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# Delaware Register of Regulations

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Volume 18 - Issue 2, Pages 85 - 169

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## IN THIS ISSUE:

Regulations:  
Emergency  
Proposed  
Final

General Notices

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, 2014.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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

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## DIVISION OF RESEARCH STAFF

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

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

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**Statewide Benefits Office**

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**Symbol Key**

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

**Emergency Regulations**

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

**§ 10119. Emergency regulations.**

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

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

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

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

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

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

**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****Controlled Substance Advisory Committee**

Statutory Authority: 16 Delaware Code, Section 4731 (16 **Del.C.** §4731)

**ORDER****Uniform Controlled Substances Act Regulations**

**WHEREAS**, the Secretary of the Department of State ("the Secretary") "may promulgate rules . . . relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this State." 16 **Del.C.** §4731(a); and

**WHEREAS**, the Secretary may adopt emergency regulations if the Secretary finds that there exists an imminent peril to the public health, safety or welfare. 29 **Del.C.** §10119; Regulation 9.3 of the Uniform Controlled Substance Act Regulations; and

**WHEREAS**, available data and information pertaining to extended-release hydrocodone lacking abuse-deterrent formulation demonstrates that this medication poses imminent peril to the public, health safety and welfare in that it is approximately five times more potent than opioids currently being prescribed to treat pain. Further, the medication lacks an abuse-deterrent formulation, meaning that it can be chewed, crushed or dissolved, thereby causing rapid release and absorption of a potentially fatal dose of hydrocodone; and

**WHEREAS**, the Delaware Controlled Substance Advisory Committee has recommended the enactment of an emergency regulation placing limitations and requirements on the prescription of extended-release hydrocodone lacking abuse-deterrent formulation; and

**WHEREAS**, the Secretary finds that adoption of the recommended regulation must occur on an emergency basis in order to properly protect the public; and

**WHEREAS**, the Secretary will accept, consider and respond to petitions by any interested person for the reconsideration of adoption of this regulation by addressing the same to the attention of Mr. Dave Dryden, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904; and

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

**NOW, THEREFORE, IT IS ORDERED** this 18th day of June, 2014:

1. The Uniform Controlled Substance Act Regulations are amended as set forth in Exhibit A, attached hereto.

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

**SO ORDERED** this 18th day of June, 2014.

Jeffrey W. Bullock, Secretary of State

## Uniform Controlled Substances Act Regulations (Break in Continuity of Sections)

### **11.0 Prescription of Extended-Release Hydrocodone Lacking Abuse-Deterrent Formulation**

**11.1 Purpose:** This rule provides requirements for the prescription of extended-release hydrocodone lacking abuse-deterrent formulation in order to address potential prescription drug overdose, abuse and diversion.

**11.2 Definitions**

**"Abuse-deterrent formulations"** or **"ADF"** means one of the following: physical/chemical barriers (i.e., physical barriers that prevent chewing, crushing, cutting, grating, or grinding or chemical barriers that can resist extraction of the opioid using common solvents like water); a version (i.e., substances that can be combined to produce an unpleasant effect if the dosage form is manipulated prior to ingestion or a higher dosage than directed is used); a formulation such that the drug is lacking in opioid activity until transformed in the gastrointestinal tract (known as a Prodrug); or a combination of the above methods).

**"Controlled Substance Treatment Agreement"** means a document that is agreed upon by both the practitioner and the patient acknowledging the rights, responsibilities and risks of being on a controlled substance and the treatment being received.

**"Hydrocodone"** means a semi-synthetic opioid derived from codeine.

**"Misuse"** means using a controlled substance in a way that is not prescribed.

**"Practitioner"** means physician, dentist, veterinarian, podiatrist, nurse practitioner, physician assistant or other individual, licensed, registered, or otherwise permitted, by the United States or the State of Delaware to prescribe, dispense or store a controlled substance in the course of professional practice but does not include a pharmacist, a pharmacy, or an institutional practitioner.

**"Risk Assessment"** means utilizing a tool, such as the Screener and Opioid Assessment for Patients with Pain ("SOAPP"), which is designed for predicting the likelihood that a patient will abuse or misuse a prescribed controlled substance based on past behavior, genetic predispositions, social or environmental factors or other risks.

**11.3 Requirements**

**11.3.1** Prior to prescribing an extended-release hydrocodone that is manufactured without an ADF, the practitioner shall:

**11.3.1.1** Conduct and document a thorough medical evaluation and physical examination as part of the patient's medical record;

**11.3.1.2** Prior to writing a prescription for a hydrocodone that is manufactured without an ADF, evaluate and document relative risks and benefits for the individual patient of the use of

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## EMERGENCY REGULATIONS

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- such a hydrocodone. The evaluation shall include, but not be limited to, a Risk Assessment as defined in Section 11.2:
- 11.3.1.3 Document in the medical record that the prescription of a hydrocodone without an ADF is required for the management of pain severe enough to require daily, around-the-clock, long-term opioid treatment, for which alternative treatment options, including non-pharmacological treatments, are ineffective, not tolerated, or would otherwise be inadequate to provide sufficient management of pain;
  - 11.3.1.4 Receive a signed Informed Consent form from the patient, or if the patient is not competent to provide informed consent, from the patient's legal representative, that shall include information regarding the drug's potential for addiction, abuse, and misuse; and the risks associated with the drug of life-threatening respiratory depression; overdose as a result of accidental exposure potentially fatal, especially in children; neonatal opioid withdrawal symptoms; and potentially fatal overdose when interacting with alcohol;
  - 11.3.1.5 Receive a signed Controlled Substance Treatment Agreement from the patient that shall include requirements such as urine screening (no less frequently than every 120 days), pill counts, safe storage and disposal, and other appropriate conditions as determined by the practitioner to reasonably and timely inform the practitioner if the patient is misusing the prescribed substance;
  - 11.3.1.6 Query the Delaware Prescription Monitoring Program ("PMP") and review other controlled substances prescribed to the patient prior to the first prescription. For any patient prescribed 40 mg or greater per day, the practitioner shall query the PMP no less frequently than once every 120 days for as long as the patient possesses a valid prescription for that amount;
  - 11.3.1.7 Determine a maximum daily dose or a "not to exceed value" for the prescription to be transmitted to the pharmacy;
  - 11.3.1.8 Write a prescription that must be filled within seven (7) days and that does not exceed 30 days in duration.
- 11.3.2 The practitioner shall schedule and undertake periodic follow-up visits and evaluations of the patient.
- 11.3.3 The practitioner shall schedule follow-up visits with the patient and at each such visit shall evaluate, determine and document:
- 11.3.3.1 Whether to continue the treatment of pain with a hydrocodone not manufactured with an ADF or whether there is an available alternative;
  - 11.3.3.2 Whether to refer the patient for a pain management or substance abuse consultation;
  - 11.3.3.3 A plan for the discontinuance of prescribed hydrocodone if the patient has failed to adhere to the Controlled Substance Treatment Agreement.

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

**Uniform Controlled Substances Act Regulations**

**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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**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))14 **DE Admin. Code** 401**PUBLIC NOTICE****Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****401 Major Capital Improvement Programs****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 401 Major Capital Improvement Programs. This regulation amendment eliminates the Voluntary School Assessment Section. A new regulation, 415 Voluntary School Assessment, is being proposed.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **September 5, 2014** to Tina Shockley, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is not directly related to improving student achievement as measured against state achievement standards. It provides guidance for the Voluntary School Assessment.

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

## 401 Major Capital Improvement Programs

### 1.0 Purpose and Definitions

- 1.1 Major Capital Improvement Programs are projects having a cost of ~~\$500,000~~ \$750,000 or more.
  - 1.1.1 The Secretary of Education ~~shall~~ may annually review the current cost per square foot for construction and make ~~needed~~ necessary adjustments as required.
  - 1.1.2 Projects may be considered together to form a single Major ~~Capital~~ Capital Improvement Project. However, the ~~consolidated~~ consolidation of major capital projects should be a consolidation of projects at for one location.
  - 1.1.3 Major Capital Improvement projects shall use standard bid and contract documents as developed by the Office of Management and Budget, Division of Facilities Management.
    - 1.1.3.1 Districts may enhance the standard bid and contract documents with additional contractual or project specific requirements as long as the enhancements do not diminish and are not in conflict with the provisions of the standard documents.
    - 1.1.3.2 The Department of Education, in consultation with the Office of Management and Budget, Division of Facilities Management shall approve any modifications or changes to the provisions of the standard bid and contract documents before a school district may use or enhance the modified documents.
- 1.2 Definitions
 

**"Certificate of Necessity"**: A document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project. The Certificate of Necessity authorizes the school district to: ~~1.) Hold a referendum for the Major eCapital construction Improvement pProgram identified;~~ 1.) Hold a referendum for the Major eCapital construction Improvement pProgram identified; ~~2.) A and authorizes the school district to sell bonds to pay the local portion of the capital program in the event of a successful referendum; and 3.) Levy and collect local taxes to service the debt on the capital bonds sold.~~ 2.) A and authorizes the school district to sell bonds to pay the local portion of the capital program in the event of a successful referendum; and 3.) Levy and collect local taxes to service the debt on the capital bonds sold.

**“Certificate of Occupancy”**: A document issued by a local code enforcement official/office attesting that a Facility meets building codes and is fit for human occupancy.

**“Change Orders”**: Documents which that change the construction contract and are negotiated between the owner and contractor in order to correct design omissions, address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.

**“Design Development Plans”**: Design documents that denote mechanical functions, placement of windows and doors, pedestrian traffic circulation both interior and exterior, utilities, service areas and structure. Design development documents are at a 40% to 60% completion stage.

**“Educational Specifications”**: A document which explains how the educational spaces relate to the educational programs as well as the requirements of an educational Facility to house and implement the educational philosophy and institutional program.

~~**“Facility”**: Long lived capital assets to include but not limited to school buildings; athletic buildings; athletic fields and appurtenances; playgrounds; maintenance, operations and storage structures; office buildings and all other buildings and capital assets associated with the operation and management of a school district and/or school system.~~

**“Final Construction Plans”**: Plans that show the complete Facility design including mechanical, electrical, water, sewer, site plans, storm water conveyance and structural systems, complete bid documents and specifications.

**“Schematic Design Plans”**: Documents that present a proposed Facility in its earliest stages denoting the approximate size and relationship of areas to each other. Detailed utilities or mechanical functions are not typically shown at this stage.

**“Signed and Sealed Plans”**: Plans that have the architect's and/or engineer's professional seal and signature affixed.

#### **42.0 Certificates of Necessity**

- 2.1 Districts shall submit local school board approved projects to the Department of Education by August 31 in order to be considered for a Certificate of Necessity.
- 4.1 The Certificate of Necessity is a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project.
- ~~42.2 Certificates of Necessity shall be obtained sufficiently in advance to meet all prerequisites for the holding of a local referendum and shall be issued only at the written request of the local school district. The Certificate of Necessity shall be quoted in the advertisement for the referendum.~~
- 42.3 Projects proposing the construction of a new Facility or for an addition to an existing Facility shall be issued a separate Certificate of Necessity. Funds issued for the construction of a new Facility or for an addition to an existing Facility shall not be transferred between projects or to projects in a separate Certificate of Necessity.
- 42.4 Additions to existing Facilities that are done in connection with other renovations may be issued a single Certificate of Necessity. However, when such a multiple project Certificate is issued, it shall identify each Facility in the program and describe the work to be done at that Facility including the dollar amount for that work. Funds may be transferred between projects issued under the same Certificate of Necessity in accordance with 8.0 below.
- 42.5 ~~The Office of Education Facilities Planning, Construction and Operations~~ The Department of Education will complete the final Certificates of Necessity and forward the Certificate of Necessity to the local school district superintendent for his/her signature.
- 42.6 A copy of the final Certificate of Necessity will be returned to the district within ten (10) working days following final approval by the Department of Education.

#### **23.0 Procedures for Approval of a Site for School Construction**

# PROPOSED REGULATIONS

- 23.1 Local school districts shall notify the Department of Education by letter to schedule a site review when they propose to purchase a site for school purposes; or when they propose to use a currently owned site for school purposes; or when they propose to obtain a site through donation, gift or condemnation.
- 23.2 The local school board shall forward all prospective sites to the Office of State Planning Coordination for consideration and comment through Planning Land use Service (PLUS) review process.
- 23.3 The acquisition of lands for school construction shall comply with 29 Del.C. §7525.

## **34.0 Approval of Educational Specifications, Schematic Design Plans, Design Development Plans, and Construction Drawings**

- 3.1 ~~Educational Specifications are defined as a document which presents to an architect what is required of an educational Facility to house and implement the educational philosophy and institutional program in an effective way.~~
  - 3.1.14.1 Educational Specifications shall be approved by the local school board and forwarded to the Department of Education for informational purposes. The Department may provide comments on Educational Specifications at its discretion.
- 3.2 ~~All Schematic Design Plans, Design Development Plans and Final Construction Drawings shall be approved by the local school board and the Department of Education. The Department of Education requires one set of Schematic Design Plans each, including a signed and sealed Final Construction Drawings and specifications.~~
- 3.3 ~~All Design Development Plans shall be approved by the local school board and the Department of Education. The Department of Education requires one set of Design Development Plans.~~
- 3.4 ~~All Final Construction Drawings shall be approved by the local school board and the Department of Education. The Department of Education requires one set of signed and sealed Final Construction Drawings and specifications.~~
- 3.5.4.3 The local school district must involve all applicable State, Local and Municipal regulatory agencies in reviewing Final Construction Drawings prior to the start of construction. Copies of all applicable State, Local and Municipal agency approvals shall be maintained in the local school district construction files. Required State agency approvals include but may not be limited to:
  - 3.5.14.3.1 Fire Marshal to review the plans for fire safety.
  - 3.5.24.3.2 ~~Division of Public Health, Bureau of Environmental Health, Sanitary Engineering for Swimming Pools, and the County Health Unit for information on Kitchens and Cafeterias.~~
  - 3.5.34.3.3 ~~Division of Facilities Management, Chief of Engineering and Operations for compliance with building codes.~~
  - 3.5.44.3.4 ~~Delaware~~ Department of Transportation for review of the Site Plan showing entrances and exits as well as required transportation infrastructure improvements.
  - 3.5.54.3.5 Architectural Accessibility Board to ensure that the build environment is safely accessible to, and usable by all persons.
  - 3.5.64.3.6 Department of Natural Resources and Environmental Control for wastewater, storm water management and erosion control.
- 3.6.4.4 Exemptions: Major Capitol Projects that do not include structural changes or wall modifications such as, but not limited to, window replacement, HVAC, electrical or plumbing infrastructure upgrades do not require submission to the Department of Education.

## **5.0 Notification, Start of Construction, and Completion of Construction, and Certificate of Occupancy**

- 5.1 The local school district shall submit to the Department of Education and the ~~Director~~, Office of Management and Budget a construction schedule, showing start dates, intermediate stages and final completion dates.
- 5.2 The local school district shall notify the Department of Education, ~~the Director~~, Office of Management and Budget and ~~the~~ Insurance Coverage Office at the completion of the construction, which is defined as when the school district, with the concurrence of the architect, accepts the ~~F~~facility as complete~~z~~.

Completion means that the following have occurred: punch-list items are resolved, release of liens has been received and funds held in retainage have been released.

- 5.3 The local school district shall record capital assets (buildings) in accordance with the State of Delaware Capital Asset Budget and Accounting Manual which requires capital assets (buildings) to be recorded when the asset is ready for its intended use. As an example, the capital asset (building) should be recorded when it has received an occupancy certificate or the building is ready for its intended use.
- 5.4 The local school district shall notify the Department of Education, ~~the State Auditor, and the Director,~~ Office of Management and Budget upon approval of the Certificate of Occupancy.
- 5.5 Local school districts shall submit to the Department of Education a copy of the electronic autocad files. Electronic autocad files shall be submitted no later than 30 calendar days after the completion of any major renovation, addition to an existing ~~F~~facility, new school or replacement school.

## 6.0 Purchase Orders

All purchase orders for any Major Capitol Improvement Project shall be approved by both the Department of Education and ~~the Assistant Chief of Fiscal & Policy Analysis for Capital Projects~~ Office of Management and Budget prior to submission to the Division of Accounting.

## 7.0 Change Orders

- 7.1 ~~Change Orders are changes in the construction contract negotiated with the contractor. The main purpose is to correct design omissions, address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.~~
- 7.21 All Change Orders must be agreed upon by the architect, ~~the local school district board~~ and ~~the contractor,~~ and shall be forwarded to the Department of Education.
  - 7.21.1 Submission of a Change Order must include the following documents: ~~Completed~~ A completed purchase order as applicable; local school board of education minutes identifying and approving the changes; completed AIA document G701, and correspondence which gives a breakdown in materials mark-up and other expenses.

## 8.0 Percentage of Funds Transferable Between Projects within a Certificate of Necessity

- 8.1 School districts may request ~~the~~ transfer of funds between projects during the bidding and construction process ~~shall be only by written request by the district in writing~~ to the Department of Education. Acceptability of the transfer of funds will meet the following criteria:
  - 8.1.1 No project may have any portion of its funding moved to another project without the approval of the Secretary of the Department of Education, ~~the Director of the Office of Management and Budget and the Controller General.~~
  - 8.1.2 No project may have any funding added to its initial funding without the approval of the Secretary of the Department of Education, ~~the Director of the Office of Management and Budget and the Controller General.~~
  - 8.1.3 No transfer of funds shall be executed between projects authorized through and by separate Certificates of Necessity.

## 9.0 Educational Technology

All school facilities being constructed or renovated under the Major Capital Improvement Program shall include, wiring for technology that meets the current Department of Technology and Information Wiring Standards and is appropriate to the grade level and educational requirements of the Facility type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds when no other technology funds are available.

## 10.0 Playground Construction:

Effective July 1, 2010, all playgrounds constructed or renovated pursuant to a major capital improvement project shall comply with the most current editions of: ~~the~~ American Society of Testing Materials (ASTM) Designation F-1487 and ~~the~~ Consumer Products Safety Commission (CPSC) Publication Number 325.

## 11.0 Administration of the New School

The ~~principle~~ principal administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The State portion of salary and benefits may be paid from Major Capital Improvement Programs.

## 12.0 ~~Voluntary School Assessment~~

~~12.1 The funds generated as a result of the Voluntary School Assessment, as authorized by the provisions of 14 Del.C. §103(c) relating to land use planning and education, shall be applied exclusively to offsetting the required local share of major capital construction costs.~~

~~12.1.1 Districts receiving Voluntary School Assessment funds shall have full discretion in the use of those funds for any construction activities that increase school capacity.~~

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### OFFICE OF THE SECRETARY

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

### PUBLIC NOTICE

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

#### 415 Voluntary School Assessment

#### A. Type of Regulatory Action Required

New Regulation

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

The Secretary of Education intends to propose a new regulation related to 14 **DE Admin. Code** 415 Voluntary School Assessment. The Voluntary School Assessment was removed from 14 **DE Admin. Code** 401 Major Capital Improvement Programs. The Department of Education proposes this regulation to further delineate the process related to Voluntary School Assessment.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **September 5, 2014** to Tina Shockley, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is not directly related to improving student achievement as measured against state achievement standards. It removes Voluntary School Assessment.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all student's legal rights are respected.

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

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing Voluntary School Assessments does not change because of this regulation.

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost associated with this new regulation.

## **415 Voluntary School Assessment**

### **1.0 Purpose**

- 1.1 The funds generated as a result of the Voluntary School Assessment, as authorized by the provisions of 14 Del.C. §103(c) relating to land use planning and education shall be applied exclusively to offsetting the required local share of major capital construction costs.
- 1.2 Districts receiving Voluntary School Assessment funds shall have full discretion in the use of those funds for any construction activities that increase school capacity.

### **2.0 Definitions**

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

**"Building Valuation Data"** means the average construction costs as published biannually by the International Code Council, which can be used for determining permit fees for a jurisdiction.

**"Certificate of Necessity"** means the document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project. The Certificate of Necessity authorizes the school district to hold a referendum for the Capital Improvement Program identified and authorizes the school district to sell bonds to pay the local portion in the event of a successful referendum.

**"Certificate of Occupancy"** means the document issued by a local code enforcement official/office attesting that a facility meets building codes and is fit for human occupancy.

**"Change Orders"** means the documents that change the construction contract and are negotiated between the owner and contractor in order to correct design omissions, address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.

**"Equalization Report"** means the report issued per 14 Del.C. §1707(i), which recommends formula adjustments for funding allocations that are intended to equalize tax-base disparities, driven by land values, amongst local school districts.

**"Gross Area"** means the calculated square footage of a residential unit.

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# PROPOSED REGULATIONS

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**“International Code Council”** means the nationally recognized organization that is dedicated to developing model codes and standards used in the design, build and compliance process to construct safe, sustainable, affordable and resilient structures.

**“Program Capacity”** means eighty-five (85) percent of the maximum number of students that a program or school can contain as determined solely by considerations of physical space, physical space and class size for each grade level, as identified in 14 **Del.C.** §405(c).

**“School Capacity”** means the calculation which determines the number of students that can be served within a school building, as determined by the Department of Education school construction formula.

**“School Capacity Certification”** means the certification made by any local school district to be impacted by a pending development, which identifies the existence of capacity within existing district infrastructure, or lack thereof.

**“School Construction Technical Assistance Manual”** means the document that identifies the school construction formula and provides local school districts with guidance and rules related to school construction.

**“Voluntary School Assessment”** means the fee assessed on new residential construction units in New Castle County and its municipalities to provide support for the construction of additional capacity within local school districts, for increased student growth that results from residential development.

## **3.0 Determination of School District Capacity**

- 3.1** Prior to a developer recording a residential subdivision plan per 9 **Del.C.** §2661, and for over 5 units in size for any lands annexed into any municipality located in New Castle County per 22 **Del.C.** §842(2), the developer shall request from the Department of Education a School Capacity Certification to ensure that the school district in which the development will be located has adequate capacity to accommodate the proposed number of students the development will incur. The Department of Education shall also verify with the municipality located in New Castle County or New Castle County all the necessary information regarding the development to include location; tax parcel number of the development; and number and type of residential units.
- 3.2** The Department of Education shall respond to the developer’s request for certification within 60 days of receipt of a completed request for such certification. The municipality located in New Castle County or New Castle County shall provide the Department of Education with all the necessary development information within 20 days from the request by the Department of Education. The certification from the school district shall include the following information for the schools impacted by the new development:
- 3.2.1** Feeder patterns for this development and the schools that will be affected by these feeder patterns.
- 3.2.2** The increased demand that will result from the proposed development.
- 3.2.3** School capacity, program capacity and enrollment data relevant to the proposed development.
- 3.3** The developer shall be subject to the Voluntary School Assessment if it is determined by the school district that no capacity exists.

## **4.0 Calculation of Voluntary School Assessment for New Castle County**

- 4.1** The Department of Education shall calculate the Voluntary School Assessment rates annually for each school district in New Castle County. Voluntary School Assessments shall be calculated on a per unit basis using statewide average cost of construction based on the school construction formula.
- 4.1.1** The calculation shall include the local share of cost per student for school construction by taking the statewide average cost and multiplying it by the annual local major capital match requirement.
- 4.1.2** The local share calculated above shall then be multiplied by 0.5 (statewide average children per household as per 14 **Del.C.** §103(c)(3)) to determine the final individual rate for each school district.

## **5.0 Determining Total Cost of a Residential Unit**

- 5.1 The developer shall contact the Department of Education to identify residential units subject to the 5 percent limitation as per 14 Del.C. §103(c).
- 5.2 Total cost of the residential unit shall mean the total cost to construct the residential unit, not to include cost of land or site work (for the purposes of determining the 5 percent limitation on the Voluntary School Assessment fees as per 14 Del.C. §103(c)).
- 5.3 Cost per square foot shall be derived from the Building Valuation Data (BVD) table, reflecting construction cost standards established by the International Code Council (ICC).
- 5.4 Total construction cost shall equal Gross Area of the residential unit multiplied by the Square Foot Construction Cost identified on the BVD table.
- 5.5 The Department of Education shall use the first issued ICC update of the BVD table in the current calendar year as the basis for calculating total construction costs for any new major subdivision which is subject to the 5 percent limitation as per 14 Del.C. §103(c).

## **6.0 Determination of Voluntary School Assessment Fee**

- 6.1 For each of the new residential units to be constructed, the developer shall pay to the Department of Education the Voluntary School Assessment in effect for the fiscal year in which the first building permit is issued for a residential unit to be constructed on the property.
  - 6.2 The fee shall remain constant throughout the development of the subdivision (and shall not be increased for any reason, including but not limited to any re-subdivision); provided, however, that after 5 years from the issuance of the first building permit, the voluntary school assessment amount may be recalculated by the Department of Education.
  - 6.3 Any voluntary school assessments paid under this subsection shall be paid to the Department of Education at the time that a certificate of occupancy is obtained for each unit, and shall be deposited by the Department into an interest-bearing account. Such assessments shall be released and paid by the State into an interest-bearing account of the school district at the time the school district engages in construction activities which increase school capacity.
  - 6.4 With the approval of the Department of Education, after consultation with the superintendent of the affected school district, an applicant may receive a credit against voluntary assessments to be paid in an amount equal to the fair market value of any lands or properties set aside by the developer and deeded to the school district for school uses. Any such lands shall not be used for non-school purposes, other than as parkland or open space.
  - 6.5 No certificate of adequate school capacity shall be required and projects are exempt from payment of Voluntary School Assessment fees where any of the following criteria are met:
    - 6.5.1 The residential development is restricted by recorded covenants to provide housing or shelter predominantly for individuals 55 years of age or older pursuant to the provisions of the Federal Fair Housing Act [42 U.S.C. § 3601, et. seq.].
    - 6.5.2 The residential development is for low income housing, which, for purposes of this section; shall be defined to mean any housing financed by a loan or mortgage that is insured or held by the Secretary of HUD or the Delaware State Housing Authority or which is developed by a nonprofit corporation certified under § 501(c) (3) of the United States Internal Revenue Code [26 U.S.C. § 501(c) (3)]; or
    - 6.5.3 The applicant has pledged, in a writing recorded and running with the subject property, to pay a Voluntary School Assessment in an amount determined pursuant to §103(c) of Title 14 for each lot for which the applicant would otherwise be required to obtain a certificate.
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# PROPOSED REGULATIONS

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## OFFICE OF THE SECRETARY

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

### PUBLIC NOTICE

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

#### 851 K to 12 Comprehensive Health Education Program

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

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 851 K to 12 Comprehensive Health Education Program. The amendment is needed in order to clarify some language regarding the incorporation of psychomotor skills learning into the instruction, and the implementation date shall be no later than the 2015-2016 school year.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **September 5, 2014** to Tina Shockley, Education Associate – Policy Advisor, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

##### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment will help improve student achievement by educating them about how to remain healthy, which will allow them to attend school regularly.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendment will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This amendment will help ensure that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendment will help ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendment preserves the necessary authority and flexibility of decision making at the local board and school level.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority does not change with regard to the amendments.

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost to the state and local school boards for compliance for CPR funding was noted in epilogue language.

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## 851 K to 12 Comprehensive Health Education Program

### 1.0 Program Requirements

- 1.1 Each school district and charter school shall have a sequential, skill-based K to 12 Comprehensive Health Education Program based on the Delaware Health Education Standards that establishes a foundation of understanding the relationship between personal behavior and health and shall include at a minimum the following:
  - 1.1.1 Identification of a district level person to coordinate the district program and a coordinator in each building to assure compliance at the building level. Each charter school shall identify a person to coordinate the program for the charter school.
  - 1.1.2 Appointment of persons such as teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and others with expertise in the areas of health, family life and safe and drug free schools and communities to serve as members of the Consolidated Application Planning Committee.
  - 1.1.3 The use of the state content standards for health education for grades K to 12 to address the core concepts: tobacco, alcohol and other drugs, injury prevention and safety, nutrition and, physical activity, family life and sexuality, personal health and wellness, mental health and community and environmental health with minimum hours of instruction as follows:
    - 1.1.3.1 In grades K to 4, a minimum of thirty (30) hours in each grade of comprehensive health education and family life education of which ten (10) hours, in each grade, must address drug and alcohol education.
    - 1.1.3.2 In grades 5 and 6, a minimum of thirty five (35) hours in each grade of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug and alcohol education.
    - 1.1.3.3 In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug and alcohol education. If all of the 60 hours are provided in one year at grade 7 or 8, an additional fifteen hours of drug and alcohol education must be provided in the other grade.
    - 1.1.3.4 In grades 9 to 12, one half (1/2) credit of comprehensive health education is required for graduation of which fifteen (15) hours of this 1/2 credit course must address drug and alcohol education. In addition, no less than two (2) hours of this 1/2 credit course shall ~~cover~~ include a cardiopulmonary resuscitation (CPR) awareness-based on instructional program which uses the most current evidence-based emergency cardiovascular care guidelines, and incorporates psychomotor skills learning into the instruction, use of an Automated External Defibrillator (AED) as well as a component on the life saving and life enhancing effects of organ and tissue donation. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of drug and alcohol education must be provided for all students. CPR ~~awareness instruction,~~ use of an AED and organ/tissue donation awareness shall be integrated into each high school Health Education Program no later than the ~~2014-2015~~ 2015-2016 school year.
  - 1.1.4 Inclusion of a comprehensive sexuality education and an HIV prevention program that stresses the benefits of abstinence from high risk behaviors.
  - 1.1.5 Inclusion of the core concepts of nutrition and family life and sexuality implemented through Family and Consumer Science courses.
  - 1.1.6 Inclusion of research-based fire safety education in grades kindergarten through grade 6.
  - 1.1.7 Inclusion of an evidence-based tobacco, alcohol, drug and interpersonal violence prevention program.

- 1.1.8 The use of effective instructional methods as demonstrated in sound research in the core concepts and skills inclusive of accessing information, self management, analyzing internal and external influences, interpersonal communication, decision making and goal setting and advocacy.
- 1.1.9 A description of the method(s) used to implement and evaluate the effectiveness of the program shall be reported upon request of the Department.

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### PUBLIC NOTICE

#### Nursing Facility Services – Preadmission Screening and Resident Review

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding administration of the Medicaid Preadmission Screening and Resident Review (PASRR), specifically, *Categorical Determinations and Specialized Services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by September 2, 2014.

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

#### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding administration of the Medicaid Preadmission Screening and Resident Review (PASRR), specifically, *Categorical Determinations and Specialized Services*.

#### Statutory Authority

- 1919(e)(7), *State Requirements for Preadmission Screening and Resident Review*
- 42 CFR 483 Subpart C, *Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals*

#### Background

Preadmission Screening and Resident Review (PASRR), a provision at section 1919(e)(7) of the Social Security Act, is a federally mandated screening process for individuals with serious mental illness and/or individuals with intellectual disability/developmental disability, who apply or reside in Medicaid certified beds in a nursing home regardless of payor. The screening helps ensure individuals in need of long term care services reside in the most appropriate and least restrictive setting possible, are not inappropriately placed in nursing homes, and receive services they need in that setting. Additionally, if a need for specialized services is determined, federal guidelines require that such services must be provided.

The PASRR process specified in 42 CFR §§ 483.100 through 483.138 requires that 1) all applicants to a Medicaid-certified nursing facility, which includes children under age 21 years, be evaluated for mental illness and/or intellectual disability; 2) be offered the most appropriate setting for their needs (in the community, a nursing facility, or acute care settings); and 3) receive the services they need in those settings.

As a process, PASRR has two core components. Level I and Level II:

### *Level I PASRR Screen*

In brief, the PASRR process requires that all applicants to Medicaid-certified Nursing Facilities be given a preliminary assessment to determine whether they *might* have mental illness or intellectual disability/developmental disability. This is called a “Level I PASRR screen.”

### *Level II PASRR Screen*

Those individuals who test positive at Level I are then evaluated in depth, called “Level II PASRR screen.” The results of this evaluation result in a determination of need, determination of appropriate setting, and a set of recommendations for services to inform the individual’s plan of care.

### *Categorical Determinations*

Categorical Determinations means the provisions in 42 CFR §483.130 for creating categories that describe certain diagnoses, severity of illness, or the need for a particular service that clearly indicates that admission to a nursing facility is normally needed or that the provision of specialized services is not normally needed.

Categorical determinations permit states to omit the full Level II evaluation in certain circumstances that are time-limited or where the need for nursing facility services is clear. While categorical determinations do abbreviate the PASRR process, the function of the resulting determination is not different from an individualized determination and a determination document must be produced prior to admission. Categorical determinations are not “exemptions.”

### *Specialized Services*

In accordance with 42 CFR §483.120, Specialized Services for Preadmission Screening and Resident Review means services that are provided in addition to the routine care provided by a nursing facility (NF) that result in the continuous and aggressive implementation of an individualized plan of care for mental illness (MI) or intellectual or developmental disability (IDD) or related conditions, as follows:

(1) For mental illness, specialized services means the services specified by the State which, combined with services provided by the NF, results in the continuous and aggressive implementation of an individualized plan of care that—

- (i) Is developed and supervised by an interdisciplinary team, which includes a physician, qualified mental health professionals and, as appropriate, other professionals.
- (ii) Prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of serious mental illness, which necessitates supervision by trained mental health personnel; and
- (iii) Is directed toward diagnosing and reducing the resident's behavioral symptoms that necessitated institutionalization, improving his or her level of independent functioning, and achieving a functioning level that permits reduction in the intensity of mental health services to below the level of specialized services at the earliest possible time.

(2) For intellectual or developmental disability, specialized services means the services specified by the State which, combined with services provided by the NF or other service providers, results in treatment which meets the requirements of §483.440(a)(1).

The State must provide or arrange for the provision of specialized services, in accordance with this subpart, to all NF residents with MI or IDD whose needs are such that continuous supervision, treatment and training by qualified mental health or intellectual disability personnel is necessary, as identified by the screening provided in §483.130 or §§483.134 and 483.136.

## **Summary of Proposal**

This state plan amendment is mandated by federal law to ensure that Medicaid-certified nursing facility applicants and residents with mental illness, intellectual or developmental disabilities, or related conditions are

identified and admitted or allowed to remain in a nursing facility only if there is a verified need for nursing facility services.

Federal regulation prohibits Medicaid reimbursement to nursing facilities under certain circumstances, such as but not limited to, (1) Individual admitted without a completed preadmission screening and resident review (PASRR) screening indicating appropriateness for nursing facility placement, (2) Nursing facility fails to obtain a Level II determination when there are indicators of mental illness or intellectual disability/developmental disability.

The Division of Medicaid and Medical Assistance (DMMA) will amend the Medicaid State plan and the Division of Social Services Manual to implement the nursing facility preadmission screening and resident review (PASRR) categorical determinations and specialized services definitions. This regulatory process defines the Level II evaluation provided to all individuals suspected of having mental illness or an intellectual developmental disability seeking admission to a Medicaid-certified nursing facility under the PASRR program. This regulatory process also identifies specialized services that will be available when determined to be needed through the PASRR evaluation process.

DMMA will utilize the PASRR state plan template, drafted by the Centers for Medicare and Medicaid Services (CMS), to ensure that the State's Medicaid plan and policies complies with PASRR federal regulations.

The provisions of this state plan amendment relating to Preadmission Screening and Resident Review are subject to approval by CMS.

**IMPORTANT NOTE:** People first language is respectful of the person and should always be used when referencing an individual with intellectual and other developmental disabilities. Current federal law and regulations use the term "mentally retarded". DHSS/DMMA prefers to use the accepted term "individuals with intellectual disability" (ID) instead of "mental retardation." The term "intellectual disability" will be reflected on all applicable amended State plan and policy pages.

### Fiscal Impact Statement

There will be a fiscal impact. However, the actual calculation of costs is currently being determined. The projected impact for federal fiscal years 2014 and 2015 will be provided in a future issue of the Delaware *Register of Regulations*.

### DMMA PROPOSED REGULATION #14-32a

#### REVISION:

79s

Revision: HCFA-PM-93-1  
January 1993

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

STATE: DELAWARE

### SECTION 4 - GENERAL PROGRAM ADMINISTRATION (Continued)

<p><u>Citation</u> 1902(a)(28)(D)(i), 1919(e)(7), 1919(b)(3)(E) of the Act; P.L. 100-203 (Sec. 4211(c)); P.L. 101-508 (Sec. 4801(b))</p>	<p>4.39</p>	<p><u>Preadmission Screening and Annual Resident Review in Nursing Facilities</u></p> <p>(a) The Medicaid agency has in effect a written agreement with the State mental health and mental retardation authorities that meet the requirements of 42 CFR 431.621(c).</p> <p>(b) The State operates a preadmission and annual resident</p>
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review program that meets the requirements of 42 CFR 483.100-138, and Section 1919e)(7)(B)(iii) of the Act.

- (c) The State identifies Nursing Facility (NF) applicants and residents who are known to, or have indications of possible, serious mental illness, intellectual disability or a related condition, and refers them to the State mental health or intellectual disability authorities for preadmission screening or resident review according to 42 CFR 483.128(a).

~~(e)~~(d) The State does not claim as "medical assistance under the State Plan" the cost of services to individuals who should receive preadmission screening or annual resident review until such individuals are screened or reviewed.

79t

Revision: HCFA-PM-93-1  
January 1993

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

SECTION 4 - GENERAL PROGRAM ADMINISTRATION (Continued)

~~(d)~~(e) With the exception of NF services furnished to certain long-term NF residents defined in 42 CFR 483.118(c)(1), the State does not claim as "medical assistance under the State plan" the cost of NF services to individuals who meet the State's medical necessity criteria for NF, but for whom NF is determined not to be a needed and appropriate setting according to 42 CFR 483.132. Determining appropriate placement considers community and other institutional options.

- (f) The State defines minimum criteria, related to the resident assessment process for significant change in a residents physical or mental condition as required at 1919(b)(3)(E) of the Social Security Act, that require nursing facilities to promptly notify the State mental health or mental retardation authority that a resident review as required at section 1919(e)(7)(B)(iii) may be needed for residents with serious mental illness, intellectual disability or a related condition. The State mental health and intellectual disability authorities assess notifications from nursing facilities and upon determining that a resident review is needed, will promptly perform a PASRR Level II evaluation and determination.

# PROPOSED REGULATIONS

~~(e)(g)~~ ATTACHMENT 4.39 Page 1 specifies the State's definition of specialized services.

~~(h)~~ The State ~~describes~~ applies any categorical determinations it ~~applies~~, as specified in ATTACHMENT 4.39-A.

## DMMA PROPOSED REGULATION #14-32b

### REVISION:

Attachment 4.39

Page 1

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

### STATE: DELAWARE

### DEFINITION OF SPECIALIZED SERVICES

#### Specialized Services for PASRR

As defined in 42 CFR 483.120, Specialized Services for Preadmission Screening and Resident Review (PASRR) means services that are provided to supplement the care provided by a nursing facility under its Medicaid per diem payment that are intended to result in the continuous and aggressive implementation of an individualized plan of care for a nursing facility resident who has a mental illness or intellectual disability or developmental disability.

#### Mental Illness

For individuals with serious mental illness, defined in 42 CFR 483.102(b)(1), specialized services, as defined in 42 CFR 483.120(a)(1), means the services specified by the State which, combined with services provided by the nursing facility, results in the continuous and aggressive implementation of an individual plan of care that:

- : Is developed and supervised by an interdisciplinary team, which includes a physician, qualified mental health professional and, as appropriate, other professionals.
- : Prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of serious mental illness, which necessitates supervision by trained mental health personnel, and
- : Treatment is directed toward stabilization and restoration of the level of functioning that preceded the acute episode.

Specialized Services do not include services that can be routinely managed by a primary care provider.

#### Intellectual Disability or Developmental Disability and Related Conditions

For individuals with intellectual disability or developmental disability, defined in 42 CFR 483.102(b)(3), specialized services, as defined in 42 CFR 483.120(a)(2), means the services that are specified by the State, which, combined with services provided by the nursing facility and other service providers results in a continuous active treatment which meets the requirements of 42 CFR 483.440(a)(1) and includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services directed toward:

- : The acquisition of skills and behaviors necessary for the client to function with as much self-determination and independence as possible, and
- : The prevention or deceleration of regression or loss of current optimal functional status

Active treatment does not include services to maintain generally independent clients who are able to function with little or no support in the absence of a continuous active treatment program.

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**DMMA PROPOSED REGULATION #14-32c****REVISION:**

Attachment 4.39-A

Page 1

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

STATE: **DELAWARE**

## CATEGORICAL DETERMINATIONS

**PASRR Level II Preadmission Screening by Categorical Determination**

The following categories developed by the State mental health or intellectual/developmental disability authorities and approved by the State Medicaid Agency may be made applicable to individuals identified by PASRR Level I as possibly having serious mental illness/intellectual/developmental disability /related condition (MI/IDD/RC) when existing data on the individual appear to be current and accurate and are sufficient to allow the reviewer readily to determine that the individual fits the category. The data available includes physical, mental, and functional assessments as required by 42 CFR 483.132(c).

An adequate inspection of records for a categorical determination takes the place of the nursing facility (NF) individualized Level II evaluation and/or the Specialized Services individualized Level II evaluation as indicated below. Categorical evaluation and determination reports as required by 42 CFR 483.128 and .130, are produced, prior to admission, for all categorical determinations.

When existing data is not adequate, or any judgment is required about the presence of serious mental illness or intellectual/developmental disability, the individual is referred for individualized Level II evaluation. The State mental health or intellectual/developmental disability authority is responsible for: 1. assuring that the categorical determinations meet requirements; 2. assuring that the determinations are in the best interests of the residents; 3. retaining copies of the categorical evaluation and determination reports, and 4. maintaining a tracking system for all categorical determinations.

For time limited categories — individuals are either discharged, or evaluated by individualized Level II Resident Review, within the specified time limits. Federal Financial Participation (FFP) is not available for days of NF care after the time limit expires and before a Level II Resident Review is completed according to requirements.

*(Check each that applies, and supply definitions and time limits as required.)*

**I. Categorical Determination that nursing facility (NF) placement is appropriate.** *(Level II Specialized Services evaluation and determination by the State Mental Health/ Intellectual Disabilities/ Developmental Disabilities Authorities (SMH/ID/DDA) is individualized. A new, individualized, Level II Resident Review is required if at any time the resident demonstrates need for services related to serious mental illness, intellectual disability, developmental disability, or a related condition, or the admission exceeds the specified time limit.)*

Attachment 4.39-A

Page 2

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

STATE: **DELAWARE**

## CATEGORICAL DETERMINATIONS

**PASRR Level II Preadmission Screening by Categorical Determination Continued**

# PROPOSED REGULATIONS

**X Convalescent Care:** NF services are needed for from an acute physical illness which required hospitalization, and does not meet all the criteria for an exempt hospital discharge. (An exempt hospital discharge as specified in 42 CFR 483.106(b)(2) is not subject to Preadmission Screening, at State option.)

Definition	Time limit
Admission directly from hospital to NF for same condition can include special medical services. Individual lacks adequate supports to safely remain in the community for the needed medical services, observation or intervention.	120 days

**X Terminal Illness** (as defined for hospice purposes at 42 CFR 418.3: a life expectancy of six (6) months or less if the illness runs its normal course). NF admission is not approved to a facility without a hospice contract unless terminal illness is documented and the individual waives a hospice contract.

<i>Additional Definition (optional)</i>
No risk to self or others

Other category(s) defined by the State.

Definition	Time limit

**II. Categorical Determination that NF placement is appropriate, and that Specialized Services are not needed.** (Determination that Specialized Services are needed is individualized, not categorical.)

**X Medical Dependence:** documented severe physical illness which results in a level of impairment documented to be so severe that the individual could not be expected to benefit from Specialized Services. For example: coma, ventilator dependence, functioning at a brain stem level, or diagnosis such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure 42 CFR 483.130 (c)(3)

<u>Definition</u>
No risk to self or others

Other category(s) defined by the State, in which a level of impairment is documented to be so severe that the individual could not be expected to benefit from Specialized Services.

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

**PASRR Level II Preadmission Screening by Categorical Determination Continued**

Definition	Time limit <i>(optional)</i>

**III. Provisional admissions. Categorical Determination that NF placement is appropriate for a brief period.** Option to also categorically determine by the SMH/ID/DDA (not Level I screeners) that Specialized Services are not needed because stay is expected to be brief and the individual does not have a history of need for intensive MI or ID/DD services. (Determination that Specialized Services (SS) are needed is individualized, not categorical.)

**X Delirium:** Provisional admission pending further assessment in case of where an accurate diagnosis cannot be made until the delirium clears.

<u>Additional Definition (optional)</u>	<u>SS Not Needed</u> <u>Categorical</u>	<u>Time limit (≤7 days)</u>
No risk to self or others	<input type="checkbox"/>	7 days

**X Emergency Situations:** Provisional admission pending further assessment requiring protective services, with placement in the nursing facility not to exceed seven (7) days.

<u>Additional Definition (optional)</u>	<u>SS Not Needed</u> <u>Categorical</u>	<u>Time limit (≤7 days)</u>
No risk to self or others	<input type="checkbox"/>	7 days

**X Respite:** Very brief and finite stays of up to a fixed number of days to provide to in-home caregivers to whom the individual with MI or ID/DD is expected to return following the brief NF stay.

<u>Additional Definition (optional)</u>	<u>SS Not Needed</u> <u>Categorical</u>	<u>Time limit</u>
No risk to self or others	<input type="checkbox"/>	Fourteen (14) days

**IV. Categorical determination that Specialized Services are not needed.** (Determination that Specialized Services are needed is individualized, not categorical. Determination by the State MH/ID/DD authority that NF placement is appropriate and is individualized.)

Attachment 4.39-A  
Page 4

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

**PASRR Level II Preadmission Screening by Categorical Determination Continued**

**X Dementia and Intellectual Disability/Developmental Disability (ID/DD).** The State intellectual disability authority (not Level I screeners) makes categorical determinations that an individual with dementia in combination with intellectual disability or a related condition, does not need Specialized Services. The dementia is of a severity to affect the individual's need for or ability to make use of Specialized Services.

<u>Additional Definition (optional)</u>

**DMMA PROPOSED REGULATION #14-32d**  
**REVISIONS:**

**PAS POL 20102.3.1 PREADMISSION SCREENING AND RESIDENT REVIEWS (PASRR)**

# PROPOSED REGULATIONS

~~This applies to all nursing home applicants or residents of a Medicaid-certified facility (NF) regardless of payment source or diagnoses.~~

Preadmission Screening and Resident Review (PASRR) Screening applies to all applicants to a Medicaid certified nursing facility, regardless of the applicant's payer source. PASRR screening must be completed prior to the individual's admission.

**1. The Division of Medicaid and Medical Assistance (DMMA) is Responsible for PASRR Oversight has oversight responsibility for Level 1 screenings.**

All involved parties are eligible to conduct the Level 1 screenings, including the State Medicaid, Mental Health, or Intellectual or Developmental Disability authorities, nursing facilities, discharging hospitals, or contractors.

Level I assessments of possible mental illness (MI)/intellectual disability (ID)/developmental disability (DD) must be made by qualified professionals such as hospital discharge planners, nurses, or social workers.

~~DMMA will assure PASRR program operates in accordance with federal regulations.~~

**~~2. A Level 1 PASRR Screening is completed on all residents or potential residents of a Medicaid-certified Nursing home.~~**

**2. A Level I screening is the process of identifying individuals who are suspected of having mental illness or intellectual disability or developmental disability/related conditions or if categorical determinations are met.**

~~The Nursing Facility is responsible for completing the Level I screening for non-Medicaid individuals.~~

~~The Division of Medicaid and Medical Assistance is responsible for completing the Level I screening for Medicaid and potential Medicaid individuals when notified.~~

**3. Determination is made regarding the need for a Level II PASRR screening.**

Based on the Level I screening, the individual will meet one of ~~three~~ the following categories:

a. ~~No indication of mental illness/mental retardation~~ intellectual disability/developmental disability or related condition – nursing home admission/continued stay is appropriate - No further evaluation is needed.

b. There are indicators of mental illness/~~mental retardation~~ intellectual disability/developmental disability/related condition however, individual meets any of the following ~~Physician's Exemption~~ Categorical Determination Criteria:

~~Primary Diagnosis of Dementia or related disorder~~

i. ~~Convalescent Care; not to exceed 30 days — PAS nurses will track this exemption and initiate Level II PASRR evaluation prior to expiration if continued NF stay is warranted.~~

ii. ~~Terminal Illness; a life expectancy of 6 months or less if the illness runs its normal course.~~

iii. ~~Medical dependency with a severe physical illness.~~ Medical Dependence;

iv. Delirium;

v. Emergency Situations;

vi. Respite;

vii. Dementia/Intellectual Disability (ID)/Developmental Disability (DD)

~~No further evaluation is needed at this time.~~

c. There are indicators of mental illness, ~~mental retardation~~ intellectual disability/developmental disability/related conditions – Needs complete PASRR Assessment (Level II).

**4. DMMA will coordinate the Level II screening for all Medicaid and non-Medicaid individuals.**

DMMA Preadmission Screening (PAS) nurse will gather available data for Level II PASRR screening and forward it to the MI or ID/DD authority.

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Data is reviewed with DMMA Nurse Supervisor for approval to continue with the Level II screening.

**5. The individual and/or legal representatives must receive written notice that further evaluation is needed.**

The notice must inform them that the individual is being referred for Level II Evaluation to ~~DSAMH~~ the Division of Substance Abuse and Mental Health (DSAMH) due to mental illness indicators or to ~~DDDS~~ the Division of Developmental Disabilities Services (DDDS) due to ~~mental retardation~~ intellectual disability/developmental disability/related condition.

**6. An Independent Psychiatric Consultant (IPC) will complete the Level II Evaluation for those with mental illness/indicators.**

The IPC will assess individual and review documentation to verify whether or not there is a serious ~~MH~~ mental illness.

~~DDDS will assess individual and review documentation to verify whether or not diagnostic criteria of mental retardation or related conditions are met.~~

The Level II evaluation may be terminated at any time if the evaluator determines that no ~~Mental Illness~~ mental illness is present.

**7. DDDS will complete the Level II Evaluation for those with ~~mental retardation~~ intellectual or developmental disabilities indicators.**

DDDS will assess individual and review documentation to verify whether or not diagnostic criteria of ~~mental retardation~~ intellectual or developmental disabilities or related conditions are met.

The Level II evaluation may be terminated at any time if the evaluator determines that no ~~Mental Retardation~~ intellectual or developmental disability [or related conditions] is are present.

**8. DSAMH or DDDS Determines Need For Specialized Services and/or Nursing Facility (NF) Services.**

DSAMH will review IPC's recommendations and determine need for Specialized Services and/or NF services.

**9. ~~DMMA is notified by DSAMH/DDDS~~ notifies DMMA of the final determination.**

**10. DMMA will send the final determination letter to:**

- Individual/~~applicant~~ Applicant;
- Legal Representative;
- Admitting or ~~retaining~~ Retaining Nursing Facility (NF);
- Attending Physician;
- Discharging ~~hospital~~ Hospital - if exemption is not applicable.

Final PASRR determinations will be issued by DMMA.

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

### Standards for the Coverage of Organ Transplant Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), with 42 CFR §447.205 and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit a state plan amendment regarding Organ Transplants, specifically, *standards for the coverage of organ and tissue transplant services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by September 2, 2014.

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

### SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding Organ Transplants, specifically, *standards for the coverage of organ and tissue transplant services*.

#### Statutory Authority

- Section 1903(i) of the Social Security Act, *Payment to States, State Plan Requirement, Organ Transplant Procedures*
- 42 CFR 441.35, *Organ Transplants*
- State Medicaid Manual Section 4210, *Organ Transplants*
- Section 1138 of the Social Security Act, *Hospital Protocols for Organ Procurement and Standards for Organ Procurement Agencies*
- 42 CFR Subpart G, *Requirements for Certification and Designation and Conditions for Coverage: Organ Procurement Organizations*

#### Background

Section 9507 of the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), codified as section 1903(i) of the Social Security Act, requires states, as part of the Medicaid program, to establish standards for coverage of transplantation services. Specifically, Section 1903(i)(1) requires the denial of Federal Financial Participation (FFP) for organ transplants unless the State plan provides written standards concerning the coverage of such procedures. The statute does not list the transplant procedures for which standards must be written, but the organs about which questions are most commonly asked are: cornea, kidney, heart, liver, bone marrow, pancreas and combined heart-lung. States can choose to cover no organ transplant procedures, some types of transplants and not others, or all transplants. States should specify in the written standards which organs the state covers and any special conditions or limitations which apply to them.

#### Standards for Coverage

If a state covers organ transplant procedures, written standards must be furnished for the coverage of these procedures which provide that:

- similarly situated individuals are treated alike;
- any restriction, on the facilities or practitioners which may provide such procedures, is consistent with the accessibility of high quality care to individuals eligible for the procedures under the State plan; and
- services are reasonable in amount, duration, and scope to achieve their purpose.

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Coverage for organ transplants is described in Attachment 3.1-E of the Medicaid State plan pursuant to the requirement of 42 CFR 441.35 (Organ Transplants), and meet the requirements of Section 4201 (Organ Transplants) of the State Medicaid Manual.

## Summary of Proposal

Delaware Medicaid currently covers the following transplant procedures for eligible Medicaid recipients:

- Heart transplant
- Heart/Lung transplant
- Liver (any age) transplant
- Cornea transplant
- Bone Marrow transplant
- Pancreas transplant
- Kidney transplant

Prior authorization is required for all transplant services.

Medicaid State Plan page Attachment 3.1-E establishes standards and criteria for tissue and organ transplant services. The purpose of the proposed state plan amendment is to update standards for coverage of organ transplant services by adding "Intestinal transplant" to the list of transplant procedures to reflect long-standing practice. Also, as the current plan page is outdated, the amended state plan is reformatted to provide the information in a more useful manner as well as to update language to reflect current terms and usage, to incorporate citations, to clarify text to reflect current policy and, to reconcile state plan and provider manual policies.

The agency's proposal involves no change in the definition of those eligible to receive benefits under Medicaid, and the transplantation services benefits available to eligible recipients remains the same.

The provisions of this state plan amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS). Upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated.

## Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund.

## DMMA PROPOSED REGULATION #14-31

### REVISION:

Revision: HCFA-PM-87-4  
MARCH 1987

ATTACHMENT 3.1-E

Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: **DELAWARE**

STANDARDS FOR THE COVERAGE OF ORGAN AND TISSUE TRANSPLANT SERVICES

## Coverage of Transplant Services

The following types of medically necessary organ and tissue transplantation procedures are covered as specified in the Delaware Medical Assistance Program (DMAP) Provider Specific Policy Manuals:

- Heart
- Heart/Lung
- Liver (~~any age~~)
- Pancreas
- Kidney
- Intestinal (small bowel)
- Cornea

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# PROPOSED REGULATIONS

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- : Bone Marrow and Peripheral Blood Stem Cell
- : Any other transplants Delaware Medicaid determine to be added to the list of medically necessary organ and tissue transplantation procedures.

Coverage is limited to transplant services that are specified in the Delaware Medical Assistance Program (DMAP) Provider Specific Policy Manuals. Additionally, the criteria for determining a recipient's clinical eligibility for transplantation are specified in the DMAP Manuals, as well. The Delaware Medical Assistance Program Provider Specific Policy Manuals, including all updates to the manuals, are available on the DMAP website at: <http://www.dmap.state.de.us/downloads/manuals.html>.

## **Experimental and/or Investigational Services**

Services considered experimental and/or investigational are not a benefit of the Delaware Medical Assistance Program.

## **Transplant Criteria**

Reimbursement will be made for medically necessary transplant services provided to an eligible Delaware Medicaid recipient.

## **Prior Authorization**

All transplants require prior authorization. Specific prior authorization requirements, including the Prior Authorization Request Form, may be found in the Delaware Medical Assistance Program Provider Manuals located on: <http://www.dmap.state.de.us/downloads/manuals.html>

## **Standards for Coverage of Organ and Transplant Services**

The following standards and criteria must be met before transplantation services are payable under the Delaware Medical Assistance Program:

Facility -The transplant facility must meet the requirements contained in Section 1138 of the Social Security Act, Hospital Protocols for Organ Procurement and Standards for Organ Procurement Agencies. The transplant facility performing the transplant must have approval for performing the surgery through the Certification of Need (CON) process and must supply supporting documentation of this.

Patient - Documentation from an appropriate attending specialist and admitting facility that all of the following conditions are met:

1. Current medical therapy has failed and will not prevent progressive disability and death;
  2. The patient does not have other major systemic disease that would comprise the transplant outcome;
  3. There is every reasonable expectation, upon considering all the circumstances involving the patient, that there will be strict adherence by the patient to the long-term difficult medical regimen which is required;
  4. The transplant is likely to prolong life for at least two years, and to restore a range of physical and social function suited to activities of daily living;
  5. The patient is not both in an irreversible terminal state (moribund) and on a life support system;
  6. The patient has a diagnosis appropriate for the transplant;
  7. The patient does not have multiple uncorrectable severe major system congenital anomalies.
-

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 1007 (16 **Del.C.** §1007)  
16 **DE Admin. Code** 4407

### PUBLIC NOTICE

#### **4407 Hospital Standards (Construction, Maintenance, and Operation)**

The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, has proposed amendments to the State of Delaware 4407 Hospital Standards (Construction, Maintenance, and Operation) regulation.

House Bill 129 (“Christina’s Law”), signed by the Governor on June 10, 2014, requires the Department of Health and Social Services to adopt regulations to ensure that hospital staff have ready access to a locked hospital bathroom in the event of an emergency. The proposed amendment adds to the existing regulation a section 4.4 “Hospitals must develop and implement policies and procedures for hospital staff to have ready access to a locked hospital bathroom in the event of an emergency.”

On August 1, 2014, the Department plans to publish proposed amendments to the 4407 Hospital Standards (Construction, Maintenance, and Operation) regulation and hold them out for public comment per Delaware law.

Copies of the proposed regulation are available for review in the August 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation must submit same to Deborah Harvey by 4:30 p.m. on Tuesday, September 2, 2014 at:

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

#### **4407 Hospital Standards (Construction, Maintenance, and Operation)**

##### **1.0 General Licensing Requirements and Procedures**

- 1.1 Definitions: The definitions as contained in 16 **Del.C.** 1001 of the Hospital Licensure Law shall apply to these rules and regulations.
- 1.2 Purpose: The purpose of these regulations is to establish reasonable standards of equipment, capacity, sanitation, and any conditions which might influence the health care received by patients or promote the purposes of the Hospital Licensure Law.
- 1.3 Application: These rules and regulations apply to all health facilities that meet the criteria for a hospital as defined under 16 **Del.C.** 1001 of the Hospital Licensure Law. The Department of Health and Social Services in these regulations officially adopts certain National Standards for hospital licensure inspections and procedures. Nothing stated in these rules and regulations shall relieve a hospital from complying with local, city, county ordinances, codes, laws, regulations or relieve the hospital from compliance with other State or Federal requirements.
- 1.4 Issuance and Renewal of License. Upon receipt and approval of a complete application the Department of Health and Social Services shall issue or renew a license in accordance with one of the following categories:
  - 1.4.1 Annual License: An annual license shall be issued or renewed on a calendar year basis if the applying hospital is in substantial compliance with the provisions of these rules and regulations:

- 1.4.2 Provisional License: A provisional license for a term not to exceed six (6) calendar months may be granted only to an applying hospital which, although not in substantial compliance, is demonstrating satisfactory evidence to meet the provisions of these rules and regulations.

## **2.0 New Construction, Additions and Alterations**

- 2.1 Definition: "**New construction, additions, and alterations**" means new buildings to be used as hospitals, additions to existing buildings to be used as hospitals, conversion of existing buildings or portions thereof for use as hospitals, alterations other than minor alterations to existing hospitals.
- 2.2 A person desiring to establish a new hospital or a new addition or alteration to a licensed hospital must apply to the Department of Health and Social Services prior to establishing or beginning construction. The person must demonstrate that the new facility will meet the standards of these rules and regulations. A letter of approval to proceed with the development of plans and specifications will be issued by the Department of Health and Social Services to any person or hospital which demonstrates that the new facility will be in accordance with these rules and regulations. Plans and specifications for new construction, additions, or alterations, other than minor alterations must be prepared by or under the direction of an architect or engineer duly registered in the State of Delaware. A narrative description must be submitted with or prior to the submission of preliminary drawings. Final working drawings and specifications must be submitted to and approved by the Department of Health and Social Services prior to the beginning of actual construction.
- 2.3 Under the authority of 16 **Del.C.** Ch. 10 as amended, the Department of Health and Social Services adopts as the official standards for new construction, additions and alterations of hospitals, where applicable, the "Guidelines for Construction and Equipment of Hospital and Medical Facilities". U.S. Department of Health and Human Services, Public Health Service Publication Number (HRS-M-HF), 84-1 and all codes or standards referred under these adopted parts. When a hospital that is required to be licensed under these rules and regulations does not normally provide a particular service or department the parts of the following which relate to such service or department shall not be applicable. This Section of rules and regulations shall apply to new construction, additions, or alterations of hospitals only and not to existing facilities.

## **3.0 Physical Environment**

- 3.1 Under the authority of 16 **Del.C.** Ch. 10, as amended, the Department of Health and Social Services adopts as the official standards for the physical environment in hospitals the following parts of the regulations, Medicare Program Regulations, 42 CFR Part 405, Subpart J, U.S. Department of Health and Human Services, Social Security Administration, dated October, 1977, Sections 405.1020 - 405.1034 inclusive, and all codes and standards referred to under these adopted parts. If any part of this section is in conflict with Section 50.1, "New Construction, Additions, and Alterations" this part shall be void and the preceding section shall apply. When a hospital that is required to be licensed under these rules and regulations does not normally provide a particular service or department, the parts of the following which relate to such service or department shall not be applicable.
- 3.2 Physical Environment. Section 405.1022 and subsection b of Section 405.1025 shall apply. The Department of Health and Social Services' regulation governing the sanitation of eating places shall also apply to the dietary department. The radiation control regulations adopted by the Authority on Radiation Protection shall govern the hospital's radiological department.

## **4.0 Governing Body, Organization and Staff**

- 4.1 Under the authority of 16 **Del.C.** Ch. 10, as amended, the Department of Health and Social Services adopts as the official standards for the governing body, organization, and staff of hospitals the following parts of "Standards for Accreditation of Hospitals Plus Provisional Interpretations", published by the Joint Commission on Accreditation of Hospitals, dated 1981 Edition, and the "Requirements and Interpretative Guide for Accredited Hospitals", by the American Osteopathic Hospital Association, and all codes or standards referred to under these adopted parts. If any part of this section is in conflict with Section 2.0 "New Construction. Additions, and Alterations" or Section 3.0 "Physical Environment", this

part shall be void and the preceding Sections shall apply. When a hospital that is required to be licensed under these rules and regulations does not normally provide a particular service or department the parts of the following which relate to such service or department shall not be applicable.

- 4.2 Allopathic Hospitals. Pages 1 through 107 inclusive of the Standards for Accreditation of Hospitals Plus Provisional Interpretations by the Joint Commission on Accreditation of Hospitals, shall apply to the governing body, organization and staff of all allopathic hospitals.
- 4.3 Osteopathic Hospitals. Pages 7 through 93 inclusive of the Requirements and Interpretative Guide for Accredited Hospitals by the American Osteopathic Association shall apply to the governing body, organization and staff of all osteopathic hospitals.
- 4.4 Hospitals must develop and implement policies and procedures for hospital staff to have ready access to a locked hospital bathroom in the event of an emergency.

#### 5.0 Fire Safety

Fire safety in hospitals shall comply with the adopted rules and regulations of the State Fire Prevention Commission. Enforcement of the fire requirements is the responsibility of the State Fire Prevention Commission. All applications for license must include, with the application, a letter certifying compliance by the Fire Marshall having jurisdiction. Notification of non-compliance with the rules and regulations of the State Fire Prevention Commission may be grounds for revocation of license.

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)  
7 DE Admin. Code 1124

#### REGISTER NOTICE

SAN #2013-31

### 1124 Control of Volatile Organic Compound Emissions

#### 1. TITLE OF THE REGULATIONS:

Revision to Section 36 "Stage II Vapor Recovery" of 7 DE Admin. Code 1124 "Control of Volatile Organic Compound Emissions."

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

Delaware's ambient air quality does not meet the health based air quality standard for the pollutant ground-level ozone. Because gasoline vapors contribute to the formation of ground-level ozone, and because gasoline vapors include hazardous air pollutants, Delaware has implemented, since 1993, Section 36 to control gasoline vapor emissions from gasoline tanks and motor vehicles at gasoline dispensing facilities (GDFs). In addition, since 1998, automobile manufacturers have been required by the federal clean air act (CAA) to install on-board refueling vapor recovery (ORVR) systems on new vehicles.

The CAA allows Delaware to phase-out Stage II vapor recovery requirements, provided overall emissions do not increase in the absence of Stage II vapor recovery requirements. The ORVR system is effective for controlling gasoline vapor emissions from the fueling of ORVR equipped vehicles. When refueling ORVR equipped vehicles, however, fresh air is ingested into the GDF gasoline storage tanks, which leads to vapor growth in the gasoline tanks and vapor emissions from those tanks through leaks and pressure relief valves.

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# PROPOSED REGULATIONS

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The DAQ is proposing to revise Section 36 to require any new GDF to 1) not install a Stage II vapor recovery system, 2) demonstrate compliance with an allowable leak rate using a continuous pressure monitoring (CPM) system, and 3) when cost effective and necessary, install a pressure management system to reduce the uncontrolled venting of emissions. The DAQ is also proposing to allow any existing GDF, at its option, to decommission its Stage II system and comply with the same requirements applicable to new GDFs.

If finalized the Department proposes to submit this revision to the U.S. Environmental Protection Agency (EPA) as a revision to Delaware's state implementation plan (SIP).

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

None.

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

7 Del.C., Chapter 60, Environmental Control

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

None

**6. NOTICE OF PUBLIC COMMENT:**

A public hearing will be held on August 28, 2014, beginning at 6:00 pm, in DNREC Auditorium, 89 Kings Highway, Dover, DE 19901.

**7. PREPARED BY:**

Frank F. Gao Phone: (302) 323-4542 Date: July 15, 2014 E-Mail: Frank.Gao@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:**

**1124 Control of Volatile Organic Compound Emissions**

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

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

Statutory Authority: 31 Delaware Code, Chapter 3 (31 Del.C. Ch. 3)  
9 DE Admin. Code 105

#### PUBLIC NOTICE

#### **105 Residential Child Care Facilities and Day Treatment Programs**

##### Summary

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Requirements for Residential Child Care Facilities and Day Treatment Programs in response to public comments received after the publication of revised regulations in the June 2013, August 2013, January 2014, and May 2014 *Register of Regulations*.

##### Comments

Because of revisions made based on public comments recently received and internal review, the revised draft

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is again offered for another period of public comment. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on September 2, 2014.

### **Adoption of Proposed Regulations**

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

### **Changes Made Since Previous Publication**

Three organizations (Delaware Developmental Disabilities Council, Governor's Advisory Council for Exceptional Citizens, and State Council for Persons with Disabilities) offered nearly identical written comments to the regulations posted in the May 2014 Register. These comments have been incorporated into the draft as shown or are responded to here.

1. The agencies question the exclusion of "psychiatric hospitals and foster homes" from the definition of "residential child care facility" and state that "the status of a pediatric skilled nursing facility is unclear." Psychiatric hospitals and facilities such as a pediatric skilled nursing facility that accept only medically fragile children are not regulated by the Office of Child Care Licensing. Foster homes are regulated under a different set of regulations (Child Placing Agency regulations). No change made to regulation.
- 2.. Definition of "Administrative Hearing" revised to remove "awkward language."
3. The agencies wish OCCL "to consider whether HRC [Human Rights Commission] review of psychotropic drugs excluded from the definition of 'chemical restraint' merit HRC review" and the jurisdiction of the HRC be assured. Regulation 17.3.2.1 states that the HRC is responsible to determine "that children in care are receiving human and proper treatment" which would include the review of the use of psychotropic medications, regardless of their possible use as a "restrictive procedure." No change made to regulation.
4. In the definition of "Consultant," use of a plural pronoun and singular antecedent has been corrected.
5. The agencies question the absence of an age limit in the definition of "Locked Isolation." "Locked Isolation" is defined as a "Restrictive Procedure." Regulation 17.1.2 states that a restrictive procedure may not be used "on any child below six years of age." However, the definition of "Restrictive Procedure" has been augmented to provide additional clarity.
6. The agencies state that the "definitions of 'exclusion' and 'time-out technique' are not well differentiated" and that the "placement of a child under age 6 in an unlocked room would be barred under the "exclusion" definition but allowed ...if characterized as "time-out." The agencies recommend that it be "clear that all children placed in "exclusion" and "time-out" must be observed by an appropriate adult at all times." As stated in its definition, "restrictive procedures" (which includes "exclusion" and "locked isolation") may only be applied "when the child has failed to respond to other less restrictive means of behavior management." Additional wording has been added to regulation 3.12.9.3.3 to insure continuous monitoring of children under 6 years of age while in time-out and the time frame for monitoring of children over age six has been changed.
7. The agencies state that the continuous monitoring required for "exclusion" but not required for "time-out" might cause "a provider [who] wishes to avoid the continuous monitoring requirement ...[to] simply characterize placing a child in an unlocked room as "time-out." The regulation 3.12.9.3 has been amended and the monitoring time changed for time-out for both children over and under 6 years of age to provide additional clarity.
8. The agencies express concern over the possibility of sequential or "stacked" periods of restraint. Regulations 17.9.1.4, 17.9.2.4 have added text to place further limits on the use of restraints.
9. The agencies express concern regarding a discrepancy between the differences in release time found in regulations 3.12.10.1.3 and 17.5.1.1. Additional text has been added to regulation 17.5.1.1 to provide clarity.

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**PROPOSED REGULATIONS**

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10. Agencies suggest that OCCL consider reducing the employment age for a "direct care worker" from age 21 to 18 either universally or under specific circumstances. Because children in care could be 17 years of age (and in some circumstances older), OCCL maintains that requiring a direct care worker to be at least 21 years of age preserves a desirable age span difference between a direct care worker and children in care. No change made to regulation.
11. The agencies suggest adding in regulation 3.12.5.5, "a reference to referral to the Pathways to Employment program for qualifying adolescents." OCCL favors keeping the listing of services adolescent children receive non-specific, allowing the licensee to incorporate appropriate and available programs that may change over time. No change made to regulation.
12. The agencies questioned the authorized use of restraint when the destruction of property is involved. This authorization has been removed from the definitions of "Restrictive Procedure" and "Non-Violent Physical Intervention Strategies" and from Regulation 3.12.10.
13. The agencies question the clarity of Section 4.7.1 in regard to lead paint hazards and also ask that the term "severely emotionally disturbed" be changed. The verbiage regarding lead paint hazards has been clarified and the requested term replaced with "severe social-emotional disability."
14. The agencies suggest adding a provision to address the use of electronic cigarettes in section 7.0. Wording has been added.
15. Agencies state that standard 3.12.10.1.4 is unclear regarding the type of training and when it is required "regarding persons implementing physical intervention strategies to be 'specifically trained in its use and have current certification, if applicable.'" Text has been amended to improve clarity.
16. The following regulations contained duplicated or misplaced information. The text has been corrected and renumbered where needed. Subsections 3.12.1.1.1 through 3.12.1.4; 4.6.1.2; and 5.9.1.17.

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

**105 Residential Child Care Facilities and Day Treatment Programs**

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 506(a)(1) (24 Del.C. §506(a)(1))  
24 DE Admin. Code 500

**PUBLIC NOTICE****500 Board of Podiatry**

The Delaware Board of Podiatry, pursuant to 24 Del.C. §506(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with operational procedures at the Division of Professional Regulation regarding license renewal, inactive status and continuing education attestation.

The Board will hold a public hearing on the proposed rule change on September 16, 2014 at 5:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meaghan Jerman, Administrator of the Delaware Board of Podiatry, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904.

**500 Board of Podiatry**  
**(Break in Continuity of Sections)**

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## 5.0 Licenses (In-Training, Lapse/Renewal, Inactive)

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

#### 5.2 Lapse/Renewal

5.2.1 Licenses may be renewed by submitting an online renewal application, paying the renewal fee set by the Division of Professional Regulation and attesting to completion of the required continuing education.

5.2.4.2 A licensee whose license lapses for non-renewal may renew within one year by submitting an online renewal application and paying the late fee required by 24 Del.C. §511 and having completed all continuing education required for renewal. Late renewals shall be audited for satisfactory completion of the continuing education requirement.

5.2.23 If a licensee allows his or her license to lapse for over one year and has not been granted inactive status, that licensee must reapply for licensure in the same manner as a new applicant.

5.2.34 It shall be the responsibility of all licensees, active or inactive, to keep the Board informed of any change in name, home or business address.

5.2.45 License renewal ~~may~~ shall be accomplished online at <http://dpr.delaware.gov>.

#### 5.3 Inactive Status

5.3.1 A licensee may be placed on inactive status by the Board for a period of no more than five (5) years. Requests for inactive status shall be made, in writing, to the Board ~~and requests which exceed one (1) year shall be renewed biennially at the time of regular license renewals~~. After application to the Board and payment of a renewal fee, an inactive licensee may obtain a new license and re-enter active practice after completion of the continuing education requirements below.

5.3.1.1 Inactive status for one (1) year or less: 16 CE hours.

5.3.1.2 Inactive status for more than one (1) year: 32 CE hours, completed within 24 months prior to reapplication.

## 6.0 Continuing Education

6.1 "Continuing medical education (CME)," as that term is herein applied by the Board, includes any and all continuing education requirements, as herein below provided, which must be satisfied biennially by all licensed practitioners as a condition for licensure renewal. Each licensed practitioner shall complete, on or before June 30 of even numbered years at least 32 hours of continuing education as a condition of license renewal.

6.2 Each practitioner shall be exempt from the continuing education requirement in the first biennial licensing period, or any portion thereof, in which he is licensed to practice in Delaware. During the renewal process, a practitioner shall attest to his satisfactory completion of the continuing education requirements for the previous two (2) years. Attestation ~~may~~ shall be completed electronically ~~if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted~~. Each licensee must maintain a Podiatry CME log, on a form to be supplied by the Board, indicating the date, title, sponsor, and number of hours the licensee attended, for each continuing education program submitted for credit. Random audits will be performed by the Board to ensure compliance with the continuing education requirement. Licensees selected for the random audit shall submit validated documents which evidence satisfactory completion of the continuing education requirements for the previous two (2) years. The Board reserves the right to request additional documentation, such as copies of program materials, to verify CME compliance in the course of a random audit.

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

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

**500 Board of Podiatry**

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# PROPOSED REGULATIONS

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## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 Del.C. §2706(a)(1))  
24 DE Admin. Code 2700

### PUBLIC NOTICE

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

The Delaware Board of Professional Land Surveyors, in accordance with 24 Del.C. §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to allow professional development hours to be obtained by active duty military. The Board will hold a public hearing on the proposed rule changes on September 18, 2014 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

#### 2700 Board of Registration for Professional Land Surveyors (Break in Continuity of Sections)

#### 10.0 Continuing Education

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

10.12 A member of the active duty military, National Guard or the military reserve who is assigned to a duty station or deployed shall be deemed to have completed one hour of professional development for each month of active duty service.

**\*Please Note: As the rest of the sections were not amended they are not being published. 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 bold stricken through]**~~ indicates language deleted at the time the final order was issued.

## Final Regulations

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

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

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 505

### REGULATORY IMPLEMENTING ORDER

#### 505 High School Graduation Requirements and Diplomas

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. The amendments include, but are not limited to: 1) requiring an advisement process to the student success planning; 2) modifications to definitions; 3) revising the date for which diplomas may be awarded to the previous graduating class; and 4) addressing students in the custody of the Department of Services for Children, Youth & Their Families ("DSCYF").

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **June 7, 2014**, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities, and the Delaware Center for Justice. The GACEC and SCPD expressed concerns related to: 1) the requirement of mathematic in the Senior year, 2) the change in the date by which a diploma may be granted for a particular senior class, 3) when a student is considered a 12<sup>th</sup> grader and the student has an IEP, 4) the IEP transition plan and how it is incorporated into the Student Success Plan (SSP), 5) and credits from other state agency educational programs. The Department does not believe that further clarification is needed within the regulation with regard to these items.

In addition, the Department made clarifications for the implementation of the World Language requirements that begins for the Class of 2015 (Freshman Class of 2011-2012). The clarifications are related to students transferring into high school from an out-of-state school, nonpublic, or another Delaware public high school.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in order to align the regulation with current best practice, federal timelines, and to provide students with the opportunity to graduate in a timely manner, and without undue burden.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas 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** 505 High School Graduation Requirements and Diplomas amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas 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 17, 2014. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 17th day of July 2014.

### Department of Education

Mark T. Murphy, Secretary of Education

Approved this 17<sup>th</sup> day of July 2014

### State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

## 505 High School Graduation Requirements and Diplomas (Break in Continuity of Sections)

### 3.0 Credit Requirements Beginning with the Graduation Class of 2015 (Freshman Class of 2011-2012) (Break in Continuity Within Section)

#### 3.2 World Language:

**[3.2.1]** Students may fulfill the two (2) credit World language requirement by either:

3.2.[1.1] Earning a minimum of two (2) World Language credits in the same language or,

3.2.[1.2] Demonstrating Novice-high or higher proficiency level on a nationally recognized assessment of language proficiency, except English, in the skill areas of oral or signed expressive and receptive communication, reading and writing, that uses the levels of

proficiency as identified by the American Council for the Teaching of Foreign Language, or as approved for use by the Delaware Department of Education.

- [3.2.2] Any student enrolling in a Delaware public high school from an out-of-state school or nonpublic Delaware high school between and including October 1<sup>st</sup> of the 11<sup>th</sup> grade year and September 30<sup>th</sup> of the 12<sup>th</sup> grade year with one (1) World Language credit from a previous school shall be required to earn the second credit in that language unless the language is not offered at the enrolling school. In such case, the student shall earn one (1) credit in an additional language for a total of two (2) credits or pursue available options in 8.0 to earn the second credit of the original language.**
- 3.2.3 Any student enrolling in a Delaware public high school from an out-of-state school or nonpublic Delaware high school between and including October 1<sup>st</sup> of the 11<sup>th</sup> grade year and September 30<sup>th</sup> of the 12<sup>th</sup> grade year with no World Language credits, shall be required to earn at least one (1) World Language credit prior to graduation. Provided further, the minimum twenty-four (24) total credits outlined in this section shall still be met, or any other credit requirements pursuant to 7.1.**
- 3.2.4 Any student enrolling in a Delaware public high school from an out-of-state school or nonpublic Delaware high school on or after October 1<sup>st</sup> of the 12<sup>th</sup> grade year, the World Language requirement shall be waived. Provided further, the minimum twenty-four (24) total credits outlined in this section shall still be met, or any other credit requirements pursuant to 7.1.**
- 3.2.5 Any student transferring between Delaware public schools with one (1) World Language credit from a previous school shall be required to earn the second credit in that language unless the language is not offered at the enrolling school. In such case, the student shall pursue available options in 8.0 to earn the second credit of the original language students or earn one (1) credit in an additional language for a total of two (2) credits.]**

**4.0 Credit Requirements Beginning with the Graduation Class of 2016 (Freshman Class of 2012-2013)**  
*(Break in Continuity Within Section)*

**4.2 World Language:**

- [4.2.1] Students may fulfill the two (2) credit World language requirement by either:**
  - 4.2.[1.1] Earning a minimum of two (2) World Language credits in the same language or,**
  - 4.2.[1.2] Demonstrating Novice-high or higher proficiency level on a nationally recognized assessment of language proficiency, except English, in the skill areas of oral or signed expressive and receptive communication, reading and writing, that uses the levels of proficiency as identified by the American Council for the Teaching of Foreign Language, or as approved for use by the Delaware Department of Education.**
- [4.2.2] Any student enrolling in a Delaware public high school from an out-of-state school or nonpublic Delaware high school between and including October 1<sup>st</sup> of the 11<sup>th</sup> grade year and September 30<sup>th</sup> of the 12<sup>th</sup> grade year with one (1) World Language credit from a previous school shall be required to earn the second credit in that language unless the language is not offered at the enrolling school. In such case, the student shall earn one (1) credit in an additional language for a total of two (2) credits or pursue available options in 8.0 to earn the second credit of the original language.**
- 4.2.3 Any student enrolling in a Delaware public high school from an out-of-state school or nonpublic Delaware high school between and including October 1<sup>st</sup> of the 11<sup>th</sup> grade year and September 30<sup>th</sup> of the 12<sup>th</sup> grade year with no World Language credits, shall be required to earn at least one (1) World Language credit prior to graduation. Provided further, the minimum twenty-four (24) total credits outlined in this section shall still be met, or any other credit requirements pursuant to 7.1.**

- 4.2.4 Any student enrolling in a Delaware public high school from an out-of-state school or nonpublic Delaware high school on or after October 1st of the 12<sup>th</sup> grade year, the World Language requirement shall be waived. Provided further, the minimum twenty-four (24) total credits outlined in this section shall still be met, or any other credit requirements pursuant to 7.1.
- 4.2.5 Any student transferring between Delaware public schools with one (1) World Language credit from a previous school shall be required to earn the second credit in that language unless the language is not offered at the enrolling school. In such case, the student shall pursue available options in 8.0 to earn the second credit of the original language or earn one (1) credit in an additional language for a total of two (2) credits.]

\*Please note that no additional changes were made to the regulation as originally proposed and published in the June 2014 issue of the *Register* at page 1127 (17 DE Reg. 1127). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

[505 High School Graduation Requirements and Diplomas](#)

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### OFFICE OF THE SECRETARY

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

### REGULATORY IMPLEMENTING ORDER

#### 610 Limitations on Use of Seclusion and Restraint

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend Title 14 of the Delaware Administrative Code by adding a new regulation 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint. This regulation is required by Senate Bill 100 of the 147<sup>th</sup> General Assembly.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **June 7, 2014**, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens, State Council for Persons with Disabilities, and representatives from two of the special programs operating in Delaware. The Department considered all the comments and made changes as noted by the bold and bracketed language. These include but, are not limited to, clarification of the development of a uniform form for submission of a waiver and timeline for notification for waiver decisions. There were several comments with suggested changes that were in conflict with statutory language. A letter will be forthcoming to each of the entities that submitted comments.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend Title 14 of the Delaware Administrative Code by adding a new regulation 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint. This regulation is required by Senate Bill 100 of the 147<sup>th</sup> General Assembly.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint 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** 610 Limitations on Use of Seclusion and Restraint amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint 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 17, 2014. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 17th day of July 2014.

### Department of Education

Mark T. Murphy, Secretary of Education

Approved this 17th day of July 2014

### 610 Limitations on Use of Seclusion and Restraint

#### **1.0** Purpose and Authority

1.1 The purpose of these regulations is to establish standards and procedures for the use of physical restraint, [chemical restraint,] mechanical restraint, and seclusion to provide safety for all individuals. The regulations set forth permitted and prohibited uses of restraint and seclusion, required training for public school, private program, or alternative program personnel, required documentation and reporting of incidents of restraint and seclusion, required notification to parents, and waiver procedures for individual students.

1.2 These regulations are promulgated in accordance with 14 **Del.C.** §4112F.

*(Break in Continuity of Sections)*

#### **3.0** Use of Restraints

*(Break in Continuity Within Section)*

3.2 Such personnel may impose physical restraint only in conformity with all of the following standards:

*(Break in Continuity Within Section)*

3.2.9 The physical restraint is within the scope of force authorized by §468 of Title 11[~~-and.~~]

(Authority: 14 **Del.C.** §4112F(b))

#### **4.0** Training of Personnel

4.1 Except as provided in 14 **Del.C.** §702(c), a student may be physically restrained only by public school personnel, private program personnel, or alternative program personnel who have **[received completed]** training in physical restraint procedures.

4.1.1 Such personnel shall receive annual training in the use of **[emergency safety interventions crisis prevention and intervention techniques]** consistent with nationally-recognized training programs, which shall meet the following minimum requirements:

4.1.1.1 The training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies and supports;

4.1.1.2 The training shall be designed to meet the needs of such personnel consistent with their duties and the potential need for emergency safety interventions; and

*(Break in Continuity of Sections)*

**6.0 Uniform Data Collection**

- 6.1 When an incident of physical restraint of a student by school personnel occurs:
- 6.1.1 As soon as practicable thereafter, a reasonable attempt shall be made to interview the student regarding the incident; and
- 6.1.2 The school principal must provide a ~~W~~written report, in a uniform format as determined by the Department, of the restraint to the Department within seventy-two (72) hours of the restraint, or within seventy-two (72) hours of the time in which the student's district or charter school of residence receives notice of the restraint from the contracted private program or alternative program, whichever the case may be; and

*(Break in Continuity of Sections)*

**8.0 Waiver**

- 8.1 Any public school, private program, or alternative program applicant for a waiver of the prohibition on the use of mechanical restraints or seclusion for an individual student must deliver the request in writing[, in a uniform format developed by the Department,] to the Secretary or Secretary's designee setting forth the grounds for the request.
- 8.1.1 The request shall be based on compelling justification supported by documentation, including, but not limited to, educational records, reporting of incidents, and the student's functional behavioral assessment and behavioral intervention plan, including implementation data, and medical documentation, if applicable.
- 8.1.2 The request shall contain a description of the conditions and safeguards that the applicant will utilize in connection with the waiver, including, but not limited to:
- 8.1.2.1 A detailed description of the proposed continual visual staff monitoring of student; **[and]**
- 8.1.2.2 A requirement that the parent be notified of each use of mechanical restraint or seclusion which conforms to the procedure set forth in Section 5.0 for reporting physical restraint **[except that the provisions of 5.1.1 shall not apply herein]; and**
- 8.1.2.3 A detailed description of the physical space within which the seclusion(s) will occur, or of the type of mechanical restraint(s) to be utilized, whichever is applicable.
- 8.1.3 The request shall include a written authorization signed by the parent agreeing to the issuance of a waiver on the prohibition of the use of mechanical restraints or seclusion for that student and a signed written consent for release of information to the Department and the waiver review committee.
- 8.1.4 All privileged documentation shall be maintained confidentially by the Department and the waiver review committee to the extent permitted by law.
- 8.2 All requests shall be considered by a waiver review committee appointed by the Secretary. A decision by the waiver review committee shall be rendered **[within no later than]** (60) sixty calendar days of receipt of the waiver request.
- 8.3 The committee shall make a written recommendation to the Secretary, which shall include:
- 8.3.1 A summary of the compelling justification based on the documentation submitted in support of the waiver requested;
- 8.3.2 Recommendations to include any specific conditions and safeguards, and a brief statement of the reasons therefore;
- 8.3.3 A requirement that, where a waiver is issued, there be continual visual monitoring, parental notice of each use of mechanical restraint or seclusion, and collection of data to include the number of times the student was subject to mechanical restraint or seclusion, the duration of each **[incident mechanical restraint or seclusion]**, and any other data as required by the Department;
- 8.3.4 A statement as to the duration of the waiver, not to exceed a period of one calendar year.
- 8.4 The Secretary shall consider the entire record of the case and the committee's recommendations in reaching a final decision. The Secretary's decision shall be issued in writing and mailed to the

applicant and the parent by certified mail [no later than ten (10) calendar days from receipt of the recommendation of the waiver review committee].

8.5 The Secretary's decision shall be final.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the June 2014 issue of the *Register* at page 1133 (17 DE Reg. 1133). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**610 Limitations on Use of Seclusion and Restraint**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(o) (16 Del.C. §122(3)(o))  
16 DE Admin. Code 4410

#### ORDER

#### 4410 Skilled Home Health Agencies (Licensure)

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Skilled Home Health Agencies (Licensure). The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122 (3)o.

On May 1, 2014 (Volume 17, Issue 11), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by May 30, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

#### SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Skilled Home Health Agencies (Licensure) were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Verbal and written comments were received on the proposed regulations during the public comment period (May 1, 2014 through May 30, 2014).

Entities offering written comments include:

- State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson
- Governor's Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson
- BAYADA Home Health Care, Jean Mullin, Division Director

Public comments and the DHSS (Agency) responses are as follows:

#### **State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson:**

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposal to amend its regulations covering skilled home health agencies. The proposed regulation was published as 17 DE Reg. 1037 in the May 1, 2014 issue of the *Register of Regulations*.

The current regulation requires a director of a skilled home health agency to "have a Baccalaureate Degree in health or a related field". The Division proposes to require more robust credentials. A director would be required to meet the following standards:

- (1) Have a Baccalaureate Degree with five years healthcare experience and at least one year supervisory experience (full-time or equivalent in home health care); or
- (2) Be a registered nurse with five years health care experience and at least one year of supervisory experience (full-time or equivalent) in home health care.

SCPD endorses the proposed regulation. However, the Council recommends that the Division clarify whether existing directors are “grandfathered” or if the regulation will be applied to disqualify existing directors who do not meet the new standards.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency will not apply this regulation to directors appointed prior to the effective date of this regulation. Directors appointed on or after the effective date of this regulation must comply with the new standards.

**Governor’s Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson:**

The Governor’s Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Public Health (DPH) proposal to amend one standard within the regulations covering skilled home health agencies. Council **endorses** the proposed amendment since the current standard is rather limited. The current regulation requires a director of a skilled home health agency to “have a Baccalaureate Degree in health or a related field”. The proposed qualifications will require more robust credentials. A director would be required to meet the following standards:

- (1) Have a Baccalaureate Degree with five years healthcare experience and at least one year supervisory experience (full-time or equivalent in home health care); or
- (2) Be a registered nurse with five years health care experience and at least one year of supervisory experience (full-time or equivalent) in home health care.

Council would suggest that the Division clarify whether existing directors will be “grandfathered” or if the regulation will be applied to disqualify existing directors who do not meet the new standards.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency will not apply this regulation to directors appointed prior to the effective date of this regulation. Directors appointed on or after the effective date of this regulation must comply with the new standards.

**BAYADA Home Health Care, Jean Mullin, Division Director:**

On behalf of BAYADA Home Health Care in Delaware, please consider our concern and comment as related to the current and newly proposed regulation regarding the definition of “director” in the 4410 and 4406 Home Health Agencies (Licensure) regulation.

**Requirement for Health-Related Degrees Poses Serious Recruitment issues**

**The Current State Requirement Dissuades the Best and Brightest from Serving.** The state requirement mandating that directors of home health care offices have a health-related degree may have had good intentions, but in reality has been nothing less than a monumental obstacle to hiring and retaining quality individuals. In some instances, individuals who have years of experience running home health offices have been turned away from new positions.

**Common-Sense Necessitates Changes for our Patients.** If not completely eliminated, this requirement should be amended to allow experience to count as much as a degree so that the industry can ensure that we are providing the best, most efficient care coupled with the best outcomes possible for our patients. As a result of this impractical rule, the industry is suffering from a huge institutional brain drain and highly qualified individuals are forced to leave the industry – in some cases after devoting their whole lives to the frailest and poorest of patients.

**Changes Are in Sight.** The Department of Health and Social Services should be applauded for recognizing that changes are needed and are currently reviewing the regulations by amending the definition for a director of home health care. We believe a common-sense change is to allow caregivers to use experience as a qualification of capability. **We respectfully propose the new regulations read as follows:**

**(Title 29, Chapter 101)**

**Definition of “Director”**

“Director” means the individual appointed by the governing body to act on its behalf in the overall management of the home health agency. The director shall have:

- (1) a Baccalaureate Degree with two years healthcare experience and at least one year supervisory experience (full-time or equivalent) in home health care; or,
- (2) a registered nurse with two years health care experience and at least one year of supervisory experience (full-time or equivalent) in home health care; or,
- (3) at least five years in supervisory experience in home health care

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency disagrees and the regulation will remain as written. The intent of this regulation is to ensure that the individual appointed to direct the home health care services has sufficient education and healthcare/supervisory experience to be knowledgeable about the overall operation and services provided by a home health agency.

The public comment period was open from May 1, 2014 through May 30, 2014. Based on comments received during the public comment period, no changes have been made to the proposed regulations. The regulations have been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.

## FINDINGS OF FACT:

Based on public comments received, no changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

**THEREFORE, IT IS ORDERED**, that the proposed State of Delaware Regulations Governing Skilled Home Health Agencies (Licensure) are adopted and shall become effective August 11, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary, July 21, 2014

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2014 issue of the *Register* at page 1037 (17 DE Reg. 1037). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**4410 Skilled Home Health Agencies (Licensure)**

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 **Delaware Code**, Section 122(3)(m) (16 **Del.C.** §122(3)(m))  
16 **DE Admin. Code** 4468

## ORDER

### 4468 Delivery of Hospice Services

## NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Delivery of Hospice Services. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 **Del.C.** §122(3)m.

On April 1, 2014 (Volume 17, Issue 10), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 30, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

## SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Delivery of Hospice Services were published in the *Delaware State*

*News*, the *News Journal* and the *Delaware Register of Regulations*.

Entities offering written comments include:

- State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson
- Governor's Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson

Public comments and the DHSS (Agency) responses are as follows:

**State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson:**

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposal to amend it "Delivery of Hospice Services regulation." As background, S.B. 119 was enacted in the summer of 2013. It requires the Department of Health & Social Services to establish standards for disposal of unused prescription medications following the death of an in-home hospice patient. DPH is now issuing this proposed regulation to implement the new law. The proposed regulation was published as 17 DE Reg. 961 in the April 1, 2014 issue of the *Register of Regulations*. SCPD has the following observations.

**First**, the proposed standards are comprehensive but only establish guidelines for hospice providers. Hospice agencies must adopt policies which conform to an outline rather than adhering to specific standards. For example, each hospice agency could adopt a different timetable for medication disposal (§A.2) and a different approach if there is evidence of missing unused prescription medication (§A.7). Reasonable persons could differ on whether this approach conforms to the statutory requirement of a "standardized protocol".

**Agency Response:** The Agency appreciates and acknowledges these comments. The intent of Senate Bill 119 was to address the prescription drug abuse epidemic by promoting the safe disposal of prescription medications by hospice programs and their patients. Because of the uniqueness of each hospice, and the multitude of circumstances that surround each in-home hospice patient death, this protocol, as written, provides the appropriate latitude to promote the safe disposal of all prescription medications. Each hospice agency was required to develop and submit policies that were inclusive of each requirement defined in the Agency's protocol. In addition, each hospice agency was required to submit the policies addressing the protocol requirements to the Agency for approval prior to implementation.

**Second**, there are some anomalies in punctuation. For example, there is no period at the end of §A.3.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency acknowledges the lack of a period at the end of §A.3. and will make the correction. Additionally, the Agency has reviewed the entire regulation for correct punctuation.

**Third**, in §C.2.a, the word "was" should be substituted for "were" since the subject (documentation) is singular.

**Agency Response:** The Agency appreciates and acknowledges these comments. The regulation will remain as written. The verb "were" refers to the hospice's policies and procedures which is plural.

**Fourth**, §§B.1.b, B.2, C.2.b, and D1 have "odd" introductory symbols prior to subsections amounting to a bullet with a dash underneath. It's unclear what this symbol represents. If it is intended to be construed as "and/or", that term "should never be used". See Delaware Administrative Code Drafting & Style Manual, §6.6. Moreover, the Delaware Administrative Code Drafting & Style Manual (§2.3.1; §2.4.2) only permits numeric subparts and disallows bullets. If numeric subparts were used, appropriate punctuation (currently absent from the subparts) could also be added. See Manual, Figure 2.2.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised Appendix A to remove the bullets and add the appropriate punctuation.

**Governor's Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson:**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Public Health (DPH) proposal to establish standards for the disposal of unused prescription medications following the death of an in-home hospice patient as required by Senate Bill No. 119 which was signed in June of 2013. The GACEC would like to share the following observations.

**First**, the proposed standards are comprehensive but only establish guidelines for hospice providers. Hospice agencies must adopt policies which conform to an outline rather than adhering to specific standards. For example, each hospice agency could adopt a different timetable for medication disposal (§A.2) and a different approach if there is evidence of missing unused prescription medication (§A.7). Reasonable persons could differ on whether this approach conforms to the statutory requirement of a "standardized protocol".

**Agency Response:** The Agency appreciates and acknowledges these comments. The intent of Senate Bill

119 was to address the prescription drug abuse epidemic by promoting the safe disposal of prescription medications by hospice programs and their patients. Because of the uniqueness of each hospice, and the multitude of circumstances that surround each in-home hospice patient death, this protocol, as written, provides the appropriate latitude to promote the safe disposal of all prescription medications. Each hospice agency was required to develop and submit policies that were inclusive of each requirement defined in the Agency's protocol. In addition, each hospice agency was required to submit the policies addressing the protocol requirements to the Agency for approval prior to implementation.

**Second**, there appears to be conflicting information in appendix A in terms of the responsibilities of designated hospice staff and family members in the disposal of medications. This section would benefit from additional clarifications.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency will clarify this section by adding the word "or" between §A.2.b and §A.2.c.

**Third**, there are some abnormalities in punctuation. For example, there is no period at the end of §A.3.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency acknowledges the lack of a period at the end of §A.3. and will make the correction. Additionally, the Agency has reviewed the entire regulation for correct punctuation.

**Fourth**, in §C.2.a, the word "was" should be substituted for "were" since the subject (documentation) is singular.

**Agency Response:** The Agency appreciates and acknowledges these comments. The regulation will remain as written. The subject for the verb "were" is the hospice's policies and procedures.

**Fifth**, §§B.1.b, B.2, C.2.b, and D1 have unusual introductory symbols prior to subsections amounting to a bullet with a dash underneath. It's unclear what this symbol represents. If it is intended to be construed as "and/or", that term "should never be used". See Delaware Administrative Code Drafting & Style Manual, §6.6. Also, the Delaware Administrative Code Drafting & Style Manual (§2.3.1; §2.4.2) only permits numeric subparts and disallows bullets. If numeric subparts were used, appropriate punctuation (currently absent from the subparts) could also be added. See Manual, Figure 2.2.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised Appendix A to remove the bullets and add the appropriate punctuation.

The public comment period was open from April 1, 2014 through April 30, 2014.

Based on comments received during the public comment period, only non-substantive changes have been made to the proposed regulations. The regulations have been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

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

Based on public comments received, non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

**THEREFORE, IT IS ORDERED**, that the proposed State of Delaware Regulations Governing Delivery of Hospice Services are adopted and shall become effective August 11, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary, July 21, 2014

### **4468 Delivery of Hospice Services (Break in Continuity of Sections)**

#### **Appendix A**

#### **Protocol Regarding the Safe Disposal of Unused Prescription Medication Following the Death of an In-Home Hospice Patient**

The Department of Health and Social Services expects that each in-home hospice agency's policies and procedures will address each of the following:

##### A. Medication Disposal Following the Death of an In-Home Hospice Patient

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# FINAL REGULATIONS

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1. Designation of hospice staff that will assist in the disposal of all unused prescription medications, regardless of the prescriber.
2. Definition of the timeframe in which the designated staff must:
  - a. Assist in the disposal of the unused prescription medications following the death on an in-home hospice patient; or
  - b. Contact the family member/designated primary care giver to arrange an appointment to assist in the disposal of the unused prescription medications if the in-home hospice patient was transferred to an inpatient hospice unit prior to the death[; or]
  - c. Dispose of the unused prescription medication in the presence of another designated hospice staff in the event that the in-home hospice patient does not have a family member or designated primary care giver.
3. Checking of the medication label to confirm that the medication belonged to the patient, prior to assisting in the disposal of the unused prescription medication[.]
4. Disposal of the unused prescription medications by at least one family member/designated primary care giver with the assistance of the designated hospice staff.
5. Disposal of the medications in accordance with the United States Food and Drug Administration guidelines which can be found at <http://www.fda.gov>.
6. Prohibition of removal by designated hospice staff of the unused prescription medications from the patient's residence.
7. Actions the designated hospice staff must take upon evidence of missing unused prescription medication(s).
8. Diversion/retention of the deceased patient's unused prescription medications could result in criminal offenses.

## B. Education

1. Education of the family member/designated primary caregiver upon the in-home hospice patient's admission and death, as follows:
  - a. Provision of a copy of the written hospice policies and procedures on the disposal of all prescription medications following the death of an in-home hospice patient.
  - b. Discussion of the prescription medication disposal policy in a language and manner that they understand to ensure that these parties are educated regarding the following:
    - [i.]** the hospice's policies and procedures for the safe disposal of all prescription medications following the death of an in-home hospice patient[; and]
    - [ii.]** the diversion/retention of the deceased patient's unused prescription medications could result in criminal offenses[.]
2. Education of hospice staff regarding the hospice's prescription medication disposal policy at the following times:
  - [a.]** prior to implementation of the policies and procedures[;]
  - [b.]** prior to any policy and procedure revision[; and]
  - [c.]** upon hire (if applicable)[.]

## C. Patient Record Documentation

1. Storage of patient records readily retrievable for 5 years after the patient's death.
2. Inclusion of the following in the patient's record:
  - a. Documentation that the hospice's policies and procedures regarding the safe disposal of all unused prescription medications were provided and discussed with the family member/designated primary care giver upon the patient's admission and in-home death.
  - b. Documentation of one of the following:
    - [i.]** an inventory of all disposed prescription medications and the signature of the family member/designated primary care giver that witnessed the disposal[; or]

[ii.] family member/designated primary care giver refusal to dispose of prescription medications[.]

D. Personnel Education Documentation

1. Education regarding the hospice's prescription medication disposal policy must be documented at the following times:

[a.] prior to implementation of the policies and procedures[;]

[b.] prior to any policy and procedure revision[; and]

[c.] upon hire (if applicable)[.]

\*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2014 issue of the *Register* at page 961 (17 DE Reg. 961). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**4468 Delivery of Hospice Services**

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 2000

### ORDER

### Case Processing Procedures - Applications

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Administrative Procedures, *specifically, Case Processing Procedures – Applications*. 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 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced June 30, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Administrative Procedures, *specifically, Case Processing Procedures – Applications*.

#### Statutory Authority

42 CFR §435.907, *Application*

45 CFR §206.10, *Application, determination of eligibility and furnishing of assistance*

#### Background

The Department of Health and Social Services is the agency designated by the State as responsible for Delaware's public assistance programs. Within the Department, the Division of Social Services (DSS) and the Division of Medicaid and Medical Assistance are responsible for administering the various benefit programs listed here:

<http://dhss.delaware.gov/dss/>

<http://dhss.delaware.gov/dhss/dmma/>

The Division of Social Services Manual (DSSM) is an integrated eligibility manual that relates to the activities of each Division's staff engaged in the direct administration of the State's public assistance programs. The Manual contains eligibility and administrative policies based on State and Federal laws and regulations that govern the programs.

### Summary of Proposed Changes

Case processing guidelines are provided to ensure maximum client service. To ensure basic efficiency and timeliness in case processing agency staff must adhere to standard times frames within which required case activities must be accomplished. Adherence to these standards allows for the provision of program services on a timely basis and assures that the agencies meet federally imposed audit criteria.

**DSSM 2000, Applications**, is amended to address case processing ambiguities. DSSM policy section 2000 defines an application as including a request for medical assistance. By referencing medical assistance in this section of policy, it could be assumed that all medical assistance applications are subject to the conditions established in the 2000 section of the DSSM policy. The requirements for Medical Assistance applications are addressed in DSSM policy section 14100. This policy change removes what could be interpreted as inconsistent policy for medical assistance applications.

Medicaid policy section at DSSM 14100.5.1 provides "90 day" and "45 day" time periods for processing Medicaid applications. However, Section 2000 references applications for "medical assistance" and Section 2000.5 establishes a "30 day" timeframe for processing the application. These sections are inconsistent.

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

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

#### GACEC & SCPD

It is Council's understanding that the Disabilities Law Program (DLP) prompted this amendment by identifying to DMMA the following inconsistency in regulations covering the time frames for processing initial Medicaid applications:

Section 14100.5.1 was amended in November, 2013. It provides "90 day" and "45 day" time periods for processing Medicaid applications. However, Section 2000 also covers applications for "medical assistance" and Section 2000.5 establishes a "30 day" time frame for processing the application. These sections are ostensibly inconsistent.

DMMA responded that the reference in §2000 is incorrect and would be removed to clarify that §2000.5 is inapplicable to Medicaid.

The proposed regulation implements the above consensus. In a nutshell, §2000 is amended to clarify that policies specific to Medical Assistance applications are compiled in §14100. However, the regulation could be improved. For example, the 2000 series still contains some references to Medical Assistance (e.g. §§2002.1.1 and 2012) and there is no exclusion in §2000.5 for Medical Assistance cases. Therefore, ambiguity is still present.

DHSS could consider the following:

- 1) Amend the new reference in §2000 as follows: "Policies specific to Medical Assistance applications and processing time lines are found in DSSM policy section 14100."
- 2) Amend the title to §2000.5 as follows: "Non-Medical Assistance Filing Dates and Processing Standards". This approach is consistent with other headings which are more program-specific. See, e.g. §§2002, 2007, and 2008.

**Agency Response:** DSS agrees and amends the final order regulation to reflect the suggested changes.

#### FINDINGS OF FACT:

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Administrative Procedures, specifically, *Case Processing Procedures – Applications*, is adopted

and shall be final effective August 10, 2014.  
Rita M. Landgraf, Secretary, DHSS

## **DSS FINAL ORDER REGULATION #14-30 REVISION:**

### **2000 Applications**

An application is a request for ~~financial or medical~~ assistance made by an individual, agency, institution, guardian, or other individual acting for the applicant with his knowledge and consent. An application must be formalized in writing and applicants must be interviewed by an application worker before an eligibility decision can be made.

Any person interested in applying for benefits will receive a DSS application form. These forms are available at all DSS locations. A daily log to record the names of individuals who request application forms will be maintained at each DSS location. Applications for benefits cannot be processed until applicants submit a completed application and complete the filing procedures as specified in DSSM 2001.1.

The primary responsibility for establishing eligibility resides with the client, however, the Division will take necessary action to assist the applicant to establish his eligibility for assistance.

Each applicant will be informed of the programs for which he may be eligible, of his right to a decision on eligibility within a reasonable period of time, and will be informed of his right to appeal any Division decision on eligibility.

Each applicant will have his need for assistance determined in accordance with Division standards. The income of an applicant will be considered in relation to his needs during the calendar month in which the individual applies for assistance. Only such resources as an applicant has currently available will be used in determining eligibility

Policies specific to Medical Assistance applications [and processing timelines] are found in DSSM policy section 14100.

### **2000.5 [Non-Medical Assistance] Filing Dates and Processing Standards**

DSS will approve eligible applicants and send notice of acceptance as soon as possible, but no later than thirty (30) days following the application filing date. The filing date is the date the applicant completes, signs, and returns at least the first page of the application form to the correct DSS location.

Applicants who are ineligible will be sent a denial notice as soon as possible, but not later than thirty (30) days following the application filing date. If the applicant has failed to appear for an interview and has made no subsequent contact with the agency, DSS will send a denial notice on the 30th day following the application date. The applicant must file a new application to be reconsidered for benefits.

In cases where verification is incomplete, the applicant must provide missing verification by the 30th day following the application filing date. If verification is not provided by that date, the application is denied unless this deadline does not allow the applicant at least ten (10) days to return information. (This will occur when the application interview is held 21 or more days after the application is filed.) In these situations, the application can pend beyond thirty (30) days to allow at least ten (10) days for return of missing verification.

In all cases, the client must be informed via Form 105 of the verification that is needed and of the last day that it will be accepted. The application may continue to pend for an additional ten (10) days if the client has returned all verification originally requested and is asked to obtain further verification as a result of agency error. In that situation, the application is approved when the additional verification is submitted, but benefits are issued from the date that the original verification was submitted. If verification is not provided by the deadline, a denial notice is sent to the applicant.

In cases where there is a pending claim for cash benefits (e.g., U.C.), the worker must find out if a decision regarding the claim will be made within thirty (30) days from the application filing date. If a decision is anticipated in that timeframe, the application is not approved until the decision is reached. In those cases, income from the approved claim is included when determining financial eligibility and the amount of the grant. If a decision is not anticipated within the thirty (30) day period, the worker must determine eligibility based on the clients current situation and set a control to check the claim when a decision is anticipated.

In situations where an applicant is ineligible in the month of application, but will be eligible in subsequent

months because of anticipated changes, the same application is used to deny benefits in the month of application and determine eligibility in the month following the month of application. In such instances the client need not reapply.

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### DIVISION OF SOCIAL SERVICES

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

### ORDER

### Food Supplement Program - Income and Eligibility Verification System

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Income and Eligibility Verification System – Exclude Unearned Income Data from IRS*. 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 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Income Eligibility Verification System - Exclude Unearned Income Data from IRS*.

#### Statutory Authority

- 7 CFR §272.8(a), *State income and eligibility verification system (IEVS)*
- 7 CFR §273.2(f)(9), *Optional use of IEVS*
- 31 Del.C. §601, *Department of Health and Social Services responsible for the administration of [Food Supplement] program*

#### Background

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

#### *Income Eligibility Verification System*

Section 1137 of the Social Security Act mandates that state agencies administering federally funded public assistance programs develop and implement an income and eligibility verification system (IEVS). The Income Eligibility Verification System (IEVS) is a federally operated income and eligibility information matching system that interfaces with other governmental agencies through which agencies request personal data, wage information and benefit information from other state and federal agencies on applicants and recipients.

#### Summary of Proposed Changes

Federal regulations give state agencies the option to use an Income and Eligibility Verification System (IEVS) to verify income when determining eligibility for and the amount of food benefits. IEVS provides earned and

unearned income information through data matches with other state and federal agencies. The Division of Social Services (DSS) has opted to not request or use the unearned income data received from the Internal Revenue Service (IRS) to verify unearned income for the Food Supplement Program (FSP). DSS will continue to use alternative methods to document and verify unearned income.

The proposed changes affect the following policy sections in the Division of Social Services Manual (DSSM):

DSSM 2013.1, *Income and Eligibility Verification Systems (IEVS)*

DSSM 2013.3, *Requesting IEVS Information*

DSSM 2013.5, *IEVS Case Processing Instructions*.

The applicable federal citations are also added to the appropriate policy sections.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

### GACEC & SCPD

As background, DSS recites that federal regulations give state agencies the option of using an Income and Eligibility Verification System "IEVS" to verify income when determining eligibility for and the amount of benefits. DSS is opting to not use the IEVS system to obtain information on unearned income. Instead, "DSS will continue to use alternative methods to document and verify unearned income." Both earned and unearned income are considered when assessing eligibility. See 16 **DE Admin Code** 9054-9057.

The rationale for opting to use "alternative methods" to verify unearned income is not provided. The justification could be based on cost, accuracy of information, or difficulty in acquiring information.

The Councils are unable to offer comments (pro or con) given lack of information on the justification for using unearned income verification sources other than the federal IEVS.

**Agency Response:** "Alternative Methods" will not be identified in this section of the policy. DSS intends to propose clarifying rules addressing "alternative methods" in a future issue of the Delaware *Register of Regulations*.

### FINDINGS OF FACT:

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP), specifically, *Income and Eligibility Verification System – Exclude Unearned Income Data from IRS*, is adopted and shall be final effective August 10, 2014.

Rita M. Landgraf, Secretary, DHSS, July 21, 2014

\*Please note that no changes were made to the regulation as originally proposed and published in the June 2014 issue of the *Register* at page 1140 (17 DE Reg. 1140). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Food Supplement Program - Income and Eligibility Verification System**

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## DIVISION OF SOCIAL SERVICES

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

### ORDER

**Delaware Temporary Assistance for Needy Families - Employment and Training Program Requirements**

### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to

amend the Division of Social Services Manual (DSSM) regarding Delaware TANF Employment and Training Program requirements, specifically, *Sanctions and Curing Sanctions*. 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 March 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Delaware TANF Employment and Training Program, specifically, *Sanctions and Curing Sanctions*.

#### Statutory Authority

- 45 CFR 261.13, *May an individual be penalized for not following an individual responsibility plan?*
- 45 CFR 261.14, *What is the penalty if an individual refuses to engage in work?*
- 45 CFR 261.15, *Can a family be penalized if a parent refuses to work because he or she cannot find child care?*
- 45 CFR 261.56, *What happens if a parent cannot obtain needed child care?*

#### Background

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193) provides funding to states through the Temporary Assistance for Needy Families (TANF) block grant. The TANF block grant is used to provide cash assistance, services and work programs for needy families, utilizing federal TANF funds along with state funds to develop and deliver services to needy families.

The 1996 PRWORA law also established the requirements that states must meet, including rules related to work requirements. Under the work provisions of the law, states must require recipients, with some exceptions, to engage in work, impose sanctions (by reducing or terminating benefits) if an individual refuses to participate in required work activities, and achieve a work participation rate measured in accordance with detailed provisions of the law. A state that fails to meet the work rate can be subject to fiscal penalty.

#### Summary of Proposal

The proposed changes reformat and clarify text for ease of readability. Also, a subsection was added and all section titles were renamed to more accurately reflect the section content.

The following policy sections in the Division of Social Services Manual (DSSM) are affected by the proposed changes:

- DSSM 3100, ~~*Employment and Training and Work*~~ *Requiring Employment and Training Participation*
- DSSM 3011.2, ~~*Sanctions for Failing to Comply with Requirements*~~ *Sanctioning for Not Meeting Employment and Training Requirements*
- NEW DSSM 3011.2.1, *Sanctioning When Child Care Is Not Available*
- DSSM 3011.3, ~~*Curing Sanction Penalties*~~ *Curing a Full Family Sanction*

#### Summary of Rule Changes

Delaware TANF families that receive a sanction as a result of not meeting their required employment and training hours are sanctioned. The current sanction rule requires that the TANF case be closed. The family must complete four (4) consecutive weeks of participation for the case to reopen; additionally the case must be closed at least one (1) month.

When examining TANF work participation rates it was discovered that many families begin to immediately re-participate and that the mandatory one month closure was a significant hardship since they were incurring expenses as the result of participating. Additionally, these families while participating were not reflected in the TANF work participation rate because they were not receiving a grant.

The policy change would remove the requirement that the case be closed for at least one (1) month and

reopen the TANF case at the beginning of the four (4) week participation period.

This change allows families to immediately reengage and potentially not see a reduction in their TANF grant, while also raising the TANF work participation rate by an estimated three (3) percent.

Approximately, thirty-two (32) more families a month will receive TANF benefits because of the rule change.

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

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

### SCPD & GACEC

As background, families participating in the program are generally subject to sanctions if they do not comply with work activity requirements. The current sanction protocol requires the TANF case to be closed, followed by 4 consecutive weeks of participation in work activities to justify reopening, and closure of the case for at least 1 month. DSS proposes to revamp this approach based on the following rationale:

When examining TANF work participation rates it was discovered that many families begin to immediately re-participate and that the mandatory one month closure was a significant hardship since they were incurring expenses as a result of participating. Additionally, these families while participating were not reflected in the TANF work participation rate because they were not receiving a grant.

The policy change would remove the requirement that the case be closed for at least one (1) month and reopen the TANF case at the beginning of the four (4) week participation period.

This change allows families to immediately reengage and potentially not see a reduction in their TANF grant, while also raising the TANF work participation rate by an estimate three (3) percent.

Approximately, thirty-two (32) more families a month will receive TANF benefits because of the rule change.

SCPD and GACEC endorse the proposed regulation since the primary change in standards promotes employment activities and program participation. However, we have two (2) observations.

**Agency Response:** Thank you for your endorsement.

First, a single custodial parent of a child under age 6 may qualify for an exemption from a sanction if child care is not available. Unavailability based on lack of a proximate day care option is based on the following standard (§3011.2., Par. 1.2a):

Appropriate child care is unavailable within a reasonable distance from their home or work. Reasonable distance is defined as care that is located in proximity to either a parent's place of employment or the parent's home; generally care that is within a one hour drive from either home or work.

We recommend that DSS reconsider the "one hour drive" standard. For example, if a single parent lived and worked in Wilmington, and child care were only available in Dover, that would be presumptively a "reasonable distance". This means the parent would have to drive 45 miles to drop off the child in Dover, drive 45 miles back to Wilmington to work, drive 45 miles back to Dover after work to pick up the child, and then drive 45 miles back to Wilmington with the child, an aggregate of 180 miles. The same analysis would apply to a single parent living and working in Georgetown who could only locate child care in Dover. The parent would have to drive 36 miles to drop off the child in Dover, drive 36 miles back to Georgetown to work, drive 36 miles back to Dover to pick up child after work, and then drive 36 miles back to Georgetown with the child, an aggregate of 144 miles. The "one hour distance" standard does not appear in the attached federal regulations, 45 C.F.R. §§261.15 and 261.56. DSS could adopt a different standard.

**Agency Response:** You recommended that DSS reconsider the "one hour drive" standard in regards to determining the availability of child care. DSS agrees that a more objective measure should be used and will amend §3011.2.1, Par. 2 to child care that is available within ten (10) miles of the home or place of employment.

Second, §3011.2.1, Par. 5, recites as follows: "While a parent may not be sanctioned as a result of child care being unavailable, the parent is not exempt from TANF work participation requirements or the TANF time limits." The statement that the parent who proves the unavailability of child care may not be sanctioned but "is not exempt from TANF work participation" is odd and ostensibly contradictory. If the parent proves a lack of available child care, the parent should logically be exempt from work participation. DSS may wish to review the accuracy of the recital.

**Agency Response:** Additionally you noted the following: “Second, §3011.2.1, Par. 5, recites as follows: “While a parent may not be sanctioned as a result of child care being unavailable, the parent is not exempt from TANF work participation requirements or the TANF time limits.” The statement that the parent who proves the unavailability of child care may not be sanctioned but “is not exempt from TANF work participation” is odd and ostensibly contradictory. If the parent proves a lack of available child care, the parent should logically be exempt from work participation. DSS may wish to review the accuracy of the recital.” The policy was attempting to relay that a family exempt due to the unavailability of child care would still be reflected in the States federal work participation rate. This fact does not need to be reflected in this policy; therefore the reference to not being exempt from work participation requirements is stricken although the time limit remains in place.

#### FINDINGS OF FACT:

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Delaware TANF Employment and Training Program, specifically, *Sanctions and Curing Sanctions*, is adopted and shall be final effective August 10, 2014.

Rita M. Landgraf, Secretary, DHSS, July 21, 2014

#### DSS FINAL ORDER REGULATION #14-27 REVISIONS:

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

#### **3011.2.1 Sanctioning When Child Care Is Not Available**

This policy applies to TANF cases with a single custodial parent caring for a child under age six and the parent is required to participate in TANF employment and training activities.

1. A Parent Who Is Unable To Obtain Child Care Is Not Sanctioned  
A Full Family Sanction is not applied to a TANF case when the parent demonstrates that child care is not available.
2. A Parent Must Demonstrate Child Care Is Not Available.  
Credible evidence of any one of the following conditions demonstrates that child care is not available.
  - a. Appropriate child care is unavailable within a reasonable distance from their home or work. Reasonable distance is defined as care that is located in proximity to either a parent’s place of employment or the parent’s home; generally care that is within ~~a one hour drive from~~ ten (10) miles of] either the home or work.
  - b. Informal child care by a relative or under other arrangements is unavailable or unsuitable. Informal care is considered unsuitable if the care would not meet the physical or psychological needs of the child.
  - c. An appropriate and affordable formal child care arrangement is not available.  
Affordable care is defined as care that would provide access to a full range of child care categories and types of providers; appropriate care is care that meets the health and safety standards as defined by State licensing guidelines, as well as the needs of the parent and child.
3. A Parent Must Report That Child Care Is Not Available Within Ten (10) Days.  
Parents who claim an inability to obtain needed child care must contact a DSS worker to press their claim. Parents have ten (10) days, either from the date when they first attempted to find child care or ten (10) days from the date DSS instructed them to participate in work activities.
4. DSS Will Decide On A Parent’s Claim Of Child Care Unavailability Within Twenty (20) Days.  
DSS staff have twenty (20) days to review and decide whether the parent’s claim that child care is not available is legitimate. If DSS determines that the parents did not demonstrate their claim, DSS will impose applicable sanctions if the family has not met the employment and training requirement. DSS workers will document in the client’s record the client’s claim and their legitimacy determination.

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5. Families Are Not Exempt From ~~[TANF Work Requirements Or]~~ Time Limits

While a parent may not be sanctioned as a result of child care being unavailable, the parent is not exempt from ~~[TANF work participation requirements or]~~ the TANF time limits.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the March 2014 issue of the *Register* at page 897 (17 DE Reg. 897). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**Delaware Temporary Assistance for Needy Families - Employment and Training Program Requirements**

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 9013.1

### ORDER

#### Food Supplement Program - Household Definition

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Household Definition*. 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 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

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

#### Statutory Authority

- 7 CFR §273.1, *Household concept*
- 13 Del.C. §101, *Void and voidable marriages*
- 13 Del.C. §129, *Equal treatment of marital relations*

#### Background

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

#### Summary of Proposed Changes

In the Food Supplement Program (FSP), spouses living together are considered a food benefit household even if they do not purchase and prepare meals together. The current policy does not recognize same gender spouses. Delaware law requires policies be consistent for same gender spouses and non-same gender spouses. The policy is modified to be consistent for all spouses regardless of gender; all spouses who live together are considered as purchasing and preparing meals together even if they do not do so.

Therefore, policy at **DSSM 9013.1(B)(1)(b)**, *Household Definition* is amended by striking the language

prohibiting same gender couples from being considered spouses. The applicable federal citation is also added to the policy section.

### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

#### GACEC & SCPD

As background, legislation (H.B. 75) was enacted in 2013 which resulted in adoption of the following statute:

§129. Equal Treatment of Marital Relationships.

- (a) All laws of this State applicable to marriage or married spouses or the children of married spouses, whether derived from statutes, administrative rules or regulations, court rules, governmental policies, common law, court decisions, or any other provisions or sources of law, including n equity, shall apply equally to same-gender and different-gender married couples and their children.

Title 13 **Del.C.** §129.

The existing federal [7 C.F.R. 273.1] and State regulations covering eligibility for the Food Supplement Program define a "household" as including "spouses" who live together regardless of whether they customarily purchase food and prepare meals together. The current State regulation contains the following provision excluding "same-sex" couples from being considered "spouses":

Same sex couples, for food stamp purposes, are not considered spouses and the presumption of purchasing food and preparing meals together would not apply to them.

At 1146.

Given the above §129, DSS is deleting this provision so same-gender spouses would be treated the same as different-gender spouses for purposes of eligibility for benefits under the Food Supplement Program.

GACEC and SCPD endorse the proposed regulation since the revision is necessary to conform to the statute.

**Agency Response:** DSS thanks the Councils for their endorsement.

#### FINDINGS OF FACT:

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

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

Rita M. Landgraf, Secretary, DHSS, July 21, 2014

\*Please note that no changes were made to the regulation as originally proposed and published in the June 2014 issue of the *Register* at page 1145 (17 DE Reg. 1145). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Food Supplement Program - Household Definition**

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#### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 11003

#### ORDER

**Child Care Subsidy Program: Determining Technical Eligibility for Child Care**

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## NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining Technical Eligibility for Child Care Assistance*. 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 May 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced May 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

## SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining Technical Eligibility for Child Care Assistance*.

### Statutory Authority

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

### Background

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

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

### Summary of Proposed Changes

**DSSM 11003**, *Determining Technical Eligibility for Child Care Assistance*, is amended to clarify eligibility for subsidized child care services. In order to qualify for child care services, the family must need care for certain reasons. The following reasons are being added to the list of reasons: teen parents enrolled in or attending middle school or high school or parent/caretakers enrolled in and participating in a General Education Diploma (GED) program.

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

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

### GACEC and SCPD

Specifically, the Division proposes some discrete changes to the eligibility standards for persons seeking subsidized child care assistance funded by the federal Child Care Development Fund. The proposed regulation expands eligibility to cover parents/caretakers who need services based on the following: 1) enrolled and attending middle school or high school; or 2) enrolled and participating in a General Education Diploma (GED) program. The proposed regulation was published as 17 DE Reg. 1038 in the May 1, 2014 issue of the *Register of Regulations*. We endorse the proposed regulation subject to consideration of the following amendments.

First, the entire regulation would benefit from addition of punctuation.

**Agency Response:** Punctuation added.

Second, the reference to GED program merits revision. Consistent with the attached 17 DE Reg. 724 (January 1, 2014), the Delaware Department of Education has recently expanded the scope of tests equivalent to the

traditional GED. The DOE now uses the term “secondary credential assessment”. Therefore, DSS may wish to adopt the following reference in Section 1.A.9: “Enrolled and participating in a General Education Diploma (GED) program or similar secondary credential assessment approved by the Delaware Department of Education.”

**Agency Response:** DSSM 11003, Section 1.A.9 is amended with the suggested reference.

#### FINDINGS OF FACT:

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

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

Rita M. Landgraf, Secretary, DHSS

#### DSS FINAL ORDER REGULATION #14-26

#### REVISION:

#### 11003 Determining Technical Eligibility for Child Care Assistance

45 CFR 98.20

PRWORA 401 and 402

This policy applies to applicants for and recipients of child care assistance.

1. Parents/Caretakers Must Meet Certain Eligibility Criteria  
To be technically eligible parents/caretakers must have a need that requires them to be out of the home or reasonably unavailable to provide supervision (e.g., a medical condition, needing rest because of working a third shift, etc.).
  - A. Parents/Caretakers must be **[a]** Delaware resident**[s.]**
  - B. Parents/Caretakers who need services ~~to~~ must meet one of the following:
    1. Accept or keep a job[;]
    2. Participate in a DSS Employment and Training **[(E & T)]** program[;]
    3. Participate in the Transitional Work Program **[(TWP);]**
    4. Participate in job search[;]
    5. Have a break in education/training[;]
    6. Prevent child abuse or neglect as referred by ~~DFS~~ Division of Family Services (DFS)[;]
    7. Provide care for the children when the parents/caretakers have a special need[;]
    8. Enrolled and attending middle school or high school[;]
    9. Enrolled and participating in a General Education Diploma (GED) program [or similar secondary credential assessment approved by the Delaware Department of Education].
2. Children Must Meet Certain Criteria  
Children may be eligible if they:
  - A. Live in the home and are under the age of 13[;]
  - B. Live in the home and are age 13 to 18 and are physically or mentally incapable of caring for themselves[;]
  - C. Are active with and referred by the Division of Family Services **[(DFS).]**
3. Non-Citizens May Qualify for Child Care Assistance  
Non-citizens may qualify if:
  - A. At least one U.S. citizen or legal alien lives in the household[.]
  - B. Both parents/caretakers meet technical and financial eligibility criteria.
  - C. The following aliens qualify for a period of five (5) years from the date of:
    1. Obtaining status as a refugee[;] or
    2. Obtaining status as an asylee[;] or

3. Their deportation is being withheld[.]
  - D. They are aliens admitted as permanent residents who have worked ~~40~~ forty (40) qualifying quarters[.]
  - E. They, their spouses or unmarried dependent children are honorably discharged veterans or on active military duty.
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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 2002, 2005(a), 2006(d & e)  
(7 Del.C. §§2002, 2005(a), 2006(d & e))

**Secretary's Order No.: 2014-F-0013**

**3801 Shellfish Aquaculture**

**Date of Issuance: July 15, 2014**

**Effective Date of the Amendment: August 11, 2014**

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 *revised* new regulations, to wit: 7 **DE Admin. Code** 3801, *Shellfish Aquaculture*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2014-04. The Department published its initial proposed new regulation in the May 1, 2014 Delaware *Register of Regulations*, and held a public hearing on May 21, 2014.

These new regulations provide for a shellfish aquaculture industry in Delaware's Inland Bays that is compatible with commercial and recreational finfishing and shellfishing, boating navigation and public safety, public water access and use, and native biota. Specifically, these proposed new regulations provide a structured process and set conditions for leasing of subaqueous bottom within Delaware's Inland Bays for the culture of bivalve shellfish.

With regard to the requirements for said leasing, the regulations proposed include considerations for application, location, issuance, marking, renewal, transfer, expiration, termination, condemnation, and emergency relocation. Additionally, said regulations further propose measures related to shellfish aquaculture gear and marking, shellfish nursery permitting and structures, harvester license qualifications, bivalve species authorized for aquaculture, activities within subaqueous lease areas, and shellfish aquaculture reporting requirements.

The aforementioned regulations were developed by the Department with significant stakeholder input, beginning in 2012 with the establishment of the Center for the Inland Bays Tiger Team. This Tiger Team was comprised of multiple stakeholders and interests, including (but certainly not limited to) staff members from the Center for the Inland Bays, aquaculture interests, commercial clamming interests, recreational interests, representatives from the University of Delaware Sea Grant Program, the Sussex County Economic Development Office, the Shellfish Advisory Council, and the Department's Divisions of Water, Watershed Stewardship, and Fish and Wildlife. Between May 1, 2012 and February 2013, the Tiger Team convened ten public meetings and two information gathering meetings, all culminating in a final report which was presented before the Advisory Council of Shellfisheries on March 28, 2013. The Department also met with the U.S. Army Corp of Engineers ("USACE") during the course of the regulatory development process, in order to streamline the permitting process and to determine exactly what would be required of Applicants seeking to lease subaqueous bottom within Delaware's Inland Bays for the culture of bivalve shellfish.

The Department has recognized throughout the development of these proposed new regulations that there are

numerous different perspectives on the issue of establishing shellfish aquaculture here in Delaware, and all such input was highly valued and taken into consideration during the regulatory development process. It should also be noted, however, that the decision to establish shellfish aquaculture in Delaware's Inland Bays was made by the passage of House Bill 160 by the 147<sup>th</sup> General Assembly. The purpose of these proposed new regulations is to implement the intent of House Bill 160 by creating an aquaculture industry in Delaware that provides jobs and economic benefits to the citizens of this state, while potentially reducing nutrients in the Inland Bays. At the same time, these proposed new regulations also serve to ensure the compatibility with Delaware's boating and fishing uses of the Inland Bays, while enabling the Department to protect and to sustain Delaware's native species, including its robust hard clam population.

The Department has the statutory basis and legal authority to act with regard to these aforementioned proposed new regulations, pursuant to 7 **Del.C.** §§2002, 2005(a), 2006(d & e), and 7 **Del.C.**, Chapter 60. Public comment was received by the Department regarding this proposed promulgation, and the same was thoroughly addressed and responded to by the Division of Fish & Wildlife in its formal Technical Response Memorandum dated July 7, 2014. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report, dated July 10, 2014 ("Report"), which recommends certain findings and the adoption of the proposed *revised* regulations, as attached to the Report as Appendix A.

### Findings and Discussion

As noted previously, House Bill 160 provided the Department the authority to promulgate these proposed new regulations regarding shellfish aquaculture in Delaware's Inland Bays. The Department stressed in its presentation at the hearing that the purpose of these proposed regulations is to support an *industry* of shellfish aquaculture in Delaware. It is *not* to establish shellfish aquaculture and leasing for speculation, nor for a personal hobby.

That being said, House Bill 160 also provided the Department with some constraints to work within, including (but not limited to) that leases must be compatible with both commercial and recreational finfishing and shellfishing, boating navigation and safety, public water access and use, and native biota. Additionally, the legislation required that shellfish aquaculture be conducted in a manner to prevent and control the spread of shellfish borne diseases among both shellfish aquaculture products and wild shellfish, and that shellfish aquaculture must provide for the conservation, preservation, and improvement of the wild shellfish resources of the Inland Bays. Furthermore, leases must not, in both Rehoboth Bay and Indian River Bay, exceed 5% of their respective total subaqueous lands, and 10% for the Little Assawoman Bay.

Some of the points that were considered within the legislation passed by the 147<sup>th</sup> General Assembly were that leases must be issued in one-acre increments, must generally be rectangular, and that leases must initially be issued by lottery and subsequently on a first-come, first-served basis thereafter. Fees and renewals were also established by the legislation, as were the penalties for violations of both the Delaware Code and the Department's regulations.

Throughout the regulatory development process regarding this particular promulgation, the Department received numerous public comments, as noted in the Report. After the hearing record closed with respect to public comment on June 5, 2014, an exhaustive review of the same was undertaken by the Department's Division of Fish & Wildlife. This comprehensive review subsequently yielded a formal Technical Response Memorandum, dated July 7, 2014, which the Hearing Officer then expressly incorporated into her Report.

The aforementioned Technical Response Memorandum addressed the full range of comment contained in the record concerning this matter. Each comment was meticulously organized and grouped according to its subject matter, followed by a thorough and rational discussion of the issue based upon the record developed in this promulgation. Following the discussion of each subject matter, the Division of Fish & Wildlife offered its recommendation as to what the position of the Department should be with respect to each issue. In most instances, the Division believed that no changes to the Department's proposed amendments were warranted. There were, however, two specific instances where the Division proposed to *revise* the wording as set forth in its initial proposed regulation, to wit: (1) minor revisions to Section 3.1.5 were necessary following conversations with the USACE, to provide additional clarity and correct clerical error; and (2) additional language was added to Section 14.2 to allow greater flexibility in lease marking and to provide clarification of the same, in consideration of the public comment received 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* proposed regulations. I find that the *revised* proposed regulations are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. I also find that the proposed *revisions* to the Department's new regulation, to wit: 7 DE Admin. Code 3801, *Shellfish Aquaculture*, are not substantive in nature, and thus no additional vetting of these proposed regulatory amendments is necessary at this time.

With the adoption of this Order, Delaware will be enabled to implement the intent of House Bill 160 by creating an aquaculture industry here in Delaware that provides jobs and economic benefits to the citizens of this state, while potentially reducing nutrients in the Inland Bays. At the same time, these proposed new regulations also serve to ensure the compatibility with Delaware's boating and fishing uses of the Inland Bays, while enabling the Department to protect and to sustain Delaware's native species, including its robust hard clam population.

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 new regulations as final;
- 2.) The Department provided adequate public notice of the proposed new regulations, and provided the public with an adequate opportunity to comment on the same, including at the public hearing held on May 21, 2014;
- 3.) The Department held a public hearing on May 21, 2014 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* new regulations as set forth in Appendix A, and the Technical Response Memorandum as set forth in Appendix B, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* new regulations should be adopted as final new regulations because Delaware will be able to (1) provide for a shellfish aquaculture industry in Delaware's Inland Bays that is compatible with commercial and recreational finfishing and shellfishing, boating navigation and public safety, public water access and use; (2) provide a structured process and set conditions for leasing of subaqueous bottom within Delaware's Inland Bays for the culture of bivalve shellfish; and, lastly, because (3) the *revised* new regulations are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final new 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.

David S. Small, Secretary

### **3801 Shellfish Aquaculture** ***(Break in Continuity of Sections)***

#### **3.0 Shellfish Aquaculture Subaqueous Land Lease Issuance**

- 3.1 The Department shall not issue a shellfish aquaculture land lease within the boundaries of a SADA without:
- 3.1.1 a complete and accepted SADA Shellfish Aquaculture Subaqueous Land Lease Application;
  - 3.1.2 required field assessments of each proposed one-acre plot indicating a mean density of less than two (2) hard clams per square yard per acre;
  - 3.1.3 evidence of the required performance bond;
  - 3.1.4 evidence of the required liability coverage;
  - 3.1.5 ~~a joint Department and an~~ Army Corps of Engineers permit ~~[application]~~; and
  - 3.1.6 full payment of all application and lease fees.

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

#### **14.0 Lease Marking**

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

- 14.2 It is unlawful for the aquaculture lessee to not mark each corner of a Shellfish Aquaculture Subaqueous Land Lease with a PVC pole [or PVC pole buoy] at least six (6) inches in diameter and extending at least five (5) feet above the surface of the water [at mean high water]. (Penalty Section 7 Del.C. §2012)

\*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2014 issue of the *Register* at page 1042 (17 DE Reg. 1042). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**3801 Shellfish Aquaculture**

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### DIVISION OF STATE POLICE

### 1300 Board of Examiners of Private Investigators & Private Security Agencies

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

24 DE Admin. Code 1300

### ORDER

### 1300 Board of Examiners of Private Investigators & Private Security Agencies

Pursuant to the Guidelines in 29 Del.C. §10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to:

- Rule 1.0 – Firearms Policy;
- Rule 2.0 – Use of Rifle and Shotgun;
- Rule 3.0 – Nightstick, PR24, Mace, Peppergas and Handcuffs;
- Rule 7.0 – Employment Notification;
- Rule 9.0 – Security Guards/Armored Car Guards;
- Rule 12.0 – Personnel Rosters and Job Assignments;
- Rule 13.0 – Record Book; Right of Inspection;
- Rule 14.0 – Agency Licensing Fees/Structure

the Board makes the following Findings and Conclusions:

### Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. Regarding the eight Rules being amended, the Board expressed its desire to adopt the amendment to:
  - Rule 1.0 to allow the Professional Licensing Section to approve instructors;
  - Rule 2.0 to clarify who may use rifles and shotguns;
  - Rule 3.0 to require certifications be on file at Professional Licensing and the instructors must be approved;
  - Rule 7.0 to clarify Professional Licensing Section;
  - Rule 9.0 to strike this rule in its entirety;
  - Rule 12.0 to clarify where these will be sent;
  - Rule 13.0 to allow inspections of personnel and offices to be done at any time;
  - Rule 14.0 to allow Professional Licensing Section to approve renewals with no changes.

### Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.

4. The Board finds that the adoption of:
  - Rule 1.0 will allow the Professional Licensing Section to approve instructors;
  - Rule 2.0 will clarify who may use rifles and shotguns;
  - Rule 3.0 will require certifications be on file at Professional Licensing and the instructors must be approved;
  - Rule 7.0 will clarify Professional Licensing Section;
  - Rule 9.0 will strike this rule in its entirety;
  - Rule 12.0 will clarify where these will be sent;
  - Rule 13.0 will allow inspections of personnel and offices to be done at any time;
  - Rule 14.0 will allow Professional Licensing Section to approve renewals with no changes.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the aforementioned rules.

## Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §1304 et seq. and, in particular, 24 **Del.C.** §1304(b)(3).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §1304 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §1304(b)(3) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be August 11, 2014.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 17<sup>th</sup> day of July, 2014.

Lt. Colonel Monroe B. Hudson, Jr., Chairman  
William G. Bush, IV, Esquire  
Mr. Michael D. Connelly  
Ms. Kelly R. Jansen  
Mr. Wayne A. Keller

Timothy P. Mullaney, Sr., Esquire  
Mrs. Heather M. Shupe  
Mrs. Sandra C. Taylor  
Mr. Harvey A. Woods, III

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2014 issue of the Register at page 1148 (17 DE Reg. 1148). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1300 Board of Examiners of Private Investigators & Private Security Agencies**

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## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

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

## ORDER

**100 Board of Accountancy**

On January 1, 2014, the Delaware Board of Accountancy published proposed changes to its regulations in

the Delaware *Register of Regulations*, Volume 17, Issue 7. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 23, 2014 at a regularly scheduled meeting of the Board of Accountancy to receive verbal comments regarding the Board's proposed amendments to its regulations.

## SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony presented at the public hearing on April 23, 2014. No written comments were received by the Board.

## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the written public comment periods, or at the public hearing.
3. Pursuant to 24 **Del.C.** §105(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

## DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 24 **Del.C.** §105(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware Register of Regulations on January 1, 2014. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 18<sup>th</sup> day of June, 2014.

### DELAWARE BOARD OF ACCOUNTANCY

Jeffrey Premo, CPA, President (absent)

John McManus, PA

Robert Mosch, Jr., CPA

Robert Paretta

Gary Phippen (absent)

Judith Scarborough, CPA

Kathryn S. Schultz, CPA

Karen C. Smith, PA

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2014 issue of the *Register* at page 1157 (17 DE Reg. 1157). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**100 Board of Accountancy**

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## DIVISION OF PROFESSIONAL REGULATION Board of Charitable Gaming

Statutory Authority: 28 Delaware Code, Section 1508(a)(2) (28 **Del.C.** §1508(a)(2))  
10 **DE Admin. Code** 103

### ORDER

#### 103 Regulations Governing Charitable Gambling Other Than Raffles

On May 1, 2014 the Delaware Board of Charitable Gaming published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 17, Issue 11. This notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the Delaware *Register* and two newspapers a public hearing was held on June 5, 2014 at a regularly scheduled meeting of the Board of Charitable Gaming to receive verbal comments of the Board's proposed amendments to its regulations.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on June 5, 2014. No written comments were received by the Board during the initial thirty day comment; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) public comment period.

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and the opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments.
2. There were no public comments submitted to the Board during the two written public comment periods, or during the hearing.
3. Pursuant to 28 **Del.C.** §1508(a)(2) the Board has statutory authority to promulgate rules and regulations clarifying specific sections of its statute.
4. The proposed amendments seek to bring the regulations into conformity with operational procedures at the Division of Professional Regulation regarding license renewal and disposal of criminal background checks as well as to ensure that the regulations do not conflict with a recently enacted Gaming Statute regarding licensing of third party vendors.
5. Having received no public comments the Board sees no reason not to amend the regulations as proposed.

#### DECISION AND ORDER REGARDING THE PROPOSED REGULATIONS

NOW THEREFORE, pursuant to 28 **Del.C.** §1508(a)(2) and for the reasons set forth above, Delaware Board of Charitable Gaming does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on May 1, 2014. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 10th day of July, 2014.

#### DELAWARE BOARD OF CHARITABLE GAMING

Janet Williams-Coger, Chairperson

W. Scott Angelucci

S. Jay Mervine

Timothy Winstead, Vice Chairperson

Francis Gant

\*Please note that no changes were made to the regulation as originally proposed and published in the May 2014 issue of the *Register* at page 1044 (17 DE Reg. 1044). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**103 Regulations Governing Charitable Gambling Other Than Raffles**

### DIVISION OF PROFESSIONAL REGULATION

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

### ORDER

### 4100 Board of Home Inspectors

### NATURE AND STAGE OF THE PROCEEDINGS

On April 1, 2014, the Delaware Board of Home Inspectors published proposed regulations in the Delaware *Register of Regulations*, Volume 17, Issue 9. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on May 13, 2014 at a regularly scheduled meeting of the Delaware Board of Home Inspectors to receive verbal comments regarding the Board's proposed amendments to its regulations.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on May 13, 2014. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 Del.C. §10115(a) second public comment period.

### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed regulations.
2. There were no public comments provided to the Board during the initial written public comment period, public hearing or fifteen day period following the public hearing.
3. Pursuant to 24 Del.C. §4106(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed rules and regulations address two separate issues. The first is a change to regulation 4.0 which would enable applicants with five years of experience or who have completed 250 home inspections to obtain a license despite not being eligible as an endorsement candidate. Currently, such candidates must become trainee registrants before obtaining a home inspection license. The second proposed change relates to regulation 18.0 regarding standards of practice. The proposed changes would reflect recent changes to the American Society of Home Inspectors standards of practice so as to allow the practice of home inspection in Delaware to remain consistent with surrounding states.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

### DECISION AND EFFECTIVE DATE

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

SO ORDERED this 10th day of June, 2014.

## DELAWARE BOARD OF HOME INSPECTORS

Donald Pyle, Sr., Chairman

Dennis Theoharis, Vice Chairman

Timothy Harriger

Joyce Edwards

Jay "Wes" Mast

\*Please note that no changes were made to the regulation as originally proposed and published in the April 2014 issue of the *Register* at page 970 (17 DE Reg. 970). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**4100 Board of Home Inspectors**

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## OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2202(b), 2304(c), and 3409  
(5 Del.C. §§121(b), 2202(b), 2304(c), and 3409)  
5 DE Admin. Code 2207, 2302, 3401 and 3402

### ORDER

**2207 Exemption of Licensed Lenders**

**2302 Exemptions**

**3401 Regulations Governing Revocable and Irrevocable Trust Agreements**

**3402 Surety Bond or Irrevocable Letter of Credit**

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of July, 2014, that amended Regulations 2207, 2302, 3401, and 3402 are adopted as Regulations of the State Bank Commissioner. These amended Regulations were published in the June 1, 2014 edition of the Delaware *Register of Regulations* and are incorporated herein by reference. The effective date of each of these Regulations is August 11, 2014. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amended Regulations and their text was published in the June 1, 2014 issue of the Delaware *Register of Regulations*. The Notice also was mailed to all persons who had made a timely written request to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended Regulations and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before July 3, 2014. The Notice further stated that the proposed amended Regulations were available for inspection during regular business hours at the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and that copies were available upon request.
2. No written comments concerning the proposed amended Regulations were received on or before July 3, 2014.
3. After review and consideration, the State Bank Commissioner hereby adopts amended Regulations 2207, 2302, 3401, and 3402 as proposed.

Robert A. Glen, State Bank Commissioner

\*Please note that no changes were made to the regulation as originally proposed and published in the June 2014 issue of the *Register* at page 1168 (17 DE Reg. 1168). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Regulations 2207, 2302, 3401 & 3402**

## PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))  
26 **DE Admin. Code** 1001

IN THE MATTER OF REVISION TO THE RULES OF	
PRACTICE AND PROCEDURE OF THE DELAWARE	PSC REGULATION DOCKET NO. 99-9
PUBLIC SERVICE COMMISSION	
(FILED JANUARY 6, 1999; RE-OPENED OCTOBER 9, 2012	

ORDER NO. 8579

**1001 Rules of Practice and Procedure of the Delaware Public Service Commission**  
~~Effective May 10, 1999~~

**AND NOW**, this 8<sup>th</sup> day of July, 2014, the Delaware Public Service Commission (“Commission”) determines and orders the following:

**WHEREAS**, by Order No. 8232 (October 9, 2012), the Commission reopened Regulation Docket No. 99-9 to review and amend the “*Rules of Practice and Procedure of the Delaware Public Service Commission*,” 26 **DE Admin. Code** §1001 et seq. (the “Rules”); and

**WHEREAS**, the Commission has jurisdiction over this matter pursuant to 26 **Del.C.** §§201(a) and 209(a)(1); and

**WHEREAS**, the Rules require amendment to update provisions regarding the Commission’s new electronic filing system (the “Amendments”); and

**WHEREAS**, pursuant to 29 **Del.C.** §§10102(9) and 10113(b)(2), because the Amendments are strictly procedural and statutorily exempt from formal notice requirements and because they are not substantive amendments which would otherwise require publication and a public comment period pursuant to §§ 10114 – 10118 of the APA;

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

1. Pursuant to 29 **Del.C.** §§10102(9) and 10113(b)(2), decretal paragraphs 2 and 3 of Order No. 8232 are hereby waived.
2. Pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10113(b)(2), the Commission hereby adopts the *Amended Rules of Practice and Procedure of the Delaware Public Service Commission* (the “Amended Rules”) as official regulations as defined by 29 **Del.C.** §1132. A true and correct copy of the redlined version reflecting the changes as between the current Rules and the Amended Rules is attached as **Exhibit “A”**. A clean version of the Amended Rules reflecting the changes is attached as **Exhibit “B”**.
3. Pursuant to 26 **Del.C.** §§10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order (with the attached Amended Rules) to the Registrar of Regulations for publication in the *Delaware Register*. An exact copy of the Amended Rules shall be published as the current official regulations in the *Delaware Register*.
4. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

## BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Harold Gray, Commissioner

Jaymes B. Lester, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

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

**1001 Rules of Practice and Procedure of the Delaware Public Service Commission**

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## DIVISION OF RESEARCH

### OFFICE OF THE REGISTRAR OF REGULATIONS

Statutory Authority: 29 Delaware Code, Section 1134(a)(4) (29 **Del.C.** §1134(a)(4))

#### ORDER

#### Regulation Governing Administrative Rulemaking Procedures

The Registrar of Regulations of the Division of Research of the Legislative Council, pursuant to 29 **Del.C.** §1134(a)(4), proposes to adopt Regulation Governing Administrative Rulemaking Procedures. The regulation was presented at the April 30, 2014 meeting of the Legislative Council.

The Registrar of Regulations published the notice of proposed adoption of Regulation Governing Administrative Rulemaking Procedures pursuant to 29 **Del.C.** §10115 in the June 1, 2014 *Delaware Register of Regulations*, requiring written comments concerning the new regulation to be submitted by July 1, 2014.

#### Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Registrar of Regulations with comments in writing on the proposed adoption of the new regulation. There were no public comments provided to the Registrar of Regulations during the public comment period.

Pursuant to 29 **Del.C.** §1134(a)(4), the Registrar of Regulations has the statutory authority to promulgate rules and regulations. The purpose of the regulation is to provide procedures for the filing of regulations under the Administrative Procedures Act, 29 **Del.C.** Ch. 101, and for publication in the *Delaware Register of Regulations* and the *Administrative Code*.

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

**IT IS ORDERED**, that the proposed regulation, Regulation Governing Administrative Rulemaking Procedures, is adopted and shall be final effective August 11, 2014, ten days after publication in the *Delaware Register of Regulations*.

Jeffrey W. Hague, Registrar of Regulations

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2014 issue of the *Register* at page 1174 (17 DE Reg. 1174). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Regulation Governing Administrative Rulemaking Procedures**

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# GENERAL NOTICES

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)

#### REGISTER NOTICE

Secretary's Order No 2014-A-0014

#### RE: APPROVAL OF REVISION TO THE DELAWARE STATE IMPLEMENTATION PLAN FOR MEETING REASONABLY AVAILABLE CONTROL TECHNOLOGY REQUIREMENTS UNDER THE FEDERAL CLEAN AIR ACT

**Date of Issuance: July 18, 2014**

**Effective Date: August 11, 2014**

This Order of the Secretary of the Department of Natural Resources and Environmental Control (Department) approves a proposed revision to the Delaware State Implementation Plan (SIP), which is issued as a state-wide air management plan under 29 Del.C. §6010.

#### Background

The United States Environmental Protection Agency (EPA) delegated authority to the Department to administer certain parts of the federal Clean Air Act (CAA) authority, including the establishment and management of a SIP. Delaware's SIP sets forth the methods for Delaware to attain and maintain air quality that conforms to EPA's primary and secondary National Ambient Air Quality Standards (NAAQS). The SIP sets forth the regulations, source specific requirements, and non-regulatory items, such as plans and emission inventories that will allow Delaware to meet the CAA standards. The current revision is to meet the requirements of the 2008 Ozone NAAQS, which established a ground-level ozone standard of 0.075 parts per million (ppm) in order to protect the environment and public health from the risk of excessive ozone levels. EPA in May 2012 designated New Castle County and Sussex County as nonattainment of the 2008 ground-level ozone NAAQS, which under Section 182(b)(2) of the CAA requires Delaware to submit to EPA by July 2014 a SIP revision that demonstrates that Delaware has implemented the necessary Reasonably Available Control Technology (RACT) requirements to stationary emission sources of precursors to ground-level ozone, i.e., volatile organic compounds (VOC) and oxides of nitrogen (NOx).

The Department's Division of Air Quality (DAQ) prepared the proposed SIP revision, which has been available to the public since April 17, 2014 and published in the May 1, 2014 issue of the *Delaware Register of Regulations*, as well as legal notices in the April 27, 2014 *Sunday News Journal* and the *Delaware State News*. These public notices also provided notice of a June 2, 2014 public hearing at the Department's Dover offices. The public was afforded an additional ten days for written public comments. The Department's presiding hearing officer prepared the attached Report, which recommends approval of the SIP revision as prepared by DAQ. The Report is adopted to the extent it is consistent with this Order.

#### Findings and Reasons

The Department finds that the record supports approval of the SIP revision, which will amend the SIP to reflect changes in the RACT requirements. The changes updates the implementation of regulations to control the emissions of VOCs and NOx, and establishes NOx limits for two sources of NOx emissions at the Delaware City Refinery Company LP's (DCRC) petroleum refinery, namely, the fluidized catalytic cracking unit (FCCU) and the fluid coking unit (FCU). The SIP revision also determines that the RACT control measures satisfies the CAA

requirements for the 50 ton per year (and above) major VOC sources and for the 100 ton per year (and above) for the major NO<sub>x</sub> sources. While 25-50 TPY VOC sources and 25-100 TPY NO<sub>x</sub> sources are not specifically addressed in this SIP document, they remain subject to the 1-hour RACT requirements under Delaware Regulations and under the “anti-backsliding” provisions of the EPA 8-hour ozone implementation rule. Finally, the SIP revision demonstrates that Delaware has promulgated the necessary regulations that will meet current RACT levels and the 2008 ozone NAAQS.

The only public comments received on the SIP revision were from DCRC, at the hearing, which objected to the SIP’s determination of RACT-level limits for its FCU and FCCU equipment.

Four of DCRC’s comments were directed at claiming that the limits presented for FCU and FCCU operation were not RACT. DAQ, in its Technical Response Memorandum (TRM), did not agree with DCRC’s comments. DAQ’s proposed SIP revised relied on then available information from extensive testing of the FCU and FCCU using installed pollution abatement equipment for the FCU and FCCU. The proposed SIP revision for the FCU and FCCU was consistent with EPA’s definition of RACT because this equipment is installed and the operating conditions determined pursuant with the terms of a 2001 consent decree that continues to control aspects of the Department’s regulation of the refinery’s air emissions. On May 21, 2014 EPA issued its determination on what the FCU and FCCU NO<sub>x</sub> limits would be, and DCRC is subject to these limits in the near future. Accordingly, DAQ at the hearing revised the SIP to reflect the EPA determination.

The DAQ used limits based upon the existing controls installed on the FCU and FCCU, which were the subject of an extensive 18 month long optimization studies, which DAQ reviewed. These studies, along with DAQ’s expert opinion, provide ample justification for the FCU and FCCU having RACT limits established in Section 3.3 of the proposed SIP revision. DAQ properly determined the two units’ emission rates for purposes of the RACT’s SIP revision. Without question, the two units’ limits, as determined by EPA in its May 21, 2014 letters and accepted by DAQ’s experts, meet the definition of RACT, and, hence, should be reflected in the SIP. At the hearing, DAQ adopted the EPA determined NO<sub>x</sub> limits for the FCU and FCCU consistent with its use as the RACT in the SIP. This change was appropriate and necessary to make considering that EPA will review the SIP revision approved by this Order. The record remained open for public comment and none was received on the change, which was modest from the originally proposed SIP revision. The public had ample opportunity to comment following the hearing of this change, and DCRC commented, as discussed above. In sum, the EPA change should be reflected in the SIP revision and the Department properly reflected the change in its SIP revision.

The Department finds that the SIP revision should be adopted and submitted to EPA for approval. Approval of the SIP revision in final is supported by the record and consistent with the Department’s delegated duties under the federal Clean Air Act. In conclusion, the following findings and conclusions are entered:

1. The Department finds the proposed SIP revision is supported by the record and should be adopted as a final SIP revision;
2. The Department finds that the SIP revision should be submitted to EPA for EPA’s review in order that the SIP may be approved by EPA; and
3. The Department shall publish notice of this Order in the same manner as the notice of the proposed SIP revision.

David S. Small, Secretary

**Delaware Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Under the  
2008 Ozone National Ambient Air Quality Standard (NAAQS)**

**Submittal To U.S. Environmental Protection Agency**

**Submitted By Delaware Department of Natural Resources and Environmental Control**

**[May August] 2014**

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

**[Delaware \(RACT\) State Implementation Plan \(SIP\)](#)**

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# GENERAL NOTICES

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## DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)

### REGISTER NOTICE

Secretary's Order No.: 2014-A-0015

**RE: Approving Revised Final Revision to the Delaware 2011 Base Year State Implementation Plan (SIP) Emission Inventory for Volatile Organic Compounds (VOCs), Nitrogen Oxides (NOx), and Carbon Monoxide (CO) for Areas of Marginal Non-Attainment under the 2008 Ozone National Ambient Air Quality Standard (NAAQS)**

**Date of Issuance: July 21, 2014**

**Effective Date of the Amendment: August 11, 2014**

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 the proposed revision to the Delaware State Implementation Plan (SIP) for meeting the Clean Air Act ("CAA") requirements for the 8-hour ozone National Ambient Air Quality Standard ("NAAQS") set forth by the U.S. Environmental Protection Agency ("EPA") in 2008. According to Section 182(a)(1) of CAA and EPA's implementation rule for the 2008 ozone standard (Proposed Rule, June 6, 2013, 78 FR 34178), Delaware is required to submit to EPA in July 2014 a SIP revision which compiles Delaware 2011 emissions of volatile organic compounds ("VOCs"), oxides of nitrogen ("NOx"), and carbon monoxide ("CO") from five source sectors: stationary point sources, stationary non-point sources, on-road mobile sources, non-road mobile sources, and natural sources. The subject document contains Delaware's base year emission inventory SIP revision under the 8-hour ozone NAAQS set forth by the U.S. Environmental Protection Agency ("EPA") in 2008.

In March of 2008, the EPA revised the 1997 8-hour ozone NAAQS of 0.08 parts per million to 0.075 parts per million. The 2008 ozone standard of 0.08 parts per million is expected to provide better protection of public health and environment. In a final rule on May 2012, the EPA designated 46 areas in the country as non-attainment for the 2008 ozone standard, including New Castle County and Sussex County in Delaware.

To facilitate planning, Sections 182(a)(1) and 172(c)(3) of the CAA require all ozone non-attainment areas to establish a comprehensive, accurate and current inventory of actual emissions from all sources of the relevant pollutant(s) in the area by July 20, 2014, which is two years after designation as non-attainment for the 2008 ozone standard. The relevant pollutants that contribute to the atmospheric formation of ozone include VOCs, NOx, and CO.

Delaware has previously been designated non-attainment for ozone under the 1990 1-hour and the 1997 8-hour ozone standards, and has thus been subject to this emission inventory requirement since 1990. Delaware has developed emissions inventories that meet the criterion of Sections 182(a)(1) and 172(c)(3) of the CAA every three years since 1990, and Delaware's latest comprehensive inventory of actual emissions from all sources of VOCs, NOx and CO in the State covered calendar year 2011.

The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories. Delaware's initial SIP was approved by the EPA on May 31, 1972. Since that initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and by adding new and revised regulatory control requirements. Delaware's SIP is compiled in the code of Federal Regulations at 40 C.F.R. Part 52, Subpart 1.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated July 14, 2014 (Report). The Report recommends certain findings and the adoption of the proposed revision to Delaware's State Implementation Plan for meeting the Clean Air Act ("CAA") requirements for the 8-hour ozone National Ambient Air Quality Standard ("NAAQS") set forth by the U.S. Environmental Protection Agency ("EPA") in 2008, as attached to the Report as Appendix A.

## Findings and Discussion

I find that the *revised* proposed revision to Delaware's aforementioned SIP is 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 *revised* proposed SIP revision.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the *revised* proposed revision to the Delaware State Implementation Plan (SIP) for meeting the Clean Air Act requirements for the 8-hour ozone National Ambient Air Quality Standard set forth by the U.S. Environmental Protection Agency ("EPA") in 2008. With the adoption of this Order, Delaware will once again demonstrate that the contingency requirements listed in Section 182(a)(1) of the Clean Air Act (CAA) are met.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this *revised* proposed SIP revision as final;
- 2.) The Department provided adequate public notice of the proposed SIP revision, and provided the public with an adequate opportunity to comment on the proposed SIP revision, including at the public hearing held on June 26, 2014;
- 3.) The Department held a public hearing on June 26, 2014, 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* SIP revision, as set forth in Appendix A, is adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* revision to Delaware's State Implementation Plan (SIP) for meeting the Clean Air Act requirements for the 8-hour ozone National Ambient Air Quality Standard set forth by the U.S. Environmental Protection Agency ("EPA") in 2008 should be adopted as final, thereby enabling Delaware to (1) demonstrate that the contingency requirements listed in Section 182(a)(1) of the Clean Air Act (CAA) are met; and (2) because the revision is well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final *revised* revision to Delaware's State Implementation Plan (SIP) to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

### 2011 Base Year State Implementation Plan Emissions Inventory for VOC, NO<sub>x</sub> and CO For Areas of Marginal Non-attainment of the 2008 Ozone NAAQS in Delaware

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

**2011 Base Year SIP Inventory for VOC, NO<sub>x</sub> and CO**

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

The State Board of Education will hold its monthly meeting on Thursday, August 21, 2014 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Nursing Facility Services– Preadmission Screening and Resident Review**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding administration of the Medicaid Preadmission Screening and Resident Review (PASRR), specifically, *Categorical Determinations and Specialized Services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by September 2, 2014.

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Standards for the Coverage of Organ Transplant Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), with 42 CFR §447.205 and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit a state plan amendment regarding Organ Transplants, specifically, *standards for the coverage of organ and tissue transplant services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by September 2, 2014.

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

**DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****4407 Hospital Standards (Construction, Maintenance, and Operation)**

The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, has proposed amendments to the State of Delaware 4407 Hospital Standards (Construction, Maintenance, and Operation) regulation.

House Bill 129 ("Christina's Law"), signed by the Governor on June 10, 2014, requires the Department of Health and Social Services to adopt regulations to ensure that hospital staff have ready access to a locked hospital bathroom in the event of an emergency. The proposed amendment adds to the existing regulation a section 4.4

“Hospitals must develop and implement policies and procedures for hospital staff to have ready access to a locked hospital bathroom in the event of an emergency.”

On August 1, 2014, the Department plans to publish proposed amendments to the 4407 Hospital Standards (Construction, Maintenance, and Operation) regulation and hold them out for public comment per Delaware law. Copies of the proposed regulation are available for review in the August 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation must submit same to Deborah Harvey by 4:30 p.m. on Tuesday, September 2, 2014 at:

Deborah Harvey

Division of Public Health

417 Federal Street

Dover, DE 19901

Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us) Phone: (302) 744-4700

## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF AIR QUALITY**

#### **PUBLIC NOTICE**

#### **1124 Control of Volatile Organic Compound Emissions**

Delaware’s ambient air quality does not meet the health based air quality standard for the pollutant ground-level ozone. Because gasoline vapors contribute to the formation of ground-level ozone, and because gasoline vapors include hazardous air pollutants, Delaware has implemented, since 1993, Section 36 to control gasoline vapor emissions from gasoline tanks and motor vehicles at gasoline dispensing facilities (GDFs). In addition, since 1998, automobile manufacturers have been required by the federal clean air act (CAA) to install on-board refueling vapor recovery (ORVR) systems on new vehicles.

The CAA allows Delaware to phase-out Stage II vapor recovery requirements, provided overall emissions do not increase in the absence of Stage II vapor recovery requirements. The ORVR system is effective for controlling gasoline vapor emissions from the fueling of ORVR equipped vehicles. When refueling ORVR equipped vehicles, however, fresh air is ingested into the GDF gasoline storage tanks, which leads to vapor growth in the gasoline tanks and vapor emissions from those tanks through leaks and pressure relief valves.

The DAQ is proposing to revise Section 36 to require any new GDF to 1) not install a Stage II vapor recovery system, 2) demonstrate compliance with an allowable leak rate using a continuous pressure monitoring (CPM) system, and 3) when cost effective and necessary, install a pressure management system to reduce the uncontrolled venting of emissions. The DAQ is also proposing to allow any existing GDF, at its option, to decommission its Stage II system and comply with the same requirements applicable to new GDFs.

If finalized the Department proposes to submit this revision to the U.S. Environmental Protection Agency (EPA) as a revision to Delaware’s state implementation plan (SIP).

A public hearing will be held on August 28, 2014, beginning at 6:00 pm, in DNREC Auditorium, 89 Kings Highway, Dover, DE 19901.

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

### **DIVISION OF FAMILY SERVICES**

#### **OFFICE OF CHILD CARE LICENSING**

#### **PUBLIC NOTICE**

#### **105 Residential Child Care Facilities and Day Treatment Programs**

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Requirements for Residential Child Care Facilities and Day Treatment Programs in response to public comments received after the publication of revised regulations in the June 2013, August 2013, January 2014, and May 2014 *Register of Regulations*.

Because of revisions made based on public comments recently received and internal review, the revised draft is again offered for another period of public comment. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on September 2, 2014.

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

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**  
**500 Board of Podiatry**

The Delaware Board of Podiatry, pursuant to 24 **Del.C.** §506(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with operational procedures at the Division of Professional Regulation regarding license renewal, inactive status and continuing education attestation.

The Board will hold a public hearing on the proposed rule change on September 16, 2014 at 5:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meaghan Jerman, Administrator of the Delaware Board of Podiatry, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904.

**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**

**1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners**

Pursuant to 24 **Del.C.** §1806(a)(2), the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners has proposed revisions to its rules and regulations. The rules are amended to provide a continuing education requirement.

At its public hearing held on July 8, 2014 at 8:30 a.m. the Board voted to continue the public hearing on the proposed Regulation amendment at its September 9, 2014 regularly scheduled meeting. Accordingly, a public meeting will be held on September 9, 2014 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be September 24, 2014 which is 15 days following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**

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

The Delaware Board of Professional Land Surveyors, in accordance with 24 **Del.C.** §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to allow professional development hours to be obtained by active duty military. The Board will hold a public hearing on the

proposed rule changes on September 18, 2014 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

**DIVISION OF PROFESSIONAL REGULATION**

**PUBLIC NOTICE**

**5200 Board of Examiners of Nursing Home Administrators**

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 **Del.C.** §5206(1), proposes to revise its regulations. The proposed revisions to the regulations would mandate that AIT registrants take additional training in preparation for the National Association of Long Term Care Administrator Boards and the practice of nursing home administration. The Board has always strongly recommended that applicants take the course and now recommends that the course become mandatory pursuant to 24 **Del.C.** §5209(a)(1).

The Board originally scheduled a public hearing on the proposed rule change for July 8, 2014 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. That meeting was cancelled due to lack of a quorum. As a result the public hearing has been rescheduled for September 8, 2014 at 1 p.m., in the Second Floor Conference Room B, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Sheryl Paquette, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.