is proposed to amend the Water Quality Regulations and Water Code as follows:

Material proposed to be added to the Water Code and Water Quality Regulations is printed in **bold face** and material proposed to be deleted is enclosed in brackets [ ] and printed in **bold face**. Asterisks indicate ellipsis of rule text retained without changes. Explanatory text is printed in ordinary style face and enclosed in brackets [ ].

Section 3.30 Interstate Streams – Tidal.

3.30.2 Zone 2.

[Amend Tables 3, 5, 6 and 7 following subsection 3.30.2 as indicated to update current criteria and remove and add compounds.]

**TABLE 3: MAXIMUM CONTAMINANT LEVELS TO BE APPLIED AS HUMAN HEALTH STREAM QUALITY OBJECTIVES IN ZONES 2 AND 3 OF THE DELAWARE RIVER ESTUARY.**

Parameter	Maximum Contaminant Level (µg/l)
<b>Metals</b>	

## PROPOSED REGULATIONS

<b>[Antimony]</b>	<b>[6]</b>
Arsenic	<b>[50] 10</b>
Barium	<b>[2.0 mg/l] 2000</b>
<b>Beryllium</b>	<b>4</b>
<b>[Cadmium]</b>	<b>[5]</b>
Chromium (trivalent) [(total)]	100
<b>Copper</b>	<b>1300</b>
<b>[Nickel]</b>	<b>[100]</b>
<b>Lead</b>	<b>15</b>
Selenium	50
<b>Pesticides/PCBs</b>	
<b>alpha-BHC</b>	<b>0.2</b>
<b>beta-BHC</b>	<b>0.2</b>
gamma - BHC (Lindane)	<b>[0.2] 2</b>
<b>2,4-Dichloro-phenoxyacetic acid (2,4-D)</b>	<b>70</b>
<b>Methoxychlor</b>	<b>40</b>
<b>Toxaphene</b>	<b>3</b>
<b>Dioxin (2,3,7,8-TCDD)</b>	<b>0.00003</b>
<b>2,4,5 Trichloro-phenoxypropionic acid (2,4,5-TP-Silvex)</b>	<b>50</b>
<b>Volatile Organic Compounds (VOCs)</b>	
<b>Benzene</b>	<b>5</b>
<b>Carbon Tetrachloride</b>	<b>5</b>
<b>1,2-Dichloroethane</b>	<b>5</b>
<b>1,1-Dichloroethylene</b>	<b>7</b>
<b>[1,2 - trans – Dichloroethene] 1,2 - trans - Dichloroethylene</b>	100
<b>Dichloromethane (methylene chloride)</b>	<b>5</b>
<b>[1,2 – Dichloropropane]</b>	<b>[5]</b>
<b>[Ethylbenzene]</b>	<b>[700]</b>
<b>Tetrachloroethylene (PCE)</b>	<b>5</b>
<b>Toluene</b>	<b>1000</b>
Total Trihalomethanes	<b>[100] 80</b>
<b>[1,2,4 – Trichlorobenzene]</b>	<b>[70]</b>

1,1,1-Trichloroethane	200
1,1,2-Trichloroethane	5
Trichloroethylene	5
Vinyl Chloride	2
Polycyclic Aromatic Hydrocarbons (PAHs)	
Benzo(a)Pyrene	0.2
Other Compounds	
Asbestos	7 million fibers/L
Bis(2-Ethylhexyl) Phthalate	6
Fluoride	4,000
Nitrate	10,000
Pentachlorophenol	1
Dioxin (2,3,7,8-TCDD)	0.00003

TABLE 5: STREAM QUALITY OBJECTIVES FOR TOXIC POLLUTANTS FOR THE PROTECTION OF AQUATIC LIFE IN THE DELAWARE RIVER ESTUARY.

Parameter	Freshwater Objectives (µg/l)		Marine Objectives (µg/l)	
	Acute	Chronic	Acute	Chronic
Metals [(Values indicated are total recoverable; See Section 3.10.3.C.2. for form of metal)]				
Aluminum <sup>a,b</sup>	750	87	[-] NA	[-] NA
Arsenic (trivalent) <sup>c</sup>	[360] 340	[190] 150	69	36
Cadmium <sup>c</sup>	$[e^{(1.128 \cdot \text{LN}(\text{Hardness}) - 3.828)}]$ 0.651*EXP(1.0166* LN(hardness)-3.924)	$[e^{(0.7852 \cdot \text{LN}(\text{Hardness}) - 3.49)}]$ 0.651*EXP(0.7409* LN(hardness)-4.719)	[43] 40	[9.3] 8.8
Chromium (trivalent) <sup>c</sup>	$[e^{(0.8190 \cdot \text{LN}(\text{Hardness}) + 3.688)}]$ 0.277*EXP(0.819* LN(hardness)+3.7256)	$[e^{(0.8190 \cdot \text{LN}(\text{Hardness}) + 1.561)}]$ 0.277*EXP(0.819* LN(hardness)+0.6848)	[-] NA	[-] NA
Chromium (hexavalent) <sup>c</sup>	16	11	1,100	50
Copper <sup>c</sup>	$[e^{(0.9422 \cdot \text{LN}(\text{Hardness}) - 1.464)}]$ 0.908*EXP(0.9422* LN(hardness)-1.7)	$[e^{(0.8545 \cdot \text{LN}(\text{Hardness}) - 1.465)}]$ 0.908*EXP(0.8545* LN(hardness)-1.702)	[5.3] 4.8	[3.4] 3.1
Lead <sup>c</sup>	[48] 38	[16] 5.4	[220] 210	[8.5] NA

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Mercury <sup>c</sup>	[2.4] 1.4	[0.012] 0.77	[2.1] 1.8	[0.025] 0.94
Nickel <sup>c</sup>	$[e^{(0.846 \cdot \text{LN}(\text{Hardness})+3.3612)}]$ 0.846*EXP(0.846* LN(hardness)+2.255)	$[e^{(0.846 \cdot \text{LN}(\text{Hardness})+1.1645)}]$ 0.846*EXP(0.846* LN(hardness)+0.0584)	[75] 64	[8.3] 22
Selenium <sup>a</sup>	20	5.0	[300] 290	71
Silver <sup>c</sup>	$[e^{(1.72 \cdot \text{LN}(\text{Hardness})-6.52)}]$ 0.85*EXP(1.72* LN(hardness)-6.59)	[-] NA	[2.3] 1.9	[-] NA
Zinc <sup>c</sup>	$[e^{(0.8473 \cdot \text{LN}(\text{Hardness})+0.8604)}]$ 0.95*EXP(0.8473* LN(hardness)+0.884)	$[e^{(0.8473 \cdot \text{LN}(\text{Hardness})+0.7614)}]$ 0.95*EXP(0.8473* LN(hardness)+0.884)	[95] 90	[86] 81
Pesticides/PCBs				
Aldrin	[1.5] 3	[-] NA	[0.65] 1.3	[-] NA
gamma - BHC (Lindane)	[1.0] 0.95	[0.08] NA	[0.08] 0.16	[-] NA
Chlordane	[1.2] 2.4	0.0043	[0.045] 0.09	0.004
Chlorpyrifos (Dursban)	0.083	0.041	0.011	0.0056
DDT and metabolites (DDE & DDD) <sup>d</sup>	[0.55] 1.1	0.001	[0.065] 0.13	0.001
Dieldrin	[1.25] 0.24	[0.0019] 0.056	[0.355] 0.71	0.0019
Endosulfan <sup>e</sup>	[0.11] 0.22	0.056	[0.017] 0.034	0.0087
Endrin	[0.09] 0.086	[0.0023] 0.036	[0.019] 0.037	0.0023
Heptachlor	[0.26] 0.52	0.0038	[0.027] 0.053	0.0036
<b>Heptachlor Epoxide</b>	<b>0.52</b>	<b>0.0038</b>	<b>0.053</b>	<b>0.0036</b>
Parathion	0.065	0.013	[-] NA	[-] NA
PCBs (Total)	1.0	0.014	5.0	0.03
Toxaphene	0.73	0.0002	0.21	0.0002
Other Compounds				
Cyanide (free) [(total)]	22	5.2	[1.0] 2.7	[-] 1
Pentachlorophenol	$e^{(1.005 \cdot \text{pH}-4.83)}$	$e^{(1.005 \cdot \text{pH}-5.29)}$	13	7.9
Indicator Parameters				

Whole Toxicity	Effluent	0.3 Toxic Units <sub>acute</sub>	1.0 Toxic Units <sub>chronic</sub>	0.3 TU <sub>a</sub>	1.0 TU <sub>c</sub>
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Footnotes to Table 5:

<sup>a</sup> Total recoverable criteria

<sup>b</sup> Aluminum criteria listed are restricted to waters with pH between 6.5 and 9.0.

<sup>c</sup> Dissolved criteria

<sup>d</sup> Criteria apply to DDT and its metabolites (i.e., the total concentration of DDT and its metabolites should not exceed this value).

<sup>e</sup> Values were derived from data for endosulfan and are most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.

Criteria for cadmium, chromium (trivalent), copper, nickel, silver and zinc are hardness-dependent and are expressed as the dissolved form (see Section 3.10.3.C.2. on form of metal).

**TABLE 6: STREAM QUALITY OBJECTIVES FOR CARCINOGENS FOR THE DELAWARE RIVER ESTUARY.**

PARAMETER	EPA class	FRESHWATER OBJECTIVES (µg/l)		MARINE OBJECTIVES (µg/l)
		FISH & WATER INGESTION	FISH INGESTION ONLY	FISH INGESTION ONLY
<b>Metals</b>				
<b>Arsenic</b>	<b>A</b>	<b>0.017</b>	<b>0.061</b>	<b>0.061</b>
<b>[Beryllium]</b>		<b>[0.00767]</b>	<b>[0.132]</b>	<b>[0.0232]</b>
<b>Pesticides/PCBs</b>				
Aldrin	B2	<b>[0.00189] 0.000049</b>	<b>[0.0226] 0.000050</b>	<b>[0.00397] 0.000050</b>
alpha – BHC	B2	<b>[0.00391] 0.0026</b>	<b>[0.0132] 0.0049</b>	<b>[0.00231] 0.0049</b>
<b>beta – BHC</b>	<b>C</b>	<b>0.0091</b>	<b>0.017</b>	<b>0.017</b>
Chlordane	B2	<b>[0.000575] 0.00080</b>	<b>[0.000588] 0.00081</b>	<b>[0.000104] 0.00081</b>
DDD	B2	<b>[0.00423] 0.00031</b>	<b>[0.00436] 0.00031</b>	<b>[0.000765] 0.00031</b>
DDE	B2	<b>[0.00554] 0.00022</b>	<b>[0.00585] 0.00022</b>	<b>[0.00103] 0.00022</b>
DDT	B2	<b>[0.000588] 0.00022</b>	<b>[0.000591] 0.00022</b>	<b>[0.000104] 0.00022</b>

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Dieldrin	B2	[0.000135] 0.000052	[0.000144] 0.000054	[0.0000253] 0.000054
Heptachlor	B2	[0.000208] 0.000079	[0.000214] 0.000079	[0.0000375] 0.000079
Heptachlor Epoxide	B2	[0.000198] 0.000039	[0.000208] 0.000039	[0.0000366] 0.000039
PCBs (Total)	B2	0.0000444	0.0000448	0.0000079
Toxaphene	B2	[0.000730] 0.00028	[0.000747] 0.00028	[0.000131] 0.00028
<b>Volatile Organic Compounds (VOCs)</b>				
Acrylonitrile	B1	[0.0591] 0.051	[0.665] 0.25	[0.117] 0.25
Benzene	A	[1.19] 0.61	[71.3] 14	[12.5] 14
Benzidine	A	[0.000118] 0.000086	[0.000535] 0.00020	[0.000094] 0.00020
Bromoform	B2	[4.31] 4.3	[164.0] 140	[28.9] 140
Bromodichloromethane	B2	[0.559] 0.55	[55.7] 17	[9.78] 17
Carbon Tetrachloride	B2	[0.254] 0.23	[4.42] 1.6	[0.776] 1.6
Chlorodibromomethane	C	[0.411] 0.40	[27.8] 13	[4.88] 13
Chloroform	B2	[5.67] 5.7	[471.0] 470	[82.7] 470
3,3 - Dichlorobenzidine	B2	[0.0386] 0.021	[0.0767] 0.028	[0.0135] 0.028
1,2 - Dichloroethane	B2	[0.383] 0.38	[98.6] 37	[17.3] 37
<b>[1,1 – Dichloroethene]</b>	C	<b>[0.0573]</b>	<b>[3.20]</b>	<b>[0.562]</b>
<b>1,2 - Dichloropropane</b>	<b>B2</b>	<b>0.50</b>	<b>15</b>	<b>15</b>
1,3 - Dichloropropene	B2	[87.0] 0.34	[14.1] 21	[2.48] 21
<b>Dichloromethane (Methylene chloride)</b>	B2	<b>[4.65] 5</b>	<b>[1,580] 590</b>	<b>[277] 590</b>
<b>[Tetrachloroethene] Tetrachloroethylene</b>	B2	<b>[0.80] 0.69</b>	<b>[8.85] 3.3</b>	<b>[1.55] 3.3</b>
<b>[1,1,1,2 – Tetrachloroethane]</b>	C	<b>[1.29]</b>	<b>[29.3]</b>	<b>[5.15]</b>
1,1,2,2 - Tetrachloroethane	C	[0.172] 0.17	[10.8] 4.0	[1.89] 4.0
1,1,2 - Trichloroethane	C	[0.605] 0.59	[41.6] 16	[7.31] 16
<b>[Trichloroethene] Trichloroethylene</b>	B2	<b>[2.70] 2.5</b>	<b>[80.7] 30</b>	<b>[14.2] 30</b>
Vinyl Chloride	A	[2.00] 0.025	[525.0] 2.4	[92.9] 2.4
<b>Polycyclic Aromatic Hydrocarbons (PAHs)</b>				
Benz[a]anthracene	B2	[0.00171] 0.0038	[0.00177] 0.18	[0.00031] 0.18



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Benzo[b]fluoranthene	B2	[0.000455] 0.038	[0.000460] 0.18	[0.000081]0.18
Benzo[k]fluoranthene	B2	[0.000280] 0.38	[0.000282] 1.8	[0.000049] 1.8
Benzo[a]pyrene	B2	[0.0000644] 0.0038	[0.0000653] 0.018	[0.0000115] 0.018
Chrysene	B2	[0.0214] 3.8	[0.0224] 18	[0.00394] 18
Dibenz[a,h]anthracene	B2	[0.0000552] 0.0038	[0.0000559] 0.018	[0.0000098] 0.018
Indeno[1,2,3-cd]pyrene	B2	[0.0000576] 0.038	[0.0000576] 0.18	[0.0000101] 0.18
<b>Other Compounds</b>				
Bis (2-chloroethyl) ether	B2	[0.0311] 0.03	[1.42] 0.53	[0.249] 0.53
Bis (2-ethylhexyl) phthalate	B2	[1.76] 1.2	[5.92] 2.2	[1.04] 2.2
<b>[Dinitrotoluene mixture (2,4 &amp; 2,6)] 2,4 - Dinitrotoluene</b>	B2	[17.3] 0.11	[1420] 3.4	[249] 3.4
1,2 - Diphenylhydrazine	B2	[0.0405] 0.036	[0.541] 0.2	[0.095] 0.2
Hexachlorobenzene	B2	[0.000748] 0.00028	[0.000775] 0.00029	[0.000136] 0.00029
<b>Hexachlorobutadiene</b>	C	[0.445] 0.44	[49.7] 18	[8.72] 18
Hexachloroethane	C	[1.95] 1.4	[8.85] 3.3	[1.56] 3.3
Isophorone	B2	[36.3] 35	[2590] 960	[455] 960
<b>N-Nitrosodi-N-butylamine</b>	<b>B2</b>	<b>0.0063</b>	<b>14</b>	<b>14</b>
N-Nitrosodi-N-methylamine	B2	[0.000686] 0.00069	[8.12] 3.0	[1.43] 3.0
<b>N-Nitrosodiethylamine</b>	<b>B2</b>	<b>0.0008</b>	<b>1.24</b>	<b>1.24</b>
N-Nitrosodi-N-phenylamine	B2	[4.95] 3.3	[16.2] 6	[2.84] 6
N-Nitrosodi-N-propylamine	B2	[0.00498] 0.0050	[1.51] 0.51	[0.265] 0.51
<b>N-Nitrosopyrrolidine</b>	<b>B2</b>	<b>0.016</b>	<b>34</b>	<b>34</b>
Pentachlorophenol	B2	[0.282] 0.27	[8.16] 3.0	[1.43] 3.0
Dioxin (2,3,7,8 – TCDD)	NA	[1.3 x 10 <sup>-8</sup> ] 0.000000005	[1.4 x 10 <sup>-8</sup> ] 0.0000000051	[2.4 x 10 <sup>-9</sup> ] 0.0000000051
2,4,6 - Trichlorophenol	B2	[2.14] 1.4	[6.53] 2.4	[1.15] 2.4

**TABLE 7: STREAM QUALITY OBJECTIVES FOR SYSTEMIC TOXICANTS FOR THE DELAWARE RIVER ESTUARY**

# PROPOSED REGULATIONS

PARAMETER	[EPA Class]	FRESHWATER OBJECTIVES (µg/l)		MARINE OBJECTIVES (µg/l)
		FISH & WATER INGESTION	FISH INGESTION ONLY	FISH INGESTION ONLY
<b>Metals</b>				
Antimony		[14.0] 5.6	[4,310] 640	[757] 640
Arsenic	[A]	[9.19] *	[73.4] NA	[12.9] NA
Beryllium	[B2]	[165] *	[2,830] 42	[498] 42
Cadmium		[14.5] 3.4	[84.1] 16	[14.8] 16
Chromium (trivalent)		[33,000] *	[673,000] 380,000	[118,000] 380,000
[Hexavalent] Chromium (hexavalent)	[A]	[166] 92	[3,370] NA	[591] NA
<b>Chromium (Total)</b>		NA	750	750
Mercury		[0.144] 0.050	[0.144] 0.051	[0.144] 0.051
<b>Methylmercury</b>		0.3 mg/kg fish tissue	0.3 mg/kg fish tissue	0.3 mg/kg fish tissue
Nickel		[607] 500	[4,580] 1,700	[805] 1,700
Selenium		[100] 170	[2,020] 4,200	[355] 4,200
Silver		[175] 170	[108,000] 40,000	[18,900] 40,000
Thallium		[1.70] 0.24	[6.20] 0.47	[1.10] 0.47
Zinc		[9110] 7,400	[68700] 26,000	[12100] 26,000
<b>Pesticides/PCBs</b>				
Aldrin	[B2]	[0.96] 0.025	[11.5] 0.025	[2.03] 0.025
gamma - BHC (Lindane)		[7.38] 0.98	[24.9] 1.8	[4.37] 1.8
Chlordane	[B2]	[0.0448] 0.14	[0.0458] 0.14	[0.00805] 0.14
<b>DDT and Metabolites (DDD and DDE)</b>	[B2]	[0.100] 0.037	[0.100] 0.037	[0.0176] 0.037
Dieldrin	[B2]	[0.108] 0.041	[0.115] 0.043	[0.020] 0.043
<b>[Endosulfan]</b>		[111]	[239]	[42.0]
<b>alpha -Endosulfan</b>		62	89	89

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<b>Beta- Endosulfan</b>		62	89	89
<b>Endosulfan Sulfate</b>		62	89	89
Endrin	[D]	[0.755] 0.059	[0.814] 0.060	[0.143] 0.060
<b>Endrin Aldehyde</b>		0.29	0.30	0.30
Heptachlor	[B2]	[0.337] 0.18	[0.344] 0.18	[0.060] 0.18
Heptachlor Epoxide	[B2]	[0.0234] 0.0046	[0.0246] 0.0046	[0.00433] 0.0046
Total PCBs	[B2]	0.00839	0.00849	0.00149
<b>Volatile Organic Compounds (VOCs)</b>				
Acrolein		[320] 6.1	[780] 9.3	[137] 9.3
<b>Benzene</b>		*	3,100	3,100
Bromoform	[B2]	[682] 650	[25,900] 9,600	[4,560]9,600
Bromodichloromethane	[B2]	[693] 680	[69,000] NA	[12,100] NA
Dibromochloromethane	[C]	[690] 680	[46,600] 21,000	[8,190] 21,000
Carbon Tetrachloride	[B2]	[23.1] *	[402] 150	[70.6] 150
Chloroform	[B2]	[346] 68	[28,700] 2,100	[5,050] 2,100
Chlorobenzene	[D]	[677] 130	[20,900] 1,600	[3,670] 1,600
<b>[1,1 – Dichloroethene] 1,1 - Dichloroethylene</b>	[C]	[309] *	[17,300] 7,100	[3,040] 7,100
<b>[1,2 - trans – Dichloroethene] 1,2 - trans - Dichloroethylene</b>		[696] 140	[136,000] 10,000	[23,900] 10,000
1,3 - Dichloropropene	[B2]	[10.4] 1,000	[1,690] 63,000	[297] 63,000
Ethylbenzene		[3,120] 530	[28,700] 2,100	[5,050] 2,100
Methyl Bromide		[49.0] 47	[N/A] 1,500	[N/A] 1,500
Methylene Chloride	[B2]	[2,090] *	[710,000] 260,000	[125,000] 260,000
1,1,2 – Trichloroethane	[C]	[138] *	[9,490] 3,600	[1,670] 3,600
<b>[Tetrachloroethene] Tetrachloroethylene</b>		[318] *	[3,520] 1,300	[618] 1,300
<b>[1,1,1,2 – Tetrachloroethane]</b>	[C]	[1,000]	[22,400]	[3,940]
Toluene		[6,760] 1,300	[201,000] 15,000	[35,400] 15,000
<b>Polycyclic Aromatic Hydrocarbons (PAHs)</b>				
Anthracene	[D]	[4,110] 8,300	[6,760] 40,000	[1,190] 40,000

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Fluoranthene		[296] 130	[375] 140	[65.8] 140
Fluorene	[D]	[730] 1,100	[1,530] 5,300	[268] 5,300
Pyrene	[D]	[228] 830	[291] 4,000	[51.1] 4,000
<b>Other Compounds</b>				
Acenaphthene		[1,180] 670	[2,670] 990	[469] 990
Benzidine	[A]	[81.8] 59	[369] 140	[64.9] 140
Bis (2-chloroisopropyl) ether		[1,390] 1,400	[174,000] 65,000	[30,600] 65,000
Bis (2-ethylhexyl) phthalate	[B2]	[492] *	[1,660] 620	[291] 620
Butylbenzyl phthalate	[C]	[298] 1,500	[520] 1,900	[91.4] 1,900
<b>2 - Chloronaphthalene</b>		1,000	1,600	1,600
2 - Chlorophenol		[122] 81	[402] 150	[70.6] 150
<b>Cyanide</b>		140	140	140
Dibutyl Phthalate	[D]	[2,710] 2,000	[12,100] 4,500	[2,130] 4,500
1,2 - Dichlorobenzene	[D]	[2,670] 420	[17,400] 1,300	[3,060] 1,300
1,3 - Dichlorobenzene	[D]	[414] 420	[3,510] 1,300	[617] 1,300
1,4 - Dichlorobenzene		[419] 63	[3,870] 190	[677] 190
2,4 - Dichlorophenol		[92.7] 77	[794] 290	[139] 290
Diethyl Phthalate	[D]	[22,600] 17,000	[118,000] 44,000	[20,700] 44,000
Dimethyl Phthalate	[D]	[313,000] 270,000	[2,990,000] 1,100,000	[526,000] 1,100,000
2,4 - Dimethylphenol		[536] 380	[2,300] 850	[403] 850
2,4 - Dinitrophenol		[70] 69	[14,300] 5,300	[2,500] 5,300
2,4 - Dinitrotoluene		[69.2] 68	[5670] 2,100	[996] 2,100
Hexachlorobenzene	[B2]	[0.958] 0.35	[0.991] 0.36	[0.174] 0.36
<b>[Hexachlorobutadiene]</b>	[C]	[69.4]	[7,750]	[1,360]
Hexachlorocyclopentadiene		[242] 40	[17,400] 1,100	[3,050] 1,100
Hexachloroethane	[C]	[27.3] 20	[124] 46	[21.7] 46
Isophorone	[C]	[6,900] 6,700	[492,000] 180,000	[86,400] 180,000
<b>2-Methyl-4,6-dinitrophenol</b>		13	280	280
Nitrobenzene	[D]	[17.3] 17	[1,860] 690	[327] 690

<b>Pentachlorobenzene</b>		<b>1.4</b>	<b>1.5</b>	<b>1.5</b>
Pentachlorophenol		[1,010] *	[29,400] 11,000	[5,160] 11,000
Phenol		[20,900] 10,000	[4,620,000] 860,000	[811,000] 860,000
<b>1,2,4,5-Tetrachlorobenzene</b>		<b>0.97</b>	<b>1.1</b>	<b>1.1</b>
1,2,4 - Trichlorobenzene	<b>[D]</b>	[255] 35	[945] 70	[166] 70
<b>2,4,5-Trichlorophenol</b>		<b>1,800</b>	<b>3,600</b>	<b>3,600</b>
<b>Vinyl Chloride</b>		*	<b>10,000</b>	<b>10,000</b>

\* The MCL for this compound applies in Zones 2 and 3 and is listed in Table 3. Objectives for "Fish Ingestion Only" listed for this compound apply in Zones 4, 5, and 6.

3.30.6 Zone 6.

[Add the following text immediately following sub-section 3.30.6 C.10. and preceding sub-section 3.30.6 D.]

11. Toxic Pollutants.

- a. Applicable criteria to protect the taste and odor of ingested water and fish are presented in Table 4.
- b. Applicable freshwater stream quality objectives for the protection of aquatic life are presented in Table 5.
- c. Applicable freshwater stream quality objectives for the protection of human health are presented in Tables 6 and 7.

Dated: July 8, 2010

PAMELA M. BUSH, ESQ., Commission Secretary

**DEPARTMENT OF EDUCATION  
PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))  
14 **DE Admin. Code** 1521

**1521 Elementary Teacher**

**Educational Impact Analysis Pursuant To 14 Del.C. Section 122(D)**

**A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1521 Elementary Teacher. It is necessary to amend this regulation in order to facilitate proper and current formatting trends. There

are no changes in certification requirements. This regulation sets forth the requirements for an Elementary Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, September 3, 2010 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

## C. Impact Criteria

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator 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 will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

## 1521 Elementary Teacher

### 4.0 Content

4.1 ~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Elementary Teacher (Grades K to 6).~~

**7-DE Reg. 775 (12/1/03)**

**7-DE Reg. 1747 (6/1/04)**

## 2-0 Definitions

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. §1202 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 Standards Board and approved by the State Board. The term ‘educator’ does not include substitute teachers.~~

~~“Examination of Content Knowledge” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.~~

~~“Fifteen (15) Credits or Their 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 apart from it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.~~

~~“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.~~

~~“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.~~

~~“NASDTEC” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.~~

~~“NCATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.~~

~~“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.~~

~~“State Board” means the State Board of Education of the State pursuant to 14 Del.C. §104.~~

~~“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.~~

~~7-DE Reg. 775 (12/1/03)~~

~~7-DE Reg. 1747 (6/1/04)~~

~~10-DE Reg. 100 (7/1/06)~~

## 3-0 Standard Certificate

The Department shall issue a Standard Certificate as an Elementary Teacher to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

- 3.1 ~~Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:~~
- 3.1.1 ~~Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or~~
  - 3.1.2 ~~Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Elementary Education; or~~
  - 3.1.3 ~~Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or~~
  - 3.1.4 ~~Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and~~
- 3.2 ~~For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or~~
- 3.3 ~~Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Elementary Education;~~
- 3.3.1 ~~The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, 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; or~~
- 3.4 ~~Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C §1203.~~

~~7-DE-Reg-775 (12/1/03)~~

~~7-DE-Reg-1747 (6/1/04)~~

#### **4.0 Multiple Certificates**

~~Educators may hold certificates in more than one area.~~

~~7-DE-Reg-775 (12/1/03)~~

~~10-DE-Reg-100 (7/1/06)~~

#### **5.0 Application Requirements**

~~An applicant for a Standard Certificate shall submit:~~

- 5.1 ~~Official transcripts; and~~
- 5.2 ~~Official scores on the Praxis II examination if applicable and available; or~~
- 5.3 ~~Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or~~
- 5.4 ~~An official copy of the out of state license or certification, if applicable.~~
- 5.5 ~~If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.~~

~~10-DE-Reg-100 (7/1/06)~~



## **6.0 Application Procedures for License Holders**

If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.

~~10 DE Reg. 100 (7/1/06)~~

## **7.0 Effect of Regulation**

This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.

~~10 DE Reg. 100 (7/1/06)~~

## **8.0 Validity of a Standard Certificate**

A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with ~~14 DE Admin. Code 1514~~. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

~~10 DE Reg. 100 (7/1/06)~~

## **9.0 Secretary of Education Review**

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

~~7 DE Reg. 775 (12/1/03)~~

~~7 DE Reg. 1747 (6/1/04)~~

~~10 DE Reg. 100 (7/1/06)~~

~~Renumbered effective 6/1/07 – see Conversion Table~~

## **1.0 Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Elementary Teacher. This certification is required for grades K to 6.
- 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.

# PROPOSED REGULATIONS

## **2.0 Definitions**

The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

## **3.0 Standard Certificate**

3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an Elementary Teacher to an 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,

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.

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

Statutory Authority: 31 Delaware Code, Chapter 5, Section 512  
(16 **Del.C.**, Ch. 5, §512)

### **Combining §1915(c) Home and Community-Based Services Waivers**

#### **PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, and, in compliance with State Notice procedures as set forth in the Federal Register, September 27, 1994, the Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit an amendment to the Elderly and Disabled Waiver that combines three existing §1915(c) Home and Community-Based Services (HCBS) waivers into one HCBS waiver.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this waiver must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by August 31, 2010. A copy of the waiver amendment is available upon request by contacting Lisa Bond, Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) at (302) 255-9358.

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

#### **SUMMARY OF PROPOSAL**

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Elderly and Disabled (E & D) §1915(c) Home and Community-Based Services (HCBS) Waiver that combines three existing HCBS waivers into one waiver.

#### **Statutory Authority**

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §435.217, *Individuals receiving home and community-based services*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*

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## Background

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

## Summary of Proposal

The State of Delaware is requesting approval for an amendment to the Elderly and Disabled (E & D) Medicaid Waiver under authority of §1915(c) of the Social Security Act. The purpose of this amendment is to: 1) Consolidate three existing home and community-based waivers into one waiver; 2) Add participant direction opportunities to the E & D Waiver; 3) Make changes to personal care and respite service definitions and planned service units; 4) Make changes in the budget to reflect the waiver consolidation and service adjustments; 5) Update data sources used as part of the Quality Improvement Strategy; 6) Make miscellaneous adjustments to the narrative.

Specifically, the provisions of the proposed amendment:

### 1) Consolidate three existing home and community-based waivers into one waiver.

Currently, the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) administers and operates three waiver programs: the Elderly & Disabled (E & D) Waiver, the Assisted Living (AL) Waiver, and the Acquired Brain Injury (ABI) Waiver. Because many current services and service providers are shared across waivers, the consolidation of the three waiver programs into a single waiver will result in numerous efficiencies. The administration and operation of a single waiver, for example, will cut down on redundant administrative activities related to provider enrollment and monitoring, records management, reporting, financial tracking, and other functions. In addition, the streamlining will simplify choices for participants, and will allow for easier access to waiver services. Services currently provided as part of the AL and ABI waiver will be incorporated into the E & D waiver as part of this amendment. The AL and ABI Waiver will be discontinued, but this change will not result in the loss of service to persons currently receiving services under the AL or ABI Waiver, nor will it result in a loss of service to participants in the E & D Waiver. In recognition of the inclusion of participants currently served under the ABI waiver, the amendment specifies persons with acquired brain injury as part of the service population for the E & D waiver.

### 2. Add participant direction opportunities to the E & D Waiver.

This amendment includes the option for individuals who receive personal care services to choose between service delivery methods. Specifically, individuals can choose: a) participant-directed personal care services; b) agency-managed personal care services; or c) both participant-directed and agency-managed personal care services. Individuals who chose to direct their personal care services will have the full range of employer authority for personal care. As common-law employers, they will be able to hire, fire, train, schedule and direct the work of their personal care attendants. Participants will have the option of hiring relatives to serve as their personal care attendants, including, with certain safeguards in place, legally-responsible relatives. The state will contract with one or more vendors to provide Support for Participant Direction as an administrative function to assist participants in managing their responsibilities as employers. Support for Participant Direction vendor(s) will provide financial management services and information and assistance in support of participant direction (support brokerage).

### 3. Make changes to personal care and respite service definitions and planned service units.

Currently, except for a small number of respite care hours delivered in long-term care facilities, respite and personal care services under the E & D Waiver are virtually identical. Personal care and respite care (except, as noted above, respite care in long-term care facilities) are supportive services provided in the home of waiver participants. All providers of home-based respite care also provide personal care under the E & D Waiver. With this

amendment, personal care and respite services will continue to be available, but with certain changes. First, respite services will be available only in long-term care facilities (assisted living facilities and nursing homes) to provide temporary and short-term relief for caregivers. The financial resources that are currently used to provide in-home respite hours will be used instead to expand the availability of personal care hours. It is expected that this change will be virtually seamless for participants, since the current respite service providers also provide personal care services. It is expected that this consolidation of in-home care service hours will be simpler for participants to understand, and more efficient for agency staff to manage. Second, the waiver amendment will increase the number and type of entities that can provide personal care services. Personal care will be available as a participant-directed service provided by individual personal care attendants, as described above, or as a provider-managed service. Currently, only home health agencies can provide personal care services under the E & D Waiver. The amendment will allow Personal Assistance Services Agencies (PASA), licensed by the State of Delaware, in addition to home health agencies, to deliver provider-managed personal care under the waiver. It is expected that the addition of personal care attendants and licensed PASA agencies as waiver providers will afford participants more choice in providers for personal care services.

#### **4. Make changes in the budget to reflect the waiver consolidation and service adjustments.**

Factor D: Cost estimates for Year 1 are adjusted to reflect the most recent claims data for the E & D Waiver. Changes in Years 2-5 are made to account for the addition of services and participants from the ABI and AL Waivers (cognitive services, day habilitation, and assisted living). In addition, service amounts for respite services are reduced and those for personal care are increased as a result of service definition changes, as described above. Service unit costs for personal care services are adjusted to account for the inclusion of personal care attendants and PASA agencies as service providers. (Unit costs for personal care attendants and PASA agencies are projected to be lower than costs for home health agencies, currently the sole provider type for personal care services.) Year 2 costs are calculated to account for the fact that new services and participants will be introduced five months into the year. (Year 2 of the renewal period begins on 7/1/10 and the amendment will take effect on 12/1/10.) Service costs are calculated at the full annual amount beginning in Year 3. Factors D', G, and G': Adjustments to Factors D', G, and G' estimates are made based on utilization data for the combined waiver populations (E & D, AL, and ABI Waiver participants). Average length of stay: Adjustments are made to the average length of stay for each of the waiver years. The new figures are derived by weighting average utilization data from the three Waiver populations (E & D, AL, and ABI) and accounting for the partial-year enrollment of AL and ABI Waiver participants during Year 2.

#### **5. Update data sources used as part of the Quality Improvement Strategy.**

DSAAPD, in coordination with the Division of Medicaid and Medical Assistance (DMMA), has had the opportunity to refine its quality improvement strategy for the E & D Waiver, and in the process has developed new data collection and remediation tools, including the Initial Level of Care Review Tool, the Critical Event or Incident Report, and the Provider and Payment Oversight Report. In some cases, these new tools replace less effective data collection and reporting methods. For some performance measures, the collection and/or aggregation and analysis of data is changed from monthly to quarterly to reflect adjustments to the quality improvement strategy. These updates are included in the quality improvement sections of the affected appendices.

#### **6. Make miscellaneous adjustments to the narrative.**

A change was made to clarify language and create consistency within the document related to the number and type of participant contacts made by DSAAPD staff each year. Throughout the narrative, reference is made to the provider relations agent. Recently, the provider relations agent for Delaware underwent a corporate name change and is now known as HP Enterprise Services. This change was made throughout the document.

The waiver will be administered by the Division of Medicaid and Medical Assistance (DMMA), the State Medicaid agency, and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The proposed waiver period is July 1, 2009 through June 30, 2014.

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

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## Fiscal Impact Statement

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

\* **Please Note: The application is available in PDF format at the following link: [1915\(c\).pdf](#)**

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Chapter 5, §512  
(31 Del.C., Ch. 5, §512)

## DSSM: 3000 Technical Eligibility for Cash Assistance and 4000 Financial Responsibility

### PUBLIC NOTICE

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by Tuesday, August 31, 2010.

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 PROPOSED CHANGES

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's General Assistance (GA) and Temporary Assistance for Needy Families (TANF) programs. The impact of the proposed changes will be that children living in the home of a non-relative custodian or legal guardian will be technically eligible for the TANF program. These children will no longer be eligible to receive benefits through the GA program.

#### Statutory Authority

- 42 U.S.C. § 601(a)(1), Purpose, Increase flexibility of States
- 31 **Del.C.** §503(d), Eligibility for assistance; amount; method of payment - Aid to Families with Dependent Children;
- 31 **Del.C.** §505(1), Categories of Assistance - Aid to Families with Dependent Children;
- 31 **Del.C.** §505(2), Categories of Assistance - General Assistance;
- 31 **Del.C.** §512(1), Administration;
- 10 **Del.C.** §901(3), (6) and (12), Definitions - Care, Custody and Control; Custodian; Family

#### Summary of Proposed Changes

Children in the care of a non-relative adult will no longer receive cash assistance through the General Assistance program. These children will be eligible for cash assistance through the TANF program. The TANF program establishes additional expectations for the caregivers in these families including parenting classes,

cooperation with child support, child immunizations, and child school attendance requirements. Caretakers in these families may also access the work support programs available to needy caretakers. This change supports the goals of both family self-sufficiency and increased family functioning.

The proposed changes affect the following policy sections:

- DSSM: 3000, *Temporary Assistance for Needy Families (TANF) - Definition*;
- 3000.4, *TANF and State Only Foster Care* 3004, *Specified Relationship*;
- 3004.1, *Living in the Home*;
- 3010, *Participation and Cooperation in Developing CMR*;
- 3018, *General Assistance (GA)*;
- 3021, *Unrelated Children*;
- 3022, *Ineligibility Due to Family Cap*;
- 3027, *Age as a Condition of Eligibility*;
- 3027.2, *Minor Parents*;
- 3028.1, *Mandatory Composition of Assistance Units*;
- 3028.2, *Optional Composition of Assistance Units*;
- 4001, *Family Budget Group*;
- 4001.1, *Examples to Illustrate Rules Regarding Budget Groups*;
- 4004.3, *Earned Income Disregards in GA*;
- 4007.1, *Standards of Need/Payment Standard - GA*; and
- 4009, *Determining Financial Eligibility and Grant Amounts in GA*.

## DSS PROPOSED REGULATIONS #10-33

### REVISIONS:

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

**[DSSM: 3000 Technical Eligibility for Cash Assistance and 4000 Financial Responsibility](#)**

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311 & 7105 (18 Del.C. §§311, 7105)  
18 DE Admin. Code 1404

### 1404 Long-Term Care Insurance

#### PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 1404 relating to long-term care insurance. The docket number for this proposed amendment is 1377.

The purpose of the proposed amendment to regulation 1404 is to regulate rescission of long-term care insurance policies and update the existing regulation 1404. The text of the proposed amendment is reproduced in the August 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be

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received by the Department of Insurance no later than 4:00 p.m., Tuesday September 7, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

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

[1404 Long-Term Care Insurance](#)

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## DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION UNIT

Statutory Authority: 6 Delaware Code, Section 2432A(h) (6 **Del.C.**, §2432A(h))

### 102 Debt Management Services

#### PUBLIC NOTICE

The Attorney General in accordance with 6 **Del.C.** §2432(h) has proposed to adopt changes in the rules and regulations implementing the Delaware Uniform Debt Management Act in 6 **Del.C.** Ch. 24A (the "Act").

Rule 3.1.1 updates the phone number for the Consumer Protection Unit.

The change to Rule 4.2.4 insures that applicants will include relevant information about their insurance coverage.

New Rule 4.2.8.1 describes required content in an educational program.

New Rule 4.2.13 outlines the process for handling applications that do not initially meet the legal requirements by providing for closing a file administratively.

New Rule 5.3.8 provides for an affidavit with a renewal application to update the criminal history previously provided.

The changes in Rule 7.0 clarifies that administrative enforcement procedures are available under the Act for actions involving all providers of debt management services in Delaware and not just those that are licensed. A provider has 10 Days from the receipt of a preliminary order to request a hearing as provided in the law.

A public hearing will be held at 10:00 A.M. on September 9, 2010 in the Attorney General's conference on the 6th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, De 19801, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5th floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to receive written comments will be at the public hearing.

### 102 Debt Management Services

#### 1.0 Definitions

1.1 The following terms are defined in 6 **Del.C.** §2402A and have the same meaning when used in these rules.

“affiliate”

“agreement”

“bank”

“business address”

“certified counselor”

“Attorney General”  
 “Concessions”  
 “Day”  
 “Debt-management services”  
 “Entity”  
 “Good faith”  
 “Person”  
 “Plan”  
 “Principal amount of debt”  
 “Provider”  
 “Record”  
 “Settlement fee”  
 “Sign”  
 “State”  
 “Trust account”

1.2 The following terms used herein mean:

- 1.2.1 “**Accreditation**” means certified as meeting a prescribed standard.
- 1.2.2 “**Administrative Procedures Act**” or "APA" means 29 **Del.C.** Chapter 101.
- 1.2.3 “**Consumer Protection Unit**” or "Consumer Protection Division" means the section of the Department of Justice established under 29 **Del.C.** §2517.
- 1.2.4 “**Debt Management Services**” as defined in 6 **Del.C.** §2402(9) include, but are not limited to, debt negotiation and settlement.
- 1.2.5 “**Delaware Uniform Debt Management Services Act**” or "Act" means the provisions in Chapter 24A of Title 6 of the **Delaware Code**.
- 1.2.6 “**Director**” means the Deputy Attorney General assigned as head of the Consumer Protection Unit.
- 1.2.7 “**Hearing Officer**” means an attorney assigned to conduct an administrative hearing.

## 2.0 Applicability

- 2.1 A provider of debt management services is not required to be licensed under the Delaware Uniform Debt Management Services Act if the provider:
  - 2.1.1 has no reason to know the individual receiving services by agreement resides in Delaware; or
  - 2.1.2 receives no compensation from the individual receiving services or a creditor of that individual.
- 2.2 Debt management services do not include:
  - 2.2.1 legal services provided by an attorney authorized to practice law in Delaware and in an attorney-client relationship or
    - 2.2.1.1 The exclusion for legal services applies only when there is an attorney-client relationship. If an out of State firm is providing legal services in association with a licensed Delaware attorney, the Delaware attorney must be identified in the debt management agreement which shall include the Delaware attorney's address and phone number.
  - 2.2.2 accounting services provided by a certified public accountant licensed to provide accounting services in Delaware and in an accountant-client relationship.
  - 2.2.3 services provided within the scope of the business or profession by
    - 2.2.3.1 a judicial officer; or person acting under court or administrative order;
    - 2.2.3.2 an assignee for the benefit of creditors;
    - 2.2.3.3 a bank or government regulated bank affiliate;
    - 2.2.3.4 a title insurer, an escrow company, or a person providing bill paying services if the provision of debt-management services is incidental to the bill-paying services.



- 2.3 The person forming an agreement to provide debt management services and any person to whom the account is then transferred are providers subject to the provisions of the Act.

**11 DE Reg. 1062 (02/01/08)**

## 3.0 Administration

- 3.1 The Consumer Protection Unit of the Fraud and Consumer Protection Division is designated by the Attorney General to administer the Delaware Uniform Debt Management Services Act in Chapter 24A of Title 6 of the **Delaware Code**.
- 3.1.1 The address of the Consumer Protection Unit is 820 N. French St., Fifth Floor, Wilmington, DE 19801. The phone number is (302) 577-8600 or (800) 220-5454 5424 (in Delaware).
- 3.1.2 The address for the Attorney General on the internet is <http://attorneygeneral.delaware.gov>
- 3.1.3 Business hours are 8:30 to 5:00 p.m. Mondays through Fridays excluding legal State holidays as defined in 1 **Del.C.** §501.
- 3.2 Copies of the law and rules are available by contacting the office above or from the web site.
- 3.3 Applicants are required to read and comply with the law and the rules. The rules are intended to be explanatory and do not contain all of the details found in the law.

**11 DE Reg. 1062 (02/01/08)**

## 4.0 Applications

- 4.1 Applications for licensure shall be submitted on forms approved by the Director of the Consumer Protection Unit. Application forms will be mailed to an applicant upon request and are also available in person or through the web site at the addresses provided in Rule 3.1.
- 4.2 Applications must be complete before they are submitted for consideration. Incomplete applications may be denied or returned to the applicant. Applications shall include:
- 4.2.1 An audited review by a certified accountant of the applicant's financial statements for the two years preceding the application or the period of existence, whichever is less. 6 **Del.C.** §2406A (8).
- 4.2.2 At the applicant's expense, the results of a criminal history record check, including fingerprints, provided pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. §534) and 28 C.F.R. §50.12., conducted within the last 12 months for every officer of the applicant and every employee with access to the trust account.
- 4.2.2.1 The applicant may request sufficient fingerprint cards and authorization forms from the Consumer Protection Unit of the Delaware Attorney General's Office for the individuals needing criminal records checks. The cards can then be taken to a local law enforcement agency for fingerprinting. The completed cards and authorizations shall be returned to the Consumer Protection Unit for further processing by the Delaware Bureau of Identification.
- 4.2.2.2 The Delaware Bureau of Identification shall be the intermediary and the Office of the Attorney General of Delaware - Consumer Protection Unit shall be the screening point for the receipt of the federal criminal history records.
- 4.2.2.3 A license will not be denied based on the information contained in an FBI identification record until a person has a reasonable time to correct or complete the record, or has declined to do so. Procedures for obtaining a change, correction or updating an FBI identification record are set forth in 28 C.F.R. §50.12.
- 4.2.2.4 A criminal records check obtained for the purpose of doing business in any state, that was issued within the last 12 months and based on the fingerprints of the officer or person with access to the trust account, satisfies this requirement if the criminal records check is provided by the licensing state and received by that state from a central repository.
- 4.2.2.5 The criminal records check of an individual obtained for licensure in Delaware will be provided to another State regulator only with the express written consent of the individual.

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## PROPOSED REGULATIONS

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- 4.2.3 A corporate surety bond on the form provided in an amount of at least \$50,000 from a surety company authorized to do business in Delaware (or an irrevocable letter of credit with the consent of the Attorney General) as provided in 6 **Del.C.** §§2405A(b)(2), 2413A, and 2414A.
- 4.2.3.1 The amount of the bond may be required to be increased after consideration of the value of the applicant's business in Delaware and the balance of the trust account.
- 4.2.3.2 The term of the bond is continuous.
- 4.2.3.3 The bond shall run to the State for the benefit of the Attorney General and consumers injured by any wrongful act, omission, default, fraud or misrepresentation by the applicant.
- 4.2.3.4 If the bond is amended, the licensee shall provide an amended copy of the original security bond to the Director of the Consumer Protection Unit of the Attorney General's Office.
- 4.2.3.5 No cancellation of a bond by the surety shall be effective unless written notice of an intent to cancel is filed with the Director of the Consumer Protection Unit of the Attorney General's Office at least 30 days before the effective date of cancellation.
- 4.2.3.6 A surety company that receives a claim against the bond shall immediately notify the Director of the Consumer Protection Unit of the Attorney General's Office. No payment shall be made without the approval of the Director of the Consumer Protection Unit of the Attorney General's Office.
- 4.2.4 Evidence of insurance against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant in the amount of \$250,000. The evidence shall identify any exclusions from coverage and include all endorsements related to Delaware. 6 **Del.C.** §2405A(b)(4).
- 4.2.4.1 Insurer must be authorized to do business in the State of Delaware and be rated at least A by a nationally recognized rating organization.
- 4.2.4.2 The deductible shall be no greater than \$5,000.
- 4.2.4.3 The Attorney General shall be named as an interested party to receive timely notice of cancellation.
- 4.2.5 Identification of trust accounts and an irrevocable consent permitting the Attorney General and/or the designee(s) of the Attorney General to review and examine accounts. 6 **Del.C.** §§2405A(b)(3) and 2422A.
- 4.2.6 Evidence of accreditation by an independent accrediting organization approved by the Director of the Consumer Protection Unit of the Attorney General's Office that assures compliance with industry standards. A list of organizations that have been approved can be found on the website provided in Rule 3.1.2 or obtained by contacting the Consumer Protection Unit.
- 4.2.7 Documentation of counselor certifications or a statement that a counselor will become certified within 12 months of employment. Certification shall be by a bona fide third-party provider approved by the Director of the Consumer Protection Unit of the Attorney General's Office. Documentation can be in a log or other record of counselors, their certifications, and dates of certification. A list of organizations or programs that have been approved can be found on the website provided in Rule 3.1.2 or obtained by contacting the Consumer Protection Unit.
- 4.2.8 A description of the three most common educational programs provided for Delaware residents and a copy of the materials. 6 **Del.C.** §2406A(11).
- 4.2.8.1 An educational program must include material on financial literacy, personal finance, and budgeting.
- 4.2.9 A description of the financial analysis and initial budget plan including any form or electronic model used to evaluate the financial conditions of individuals. 6 **Del.C.** §2406A(2).
- 4.2.10 A copy of each form of agreement used with Delaware residents. 6 **Del.C.** §2406A(13).
- 4.2.11 A schedule of all fees, including any recommended donations, used with Delaware residents. 6 **Del.C.** §2406A(14).
- 4.2.11.1 If a plan contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge an initial fee of up to \$50 and a monthly

service fee not to exceed \$10 times the number of creditors in the plan when the fee is assessed, but not more than \$50 in any month.

4.2.11.2 If a plan or program contemplates settling a debt for less than the principal amount of the debt, the provider may charge a non-refundable initial fee that represents the value of obtaining a credit report and consultation.

4.2.11.2.1 Each plan or program payment may include a reasonable monthly service fee and must include an amount designated for the settlement fund to pay the creditors following a negotiated settlement.

4.2.11.2.2 The settlement fee, which represents the compensation for services in connection with settling a debt, paid to the provider cannot exceed 18% of the principal amount of the debt including the initial fee and monthly service fees.

4.2.11.2.3 The settlement fee may be collected in installments over the expected length of the program but in no event shall the final installment be due before the conclusion of the program either by termination or by settlement of all debts included in the program.

4.2.12 The application fee in the amount of \$2000. 6 **Del.C.** §2405A(b)(1).

4.2.13 An applicant submitting an application that does not satisfy the statutory or regulatory requirements may receive one or more deficiency letters and have an opportunity to submit additional or modified information. If there is no response to a deficiency letter within 90 days of its mailing, the application is incomplete and may be administratively closed after notice to the applicant. Any new application requires a new fee as provided in 4.1.12. Nothing herein shall impair the authority of the Director to deny an erroneous or incomplete application.

4.3 The Director of the Consumer Protection Unit:

4.3.1 will make a preliminary decision on a completed application within 120 days unless additional information is needed. In that case, the period is extended by 60 days.

4.3.2 may deny a license application for any of the reasons in 6 **Del.C.** §2409A(b) including:

4.3.2.1 the application contains information that is materially erroneous or incomplete;

4.3.2.2 an officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

4.3.2.3 the applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or

4.3.2.4 the Attorney General, or designee, finds that the financial responsibility experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this chapter.

4.3.3 shall deny a license as provided in 6 **Del.C.** §2409A(c) if no fee accompanies the application or if the Board of Directors of a not-for-profit or tax exempt applicant is not independent of the applicant's employees and agents.

4.4 An applicant must be notified in writing of a preliminary decision to deny the application within 7 days of the decision along with the reasons for the intended action. The notification must advise the applicant of the right to a hearing.

4.5 An applicant may request a hearing within twenty (20) days after receipt of the preliminary decision to deny the application.

4.5.1 If an applicant does not timely request a hearing, the preliminary decision is final.

4.5.2 A hearing will be scheduled upon timely request by the applicant as provided in Subchapter IV of the Administrative Procedures Act.

4.5.3 The Director, or an attorney designated by the Director, will serve as hearing officer after a preliminary decision to deny a license is made.

**11 DE Reg. 1062 (02/01/08)**

**5.0 Renewals**

- 5.1 Licenses shall expire one year following the date of issuance unless it is renewed as provided in 6 **Del.C.** §2411A.
- 5.2 Licensees are responsible for annual renewal whether or not a notice of renewal is received from the Consumer Protection Unit.
- 5.3 Renewal applications shall be on forms approved by the Director of the Consumer Protection Unit. The following shall be included with the completed renewal application form as described in the section of the Act indicated:
- 5.3.1 A non refundable fee of \$1000.00. 6 **Del.C.** 2411A §(b)(2).
- 5.3.2 Evidence of accreditation by an independent accrediting organization. 6 **Del.C.** 2411A §(b)(3).
- 5.3.3 Evidence of certification by applicants' counselors. 6 **Del.C.** 2411A §(b)(3).
- 5.3.4 A financial statement, audited by an accountant licensed to conduct audits, for the fiscal year immediately preceding the renewal application. 6 **Del.C.** §2411A(b)(3).
- 5.3.5 Evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily balance in the required trust account with terms consistent 6 **Del.C.** §2411A (b)(5). [See Rule 4.2.4.1 through 4.2.4.4]. The balance refers to the balance attributable to clients in Delaware whose money is deposited in the trust account.
- 5.3.6 A accounting of the total amount of money received by a licensee or its designee on behalf of individuals who resides in this State to pay creditors, and the amount distributed to each creditor in the 12 months immediately preceding the renewal application, if any. The distributions to creditors must be disclosed by licensees regardless of whether they receive payments or direct individuals to accumulate an account for debt settlement. 6 **Del.C.** §2411(a)(6).
- 5.3.7 If known to the licensee, the gross amount of money accumulated for settlements in the 12 months immediately preceding the renewal application pursuant to programs by or on behalf of individuals who reside in this State who are parties to agreements with the licensee. 6 **Del.C.** §2411A(a)(7).
- 5.3.8 A statement indicating the number of individuals who enrolled in debt management plans and the number of individuals who successfully completed debt management plans in the year preceding the renewal application.
- 5.3.9 An affidavit signed by any individual who has previously provided a criminal history check that reports any changes to his or her criminal history not included in the original record.
- 5.4 Applications for renewal must be filed with the Director of the Consumer Protection Unit no fewer than 30 days or more than 60 days before the expiration.
- 5.5 If a timely and complete application for renewal is filed, a license remains in effect until the licensee is advised of a preliminary decision to deny the application along with the reasons.
- 5.6 An applicant may make a request for a hearing within twenty (20) days after receipt of a preliminary decision to deny the renewal application pursuant to Subchapter IV of the Administrative Procedures Act. If no hearing is requested, the preliminary decision is final.
- 5.7 If a timely and complete application for renewal is not received in the Consumer Protection Unit by the expiration date of the license, the license is expired and the former licensee is prohibited from conducting business which requires a license for Debt Management Services in this State. The applicant may apply for a new license.

**11 DE Reg. 1062 (02/01/08)**

**6.0 Debt Management Services**

- 6.1 Before entering into an agreement for debt management services, a licensee must provide an itemized list of goods and services and disclose all fees as required under 6 **Del.C.** §2417A.
- 6.1.1 The list must be clear and conspicuous.
- 6.1.2 The list must be provided in a record the consumer may retain regardless of whether an agreement is reached for services.

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- 6.2 No debt management services may be furnished until a certified counselor conducts the education and financial analysis required, and prepare a suitable plan if appropriate, as provided in 2417A(a) and the consumer is
- 6.2.1 given a copy of the financial analysis and plan.
  - 6.2.2 informed in a record of the availability, at the consumer's option, of assistance by toll-free communication or in person to discuss the financial analysis.
  - 6.2.3 informed that some of the creditors, identified by the individual or known by the provider to be creditors of the individuals, may be unwilling to negotiate with the provider.
  - 6.2.4 given the separate disclosures required under 6 **Del.C.** §2417A(d).
- 6.3 A plan or program is suitable under 6 **Del.C.** §2417A(b)(3)(B) when, at a minimum, the provider determines:
- 6.3.1 for a plan that provides for payment of principal in full, that the individual has the ability to repay the debt but only after there are concessions by creditors.
  - 6.3.2 for a program that contemplates settling the debts of an individual for less than the principal amount owed, that the individual does not have the ability to satisfy creditors out of current income in a reasonable time even if the creditors made concessions other than reduction of principal.
- 6.4 Agreements must include the provisions required under 6 **Del.C.** §2419A.
- 6.4.1 Agreements must be accompanied by the "Notice of Right to Cancel" in bold-face type surrounded by bold black line as required under 6 **Del.C.** §2420A.
  - 6.4.2 Any agreement that does not comply with the law or rules is voidable.
  - 6.4.3 Agreements may be terminated as provided in 6 **Del.C.** §2426A.
  - 6.4.4 In a plan that provides for regular payments to creditors, the concessions that the provider believes may be offered by each creditor must be identified in the agreement. The concessions may include reduction in finance charge or interest, reduction or waiver of charges for late payment, default or delinquency. Concessions may also include more favorable terms on a judgment.
  - 6.4.5 An agreement may not:
    - 6.4.5.1 provide for the application of the law of a jurisdiction other than the United States and Delaware or
    - 6.4.5.2 limit or release the liability of any person for not performing the agreement or violating the law or
    - 6.4.5.3 indemnify any person for liability arising under the agreement or the law.
- 6.5 If an individual residing in Delaware is referred by a licensee to another provider of debt management services, e.g. a referral by a credit counseling company to a debt settlement company, then it is the responsibility of the referring licensee to insure that such referral is made to a provider who is licensed or exempt from licensure in Delaware. If referrals are made through links on a licensee's web page, then the page must disclose if the referral is to a provider that is not authorized to provide services in Delaware.
- 6.6 If a provider uses a third party to solicit or qualify individuals for debt management services, any fee paid by the individual to the third party is an indirect charge attributed to the provider in calculating the fees or charges permitted by the provider under the Act.
- 6.7 Advertising must comply with the provisions in 6 **Del.C.** §2430A and applies to any medium, e.g. print, broadcast, telecast, electronic, internet, or other.
- 6.7.1 "Easily comprehensible" as used in the §2430A means that type must be large enough, and a video ad must be on the screen long enough, to be read by an individual of average eyesight. An audio ad must be spoken slowly enough to be understood by a person of average hearing.
  - 6.7.2 A mere listing of the name, address, and phone number of a provider in a directory is not advertising under this section.

**11 DE Reg. 1062 (02/01/08)**

**7.0 Complaints**

- 7.1 Any person, including employees in the Consumer Protection Unit, may file a complaint against a licensee provider in writing on a form provided by the Consumer Protection Unit.
- 7.2 The Director may refer a completed and signed complaint to the Special Investigation Unit for investigation.
- 7.2.1 If, after review and/or investigation, there is insufficient evidence to support a finding the licensee provider is in violation of the Debt Management Services Act or the lawful rules promulgated under the Act, the Director may on his or her own accord dismiss the complaint.
- 7.2.2 If, after review and/or investigation, there is sufficient evidence to support a finding the licensee provider is in violation of the Debt Management Services Act or the lawful rules promulgated under the Act, the Director may
- 7.2.2.1 enter a preliminary order directed to a licensee to cease and desist from any violation, to correct a violation including providing restitution, and/or to pay a civil penalty as provided in 6 **Del.C.** §2433A;
- 7.2.2.2 enter a preliminary order suspending or revoking the license of licensee as provided in 6 **Del.C.** §2434A;
- 7.2.2.3 without entering a preliminary order, assign the matter to a Deputy Attorney General for preparation and prosecution of a formal complaint before a hearing officer;
- 7.2.2.4 impose civil penalties and/or recover costs of enforcement; or
- 7.2.2.5 proceed in any other manner permitted under the Act.
- 7.2.3 A licensee provider has twenty (20) days from receipt of a preliminary order in which to request a hearing before a hearing officer.
- 7.2.3.1 If no hearing is requested, the preliminary order becomes final.
- 7.2.3.2 If a hearing is requested, the matter will be assigned to a Deputy Attorney General as provided in 7.2.2.3.
- 7.2.4 When a hearing is requested following issuance of a preliminary order by the Director, enforcement is stayed pending a final determination by a hearing officer except in the case of an order issued with reference to 6 **Del.C.** §2433A(g)(2) or 2434A(c).
- 7.2.5 Any requested hearing will proceed as provided under the Administrative Procedures Act.

**8.0 Hearings**

- 8.1 All hearings are open to the public.
- 8.2 An individual may represent himself or herself in a hearing. An artificial entity shall be represented by an attorney authorized to practice law in Delaware.
- 8.2.1 Delaware Supreme Court Rule 72 is applicable to the admission of attorneys, who are not licensed in Delaware, *pro hac vice* before administrative agencies.
- 8.3 Testimony shall be under oath or affirmation.
- 8.4 The hearing officer shall preserve the record of the hearing including the pleadings and documentary evidence.
- 8.5 The hearing shall be recorded verbatim by a court reporter. The expense of preparing any transcript for any purpose, including an appeal, shall be borne by the person requesting it.
- 8.6 The Delaware Uniform Rules of Evidence will provide a reference for the hearing officer. However, the hearing officer may admit any evidence that reasonable and prudent individuals would commonly accept in the conduct of their affairs and give probative effect that evidence. Evidence may not be excluded solely on the ground that it is hearsay, but a decision may not be based solely on hearsay.

**9.0 Summary suspension.**

- 9.1 The Director of Consumer Protection, by designation of the Attorney General, may order a summary suspension of a license effective the date specified in the order as provided in 6 **Del.C.** §2434A (c).

**10.0 Appeals**

- 10.1 Judicial review of regulations is authorized under 29 **Del.C.** §10141.
- 10.2 Judicial review of case decisions is authorized under 29 **Del.C.** §10142.
- 10.3 There is no automatic stay of enforcement of a decision when an appeal is filed from the final order of the Director or hearing officer. The requirements for a stay of enforcement are provided in 29 **Del.C.** §10144.

**11.0 Trust Account**

- 11.1 All money provided to a licensee pursuant to a plan for distribution to creditors shall be deposited in a trust account within two (2) business days after receipt and distributed to creditors within eight (8) days.
- 11.2 The licensee shall maintain separate records for each individual.
- 11.3 Each trust account shall be reconciled at least once each month. The balance must at all time equal the sum of the balances of each individual's account.
- 11.4 If the agreement is terminated or the plan fails, the licensee shall return the funds remaining in the trust account, less fees permitted under the Act, to the individual client.
- 11.5 A licensee shall notify the Director of the Consumer Protection Unit of the Attorney General's Office before a trust account is moved and shall provide the name, address, and telephone number of the new bank along with the new account number.
- 11.6 A provider may not co-mingle funds of others with those being held in trust for participants of debt management plans. Interest payable on the account must be credited to the individual depositors and not to the provider except that such interest may be used to pay the fees of the financial institution related to the trust account.
- 11.7 A licensee shall comply with all provisions related to the trust account required by 6 **Del.C.** §2422A.

**11 DE Reg. 1062 (02/01/08)****12.0 Examinations**

- 12.1 An on-site examination of assets, securities, books, accounts, papers, and records of a licensee or affiliate can be conducted by an examiner designated by the Director with or without notice during regular business hours. The records shall document the information in 6 **Del.C.** §2427A including at least the following:
  - 12.1.1 A file for each consumer containing the preliminary financial analysis prepared for the consumer, the original agreement, the consumer's total income along with the debt balance, the monthly payment due each creditor, and copies of the periodic statements provided to the consumer.
  - 12.1.2 An activity record for each consumer including the account number, name, address, date of the agreement, total indebtedness, monthly receipts including the date of receipt, any fees charged, amounts disbursed to creditors including the payment date, and the estimated term of the agreement. The record shall also include any action taken to recover unpaid fees that may be owed by a consumer who has cancelled an agreement.
  - 12.1.3 In the case of a settlement with a creditor for less than the principal amount due, the record shall include the terms of the settlement, the amount owed at the time of an agreement, the amount of the settlement, and the calculation of a settlement fee.
  - 12.1.4 An alphabetical index of names, addresses, account numbers, date of agreement, and total indebtedness.
- 12.2 Any person who is connected or associated with the licensee may be examined, under oath, as to the facts and circumstances of any matter under examination.
- 12.3 A licensee shall pay all reasonably incurred fees, costs, and expenses directly related to an examination including travel expenses, lodging expenses, and a per diem for examiners. Payment shall be made within 10 days after receipt of a statement from the Director.

- 12.4 The Director may accept the report of a responsible supervisory agency from another state in lieu of an on-site examination.

**13.0 Miscellaneous**

- 13.1 Computation of time. In computing any period of time prescribed in or allowed by these Rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or State legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or State legal holiday. If service is made by mail, three days shall be added to the prescribed period for response.
- 13.2 A list of licensees is available upon request to the Consumer Protection Unit or online at the address in Rule 3.0.
- 13.3 A licensee shall notify the Director of the Consumer Protection Unit within 30 days of receipt of a notice of civil litigation filed by or on behalf of an individual who was residing in Delaware at the time an agreement for services was signed or at the time the notice was served.
- 13.4 A licensee shall notify the Director of the Consumer Protection Unit within 10 days after a change of information specified in 6 **Del.C.** §§2405A or 2406A.

**10 DE Reg. 1309 (02/01/07)**

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**2700 Board of Professional Land Surveyors**

Statutory Authority: 24 Delaware Code, Section 2706 (24 **Del.C.** §2706(a))  
**24 DE Admin. Code 2700**

**2700 Board of Registration for Professional Land Surveyors**

**PUBLIC NOTICE**

The Delaware Board of Professional Land Surveyors, pursuant to 24 **Del.C.** §2706(a)(1), proposes to revise Rule 12. The proposed revisions to Rule 12 are intended to revise the minimum technical standards for licensees, including changes to what are currently known as Mortgage Inspection Plans (MIPs), and clarify an issue regarding license reciprocity. This rule was previously advertised for revision in September of 2009. Following the public hearing on September 17, 2009, so many substantial changes were suggested and incorporated that the Board is publishing these revision for comment.

The Board will hold a public hearing on the proposed rule change on August 24, 2010 at 08:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to David Mangler, Executive Director of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

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

**2700 Board of Registration for Professional Land Surveyors**

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**Symbol Key**

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

**Final Regulations**

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

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

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

Statutory Authority: 14 Delaware Code, Section 122 (14 **Del.C.** §122)  
14 **DE Admin. Code** 920

**920 Educational Programs for English Language Learners (ELLs)****REGULATORY IMPLEMENTING ORDER****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELLs) by replacing Delaware Student Testing Program (DSTP) with Delaware Comprehensive Assessment System (DCAS). This regulation was reviewed as part of the 5 year review cycle.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 2, 2010, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the amendments.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELLs) in order to provide language that is consistent with the new state assessment system.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELLS). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELLS) attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELLS) hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELLS) amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELLS) in the Administrative Code of Regulations for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 20, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 20th day of July 2010.

**DEPARTMENT OF EDUCATION**

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 20<sup>th</sup> day of July 2010

**920 Educational Programs for English Language Learners (ELLS)**

This regulation shall apply to any district or charter school applying for or receiving funds to provide services or programs for English Language Learners (ELLS).

**1.0 Definitions**

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

**"Bilingual Programs"** Bilingual programs are programs that provide instruction using the student's native language and English across all subject areas or provide instruction in English across all subject areas with support in the native language.

**"English as a Second Language (ESL) Programs"** English as a Second Language Programs are programs providing instruction in English across all subject areas. This program takes into account the student's level of English proficiency and builds on the language skills and academic subject knowledge the student has acquired in his or her native language.

**"English Language Learners (ELLS)"** English Language Learners are students with limited English proficiency (also referred to as (LEP) Limited English Proficient Students). ELLs are individuals who, by reason of foreign birth or ancestry, speak a language other than English, and either comprehend, speak, read or write little or no English, or who have been identified as English Language Learners by

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a valid English language proficiency assessment approved by the Department of Education for use statewide.

## **2.0 Home Language Survey**

- 2.1 A home language survey or the questions contained in the survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent, guardian or Relative Caregiver the student's first acquired language and the language(s) spoken in the student's home or by the student.
- 2.2 Any student for whom a language other than English is reported on the home language survey or on the registration form as the student's first acquired language or as a language used in the student's home or by the student shall be administered an English language proficiency assessment. The assessment shall be conducted as soon as practicable, but not later than twenty five (25) school days after enrollment and shall be conducted by qualified personnel trained in the administration of the assessment instrument.
  - 2.2.1 The English language proficiency assessment shall be based on the English Language Proficiency Standards for English Language Learners K to 12 and shall assess listening, speaking, reading and writing. The assessment shall be validated for this purpose and approved by the Department of Education for use statewide.
  - 2.2.2 Any student who achieves a score on the English language proficiency assessment that is lower than the eligibility cut off score in listening, speaking, reading and writing established by the Department of Education shall be identified as an ELL and shall be entitled to a program of instruction for ELLs.

## **3.0 Programs of Instruction for ELLs**

- 3.1 Programs of instruction for ELLs shall include formal instruction in English language development; and instruction in academic subjects which is designed to provide ELLs with access to the regular curriculum. In selecting a program(s), each district shall choose programs that are research based and that have been demonstrated to be effective in the education of ELLs.
- 3.2 Programs shall be implemented consistent with the goal of prompt acquisition of full English proficiency. Programs shall include instruction in academic subjects which is equivalent in scope to the instruction that is provided to students who are not limited in English proficiency.
- 3.3 Instruction shall be delivered by individuals who meet Department of Education licensure and certification requirements and who are trained in the delivery of instruction to ELLs.
- 3.4 The student's parent, guardian or Relative Caregiver has a right to refuse placement of their child(ren) in either the Bilingual or the ESL program and also has the right to withdraw an identified student from either program. Parents, guardians or Relative Caregivers of eligible students who refuse placement of their student in either program or withdraw students from either program shall do so in writing.

## **4.0 English Language Proficiency Assessment**

- 4.1 Every student identified as an ELL will be administered an English language proficiency assessment annually.
- 4.2 Any student who achieves a score on the annual English language proficiency assessment that is higher than the eligibility cut off score in listening, speaking, reading and writing established by the Department of Education shall be transitioned as fully English proficient and placed in a regular classroom.
  - 4.2.1 For at least two school years following the identification of the student as fully English Proficient, the district or charter school shall monitor the academic performance of the student. Students who experience academic difficulty in the regular classroom during the transition period shall, based on further assessment re enter a Bilingual or ESL program or shall be provided with additional instructional services as necessary and appropriate.

**5.0 Annual Evaluation**

Each district and charter school receiving funds to provide services or programs for ELL's shall prepare an annual evaluation of its program(s). This evaluation shall be part of the district's annual evaluation process under and in compliance with the Consolidated Application.

**6.0 Data and Information Required**

Each district and charter school shall enter such data and information concerning ELLs as instructed by the Department of Education and as otherwise required by the Department into the statewide database.

**9 DE Reg. 398 (9/1/05)**

**7.0 Communication**

Each district and charter school shall ensure that communication with parents, guardians and Relative Caregivers, including notices of eligibility for programs for ELLs, notices about the student's educational performance and progress in such programs, and school information that is made available to other parents, guardians and Relative Caregivers shall be provided in English or to the extent practicable in a language the parent, guardian or Relative Caregiver can understand.

**9 DE Reg. 398 (9/1/05)**

**8.0 Inclusion in Delaware Student Testing Program**

ELLs and students transitioned as fully English proficient shall be included in the ~~Delaware Student Testing Program (DSTP)~~ Delaware Comprehensive Assessment System (DCAS) as provided for in the Department of Education document *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*, as the same may from time to time be amended hereafter.

**4 DE Reg. 467 (9/1/00)**

**9 DE Reg. 398 (9/1/05)**

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

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

**Non-Emergency Medical Transportation Services****ORDER****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding Non-Emergency Medical Transportation Services. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the June 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

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## SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan to implement the provisions of Section 6083 of the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) regarding Non-Emergency Medical Transportation Services.

### Statutory Authority

- Deficit Reduction Act (DRA) of 2005, Public Law 109-171, enacted on February 8, 2006
- 42 CFR §431.53, Assurance of transportation
- 42 CFR §440.170(a), Any other medical care or remedial care recognized under State law and specified by the Secretary (Transportation)
- 42 CFR §447.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates

### Background

Section 6083 of the DRA amends section 1902(a) of the Social Security Act by adding a new section 1902(a)(70) that provides States the authority to establish, under the State plan, a non-emergency medical transportation (NEMT) brokerage program.

Medicaid programs are federally required in their Title XIX Medicaid state plans to ensure necessary transportation to and from providers. Federal regulations, at both §§431.53 and 440.170(a), permit this coverage in either of two ways, at the state's discretion: 42 CFR §431.53 permits coverage as an administrative expense; 42 CFR §440.170 permits transportation coverage as a medical expense under its State Medicaid plan. Besides the differences in federal financial participation (FFP) for this service for some states (the medical expense is federally reimbursed higher), the most significant difference in these two alternatives is the amount of service coordination and management that is permitted by 42 CFR §431.53.

Prior to enactment of the DRA, when a State elected to provide transportation as medical assistance under its State plan, the State needed to receive a waiver under 1915(b) of the Act in order to institute a NEMT brokerage program.

The law has changed. States are no longer required to obtain a section 1915(b) waiver in order to provide NEMT as an optional medical service through a contracted broker. Under section 1902(a)(70), a State may now use a NEMT brokerage program when providing transportation as medical assistance under the State plan.

### Summary of Proposal

The Delaware Medical Assistance Program (DMAP) has a non-emergency medical transportation brokerage program in place as an "administrative service". This amendment establishes DMAP's non-emergency medical transportation brokerage program in the State's Title XIX state plan pursuant to Section 6083 of the Deficit Reduction Act of 2005. This approach will allow for coverage of non-emergency medical transportation through a contracted broker as a medical service comparable to other medical services DMAP covers such as physician and hospital care.

The proposed amendment simultaneously repeals State plan language relating to transportation cost-sharing for Medicaid recipients. There will be no client co-payment requirement for non-emergency medical transportation services.

An approved state plan amendment will allow DMAP to continue to utilize a transportation broker for meeting the non-emergency transportation needs of Medicaid recipients.

The provisions of this amendment are effective July 1, 2010 and subject to approval by the Centers for Medicare and Medicaid Services (CMS).

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following observation and endorsement summarized below. The Division of Medicaid and Medical Assistance (DMMA) considered the comment and responds as follows.

As background, DMMA adopted a transportation broker system in 2002 utilizing LogistiCare. It replaces a fee for service transportation system. This general model will continue under the new regulation. However, states have an option to fund transportation broker systems either as an "administrative expense" or a "medical expense". DMMA is proposing to change transportation from an "administrative expense" to a "medical expense" with two (2) positive results: 1) elimination of the beneficiary co-pay; and 2) State qualification for a higher federal reimbursement rate. SCPD endorses the proposed regulation since it will eliminate beneficiary co-pays and increase the federal reimbursement rate.

**Agency Response:** DMMA thanks the SCPD for their endorsement.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the June 2010 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Delaware's Title XIX Medicaid State Plan regarding Non-Emergency Medical Transportation Services is adopted and shall be final effective August 10, 2010.

Rita M. Landgraf, Secretary, DHSS

## DMMA FINAL ORDER REGULATION #10-35a

## REVISIONS:

Revision:CMS

OMB No.

ATTACHMENT 3.1-A

Page 9a

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory **DELAWARE**

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

24. Any other medical care and any other type of remedial care recognized under State law and specified by the Secretary.

a 1. Transportation (provided in accordance with 42 CFR 440.170 as an optional medical service).

No limitations  
With limitations

Non-emergency medical transportation is provided statewide through a brokerage program as an optional medical service in accordance with 1902(a)(70) of the Social Security Act and 42 CFR 440.170(a)(4) and all other requirements relating to Medicaid services.

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a 2. Brokered Transportation

Provided under section 1902(a)(70)

The State assures it has established a non-emergency medical transportation program in order to more cost-effectively provide transportation, and can document, upon request from CMS, that the transportation broker was procured in compliance with the requirements of 45 CFR 92.36 (b)-(f).

(1) The State will operate the broker program without the requirements of the following paragraphs of section 1902(a);

- (1) statewideness (indicate areas of State that are covered)
- (10)(B) comparability (indicate participating beneficiary groups)
- (23) freedom of choice (indicate mandatory population groups)

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Page 9a.1.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory **DELAWARE**

(2) Transportation services will include:

- wheelchair van
- taxi
- stretcher car
- bus passes
- tickets
- secured transportation
- such other transportation as the Secretary determines appropriate (please describe)

(3) The State assures that transportation services will be provided under contract with a broker who:

(i) is selected through a competitive bidding process based on the State's evaluation of the broker's experience, performance, references, resources, qualifications, and costs;

(ii) has oversight procedures to monitor beneficiary access and complaints and ensures that transport personnel are licensed, qualified, competent, and courteous;

(iii) is subject to regular auditing and oversight by the State in order to ensure the quality of the transportation services provided and the adequacy of beneficiary access to medical care and services;

(iv) complies with such requirements related to prohibitions on referrals and conflict of interest as the Secretary shall establish (based on prohibitions on physician referrals under section 1877 and such other prohibitions and requirements as the Secretary determines to be appropriate);

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Page 9a.2.

# FINAL REGULATIONS

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory **DELAWARE**

(4) The broker contract will provide transportation to the following categorically needy mandatory populations:

- Low-income families with children (section 1931)
- Poverty-level related pregnant women
- Poverty-level infants
- Poverty-level children 1 through 5
- Poverty-level children 6 - 19
- Qualified pregnant women AFDC-related
- Qualified children AFDC-related
- IV-E Federal foster care and adoption assistance children
- TMA recipients (due to employment)
- TMA recipients (due to child support)
- SSI recipients

(5) The broker contract will provide transportation to the following categorically needy optional populations:

- Optional poverty-level-related pregnant women
- Optional poverty-level-related infants
- Optional targeted low-income children
- Non IV-E individuals under 21 who are in foster care and who are under State adoption assistance agreements
- Individuals under 21 who are in foster care on their 18<sup>th</sup> birthday
- Individuals who meet income and resource requirements of AFDC or SSI
- Individuals who would meet the income & resource requirements of AFDC if child care costs were paid from earnings rather than by a State agency
- Individuals who would be eligible for AFDC if State plan had been as broad as allowed under Federal law
- Individuals who would be eligible for AFDC or SSI if they were not in a medical institution
- Individuals infected with TB
- Individuals screened for breast or cervical cancer by CDC program
- Individuals receiving COBRA continuation benefits
- Individuals in special income level group, in a medical institution for at least 30 consecutive days, with gross income not exceeding 300% of SSI income standard

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Page 9a.3.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory **DELAWARE**



- Individuals receiving home and community based waiver services who would only be eligible under State plan if in a medical institution
- Individuals terminally ill if in a medical institution and will receive hospice care
- Individuals aged or disabled with income not above 100% FPL
- Individuals receiving only an optional State supplement in a 209(b) State
- Individuals working disabled who buy into Medicaid (BBA working disabled group)
- Individuals working disabled who buy into Medicaid under TWWIIA Basic Coverage Group
- Employed medically improved individuals who buy into Medicaid under TWWIIA Medical Improvement Group
- Individuals disabled age 18 or younger who would require an institutional level of care (TEFRA 134 kids)

(6) The State will pay the contracted broker by the following method:

- (i) risk capitation
- (ii) non-risk capitation
- (iii) other (e.g., brokerage fee and direct payment to providers)

Effective Date:

DELAWARE will implement this State plan amendment on **July 1, 2010**.

## **DMMA FINAL ORDER REGULATION #10-35b**

### **REVISIONS:**

STATE PLAN UNDER TITLE XIX UNDER THE SOCIAL SECURITY ACT ESTABLISHMENT AND  
MAINTENANCE OF STATE AND FEDERAL STANDARDS  
STATE OF DELAWARE  
ATTACHMENT 3.1-D  
METHODS OF PROVIDING TRANSPORTATION

Transportation is covered as administrative service through a broker system provided statewide through a brokerage program as an optional medical service in accordance with 1902(a)(70) of the Social Security Act, 42 CFR 440.170(a)(4) and all other requirements relating to Medicaid services.

## **DMMA FINAL ORDER REGULATION #10-35c**

### **REVISIONS:**

ATTACHMENT 4.18-A

Page 1

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

A. The following charges are imposed on the categorically needy for services other than those provided under section 1905 (a) (1) through (5) and (7) of the Act:

# FINAL REGULATIONS

Service	Type of Charge			Amount and Basis for Determination										
	Deductible	Coinsurance	Co-payment											
1. Non-Emergency Medical Transportation	-0-	-0-	\$1.00 per one-way trip	1. This co-payment is effective October 1, 2002 and is based on the ranges specified in 42 CFR §§447.54 and 447.55.  2. This co-payment is effective January 10, 2005 and is based upon the cost of the drug as follows:										
2. Pharmacy	-0-	-0-	X											
				<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Medicaid Payment for the Drug</th> <th style="text-align: left;">Co-payment</th> </tr> </thead> <tbody> <tr> <td>\$10.00 or less</td> <td style="text-align: right;">\$ .50</td> </tr> <tr> <td>\$10.01 to \$25.00</td> <td style="text-align: right;">\$1.00</td> </tr> <tr> <td>\$25.01 to \$50.00</td> <td style="text-align: right;">\$2.00</td> </tr> <tr> <td>\$50.01 or more</td> <td style="text-align: right;">\$3.00</td> </tr> </tbody> </table>	Medicaid Payment for the Drug	Co-payment	\$10.00 or less	\$ .50	\$10.01 to \$25.00	\$1.00	\$25.01 to \$50.00	\$2.00	\$50.01 or more	\$3.00
Medicaid Payment for the Drug	Co-payment													
\$10.00 or less	\$ .50													
\$10.01 to \$25.00	\$1.00													
\$25.01 to \$50.00	\$2.00													
\$50.01 or more	\$3.00													

ATTACHMENT 4.18-A

Page 2

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

B. The method used to collect cost sharing charges for categorically needy individuals:

Providers are responsible for collecting the cost sharing charges from individuals

The agency reimburses providers the full Medicaid rate for services and collects the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

### Non-Emergency Transportation (NET) Co-payment

~~Non-Emergency Transportation (NET) is provided as an administrative activity under the State Plan. The State's position is that as an administrative activity, NET co-payment requirements are not subject to 42 CFR 447.53(b), exclusions from cost sharing.~~

~~The Transportation Broker or Transportation Provider will, based on information available to them, make a determination of the client's ability to pay the co-payment. Non-payment of this standard cost-sharing amount may result in denial of the service at the Transportation Broker's or Transportation Provider's discretion. Providers may voluntarily provide transportation to client who cannot pay the co-payment amount, however the State will not reimburse the Transportation Broker or the Transportation Provider any co-payment amounts for which the client is or would have been liable. Further, the Transportation Broker or Transportation Provider have complete discretion as to whether they will pursue any unpaid co-payment amounts from clients who were provided non-emergency transportation but failed to reimburse the Transportation Provider the required co-payment fee at the time of the service. The State will not pursue unpaid co-payment amounts from clients.~~

### Pharmacy Services Co-payment

The Pharmacy (Pharmacist) Provider will be advised via the Point-of-Sale System regarding the client's liability for the drug co-payment and the amount of the co-payment. When a client advises a pharmacy of an inability to pay the applicable co-payment amount at the time the prescription is filled, the pharmacy cannot refuse to fill the prescription and must dispense the drug as prescribed.

The client will remain liable for reimbursement of the co-payment amount and will be responsible for paying the pharmacy when financially able. Medicaid will not pay the co-payment amount to the pharmacy where a client declares an inability to pay. Provider payment will continue to be that sum which is the Medicaid fee minus the applicable client co-payment amount.

ATTACHMENT 4.18-A

Page 3

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

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b) are described below:

Exclusions from cost sharing requirements are programmed into the Medicaid Management Information System and the Point-of-Sale (POS) System.

Providers are informed about applicable service and amount; and, the prohibition of service denial if client is unable to meet the co-pay amount by the following methods: (1) provider manuals, which are distributed to all providers; (2) DMAP website; and (3) provider newsletters.

Co-payment requirements are set forth in provider manuals, which are distributed, to all providers. The billing instructions are updated and transmitted to providers via the Provider Newsletter. These instructions are incorporated in the billing instruction section of the provider manuals, which are given to all providers.

E. Cumulative maximums on charges: See descriptions below:

~~X For Non-Emergency Transportation (NET) Co-payment, the State policy does not provide maximums.~~

X For Pharmacy Services Co-payment, cumulative maximums have been established as described below:

\$15.00 cumulative monthly maximum co-payment amount aggregated for pharmacy services. Once a client has met the individual monthly maximum co-payment for his or her prescriptions, the Point of Sale (POS) System will NOT indicate a co-payment is due. Medicaid will keep track of the cumulative number of prescriptions for a client with co-payments. Any prescriptions dispensed after the cumulative maximum monthly co-payment amount is met are not subject to a co-payment. Reversal of a previously filled prescription with a co-payment will require a refund of the co-payment to the individual, and will cause the next prescription filled for that client to be adjudicated with a co-payment.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL**

**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901(b); 903(3)(2)a3

(7 Del.C. §§901(b); 903(3)(2)a3)

7 DE Admin. Code 3507

Secretary's Order No.: 2010-F-0021

**3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas**

Date of Issuance: July 20, 2010

Effective Date of the Amendment: August 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

### **Background and Procedural History**

This Order considers proposed regulations to amend 7 **DE Admin. Code** 3507, Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2010-13. The Department published its initial proposed regulation Amendments in the May 1, 2010 *Delaware Register of Regulations*, and held a public hearing on May 21, 2010. The public hearing record remained open at that time for public comment through May 31, 2010.

Subsequent to the Department's initial publication of its proposed regulation Amendments on May 1, 2010, but prior to the public hearing held on May 21, 2010, the Flounder, Scup and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission reviewed the final landings data on black sea bass. These data indicated that the original plan calling for 44% harvest reduction of this species would not be necessary. Instead, updated management measures were developed and approved that anticipated harvest reduction of this species by 26%. The new proposal maintained the original season, but also added an additional season, to extend through the months of November and December. The new season, although slightly more conservative than required, was developed as a buffer to account for the uncertainty and the effectiveness in the new regulations.

As required, in order to remain in compliance with the above referenced ASMFC Fisheries Management Plan for black sea bass and be consistent with all other coastal states, the Department's Division of Fish and Wildlife is proposing to adopt the regulation that was approved by the Board as noted above, and to revise the original draft regulation to include additional language which reflects the longer open season. Under the revised proposed regulations, the season will be open from May 22nd through October 11th, and then again from November 1st through December 31st. Again, the Board is requiring states to implement this seasonal closure in order to keep the ASMFC's 2010 recreational harvest cap of 1.8 million pounds from being exceeded. The current 12.5" minimum size and 25 fish creel limit remain in place at this time.

The revised proposed Amendments were thoroughly vetted by the Department at the public hearing on May 21, 2010. No comment was received by the Department subsequent to the holding of said public hearing, and thus no additional revisions have been made to the proposed revised regulation Amendments.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated July 1, 2010 (Report). The Report recommends certain findings and the adoption of the proposed revised Amendments as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the revised proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed revised Amendments. Throughout the regulatory development process regarding this promulgation, the Department received public comment, as noted in the Report, and the same was fully addressed by Department staff in a thorough and balanced manner, accurately reflecting the information as contained in the public hearing record which was developed in this matter.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these revised Amendments. With the adoption of this Order, Delaware will (1) allow Delaware to remain in compliance with the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan, as implemented by both the NMFS and the ASMFC; (2) implement additional regulatory measures necessary to prevent the 2010 harvest cap from being exceeded; and (3) make Delaware's black seas bass fishing regulations identical to management measures adopted by surrounding states and those likely to be in place in federal waters.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these revised proposed Amendments as final;

2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on both the initial proposed Amendments, as well as the proposed revised Amendments, including at the public hearing held on May 21, 2010;

3.) The Department held a public hearing on May 21, 2010 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended revised Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended revised Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) mirror its black sea bass management measures with those of surrounding states, as well as those likely to be in place in federal waters; (2) remain in compliance with the aforementioned Fishery Management Plan for this species, as implemented by both the NMFS and the ASMFC; and lastly, because (3) the amendments are well supported by documents in the record;

6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara  
Secretary

### **3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas**

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.

**6 DE Reg. 1230 (3/1/03)**

**6 DE Reg. 1360 (4/1/03)**

**12 DE Reg. 1430 (05/01/09)**

- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.
- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that

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have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.

- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.

**1 DE Reg. 1767 (5/1/98)**

**2 DE Reg. 1900 (4/1/99)**

**3 DE Reg. 1088 (2/1/00)**

**4 DE Reg. 1665 (4/1/01)**

**4 DE Reg. 1859 (5/1/01)**

**5 DE Reg. 2142 (5/1/02)**

**6 DE Reg. 348 (9/1/02)**

**6 DE Reg. 1230 (3/1/03)**

- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.

Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.

- 8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.

- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:

9.1 A maximum of one transfer per year per person.

9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.

- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:

10.1 A maximum of one transfer per year per person.

10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.

- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.

12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01 AM January 1, [2010] and ending midnight May 21, [2010] and beginning at ~~midnight on September 12, 2010 and ending at midnight on December 31, 2010~~ 12:01 a.m. October 12 and ending mid-night October 31].

12.1 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

7 DE Reg. 1575 (5/1/04)

6 DE Reg. 1230 (3/1/03)

8 DE Reg. 1488 (4/1/05)

9 DE Reg. 1759 (5/1/06)

11 DE Reg. 1662 (06/01/08)

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## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 1902(a)(4) (7 Del.C. §1902(a)(4))  
7 DE Admin. Code 3702 & 3771

Secretary's Order No.: 2010-F-0020

**3700 Shellfish Regulations**

Date of Issuance: July 9, 2010

Effective Date of the Amendment: August 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

### Background and Procedural History

This Order considers proposed regulations to amend 7 DE Admin. Code 3702 and 3771, Delaware Shellfish Regulations Pertaining to Oysters: Definitions and Oyster Harvesting Licensee Requirements. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2010-12. The Department published its initial proposed regulation Amendments in the April 1, 2010 *Delaware Register of Regulations*, and held a public hearing on Thursday, April 29, 2010. The public hearing record remained open at that time for public comment through April 30, 2010.

Subsequent to the Department's initial publication of its proposed regulation Amendments on April 1, 2010, the Department received numerous public comments concerning the proposed Amendments to Delaware's Shellfish Regulations Pertaining to Oysters. These comments were primarily focused on the proposed requirements of (1) a "processor" to retain tags for an extended period following the original purchase of legally harvested oysters; and that (2) no broken or previously used tags can be kept on the vessel. After thorough review by the Department, it was determined that no revisions to the initially proposed regulations regarding this matter were necessary.

With regard to the first proposed requirement noted above, the Enforcement Section of the Department's Division of Fish and Wildlife thoroughly reviewed this proposed regulation language in the light of the public comment received on this issue. The Department believes that no storage problem(s) should occur as a result of a "processor" now being required to keep the tags from any bags of oysters that he or she had opened. If, however, a "processor" should develop a storage problem, the tags would be picked up by Enforcement upon request, or at regular intervals, in order to avoid a storage problem. The Department discussed this rationale with members of the regulated community that had expressed their concerns on this issue at the time of the public hearing, and this arrangement was agreeable to both the "processors" and the Department's Enforcement Section. Again, no

revision to the proposed regulation language is necessary, as the proposed amendments to 7 DE Admin. Code 3771 specifically allow for this arrangement to be made between the "processor" and the Department's Enforcement Section.

The second proposed regulatory requirement (i.e., no broken or previously used tags may be kept on the vessel) is the Department's attempt to eliminate one of the major "loopholes" in Delaware's current oyster regulations. At the present time, as long as used tags were permitted to remain onboard the oyster vessel, an oysterman could claim that the used tags were just removed from the oyster bags that were still onboard the vessel. Thus, by making it illegal to possess these invalid tags, oystermen would no longer be able to continue that practice. Concern was expressed at the public hearing that, on occasion, tags were either inadvertently broken or become otherwise unusable. Once again, the Department reviewed this proposed amendment in light of the public comment received in this matter, and determined that no revision to the proposed regulation language is necessary.

Although neither the Fisheries Section nor the Enforcement Section of the Department has any knowledge of any such problems in the past with the oyster tags being used, the Department does acknowledge that the possibility exists of a seal becoming unusable as a result of insufficient quality control during its manufacture. In the event of such a problem, the Department's Fisheries Section shall work with the Enforcement Section and any other oysterman that has a valid complaint of a faulty or unusable tag. If necessary, the tag will be replaced with a new tag in order for the oysterman to harvest his full allocation.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated June 24, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. Throughout the regulatory development process regarding this promulgation, the Department received public comment, as noted in the Report, and the same were fully addressed by Department staff in a thorough and balanced manner, accurately reflecting the information as contained in the public hearing record which was developed in this matter.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will (1) require that oyster tags remain in place on oyster containers while being transported for processing; (2) require that tags on oyster containers remain in place until the containers are opened or emptied by a processor; (3) require processors to retain removed tags for a period of 90 days beyond the end of the calendar year; (4) make it unlawful to process oysters aboard a vessel; (5) define "processing" as it pertains to shellfish and shellfish products; (6) define "processor" as it pertains to shellfish and shellfish products; and (7) make it unlawful to possess a used or broken oyster tag on the harvesting vessel.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments;
- 3.) The Department held a public hearing on April 29, 2010 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) eliminate one of the major loopholes in Delaware's existing oyster regulations by making it illegal for oystermen to possess either broken or previously used oyster bag tags on the oyster vessel; (2) formally define "processing" and "processor" as it pertains to both shellfish and shellfish products, in order to



provide clarification to existing regulations to promote a greater understanding of the same to oystermen; (3) more effectively and efficiently prevent the overharvesting of this natural resource by assisting the Department with its critical tasks of quota allocation, subsequent monitoring and enforcement efforts; and lastly, because (4) the amendments are well supported by documents in the record;

6.) The Department shall submit this Order approving the final regulation to the Delaware Register of Regulations for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

## 3702 Definitions:

1.0 **"2 Consecutive Years"**, as it appears in 7 Del.C. §1918(c) shall mean any consecutive 24 month period.

**"A Person's Intent to Sell Shellfisheries to Another"** shall mean a person has in his possession a quantity of that species of shellfish in excess of the quantity specified under the definition of "Commercial Shellfishing" or this same person advertises for sale, offers for sale or completes the sale of any portion of that measure of shellfish to another person.

**"Commercial Shellfishing"** shall mean for any person to possess those species of shellfish in excess of the following quantities unless said person has a valid receipt for all shellfish above these quantities; or as otherwise provided by law or regulation:

- Oysters - one (1) bushel per vessel
- Blue Crabs - one (1) bushel per person
- Hard Clams - five hundred (500) clams per person
- Lobsters - two (2) lobsters per person

**"Commercial Measure"** shall mean that unit of measurement of a species of shellfish as described herein:

- Oysters - bushels
- Blue Crabs - bushels
- Clams - actual numbers or bushels
- Lobsters - actual numbers or pounds
- Blue Mussels - bushels or pounds

**"Delaware Bay"** shall mean all those waters and submerged lands under the jurisdiction of the State located within an area bordered on the North by a straight line drawn between Liston Point, Delaware and Hope Creek, New Jersey and bordered on the South by a line drawn from Cape May Inlet East Jetty Light to Cape May Harbor Inlet Lighted Bell Buoy 2CM; thence to the northernmost extremity of Cape Henlopen, but not including any tributaries thereto.

**"Delaware River"** shall mean all those waters and submerged lands under the jurisdictions of the State located within an area to the North of a straight line connecting Liston Point, Delaware and Hope Creek, New Jersey, but not including any tributaries thereto.

### **"New Licensee"**

- shall mean for purposes of interpreting 7 Del.C. §1918(a), any person who has never been issued a commercial crab pot license or any person who has not been issued a valid commercial crab pot license by the Department before May 1, 1994 and annually thereafter when applying for the renewal of such license.
- shall mean for purposes of interpreting 7 Del.C. §1918(b), any person who has never been issued a commercial crab dredger's license or any person who has not been issued a valid crab dredger's license by the Department before May 1, 1994 and then annually thereafter when applying for the renewal of such license."

**"Processing"** shall mean, with respect to shellfish or shellfisheries products: Preparing, shucking, freezing, changing into different market forms, manufacturing, preserving, packing.

"Processor" shall mean any person engaged in the purchasing, or commercial, custom, or institutional processing of shellfish products.

"Recreational Purposes" shall mean the noncommercial use of shellfish that does not include the sale, trade or barter of shellfish in quantities less than the prescribed quantities for commercial shellfishing.

### 3771 Oyster Harvesting Licensee Requirements

(Penalty Section 7 Del.C. §1912)

- 1.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess another person's oyster harvesting tags while on board the vessel listed on said person's oyster harvesting license unless the other person is on board said vessel while harvesting oysters.
- 2.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds for direct sale to not attach a current Department issued oyster harvesting tag in the locked position through the fabric of a bushel bag containing oysters. The tag shall be cinched around the top of the bag and locked such that the bag may not be opened nor oysters removed from the bag without breaking the tag or seal. Bags shall be tagged prior to the vessel leaving the shellfish harvest grounds and returning to any port remain in place while being transported for processing.
- 3.0 It shall be unlawful for any person to possess a bushel bag that is empty or partially filled with oysters so long as an oyster harvesting tag is attached to said bag.

**5 DE Reg. 2140 (5/1/02)**

**6 DE Reg. 1356 (4/1/03)**

- 4.0 It shall be unlawful for any person to possess an oyster cage that is empty of oysters so long as an oyster harvesting tag is attached to said cage. A filled or partially filled oyster cage must have the appropriate number of tags attached in the locked position to reflect the number of bushels of oysters in the cage.
- 5.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess, while on board any vessel listed on said person's oyster harvesting license, used or otherwise invalid oyster harvesting tags. A used tag shall mean any tag that has been locked or sealed and subsequently cut, broken, or made unusable.
- 6.0 Any processor receiving oysters that were harvested from the State's natural oyster beds must keep the oyster harvesting tag or tags in place until the container is broken open or emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for a period of 90 days beyond the end of the calendar year, unless otherwise directed by authorized representatives of the Department.

6.1 It shall be unlawful for any person to process oysters aboard a vessel.

**6 DE Reg. 1356 (4/1/03)**

**11 DE Reg. 1496 (05/01/08)**

**13 DE Reg. 1285 (04/01/10)**

## DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))  
26 DE Admin. Code 2002

IN THE MATTER OF THE ADOPTION OF RULES	
CONCERNING THE IMPLEMENTATION OF 72 DEL.	
LAWS CH. 402 (2000) GRANTING THE COMMISSION	
THE JURISDICTION TO GRANT AND REVOKE THE	

CERTIFICATES OF PUBLIC CONVENIENCE AND  
NECESSITY FOR PUBLIC UTILITY WATER UTILITIES |  
(OPENED NOVEMBER 12, 2000; REOPENED  
MARCH 20, 2007

PSC REGULATION DOCKET NO. 51

## 2002 Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities

### ORDER No. 7813

This 22<sup>ND</sup> day of July, 2010, the Commission determines and Orders the following:

**WHEREAS**, on May 4, 2010, after extensive proceedings in the above docket, the Commission repealed and replaced its existing *Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities* with a newly revised set of regulations (the "Revised Water CPCN Regulations"). See PSC Order No. 7774 (May 4, 2010);<sup>1</sup> and

**WHEREAS**, pursuant to Order No. 7774 and 29 **Del.C.** §§10113 and 10115(a), the Commission Secretary caused to be published in the *Delaware Register of Regulations* a copy of the Revised Water CPCN Regulations, along with a notice (the "Notice") soliciting public comments to the Revised Water CPCN Regulations and stating that the Commission will hold hearing on the regulations on July 22, 2010, at the Commission's regularly schedule meeting; and

**WHEREAS**, the Secretary also published the Notice in both *The News Journal* and the *Delaware State News* newspapers; and

**WHEREAS**, the Commission has not received any comments to the Revised Water CPCN Regulations, and the comment period has expired.

### NOW THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That, pursuant to 26 **Del.C.** §§209(a) and 821, and 29 **Del.C.** §§10111 *et seq.*, the Commission hereby promulgates the revised *Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities* with a newly revised set of regulations (the "Revised Water CPCN Regulations"), a true and correct copy of which is attached hereto as Exhibit A, as official regulations as defined by 29 **Del.C.** §1132. The Revised Water CPCN Regulations replace the regulations existing at 26 **DE Admin. Code** §2002.

2. That, pursuant to 26 **Del.C.** §§10113 and 10118, the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* a copy of this Order (with the attached Revised Water CPCN Regulations). An exact copy of the Revised Water CPCN Regulations attached hereto shall be published as final, official regulations in the *Delaware Register*.

3. The Commission Secretary shall serve a copy of this Order upon its regulated water utilities.

4. 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:

Arnetta McRae, Chair  
Jeffrey J. Clark, Commissioner  
Jaymes B. Lester, Commissioner  
Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

<sup>1</sup> A set of the Revised Water CPCN Regulations was attached to the Order and were, due to a typographical error, referred to as both exhibit 2 and 3 in the Order. The water CPCN regulations that the revised set replace were originally adopted by PSC Order No. 5730 (June 5, 2001).

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2010 issue of the *Register* at page 1515 (13 DE Reg. 1515). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[2002 Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities](#)**

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**DELAWARE RIVER BASIN COMMISSION**  
**NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING****Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for Toxic Pollutants in the Delaware Estuary and Extend These Criteria to Delaware Bay**

The Delaware River Basin Commission (DRBC or "Commission") will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to update many of the Commission's stream quality objectives (also called water quality criteria) for human health and aquatic life for toxic pollutants in the Delaware Estuary (DRBC Water Quality Zones 2 through 5) and to extend application of the criteria to Delaware Bay (DRBC Water Quality Zone 6). The proposed changes will bring the Commission's criteria for toxic pollutants into conformity with current guidance published by the U.S. Environmental Protection Agency (EPA) and provide a more consistent regulatory framework for managing the tidal portion of the main stem Delaware River.

The public hearing will take place on Thursday, September 23 at 2:30 p.m. and will continue on that day until all those who wish to testify are afforded an opportunity to do so. Written comments will be accepted through 5:00 p.m. on Friday, October 1, 2010.

The public hearing will take place in the Goddard Room at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission's Web site, [www.drbc.net](http://www.drbc.net). Please do not rely on Internet mapping services as they may not provide accurate directions to this location.

Written comments may be submitted by e-mail to [regs@drbc.state.nj.us](mailto:regs@drbc.state.nj.us); by fax to Regulations at 609-883-9522; by U.S. Mail to Regulations c/o Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by private mail carrier to Regulations c/o Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. In all cases, please include the commenter's name, address and affiliation if any in the comment and include "Water Quality Criteria" in the subject line.

The current rule and the full text of the proposed amendments are posted on the Commission's Web site, [www.drbc.net](http://www.drbc.net), along with the report entitled "Water Quality Criteria for Toxic Pollutants for Zones 2-6 of the Delaware Estuary: Basis and Background Document" (DRBC, June 2010) and a set of PowerPoint slides presented to the Commission at the latter's public meeting on December 9, 2009 by the chair of the Commission's Toxics Advisory Committee. Hard copies of these materials may be obtained for the price of postage by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. For questions about the technical basis for the rule, please contact Dr. Ronald MacGillivray at 609-477-7252. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

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

The State Board of Education will hold its monthly meeting on Thursday, August 20, 2010 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**Combining §1915(c) Home and Community-Based Services Waivers**  
**NOTICE OF PUBLIC COMMENT PERIOD**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, and, in compliance with State Notice procedures as set forth in the Federal Register, September 27, 1994, the Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit an amendment to the

Elderly and Disabled Waiver that combines three existing §1915(c) Home and Community-Based Services (HCBS) waivers into one HCBS waiver.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this waiver must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by August 31, 2010. A copy of the waiver amendment is available upon request by contacting Lisa Bond, Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) at (302) 255-9358.

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.

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### **DIVISION OF SOCIAL SERVICES**

#### **Amending policies in the Division of Social Services Manual (DSSM) regarding the General Assistance (GA) and Temporary Assistance for Needy Families (TANF) programs.**

#### **PUBLIC NOTICE**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by Tuesday, August 31, 2010.

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.

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### **DIVISION OF SOCIAL SERVICES**

#### **DSSM: 3000 Technical Eligibility for Cash Assistance and 4000 Financial Responsibility**

#### **PUBLIC NOTICE**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by Tuesday, August 31, 2010.

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.

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**DEPARTMENT OF INSURANCE****1404 Long-Term Care Insurance  
NOTICE OF PUBLIC COMMENT PERIOD**

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 1404 relating to long-term care insurance. The docket number for this proposed amendment is 1377.

The purpose of the proposed amendment to regulation 1404 is to regulate rescission of long-term care insurance policies and update the existing regulation 1404. The text of the proposed amendment is reproduced in the August 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Tuesday September 7, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to [mitch.crane@state.de.us](mailto:mitch.crane@state.de.us).

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**DEPARTMENT OF JUSTICE****FRAUD AND CONSUMER PROTECTION UNIT****102 Debt Management Services  
PUBLIC NOTICE**

The Attorney General in accordance with 6 **Del.C.** §2432(h) has proposed to adopt changes in the rules and regulations implementing the Delaware Uniform Debt Management Act in 6 **Del.C.** Ch. 24A (the "Act").

A public hearing will be held at 10:00 A.M. on September 9, 2010 in the Attorney General's conference on the 6th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, De 19801, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5th floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to receive written comments will be at the public hearing.

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****2700 Board of Professional Land Surveyors  
PUBLIC NOTICE**

The Delaware Board of Professional Land Surveyors, pursuant to 24 **Del.C.** §2706(a)(1), proposes to revise Rule 12. The proposed revisions to Rule 12 are intended to revise the minimum technical standards for licensees, including changes to what are currently known as Mortgage Inspection Plans (MIPs), and clarify an issue regarding license reciprocity. This rule was previously advertised for revision in September of 2009. Following the public hearing on September 17, 2009, so many substantial changes were suggested and incorporated that the Board is publishing these revision for comment.

The Board will hold a public hearing on the proposed rule change on August 24, 2010 at 08:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to David Mangler, Executive Director of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

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