
Delaware Register of Regulations

Issue Date: August 1, 2018

Volume 22 - Issue 2, Pages 92 - 172



IN THIS ISSUE:

Regulations:

- Errata
- Emergency
- Proposed
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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, 2018.

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF RESEARCH STAFF

Lori Christiansen, Director; **Mark J. Cutrona**, Deputy Director; **Julie Fedele**, Joint Sunset Research Analyst; **Bethany Fiske**, Assistant Registrar of Regulations; **Deborah Gottschalk**, Legislative Attorney; **Robert Lupo**, Graphics and Printing Technician IV; **Colinda Marker**, Executive Secretary; **Kathleen Morris**, Human Resources/Financial Manager; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Print Shop Supervisor; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Wagner**, Legislative Attorney; **Natalie White**, Administrative Specialist II; **Sara Zimmerman**, Legislative Librarian.

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Office of the Secretary

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DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

OFFICE OF THE SECRETARY

Statutory Authority: 7 Delaware Code, Section 7507A(b) (7 **Del.C.** §7507A(b))
7 **DE Admin. Code** 109

Amendment to Secretary's Order No.: 2018-P-0030

109 Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection

***Please Note:** The Secretary's Order that approved *Final Regulations of 7 DE Admin. Code 109, Regulations Governing the Guidelines to Evaluate Land Being Considered/or Permanent Protection*, as published in the June 1, 2018 issue of the *Delaware Register of Regulations* (21 DE Reg. 986) by the State Registrar's Office, contained the following clerical errors:

- (1) Under the first section of the Order, "**Background, Procedural History and Findings of Fact**", the first sentence of the second paragraph contains a numbering error. The sentence containing the error is reprinted below, with the error corrected:

The entities of the State that are eligible to purchase land through the Open Space Program are as follows: (1) the DNREC Division of Parks and Recreation; (2) the DNREC Division of Fish and Wildlife; (3) ~~the Department of Agriculture~~; (4) ~~the Delaware Forest Service~~; and (5) the Department of Agriculture, Delaware Forest Service; and (4) the Department of State Division of Historic and Cultural Affairs.

- (2) Under the same aforementioned section of the Order, the last sentence of the third paragraph also contains a clerical error. The sentence containing the error is reprinted below, with the error correction:

During the process of amending the LPA in 2016, legislators decided the best way to incorporate public comment was through notice and public hearing, pursuant to the Administrative Procedures Act ("APA"), pursuant to 29 ~~Del.C.~~ **Del.C.** Chapter 101, Subchapter II.

The regulatory text itself, as previously published by the State Registrar as referenced above, is accurate.

Shawn M. Garvin
Secretary
June 30, 2018

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 EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a) and 4112 and 29 Delaware Code, Section 10119 (14 **Del.C.** §§122(a) & 4112; 29 **Del.C.** §10119)
 14 **DE Admin. Code** 601

Secretary's Order
601 Schools and Law Enforcement Agencies

Pursuant to 29 **Del.C.** §10113(b)(5), and 14 **Del.C.** §122(a), the State of Delaware Department of Education issued on June 15, 2018 a Final Order amending 14 **DE Admin. Code** 601. 6.1 to be consistent with the mandatory reporting requirements of 14 **Del.C.** §4112(b). Subsequently, the Department of Education discovered that the regulation had already been amended in 2013 to bring it into compliance with 14 **Del.C.** §4112(b) and that the June 15, 2018 Order was not in compliance with 14 **Del.C.** §4112(b).

14 **Del.C.** §122(a) authorizes the Department to adopt regulations which are consistent with the laws of this State. 14 **Del.C.** §122(a) prohibits the publishing of regulations which conflict with any law of the State. Pursuant to 29 **Del.C.** §10119, this Emergency Order is necessary to avoid the risk of harm to the health, safety and welfare of the citizens of Delaware that would result in the Regulation being adopted contrary to the statutory authority of the Department. Therefore, the Department hereby withdraws its Final Order, dated June 15, 2018, purporting to amend 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect immediately upon issuance, and shall remain in effect for 120 days. The Department intends to submit a non-emergency Order of Withdrawal for publication in the August 1, 2018 *Register of Regulations*.

PETITION FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions to this Order. Petitions should be presented to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us

ORDER

It is hereby ordered, the 10th day of July, 2018, that the June 15, 2018 Final Order amending 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies is hereby withdrawn.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education
(by Emily W. Cunningham)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(h) and 29 Delaware Code, Section 10119
(7 **Del.C.** §903(h) and 29 **Del.C.** §10119)
7 **DE Admin. Code** 3511

SECRETARY'S ORDER NO: 2018-F-0041
(Renewal of Secretary's Order 2018-F-0026)

3511 Summer Flounder Size Limits; Possession Limits; Season

AUTHORITY

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is renewing amendments to Tidal Finfish Regulation 7 **DE Admin. Code** 3511, *Summer Flounder Size Limits; Possession Limits; Season*, adopted through Secretary's Order 2018-F- 0026, without prior notice or public hearing to ensure that Delaware's recreational Summer Flounder fishery resource avoids unnecessary hardship, benefits from a sustainable harvest liberalization, and remains competitive with similar fishing resources in New Jersey, Maryland and Virginia.

7 **Del.C.** §903(h) authorizes the Department to adopt and renew emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource or habitat involving finfish. It should be noted that the emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act.

REASON FOR THE EMERGENCY ORDER

The Atlantic States Marine Fisheries Commission (ASMFC) and Mid Atlantic Fisheries Management Council extended the regional approach to recreational Summer Flounder management outlined in Addendum XXVIII to the Interstate Fishery Management Plan (FMP) for Summer Flounder, Scup, and Black Sea Bass through 2018.

Addendum XXVIII allows states or regions to develop measures that will achieve the coast wide recreational harvest limit (RHL) of 4.42 M pounds. Based on Summer Flounder stock status, states or regions may liberalize their 2017 recreational Summer Flounder regulations to allow for up to a 17% harvest increase in 2018.

By extending the provisions of Addendum XXVIII, Delaware continued to be grouped in a region (DelMarVa) with Maryland and Virginia. The DelMarVa region submitted an analysis to the ASMFC Summer Flounder Technical Committee for a four (4) fish possession limit, a 365-day season and a 16.5-inch minimum size limit that is estimated to result in a 16.4% harvest increase. This proposed management strategy was approved by the ASMFC's Management Board in February 2018 and allowed Delaware to reduce its Summer Flounder minimum size limit by a half inch.

As the Summer Flounder recreational fishery typically begins in April, the requirements of 29 **Del.C.** §§10115 - 10118 did not afford sufficient time to accommodate adoption of a 16.5- inch minimum size limit before the Summer Flounder recreational fishery began. Therefore, the emergency provisions of 29 **Del.C.** §10119, as well as 7 **Del.C.** §903(h), which authorize the adoption of emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource, were used to implement the necessary regulatory change.

As the emergency regulation is set to expire, renewal of the emergency regulation, as provided by 29 **Del.C.** §10119(3), is necessary to allow sufficient time to amend the Summer Flounder regulation through the full provisions of the Administrative Procedures Act and 29 **Del.C.** §10115. Renewal of this emergency regulation will continue to ensure Delaware's recreational fishing resources avoid unnecessary hardship, benefit from the sustainable harvest liberalization, and remain competitive with similar fisheries in New Jersey, Maryland and Virginia.

EFFECTIVE DATE OF ORDER

This order and the corresponding emergency regulation shall take effect at 12:01 a.m. on August 11, 2018 and shall remain in effect for no longer than 60 days, consistent with 29 **Del.C.** §10119(3). The Department has proposed regulations that would supersede the interim regulations upon formal approval pursuant to the Administrative Procedures Act and 29 **Del.C.** §10115.

PETITION FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this order. Petitions should be presented to the Fisheries Section, Division of Fish & Wildlife, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, the 18th day of July, 2018 that the above referenced amendments to 7 **DE Admin. Code** 3511, *Summer Flounder Size Limits; Possession Limits; Season*, a copy of which is hereby attached, are renewed and adopted pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h), and are supported by the evidence contained herein.

Shawn M. Garvin, Secretary
Department of Natural Resources and Environmental Control
7/18/18

3511 Summer Flounder Size Limits; Possession Limits; Season

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~seventeen (17)~~ sixteen and one half (16.5) inches between the tip of the snout and the furthest tip of the tail.
- 3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than ~~seventeen (17)~~ sixteen and one half (16.5) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.
- 4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:
- 4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;
 - 4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or
 - 4.3 A bill of lading while transporting fresh or frozen summer flounder.
 - 4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.
- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.
- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.
- 7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 29 Delaware Code, Section 10119 and 7 Delaware Code, Section 903(h)
(29 **Del.C.** §10119 & 7 **Del.C.** §903(h))
7 DE Admin. Code 3531

SECRETARY'S ORDER NO: 2018-F-0035

3531 Tautog; Size Limits, Creel Limits and Seasons

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is adopting amendments to Tidal Finfish Regulation 7 **DE Admin. Code** 3512: Tautog; Size Limits, Creel Limits and Seasons, without prior notice or public hearing to ensure that Delaware's Tautog fishing resource avoids unnecessary hardship, benefits from a sustainable harvest strategy, and remains competitive with similar fishing resources in

Maryland and Virginia.

7 **Del.C.** §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource or habitat involving finfish. It should be noted that the emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act.

REASON FOR THE EMERGENCY ORDER

The most recent Tautog stock assessment indicated that the Delaware, Maryland and Virginia (DelMarVa) component of the stock is overfished. In response, the Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 1 to the Interstate Fishery Management Plan (FMP) for Tautog. Amendment 1 requires that Delaware implement management measures consistent with the other states in the region. These measures include a 16-inch minimum size limit, a four fish possession limit and a closed season from May 16 through June 30.

The Division of Fish & Wildlife submitted draft SAN No. 2018-08 proposing to adopt the required size and possession limit and season, as well as other commercial fishery measures (not required until 2019), following the standard administrative procedures outlined in 29 **Del.C.** §§10115-10118. However, these procedures preclude timely implementation of the measures and jeopardize Delaware's Tautog fishing resource through the continuance of unnecessary closures during the periods May 12 through July 16, and September 1 through September 28, which are periods of high fishing activity (including Independence Day and Labor Day). These unnecessary closures impact the recreational and commercial fisheries, as well as their dependent businesses (seafood retailers, bait and tackle stores, etc.), and puts the affected parties at a competitive disadvantage to neighboring states. The emergency provisions of 29 **Del.C.** §10119, as well as 7 **Del.C.** §903(h), which authorizes the adoption of emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource, allow for the timely adoption of the required measures. Emergency action will ensure the Tautog fishing resource avoids unnecessary hardship, benefits from a sustainable harvest strategy, and remains competitive with similar fishing resources in Maryland and Virginia.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect July 1, 2018, and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3). The Department intends to propose regulations that would supersede the emergency regulations upon formal approval, pursuant to the Administrative Procedures Act, and 29 **Del.C.** §10115.

PETITION FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish & Wildlife, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, the 28th day of June, 2018 that the above referenced amendments to 7 **DE Admin. Code** 3512: *Tautog; Size Limits, Creel Limits and Seasons*, a copy of which is hereby attached, are adopted pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h), and are supported by the evidence contained herein.

Shawn M. Garvin,
Secretary

Amendment to Secretary's Order No.: 2018-F-0035

***Please Note:** The Secretary's Order that adopted emergency regulatory amendments to 7 DE Admin. Code 3531, *Tautog: Size Limits, Creel Limits and Seasons*, to be published in the August 1, 2018 issue of the Delaware Register of Regulations by the State Registrar's Office, inadvertently contained clerical errors. All references to "Tidal Finfish Regulation 7 DE Admin. Code 3512" have been corrected to reflect the accurate citation for this regulation, which is "Tidal Finfish Regulation 7 DE Admin. Code 3531."

July 11, 2018
Shawn M. Garvin
Secretary

3531 Tautog; ~~Size Limits, Creel Limits and Seasons~~**1.0 Recreational and Commercial Size Limits**

~~4.01.1~~ Notwithstanding the provisions of 7 Del.C. §§~~929 and~~ 939, it ~~shall be~~ is unlawful for any person to possess any tautog, *Tautoga onitis*, less than ~~fifteen (15)~~ sixteen (16) inches in total length.

2.0 Recreational and Commercial Possession Limits and Seasons

~~2.1~~ Notwithstanding the provisions of 7 Del.C. §§~~938, and~~ 939, it ~~shall be~~ is unlawful for any person to ~~possess~~ take and reduce to possession more than ~~five (5)~~ four (4) tautog per day during the period beginning at 12:00 a.m. on January 1 and ending at 11:59 p.m. on ~~March 31~~ May 15, and during the period beginning at 12:00 a.m. on July 17 and ending at 11:59 p.m. on ~~August~~ December 31, and ~~during the period beginning at 12:00 a.m. on September 29 and ending at 11:59 p.m. on December 31, at or between the place where said tautog were caught and said person's personal abode, or temporary or transient place of lodging or, for a licensed commercial foodfisherman, point of sale.~~

~~3.0~~ Notwithstanding the provisions of 7 Del.C. §§~~938, 939~~, it shall be unlawful for any person to possess more than ~~three (3)~~ tautog during the period beginning at 12:00 a.m. on April 1 and ending at 11:59 p.m. on ~~May 11~~, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

~~4.02.2~~ Notwithstanding the provisions of subsections ~~1.0, 2.0 and 3.0~~ of this regulation 7 Del.C. §§~~938 and~~ 939, it shall be is unlawful for any person to possess take and reduce to possession any tautog during the period beginning at 12:00 a.m. on ~~May 12~~ May 16 and ending at 11:59 p.m. on ~~July 16~~ and during the period beginning at 12:00 a.m. on ~~September 1 and ending at 11:59 p.m. on September 28~~, except in said person's personal abode or temporary or transient place of lodging June 30.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
OFFICE OF THE SECRETARY

Statutory Authority: 11 Delaware Code, Section 1444(f) (11 Del.C. §1444(f))

ORDER**102 Regulations Governing the Destructive Weapon Compensation Program (DWCP)**

The Department of Safety and Homeland Security (DSHS), pursuant to 11 Del.C. §1444(f)(1), adopts the attached emergency regulations that provide detailed information regarding the Destructive Weapon

Compensation Program (DWCP), as identified in 11 **Del.C.** §1444(f)(2). These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for the Department of Safety and Homeland Security Secretary by 11 **Del.C.** §1444(f)(1).

It should be noted that the emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act, within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations by 29 **Del.C.** §10119(3).

REASON FOR THE EMERGENCY ORDER

The regulations provided below are necessary for immediate implementation based on legislation signed into law effective June 14, 2018. Establishing DWCP locations and collection processes will allow for these items to be expeditiously turned in where they pose a risk to the safety and welfare of the public.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect immediately upon issuance, and shall remain in effect for 120-days; however, at the expiration of 120-days, the Department may choose to renew this Emergency Order for a period not exceeding 60-days, consistent with 29 **Del.C.** §10119(3). The Department intends to propose regulations that would supersede the interim regulations upon formal approval pursuant to the Administrative Procedures Act, pursuant to 29 **Del.C.** §10115.

PETITION FOR RECOMMENDATIONS

Consistent with the requirements of 29 **Del.C.** §10119(4), the Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Order. Petitions should be presented to the Department of Safety and Homeland Security, Attn: Terry Pepper, Public Safety Building Suite 220, P.O. BOX 818, Dover, Delaware 19903-0818.

ORDER

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Department of Safety and Homeland Security does hereby ORDER this 24th day of July, 2018 that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

Robert M. Coupe
7/24/2018
Secretary, Department of Safety and Homeland Security

102 Regulations Governing the Destructive Weapon Compensation Program (DWCP)

1.0 Definitions

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

"Bump stock" means an after-market device that increases the rate of fire achievable with a semi-automatic rifle by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.

"Destructive weapon" means a destructive weapon as described in 11 **Del.C.** §1444(a)(6).

"DSHS" means Delaware Department of Safety and Homeland Security.

"DWCP" means the Destructive Weapon Compensation Program.

"Gift card" means type of payment used by a law enforcement agency to pay for surrendered destructive weapons such as a VISA or MasterCard gift card.

"Law enforcement agency" means the Delaware State Police.

"Program period" means July 1, 2018 to June 30, 2019.

"Secretary" means the Secretary of Delaware Department of Safety and Homeland Security.

"Trigger crank" means an after-market device designed and intended to be added to a semi-automatic rifle as a crank operated trigger actuator capable of triggering multiple shots with a single rotation of the crank.

2.0 Authorization

- 2.1 Funds allocated pursuant to 11 Del.C. §1444 shall be maintained in the DSHS, Office of the Secretary.
 - 2.1.1 Funds will be distributed to the law enforcement agency locations in the form of gift cards.
- 2.2 The Secretary will designate which law enforcement agency locations will participate in the DWCP.
 - 2.2.1 An agency location designated to participate in the DWCP and receive funds shall make public notice upon designation by the Secretary, at least 14 days in advance of starting their program, indicating the following:
 - 2.2.1.1 The dates, times, location and duration for collection;
 - 2.2.1.2 The contact person for the DWCP responsible for maintaining the funds and/or inventory allocated by DSHS.
- 2.3 Within seven (7) days after the conclusion of the DWCP program period, the law enforcement agency shall submit to the Secretary an accounting of all funds allocated by DSHS under these regulations.
- 2.4 All unused funds shall be returned to DSHS in the form it was received, within seven (7) days of the conclusion of the DWCP program period.

3.0 Collection and Disposition of Recovered Destructive Weapon

- 3.1 Upon surrender, all destructive weapons shall be tagged or marked by the collecting agency as to where collected, whom collected by, who collected from, the date of collection, make, model and serial number if applicable.
- 3.2 Funds shall be issued for destructive weapons which, upon preliminary inspection, appear to be operational, in amounts not to exceed the following:

<u>Bump Stock</u>	<u>\$100.00</u>
<u>Trigger Crank</u>	<u>\$15.00</u>
- 3.3 The law enforcement agency shall not have the discretion to pay an amount exceeding the amounts as described in subsection 3.2 during the DWCP program period.
- 3.4 Within seven (7) business days after the conclusion of the DWCP program period, a complete list of all destructive weapons collected shall be supplied to the Secretary containing information listed in subsection 3.1 of these regulations.
- 3.5 It shall be the responsibility of the law enforcement agency participating in the DWCP to dispose of the destructive weapons collected. Disposal may include any, or a combination, of the following:
 - 3.5.1 Destruction in a manner causing total destruction of the weapon through such methods as crushing, melting or shredding.
- 3.6 Agencies, upon destruction of weapons, shall furnish a list of all disposed destructive weapons to the Secretary within seven (7) business days.

4.0 General Rules

- 4.1 An agency conducting a DWCP shall be responsible for the security of the site, the surrounding area, the surrendered destructive weapons, transportation, unused funds and inventory.

- 4.2 To ensure safety, any agency conducting a DWCP shall have at least one person on site knowledgeable in the operation and safety of firearms.
- 4.3 Any individual who elects to surrender a destructive weapon anonymously at a DWCP designated location may do so; however, the individual will not be eligible for compensation.
- 4.4 Personal identification showing proof of Delaware residency shall be required to be presented at the time of the redemption.
- 4.5 The DWCP is only intended for individuals and does not apply to wholesale, retail, manufacturers and distributor business entities.
- 4.6 Destructive weapons relinquished to a law-enforcement agency of the state as part of the DWCP may be destroyed by that agency 30-days after relinquishment.
- 4.7 Notwithstanding any law to the contrary, any person, provided the person is, in good faith, on an immediate, direct route to a designated law enforcement agency in the DWCP shall be immune from criminal prosecution for the criminal offenses defined in 11 **Del.C.** §1444.
-

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))
14 **DE Admin. Code** 415

PUBLIC NOTICE

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

415 Voluntary School Assessment

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(a), the Secretary of Education intends to amend 14 **DE Admin. Code** 415 Voluntary School Assessment. The regulation is being amended to delete unnecessary language that merely restates Delaware Code, delete language that conflicted with Delaware Code, and clarify the Department's definition of "adequate capacity."

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 5, 2018 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not address students receiving 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 regulation does not change the decision making at the local board and school level.

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

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

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

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

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

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

<http://regulations.delaware.gov/register/august2018/proposed/22 DE Reg 109RFA 08-01-18.pdf>

415 Voluntary School Assessment

1.0 Purpose General Provisions

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.~~

Pursuant to 14 Del.C. §103(c), this regulation shall apply to Voluntary School Assessments that are required in lieu of Certifications of Adequate Capacity for proposed residential developments in New Castle County.

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" or "BVD" 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.~~

"Certification of Adequate Capacity" means a certification that the school district in which a proposed development is located has 85% or less capacity for the elementary, middle, and high schools in the proposed development's feeder pattern. Such certification is issued by the Secretary

based on information provided to the Department by the school district and New Castle County Department of Land Use.

~~“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.~~

~~“Department” means the Delaware Department of Education.~~

~~“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.~~

~~“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 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.~~

~~“Secretary” means the Secretary of the Delaware Department of Education or his or her designee.~~

~~“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 assessment amount calculated by the Secretary pursuant to 14 Del.C. §103(c).~~

3.0 Determination of School District Capacity Certification of Adequate 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 generate. 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.~~

PROPOSED REGULATIONS

- ~~3.3 The developer shall be subject to the Voluntary School Assessment if it is determined by the school district that no capacity exists.~~
- 3.1 The Secretary shall issue a Certification of Adequate Capacity for a proposed development if the school district in which the proposed development is located has adequate capacity for the increased demand that will result from the proposed development.
- 3.1.1 A school district has adequate capacity for a proposed development if the elementary, middle, and high schools in the proposed development's feeder pattern each do not exceed 85 percent of the maximum number of students the schools can contain based on each school's physical space and class size for each grade level.
- 3.1.2 Capacity shall include students who are enrolled in the proposed development's feeder pattern schools based on their residence, as provided in 14 Del.C. §202(c), and through the Delaware's School District Enrollment Choice Program as provided in 14 Del.C. Ch. 4.
- 3.1.3 Capacity is determined by the district at the time a developer submits a completed request for a Certification of Adequate Capacity.

~~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.~~

~~5.04.0 Determining Total Cost of a Residential Unit~~

- 4.1 Pursuant to 14 Del.C. §103(c)(3), a Voluntary School Assessment shall not exceed 5 percent of the total cost of a residential unit.
- 4.1.1 For the purpose of this regulation, the total cost of a residential unit shall mean the total cost to construct the unit.
- 4.1.1.1 The total cost shall equal the Gross Area of the unit multiplied by the square footage construction cost that is derived from the Building Valuation Data table that is first issued for the current calendar year.
- 4.1.1.2 The total cost shall not include the cost of land and site work.
- ~~5.14.1.2 The developer shall contact the Department of Education to identify residential units subject to the 5 percent limitation as per 14 Del.C. §103(e).~~
- ~~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(e)).~~
- ~~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(e).~~

~~6.0 Determination of Voluntary School Assessment Fee~~

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- 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(e) of Title 14 for each lot for which the applicant would otherwise be required to obtain a certificate.~~
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PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 & 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1517

PUBLIC NOTICE

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

1517 Paraeducator Permit

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1517 Paraeducator Permit. The regulation applies to the issuance of a paraeducator permit pursuant to 14 Del.C. §1205(b). The proposed changes include striking the terms "Associate's or Higher Degree" and "Completed at Least 2 Years of Study at an Institution of Higher Education" from Section 2.0 as those terms do not appear elsewhere in the regulation; adding definitions for several new terms to Section 2.0; clarifying the requirements for the issuance of

Title I, Instructional, and Service Paraeducator Permits in Sections 3.0, 4.0, and 5.0; and adding a chart with options for renewing a paraeducator permit in subsection 8.2.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 4, 2018 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure all student's health and safety are adequately protected? The amended regulation addresses permits for paraeducators, not students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses permits for paraeducators, not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators and paraprofessional qualifications and training.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.
9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of this amended regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

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

<http://regulations.delaware.gov/register/august2018/proposed/22 DE Reg 113RFA 08-01-18.pdf>

1517 Paraeducator Permit

1.0 Content

This regulation shall apply to the issuance of a Paraeducator Permit, pursuant to 14 **Del.C.** §1205(a)(b). This Permit is required of Title I Paraeducators, Instructional Paraeducators, and Service Paraeducators who are employed, either full time or part time in support positions in public schools. This Permit is required of all Paraeducators, regardless of employment date.

2.0 Definitions

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

"Action Research" means a process by which educational issues and problems are identified and researched at either the school or the classroom level. By integrating current research into these settings and engaging the relevant educators in research activities, the findings can be applied immediately to solve the targeted problems more quickly.

"Activity Documentation Form" means the official form approved by the Department that includes specific details about the activity to be used for Permit renewal and the signature of an instructional leader within a school, district or charter school the applicant is responsible to.

"A Product Shall Be Made Available for Verification" means that the culminating, tangible result of the Professional Development activity is accessible by the individual signing the certificate of participation or the Activity Documentation Form. Examples of a product include, but are not limited to, standards-based assessments or curriculum, copies of a presentation or other substantial work as a result of Action Research.

~~"Associate's or Higher Degree" means that the degree is conferred by a regionally accredited institution of higher education or by a distance education institution that is regionally accredited, or any other accrediting agency the Delaware Secretary of Education deems within his or her discretion, to be reliable or equivalent to a regional accrediting agency.~~

"Associate's Degree" means an academic degree awarded for the successful completion of a program of studies that usually requires at least 2 years or the equivalent thereof of full-time college-level study.

~~"Completed at Least 2 Years of Study at an Institution of Higher Education" means the satisfactory completion of a minimum of sixty (60) semester hours of instruction at a regionally accredited institution of higher education or by a distance education institution that is regionally accredited, or any other accrediting agency the Delaware Secretary of Education deems within his or her discretion, to be reliable or equivalent to a regional accrediting agency, in general or educational studies, including reading, writing, and mathematics content and pedagogy, unless the institution of higher education defines two (2) years of full time study as the successful completion of a minimum of forty-eight (48) semester hours, and provides documentation of such definition.~~

"Clock Hour" means actual time spent in Professional Development, not credit hours.

"Department" means the Delaware Department of Education.

"Educational Project" means an individual professional growth project of 15 or more Clock Hours, including a research project not related to a course for which credit is claimed, completed to enhance the individual's professional practice, with the development of a final product or report.

(Break in Continuity Within Section)

"Paraeducator", as used herein, means a paraprofessional, as it is used in 14 Del.C. §1205(b). Paraeducators are not "educators" within the meaning of 14 Del.C. §1202(4)(5).

"Permit" means a document issued by the Department that verifies an individual's qualifications and training to serve as a Title I, Instructional, or Service Paraeducator.

"Planned Professional Development Program" means a structured program within a building, district or charter school that has been specifically identified through a success plan. Such programs shall be designed to enhance knowledge and skills that promote continuous professional growth and improve student performance.

"Presentation" means preparation and presentation as a workshop or conference presenter or course instructor on a topic related to the individual's professional responsibilities.

"Professional Committee, Conference, Workshop, Institute, or Academy" means a program offered either within, or outside, the state that contributes to the participant's professional knowledge or skills in effectively conducting his/her work in education.

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

PROPOSED REGULATIONS

descriptive feedback, and refinement of practice in the work setting as per 14 DE Admin. Code 1598 Delaware Professional Development Standards.

“**Secretary**” means the Secretary of the Delaware Department of Education.

“**Service Paraeducator**” means a public school employee who provides support services other than instructional assistance to students, but does not include bus aides (~~See 14 DE Admin. Code 1105~~).

“**Standards Board**” means the Professional Standards Board of the State of Delaware as established in response pursuant to 14 Del.C. §1205 1201.

“**State Board**” means the State Board of Education of the State of Delaware established in response pursuant to 14 Del.C. §104.

(Break in Continuity Within Section)

3.0 Issuance of Title I Paraeducators and Instructional Paraeducators Permits

3.1 A Title I Paraeducator must hold a Title I Paraeducator Permit. ~~An Instructional Paraeducator must hold an Instructional Paraeducator Permit.~~

3.1.1 In accordance with 14 Del.C. §1205(a)(b), the Department shall issue a Title I Paraeducator Permit to an otherwise qualified applicant who has met one of the following requirements:

3.1.1.1 The applicant holds a high school diploma or its recognized equivalent and achieved a passing score of 459 or higher on the ParaPro Assessment; or

~~3.1.1.13.1.2~~ Completion of at least two (2) years of study in general or educational studies at an institution of higher education. The applicant completed at least two (2) years of instruction in general or educational studies, including reading, writing, and mathematics content and pedagogy, at a regionally accredited institution of higher education or an institution of higher education that is accredited by an accrediting agency that the Secretary, in his or her discretion, deems to be equivalent to a regional accrediting agency. For the purpose of this subsection, two (2) years of instruction means a minimum of sixty (60) semester hours unless the applicant provides documentation that the institution of higher education defines two (2) years of full-time study as the successful completion of a minimum of forty-eight (48) semester hours. In addition, applicants shall have earned a “C” or better in each course they seek to have counted toward the minimum semester hours required. Developmental level or remedial courses shall not be included in the calculation of semester hours; or

~~3.1.1.23.1.1.3~~ Receipt of The applicant holds an associate's or higher degree; or Associate's Degree or higher conferred by a regionally accredited institution of higher education or an institution of higher education that is accredited by an accrediting agency that the Secretary, in his or her discretion, deems to be equivalent to a regional accrediting agency.

3.1.1.3 ~~Completion of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.~~

3.1.1.3.1 ~~Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:~~

3.1.1.3.1.1 ~~Para Pro assessment with a qualifying score of 459 or higher.~~

3.1.1.3.1.2 ~~Such alternative as may be established by the Standards Board, with the approval of the State Board; and~~

3.1.1.4 ~~Submission of sufficient verifiable evidence of qualifications to the Department which meets all the requirements.~~

3.1.2 ~~In accordance with 14 Del.C. §1205(a), the Department shall issue an Instructional Paraeducator Permit to an otherwise qualified applicant who has met the following:~~

3.1.2.1 ~~Completion of at least two (2) years of study in general or educational studies at an institution of higher education; or~~

- ~~3.1.2.2 Receipt of an associate's or higher degree; or~~
- ~~3.1.2.3 Completion of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.~~
 - ~~3.1.2.3.1 Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:
 - ~~3.1.2.3.1.1 Para Pro assessment with a qualifying score of 459 or higher.~~
 - ~~3.1.2.3.1.2 Such alternative as may be established by the Standards Board, with the approval of the State Board; and~~~~
- ~~3.1.2.4 Submission of sufficient verifiable evidence of qualifications to the Department which meets all the requirements.~~

3.1.2 An applicant who holds a current Permit or the equivalent from another jurisdiction shall meet the requirements herein for the Department to issue him or her a Title I Paraeducator Permit.

3.1.3 An applicant who previously held a Delaware Title I Paraeducator Permit shall be treated as a new applicant and shall meet all requirements of this regulation.

3.2 Application Requirements and Procedures-

~~3.2.1 The An applicant must for a Title I Paraeducator Permit shall submit a Department approved application, his or her official transcript, and, if applicable, his or her official score on the ParaPro Assessment to the Department. The applicant must include official transcripts and when required official scores on an approved assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics. The applicant shall certify that answers on the application are true and accurate.~~

~~3.2.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope. Official electronic transcripts forwarded directly to the Department from the issuing institution shall be accepted by the Department. Copies of diplomas and degrees shall not be accepted by the Department.~~

~~3.2.1.2 Test ParaPro Assessment scores shall be official and sent directly from Educational Testing Service (ETS) or other test vendor. Unopened, unaltered envelopes containing test scores sent to an individual the applicant may be accepted as official. The Department shall determine whether the scores, as presented, are acceptable.~~

4.0 Issuance of Instructional Paraeducator Permits

4.1 An Instructional Paraeducator must hold an Instructional Paraeducator Permit.

4.1.1 In accordance with 14 Del.C. §1205(b), the Department shall issue an Instructional Paraeducator Permit to an otherwise qualified applicant who has met one of the following requirements:

4.1.1.1 The applicant holds a high school diploma or its recognized equivalent and achieved a passing score of 459 or higher on the ParaPro Assessment; or

4.1.1.2 The applicant completed at least two (2) years of instruction in general or educational studies, including reading, writing, and mathematics content and pedagogy, at a regionally accredited institution of higher education or an institution of higher education that is accredited by an accrediting agency that the Secretary, in his or her discretion, deems to be equivalent to a regional accrediting agency. For the purpose of this subsection, two (2) years of instruction means a minimum of sixty (60) semester hours unless the applicant provides documentation that the institution of higher education defines two (2) years of full-time study as the successful completion of a minimum of forty-eight (48) semester hours. In addition, applicants shall have earned a "C" or better in each course they seek to have counted toward the minimum semester hours required. Developmental level or remedial courses shall not be included in the calculation of semester hours; or

4.1.1.3 The applicant holds an Associate's Degree or higher conferred by a regionally accredited institution of higher education or an institution of higher education that is accredited by an

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accrediting agency that the Secretary, in his or her discretion, deems to be equivalent to a regional accrediting agency.

4.1.2 An applicant who holds a Permit or the equivalent from another jurisdiction shall meet the requirements herein for the Department to issue him or her an Instructional Paraeducator Permit.

4.1.3 An applicant who previously held a Delaware Instructional Paraeducator Permit shall be treated as a new applicant and shall meet all requirements of this regulation.

4.2 Application Requirements and Procedures

4.2.1 An applicant for an Instructional Paraeducator Permit shall submit a Department approved application, his or her official transcript, and, if applicable, his or her official score on the ParaPro Assessment to the Department. The applicant shall certify that answers on the application are true and accurate.

4.2.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope. Official electronic transcripts forwarded directly to the Department from the issuing institution shall be accepted by the Department. Copies of diplomas and degrees shall not be accepted by the Department.

4.2.1.2 ParaPro Assessment scores shall be official and sent directly from Educational Testing Service (ETS). Unopened, unaltered envelopes containing test scores sent to the applicant may be accepted as official. The Department shall determine whether the scores, as presented, are acceptable.

4.05.0 Issuance of Service Paraeducators Permits

~~4.15.1 All Service Paraeducators Must Hold the Appropriate Permit in accordance with 14 Del.C. §1205(a) A Service Paraeducator must hold a Service Paraeducator Permit.~~

5.1.1 In accordance with 14 Del.C. §1205(b), the Department shall issue a Service Paraeducator Permit to an otherwise qualified applicant who holds a high school diploma or its recognized equivalent.

~~4.2 The Department shall issue a Service Paraeducator Permit to an otherwise qualified applicant who has submitted a Department approved application form and who provides evidence of a high school diploma or its recognized equivalent.~~

5.1.2 An applicant who holds a Permit or the equivalent from another jurisdiction shall meet the requirements herein for the Department to issue him or her a Service Paraeducator Permit.

5.1.3 An applicant who previously held a Delaware Service Paraeducator Permit shall be treated as a new applicant and shall meet all requirements of this regulation.

5.2 Application Requirements and Procedures

5.2.1 An applicant for a Service Paraeducator Permit shall submit a Department approved application and his or her official transcript to the Department. The applicant shall certify that answers on the application are true and accurate.

5.2.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope. Official electronic transcripts forwarded directly to the Department from the issuing institution shall be accepted by the Department. Copies of diplomas and degrees shall not be accepted by the Department.

5.06.0 Validity

5.1 ~~Unless stated otherwise herein, a Title I, Instructional, or Service Paraeducator Permit shall be valid for five (5) years from the Date of Issuance.~~

5.2 ~~The Department shall renew a Paraeducator Permit, valid for an additional five (5) years, to a Paraeducator who provides evidence of successful completion of a minimum of fifteen (15) clock hours of approved professional development.~~

5.3 ~~The paraeducator is required to complete fifteen (15) clock hours of approved professional development during the term of validity of the Paraeducator Permit.~~

7.0 Renewal

- 7.1 The Department may renew a Paraeducator Permit, valid for an additional five (5) years, to a Paraeducator who provides evidence of successful completion of a minimum of fifteen (15) clock hours of Department-approved professional development.
- 7.2 Paraeducators are required to complete fifteen (15) clock hours of Department-approved professional development during the term of validity of the Paraeducator Permit.
- 7.3 Satisfactory evidence of such completion shall be submitted to the Department with the renewal application.

~~6-08.0~~ Options for Renewal

- ~~6.18.1~~ Options for Renewal: are listed in Sections 6.2 and 6.3. These The professional development activities listed in subsection 8.2 of this regulation are approved options for the renewal of a Paraeducator Permit. Unless otherwise stated, there is no limit to the number of hours that may be taken in any of the options listed below:.
- ~~6.2~~ Options listed in Section 6.2 shall be valid for paraeducators holding a Permit whose expiration date does not exceed December 10, 2015.
 - ~~6.2.1~~ College credit completed at a regionally accredited college or university with a grade of "C" or better or a "P" in a pass or fail course (One [1] semester hour equals fifteen (15) clock hours).
 - ~~6.2.2~~ Planned school professional development day (maximum six (6) clock hours per day).
 - ~~6.2.3~~ Professional conference, workshop, institute, or academy that contributes to the participant's knowledge, competence, performance, or effectiveness as a paraeducator (verified clock hours actively involved in workshop or conference sessions).
 - ~~6.2.4~~ Participation on a school, district, or state sponsored committee which has as its focus curriculum, instruction, or school or district improvement (verified clock hours of service or experience).
- ~~6.3~~ Educators holding a Paraeducator Permit whose expiration date does not exceed December 10, 2015 may also use the Paraeducator Permit renewal options listed in Section 6.3.
 - ~~6.3.1~~ College courses taken at a regionally accredited College or University. College or University Credit shall be taken for credit and the educator shall attain a grade of "C" or better in the course, or a "P" in Pass / Fail course. [One (1) semester hour equals fifteen (15) clock hours.]
 - ~~6.3.2~~ Professional development programs targeting curriculum, instruction, assessment, school climate, or other identified need.
 - ~~6.3.3~~ A Committee, Professional Learning Community (PLC), Conference, Workshop, Institute or Academy that contribute to the participant's knowledge and skills, competence, performance or effectiveness in education that are directly connected to the school, district or charter school's Success Plan or State initiative. This option includes workshops offered by districts or other employing authorities either as part of a professional development day or during after school hours.
- ~~6.4~~ Options listed in Section 6.2 for the renewal of a Paraeducator Permit shall expire on December 10, 2015.
- ~~6.5~~ Educators either receiving their original Paraeducator Permit after December 11, 2010 or upon renewing their Paraeducator Permit on or after December 11, 2010 shall use the options listed in Section 6.3.
- 8.2 Options for Renewal

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OPTION	HOUR VALUE	CRITERIA	VERIFICATION
<u>Action Research or other Educational Project</u>	<u>Verified Clock Hours completing Action Research or other Educational Project. Maximum of 30 Clock Hours.</u>	<u>The verified Clock Hours shall be accrued during the Action Research or other Educational Project. The documented goal for the participant(s) shall be a product and a new set of educator Knowledge and Skills. These shall complement the school, district, or charter school's success plan or State's initiative and shall be focused on student learning. A Product Shall Be Made Available for Verification. If an educator does not complete NBPTS or Similar National Certification, the educator may use the verified Clock Hours as an other Educational Project.</u>	<u>A certificate of participation, PDMS transcript (for PDMS that did not flow to DEEDS), professional development transcripts from in state and out-of-state computer school district programs, or the completed Activity Documentation Form as well as the final product which documents the goals and results of the Action Research or other Educational Project shall be presented to the Department.</u>
<u>Certification required to retain a State professional license</u>	<u>Verified Clock Hours involved in recertification activities.</u>	<u>The certification to maintain a State professional license as required in the applicable regulation.</u>	<u>A certificate of attendance and the original certificate of completion for Continuing Education Units (CEUs) shall be presented to the Department.</u>
<u>College Course</u>	<u>Clock Hours may be accrued where 1 semester hour equals 15 hours and 1 quarter semester hour or Continuing Education Unit (CEU) equals 10 hours.</u>	<u>The course shall be completed within a matriculated Masters program, Doctoral program or a graduate level course of study at or through a regionally accredited college or university or other Department-approved provider. The course may also be an undergraduate course as seen by the educator as necessary to acquire new Knowledge and Skills related to the educator's position. The course shall be taken at a regionally accredited college or university for credit. The educator shall attain a grade of "C" or better (or a "P" in Pass / Fail course).</u>	<u>Official transcripts or an original certificate of completion for Continuing Education Units (CEUs) shall be presented to the Department.</u>
<u>Curriculum and/or Assessment Development</u>	<u>Verified Clock Hours of service. Minimum of 3 Clock Hours. Maximum of 15 Clock Hours over the course of 5 years.</u>	<u>The documented goal is a curricular component and/or an encompassing assessment. A Product Shall Be Made Available for Verification.</u>	<u>A certificate of participation, PDMS transcript (for PDMS that did not flow to DEEDS), professional development transcripts from in state and out-of-state computer school district programs, or the completed Activity Documentation Form as well as the final product shall be presented to the Department.</u>

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<p><u>Planned Professional Development Program</u></p>	<p><u>Verified Clock Hours of service or experience.</u></p>	<p><u>The Planned Professional Development Program shall focus on the school, district or charter school's success plan which may be targeting curriculum, instruction, assessment, school climate, or other identified need or shall be related to the educator's work with students or staff.</u></p>	<p><u>A certificate of participation, PDMS transcript (for PDMS that did not flow to DEEDS), professional development transcripts from in state and out-of-state computer school district programs, or the completed Activity Documentation Form shall be presented to the Department.</u></p>
<p><u>Presentation</u></p>	<p><u>Verified Clock Hours of presentation and preparation. The ratio of preparation to presentation is 3:1. Each presentation topic may be submitted one time. Maximum of 15 Clock Hours.</u></p>	<p><u>The Presentation shall contribute to the education profession or add to the body of knowledge in the educator's specific field. The Presentation shall be made at a local, state, regional or national conference.</u></p>	<p><u>The completed Activity Documentation Form and conference agenda listing the Presentation shall be presented to the Department.</u></p>
<p><u>Professional Committee, Conference, Workshop, Institute or Academy</u></p>	<p><u>Verified Clock Hours of service or experience.</u></p>	<p><u>The educator may include time spent in those portions of the Professional Committee, Conference, Workshop, Institute or Academy that contribute to the educator's Knowledge and Skills, competence, performance or effectiveness in education that are directly connected to the school, district or charter school's success plan or State initiative. This option includes workshops offered by districts or other employing authorities either as part of a professional development day or during after school hours. Examples of expected student or educator outcomes are anticipated.</u></p>	<p><u>The completed Activity Documentation Form and the original certificate of attendance or completion or a letter from the Professional Committee, Conference, Workshop, Institute or Academy staff shall be presented to the Department.</u></p>

7-09.0 Criminal Conviction History

- 7-19.1 An applicant shall disclose his or her criminal conviction history upon application for any Paraeducator Permit.
- 7-29.2 Failure to disclose a criminal conviction history is grounds for denial or revocation of a Paraeducator Permit as specified in 14 **Del.C.** §1219.

8-010.0 Denial and Revocation

- 8-110.1 An applicant may be denied a ~~paraeducator permit~~ Paraeducator Permit upon a finding that the applicant has failed to meet the requirements set forth herein or is unfit to be issued a ~~permit~~ Permit in the State.
- 8-210.2 A Paraeducator Permit may be revoked upon the dismissal of the ~~permit~~ Permit holder for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty, and must be revoked upon a finding that the ~~permit~~ Permit holder made a materially false or misleading statement in his or her ~~permit~~ Permit application.

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~~8.310.3A~~ Paraeducator whose Permit has been denied or revoked may file a request for a hearing with the Secretary within ten (10) days of receipt of the notice of denial or revocation.

~~8.3.410.3.1~~ The Secretary's decision shall be final.

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

1517 Paraeducator Permit

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

CHIP Premium Requirements

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on August 31, 2018. Please identify in the subject line: **CHIP Premium Requirements**.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152), together known as the Affordable Care Act
- Title XXI of the Social Security Act, *State Children's Health Insurance Program*
- 42 CFR Part 457, *State Children's Health Insurance Programs (SCHIPs)*
- 16 Delaware Code, Section 9909

Background

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

Modified Adjusted Gross Income (MAGI) Conversion Plan

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

The conversion to MAGI-based income eligibility standards impacts the percentages of the Federal Poverty Level (FPL) used to set the premium levels under CHIP. The Centers for Medicare and Medicaid Services (CMS) advised Delaware that the State needed to amend the Delaware's Children's Health Insurance Program (CHIP) State Plan to update the premium levels to account for the MAGI-based conversion standards. Therefore, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) drafted a proposed CHIP State Plan Amendment (SPA) to change the percentages of the Federal Poverty Level (FPL) applied to the premium levels and to describe the incentives for pre-payment of premiums. The proposed regulation was published in the September 2014 Delaware *Register of Regulations* for public comment. The final regulation was published in the November 2014 Delaware *Register of Regulations* and the SPA was submitted to CMS on December 17, 2014. DMMA worked with CMS over the course of two (2) years to re-work the language in Delaware's CHIP State Plan to reflect the new ACA requirements, and update the CHIP family premium cost sharing amounts to be consistent with the state's approved Modified Gross Income conversion plan. The SPA was approved on May 19, 2016.

Summary of Proposal

Purpose

The purpose of this SPA is to update the CHIP family premium structure to align with federal regulation.

Summary of Proposed Changes

Effective for services provided on and after July 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend XXI Delaware Healthy Children Program State Plan sections 8.2. & 8.5 and Delaware Social Services Manual (DSSM) 18700, specifically, to update CHIP Premium Requirements.

Public Notice

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

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

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DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

The following fiscal impact is projected:

	Federal Fiscal Year 2018 July –Sep	Federal Fiscal Year 2019
Federal funds	\$11,447	\$46,179
General (State) funds	\$925	\$3,321

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

<http://regulations.delaware.gov/register/august2018/proposed/22 DE Reg 122RFA 08-01-18.pdf>

DELAWARE HEALTHY CHILDREN PROGRAM

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

Preamble

Section 4901 of the Balanced Budget Act of 1997 (BBA) amended the Social Security Act (the Act) by adding a new Title XXI, the State Children's Health Insurance Program (CHIP). Title XXI provides funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner. To be eligible for funds under this program, states must submit a state plan, which must be approved by the Secretary. A state may choose to amend its approved state plan in whole or in part at any time through the submittal of a plan amendment.

This model application template outlines the information that must be included in the state child health plan, and any subsequent amendments. It has been designed to reflect the requirements as they exist in current regulations, found at 42 CFR Part 457. These requirements are necessary for state plans and amendments under Title XXI.

The Department of Health and Human Services will continue to work collaboratively with states and other interested parties to provide specific guidance in key areas like applicant and enrollee protections, collection of baseline data, and methods for preventing substitution of Federal funds for existing state and private funds. As such guidance becomes available we will work to distribute it in a timely fashion to provide assistance as states submit their state plans and amendments.

(Required under 4901 of the Balanced Budget Act of 1997 (New section 2101(b)))

State/Territory: DELAWARE
(Name of State/Territory)

As a condition for receipt of Federal funds under Title XXI of the Social Security Act, (42 CFR, 457.40(b))

Thomas R. Carper, Governor June 30, 1998
(Signature of Governor, or designee, of State/Territory, Date Signed)

submits the following State Child Health Plan for the State Children's Health Insurance Program and hereby agrees to administer the program in accordance with the provisions of the approved State Child Health Plan, the requirements of Title XXI and XIX of the Act (as appropriate) and all applicable Federal regulations and other official issuances of the Department.

The following state officials are responsible for program administration and financial oversight (42 CFR 457.40(c)):

Name: Stephen M. Groff (DMMA)	Position/Title: Director, Division of Medicaid and Medical Assistance
Name: Lisa Zimmerman	Position/Title: Deputy Director, DMMA
Name: Beth Laucius	Position/Title: Chief of Administration, DMMA

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938 0707. The time required to complete this information collection is estimated to average 160 hours (or minutes) per response, including the time to review instructions, search existing data resources, gather the data needed and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this Form, please write to: CMS, P.O. Box 26684, Baltimore, Maryland 21207 and to the Office of the Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

- 8.2. Describe the amount of cost-sharing, any sliding scale based on income, the group or groups of enrollees that may be subject to the charge and the service for which the charge is imposed or time period for the charge, as appropriate.

(Section 2103(e)(1)(A)) (42CFR 457.505(a), 457.510(b) &(c), 457.515(a)&(c))

- 8.2.1. Premiums: ~~\$4510~~ PFPM for ~~families~~ children ages 1 through 5- with ~~family incomes~~ income ranging from 143% ~~to~~ through 159% of the FPL, \$10 PFPM for children ages 6 through 18 with family income ranging from 134-159% of the FPL, \$15 PFPM for children ages 1 through 18 with family income ranging from 160% through 176% of the FPL and \$25 PFPM for families children ages 1 through 18 with family income ranging from 177% to 212% of the FPL (refer to CHIP MAGI State Plan Page CS21 for information on the effect of non-payment of premiums).

Incentives for pre-payment of premiums include the following: Pay three (3) months get one (1) premium free month; pay six (6) months get two (2) premium free months; pay nine (9) months get three (3) premium free months.

- 8.2.2. Deductibles: _____

- 8.2.3. Coinsurance or copayments: Ten dollars (\$10) per emergency room (ER) visit (waived if results in immediate inpatient hospitalization or if a prudent layperson would interpret the need for the visit to the ER to be an emergency).

- 8.2.4. Other: _____

- 8.5. Describe how the State will ensure that the annual aggregate cost-sharing for a family does not exceed 5 percent of such family's income for the length of the child's eligibility period in the State. Include a description of the procedures that do not primarily rely on a refund given by the State for overpayment by an enrollee: (Section 2103(e)(3)(B)) (42CFR 457.560(b) and 457.505(e))

Since cost sharing is per family per month (PFPM), rather than per member per month, each family will pay the same amount no matter the number of children in the household. The premium rates are

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significantly less than those allowed by the Balance Budget Act of 1997 for premiums (see chart below). There is a minimal copayment of \$10 per inappropriate use of the emergency room that will be waived if a prudent layperson would deem the visit an emergency or if it results in an inpatient admission. Delaware believes these levels of cost sharing are affordable but, at the same time, provide an incentive for clients to responsibly use health care services and avoid unnecessary emergency room visits.

An analysis of the State's fee schedule suggests that cumulative cost-sharing will rarely exceed 1% of the family's adjusted gross income. However, should families submit evidence that they have reached the aggregate limit on cost-sharing, the State will work with the MCOs on an individual basis to exempt the family from future cost-sharing.

Premiums as a percentage of Income

% of FPL*	Family Size	143%	176%	177%	212%
\$180 Annual Premium	4	1.06%	.86%		
	2	.79%	.64%		
	3	.62%	.51%		
\$300 Annual Premium	4			1.43%	1.19%
	2			1.06%	.88%
	3			.84%	.70%

*Based on the 2016 Poverty Limit of \$11,880 for 1 person, \$16,020 for 2, and \$20,160 for 3.

Premiums as a Percentage of Income

Premium Amount Per Month	Age	Family Size	134% FPL lower limit	143% FPL lower limit	159% FPL upper limit	160% FPL lower limit	176%F PL upper limit	177% FPL lower limit	212% FPL upper limit
\$10 Monthly Premium	1 through 5	1		0.69%	0.62%				
	1 through 5	2		0.51%	0.46%				
	1 through 5	3		0.40%	0.36%				
	6 through 18	1	0.74%		0.62%				
	6 through 18	2	0.54%		0.46%				
	6 through 18	3	0.43%		0.36%				
\$15 Monthly Premium	1 through 18	1				0.93%	0.84%		
	1 through 18	2				0.68%	0.62%		
	1 through 18	3				0.54%	0.49%		
\$25 Monthly Premium	1 through 18	1						1.40%	1.17%
	1 through 18	2						1.03%	0.86%
	1 through 18	3						0.82%	0.68%

*Based on the 2018 Poverty Limit of \$12,140 for 1 person, \$16,460 for 2, and \$20,780 for 3.

Effective Date: July 1, 2014

AMENDED

18700 Premium Requirements

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

Family Income	Premium
$\geq 143\% \leq 176\%$	\$15.00
$\geq 177\% \leq 212\%$	\$25.00

<u>Age</u>	<u>Percent Federal Poverty Level based on Household size</u>	<u>Monthly Premium</u>
<u>1 through 5</u>	<u>143% through 159% FPL</u>	<u>\$10.00</u>
<u>6 through 18</u>	<u>134% through 159% FPL</u>	<u>\$10.00</u>
<u>1 through 18</u>	<u>160% through 176% FPL</u>	<u>\$15.00</u>
<u>1 through 18</u>	<u>177% through 212% FPL</u>	<u>\$25.00</u>

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

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

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

- Pay three (3) months – get one (1) premium free month
- Pay six (6) months – get two (2) premium free months
- Pay nine (9) months – get three (3) premium free months.

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

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

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

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Asset Verification System

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512,

Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the Asset Verification System, specifically, to identify the contractor selected to implement the system.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on August 31, 2018. Please identify in the subject line: Asset Verification System.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the Asset Verification System, specifically, to identify the contractor selected to implement the system.

Statutory Authority

- Supplemental Appropriations Act of 2008, Public Law 111-148, Title VII, Section 7001(d)
- Social Security Act §1940, *Asset Verification through Access to Information Held By Financial Institutions*

Background

In a letter dated February 8, 2012, CMS approved DE SPA# 11-011 which proposed to implement an Asset Verification System, a system for verifying the assets of aged, blind or disabled applicants for and recipients of Medicaid.

Individuals whose eligibility is being determined or redetermined (and others whose finances are relevant to eligibility) must authorize the State agency to obtain records from any financial institution in connection with the eligibility determination in order to verify the individual's assets. The verification program is to be "consistent with the approach of the Commissioner of Social Security" under Section 1631 of the SSA, i.e., an electronic verification system. Individuals who refuse or revoke their authorization may be determined ineligible for medical assistance.

For purposes of implementing an asset verification program under this section, a State may select and enter into a contract with a public or private entity. The DE SPA# 11-011 did not identify a contractor.

Although Delaware has been complying with and meeting the requirements of AVS, in an effort to provide increased efficiency and oversight, a Request for Proposal was issued in 2017 and a contractor identified.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to identify the contractor selected to implement the Asset Verification System.

Summary of Proposed Changes

Effective for services provided on and after October 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan pages Supplement 16 to Attachment 2.6 A Pages 1 - 3 regarding the Asset Verification System, specifically, to identify the contractor selected to implement the system.

Public Notice

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

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

The following fiscal impact is projected:

	Federal Fiscal Year 2018	Federal Fiscal Year 2019
Federal funds	\$570,906	\$217,536
General (State) funds	\$91,137	\$72,512

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

<http://regulations.delaware.gov/register/august2018/proposed/22 DE Reg 127RFA 08-01-18.pdf>

AMENDED

Supplement 16 to Attachment 2.6-A
Page 1

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

ASSET VERIFICATION SYSTEM

1940(a)	<p>1. The Agency will provide for the verification of assets for purposes of determining or redetermining Medicaid eligibility for aged, blind and disabled Medicaid applicants and recipients using an Asset Verification System (AVS) that meets the following minimum requirements.</p> <p style="margin-left: 20px;">A. The request and response system must be electronic:</p> <p style="margin-left: 40px;">(1) Verification inquiries must be sent electronically via the internet or similar means from the Agency to the financial institution (FI).</p> <p style="margin-left: 40px;">(2) The system cannot be based on mailing paper-based requests.</p> <p style="margin-left: 40px;">(3) The system must have the capability to accept responses electronically.</p> <p style="margin-left: 20px;">B. The system must be secure, based on a recognized industry standard of security (e.g., as defined by the U.S. Commerce Department's National Institute of Standards and Technology, or NIST).</p>
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PROPOSED REGULATIONS

	<p>C. The system must establish and maintain a database of FIs that participate in the Agency's AVS.</p> <p>D. Verification requests also must be sent to FIs other than those identified by applicants and recipients, based on some logic such as geographic proximity to the applicant's home address, or other reasonable factors whenever the Agency determines that such requests are needed to determine or redetermine the individual's eligibility.</p> <p>E. The verification requests must include a request for information on both open and closed accounts, going back up to 5 years.</p>
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TN No. SPA <u>18-026</u>	Approval Date
TN No. SPA <u>11-011</u>	Effective Date <u>July 1, 2018</u>

AMENDED
Attachment 2.6 A

Supplement 16 to

Page 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: **DELAWARE**
ASSET VERIFICATION SYSTEM

2. System Development

- A. The Agency itself will build and maintain an AVS.

In 3 below, describe how the system will meet the requirements in Section 1.

- B. The Agency will hire the following contractor to build and maintain an AVS.

In 3 below, identify the contractor, if known, and describe how the system will meet the requirements in Section 1.

- C. The Agency will be joining a consortium to develop an AVS.

In 3 below, identify the States participating in the consortium. Also identify the contractor, if known, who will build and maintain the consortium's AVS, and how the system will meet the requirements in Section 1.

- D. The Agency already has a system in place that meets the requirements for an acceptable AVS:

In 3 below, describe how the system meets the requirements in Section 1.

- E. Other alternative not included in A. - D. above.

In 3 below, describe this alternative approach how it will meet the requirements in Section 1.

TN No. SPA <u>18-026</u>	Approval Date
TN No. SPA <u>11-011</u>	Effective Date <u>July 1, 2018</u>

AMENDED

Supplement 16 to Attachment 2.6 A
Page 3

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

ASSET VERIFICATION SYSTEM

2. Provide the AVS implementation description and other information requested for the implementation approach checked in Section 2.

~~The contractor is not known at this time.~~

~~The Agency will select a contractor through the Request for Proposal (RFP) process.~~

Delaware has contracted with Public Consulting Group Incorporated to provide an Asset Verification System (AVS), to identify assets of Medicaid applicants and recipients held at various Financial Institutions (FI's). This system complies ~~The system and entity chosen will be able to comply with the following requirements of Supplement 16 to Attachment 2.6-A, Page 1:~~

- A. *An electronic request and response process for asset verification;*
- B. *A database of financial institutions (FIs) that provide data to the entity meeting the geographic requirements of the entity;*
- C. *A 5-year look-back of the assets on individual applicants, recipients, spouses and partners;*
- D. *A secure system based on a recognized industry standard as defined by the United States Commerce Department's National Institute of Standards and Technology, or NIST;*
- E. *Verification request will include both open and closed asset account information as determined by the State;*

PROPOSED REGULATIONS

- F. *The acceptable asset verification entity will provide adequate data for the generation of all required reports expected to meet federal reporting requirements such as the number of requests, number of responses and amounts of undisclosed assets found.*

TN No. SPA <u>18-026</u>	Approval Date
TN No. SPA <u>11-011</u>	Effective Date <u>July 1, 2018</u>

DIVISION OF PUBLIC HEALTH

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

PUBLIC NOTICE

4471 Massage and Bodywork Facilities

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

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

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, September 7, 2018, at:

Jamie Mack
 Division of Public Health
 417 Federal Street
 Dover, DE 19901
 Email: jamie.mack@state.de.us
 Phone: (302) 744-4832

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

<http://regulations.delaware.gov/register/august2018/proposed/22 DE Reg 132RFA 08-01-18.pdf>

4471 Massage and Bodywork Facilities

1.0 General Provisions

- 1.1 Preamble. The Secretary, Delaware Health and Social Services (DHSS), adopts these Regulations pursuant to the authority vested by 24 Del.C. §5306. These Regulations establish requirements for the practice of massage and bodywork in massage establishments and provide for the investigation of complaints involving unsanitary or unsafe practices or conditions in such facilities.
- 1.2 Purpose. These Regulations shall establish minimum requirements for public health assurance in the practice of massage and body work in massage establishments licensed by the Board of Massage and

Bodywork (Board). License holders are encouraged to employ more stringent requirements. License holders must also comply with the Board's rules and regulations applicable to massage establishments.

1.3 Facilities - Existing and New. Facilities that are lawfully in existence and operating at the time of adoption of the Regulations shall be permitted to have their use and maintenance continued if the use, maintenance, or repair of the physical establishment and structure is in accordance with the original design and no hazard to life or health is created by the existing establishment.

1.4 Variance

1.4.1 A licensee may request a variance from these Regulations from DHSS. DHSS may grant a variance by modifying or waiving the requirements of these Regulations if in the opinion of DHSS a health hazard or nuisance will not result from the variance.

1.4.2 A variance shall not be transferred from person to person, nor from location to location.

1.4.3 If a variance is granted, DHSS shall retain the information specified below in its records for the establishment:

1.4.3.1 Statement of the proposed variance of the Regulations, citing the relevant Section of these Regulations;

1.4.3.2 An analysis of the rationale for how the potential public health hazards or nuisance will be alternatively addressed by the proposal; and

1.4.3.3 Any other information requested by DHSS that may be deemed necessary to render judgment.

1.4.4 A variance, if granted, is rendered void upon occurrence of one or more of the following:

1.4.4.1 The physical establishment is demolished or sold;

1.4.4.2 A remodeling project in the establishment includes area(s) addressed in the variance;

1.4.4.3 The license or certificate holder granted the variance ceases to operate the establishment for a period exceeding thirty (30) consecutive days.

1.5 Severability. If any provision or application of any provision of these Regulations is held invalid, that invalidity shall not affect other provisions or applications, which can be given effect without the invalid provision.

1.6 Effective Date. These Regulations are effective January 1, 2019.

2.0 Definitions

For purposes of these Regulations, the following definitions shall apply:

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

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

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

"EPA" means the United States Environmental Protection Agency.

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

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

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

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

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

"Licensee" means any person licensed by Board.

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

PROPOSED REGULATIONS

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

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

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

"Secretary" means the Secretary of DHSS or designee.

3.0 Inspections

The Secretary shall have right of entry without fee or hindrance, for the purpose of determining if the establishment is in compliance with these Regulations. The establishment shall allow for inspection and shall provide information and records needed to determine compliance with these Regulations, whether or not the evidence exists that the establishment is in violation of these Regulations.

4.0 Operational Requirements

4.1 General Requirements

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

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

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

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

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

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

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

4.4 Ventilation. Licensed establishments shall be provided with adequate ventilation which draws air from employees and clients and vents to the outside. Ventilation must be in compliance with all applicable local codes.

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

4.6 Water Supply

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

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

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

4.8 Handwashing sinks. A permanent handwashing sink which is convenient and accessible to all work stations shall be provided. This sink shall be supplied with liquid soap, disposable paper towels, and a

waste receptacle. One handwashing sink per 40 people is required. The number of people will be determined by the occupant load.

4.9 Restrooms

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

4.9.2 Restrooms shall be kept in a sanitary condition, maintained in a safe and orderly manner, and be equipped with an operational handwashing sink, liquid soap dispenser, disposable towels, toilet paper, and a waste receptacle.

4.10 Sewage. Sewage shall be disposed of through an approved public treatment sewage plant or private disposal system that is sized, constructed, maintained, and operated according to the requirements of DNREC and DHSS.

4.11 Garbage and Refuse. A waste receptacle shall be provided in each client room and shall be emptied daily. Exterior refuse containers shall be cleanable with a tight fitting lid and collected weekly, at a minimum.

4.12 Animals. No animals shall be allowed in any licensed establishment except for those that assist persons with disabilities. Notwithstanding the foregoing, fish aquariums are allowed in the waiting area.

4.13 Insect and Rodent Control. Establishments shall be designed so as to prevent the entry and occurrence of insects and rodents. Pest control measures shall be provided and, if a problem occurs, professional pest control services shall be provided.

5.0 **Safety and Sanitation Requirements**

5.1 General Requirements

5.1.1 Instruments shall be clean and, when necessary, sanitized in accordance with Section 7.0 of these Regulations.

5.1.2 An instrument that caused a skin abrasion or a cut to the skin shall be cleaned and sanitized immediately. If bleeding occurs, a tissue or cotton shall be used to collect the blood. Blood contaminated materials shall be disposed of immediately in a sealed, double-plastic bag.

5.1.3 Objects dropped on the floor may not be used until they are cleaned and, if necessary, sanitized in accordance with Section 7.0 of these regulations.

5.1.4 All instruments that have been used on a client or soiled in any manner shall be placed in a properly labeled receptacle while awaiting cleaning and sanitizing.

5.1.5 All supplies or instruments which come in direct contact with a client and cannot be disinfected, for example examination paper, neck strips, and cotton pads, shall be disposed of in a covered waste receptacle immediately after use.

5.1.6 Shower facilities shall be cleaned and sanitized after each client use in accordance with Section 7.0 of these Regulations.

5.1.6.1 No clients shall be allowed to use any shower facilities of the establishment unless clients are wearing slip-resistant sandals or flip flops while in the shower compartment.

5.1.7 All bathrobes, bathing suits, and/or other garments that are provided for the use of clients shall be either disposable and shall not be used by more than one person or shall be laundered after each use.

6.0 **Single Service**

6.1 Only clean cloth towels or disposable paper towels shall be used on clients. A cloth towel that has been used on a client shall be immediately placed in a container for soiled linen. A disposable paper towel that has been used on a client shall be immediately discarded in a waste container.

- 6.2 The cushion, mat, or table for procedures shall be covered with a clean cloth towel, sheet, disposable examination sheet, or the similar before the start of each procedure.

7.0 Instruments, Equipment and Supplies

7.1 Non-electric Instruments and Equipment

- 7.1.1 Before use upon a client, all non-electrical instruments may be sanitized in the following manner:

7.1.1.1 Cleaned with soap or detergent and water.

7.1.1.2 Then totally immersed in one of the following:

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

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

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

- 7.1.2 The sanitizing solutions required in subsection 7.1.1 shall:

7.1.2.1 Remain covered at all times.

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

7.1.2.3 Be changed daily if bleach based.

7.2 Electrical Instruments and Equipment.

- 7.2.1 Electrical instruments may be sanitized prior to each use by:

7.2.1.1 Removing all foreign matter; and

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

7.3 Equipment Storage

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

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

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

7.4 Supplies

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

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

8.0 Employees

8.1 Sanitary and Hygienic Practices

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

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

8.1.3 An employee whose hands come in contact with blood or other bodily fluids shall wash them immediately.

8.1.4 Implements shall not be placed in the mouth.

8.2 Health

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

8.3 Clothing

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

9.0 Infectious, Contagious or Communicable Diseases

9.1 No professional in charge shall knowingly require or permit an employee to work upon a person believed to have an infection or parasitic infestations capable of being transmitted to the employee unless the client can produce a physician's certification that the client does not have an infectious, contagious or communicable disease.

9.2 A person shall wear gloves when required to serve a client with skin that is inflamed, broken, abraded, cut or where a skin infection or eruption is present.

9.3 Infections or parasitic infestations capable of being transmitted to a client include but are not limited to:

9.3.1 Cold, influenza, or other respiratory illness accompanied by a fever, until twenty-four (24) hours after resolution of the fever;

9.3.2 Streptococcal pharyngitis ("strep throat") until twenty-four (24) hours after treatment has been initiated and twenty-four (24) hours after resolution of fever;

9.3.3 Purulent conjunctivitis ("pink eye") until examined by a physician and approved for return to work;

9.3.4 Pertussis ("whooping cough") until five days of antibiotic therapy has been completed;

9.3.5 Varicella ("chicken pox") until the sixth day after onset of rash or sooner if all lesions have dried and crusted;

9.3.6 Mumps, until nine days after onset of parotid gland swelling;

9.3.7 Tuberculosis, until a physician or local health department authority states that the person is noninfectious;

9.3.8 Impetigo (bacterial skin infection) until twenty-four (24) hours after treatment has begun;

9.3.9 Pediculosis (head lice) until the morning after first treatment; and

9.3.10 Scabies ("crabs") until after treatment has been completed.

9.4 Blood-borne diseases such as HIV/AIDS and hepatitis B (HBV) shall not be considered infectious or communicable diseases for the purpose of this Regulation.

10.0 Prohibited Hazardous Substances / Use of Products

10.1 No establishment shall have on the premises products containing hazardous substances, which have been banned by federal, state, or local law for use in products. Establishments permitted under these regulations may only use and store pesticides and cleaning products approved for use in compliance with subsection 10.2.

10.2 No product shall be used in a manner that is disapproved by the Board, DHSS, or the FDA or is in violation of any applicable Federal or State statute or Regulation.

11.0 Invasive Procedures

11.1 No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:

11.1.1 Application of electricity which contracts the muscle;

11.1.2 Application of topical lotions, creams, or other substances which affect living tissue, such as chemical peel preparations or bleaches;

11.1.3 Penetration of the skin with any needle-like instrument for any purpose;

11.1.4 Abrasion of the skin below the nonliving, epidermal layers; and

11.1.5 Removal of skin by means of any razor-edged instrument or other device or tool.

12.0 Compliance and Enforcement

- 12.1 The professional in charge of a massage establishment shall be responsible for maintaining the Standards for Public Health Assurances established by these Regulations.
- 12.2 Refusal to permit, or interference with, an inspection by DHSS, or the Board, constitutes violation of the Regulations.
- 12.3 DHSS shall investigate all complaints for violations of these Regulations as herein regulated and shall refer any failure to comply with these Regulations to the Board for disciplinary sanctions as allowed by law.
- 12.4 When a professional in charge of a massage establishment is not in compliance with the provisions of these Regulations, the Department shall refer the matter to the Board for enforcement action. However, in the event there is an immediate risk to the public health, the Secretary, in accordance with 16 Del.C. §122(1), may take immediate action.
- 12.5 Penalties. Any person violating any of the requirements established by these Regulations is subject to be referred to the Board for disciplinary sanctions pursuant to 24 Del.C. Ch. 53.
-

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE**Purchase of Care Plus**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend the Division of Social Services Manual regarding Purchase of Care Plus, specifically, to clarify program policy and requirements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on August 31, 2018. Please identify in the subject line: Purchase of Care Plus.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Purchase of Care Plus, specifically, to clarify program policy and requirements.

Statutory Authority

- 45 CFR 98.1

Background

In October 2003, the Division of Social Services (DSS) piloted the Purchase of Care Plus (POC+) program based on feedback from provider groups regarding the low DSS reimbursement rates and providers' inability to financially maintain slots for DSS clients. This program was designed to encourage providers to increase the number of slots available to DSS clients by reducing the financial burden on the provider and was implemented statewide beginning January 2005.

POC+ is a care option that allows POC providers to charge DSS fee-paying clients the difference between the DSS reimbursement rate and the provider's private fee for service. The provider receives the DSS reimbursement, the DSS determined child care parent fee, if applicable, and any additional provider determined co-payment. Currently providers are only required to have one regular slot if they chose to be a POC+ provider. DSS has noticed that all new providers are applying to be POC+ providers.

DSS has seen a reduction in the number of regular POC slots available to non-fee paying families and an increase in providers who are not abreast of the POC+ requirements and are therefore frequently out of compliance with them. The revised POC+ policy outlines current requirements for POC+ providers, as well as the new requirements to be in good standing with the POC program for at least 6 months prior to applying to become a POC+ provider and the requirement that providers have equal shares of regular and POC+ slots available to families.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to clarify program policy and requirements, specifically, to explain the requirements for participation in the POC+ program for POC providers and families. In addition, the policy explains the different options available to the families that participate.

Summary of Proposed Changes

Effective for services provided on and after October 12, 2018 Delaware Health and Social Services/Division of Social Services proposes to amend section 11004.4.2 of Division of Social Services Manual (DSSM) regarding Purchase of Care Plus, specifically, to clarify program policy and requirements.

Public Notice

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

Fiscal Impact

There are no budget implications as a result of the POC+ policy revision. The policy is being revised to more clearly define the POC+ program and the program's requirements for providers and families.

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

<http://regulations.delaware.gov/register/august2018/proposed/22 DE Reg 138RFA 08-01-18.pdf>

AMENDED

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

11004.4.2 Defining the Purchase of Care Plus (POC+) Program

~~POC+ is a care option that allows providers to charge DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives the DSS rate, the DSS determined child care parent fee if applicable, and any additional provider determined co pay.~~

PROPOSED REGULATIONS

This option is primarily for DSS fee-paying clients. DSS chooses not to limit childcare options for any group of individuals. DSS will allow all DSS purchase-of-care clients eligible for POC with no parent fee the opportunity to waive their right to receive childcare with no additional provider co-pays and choose a POC+ slot.

POC+ is an option for all DSS clients, not a requirement. If a provider does not have a regular POC slot available, the client can choose to self arrange, enter into a POC+ arrangement or find another provider that will take the regular DSS payment.

It is the provider's responsibility to include in their contract with the DSS client the explanation of POC+, the length of POC+ if it is specified, the co-payment amount, the providers policy on non-payment of fees, and a statement that they have explained to the client their options and that the client chooses to participate in POC+.

In order for providers to be able to participate in the POC+ option they must agree to take a percentage of DSS waived fee clients and attend training on POC+.

If a client is currently participating in POC+ and goes to a zero parent fee for DSS, the client can stay POC+ or request a regular POC slot. If a regular POC slot is not available the client can chose to remain in a POC+ slot, self arrange, or find a provider with a regular POC slot.

A provider cannot change a zero parent fee client from a regular POC slot to a POC+ slot.

NOTE: It is important to explain to DSS clients who receive POC and Food Stamps that if they choose to participate in POC+ they need to inform the DSS worker of the co-payment amount so that the Food Stamp case can be updated.

The POC+ program is an option available to families receiving child care assistance.

1. POC+ allows providers to charge DSS clients the difference between the DSS reimbursement rate and the provider's private fee for service.

A. The provider receives:

- The DSS reimbursement rate.
- The DSS determined child care parent fee (if applicable), and
- Any additional provider determined POC+ copayment (not to exceed the provider's current contracted rate).

B. The provider must:

- Be a POC provider in good standing for a period of at least six months.
- Complete POC+ program training every two years.
- Be recertified if the POC+ option has not been used in a 12-month period.
- Agree to provide and fill equal shares of POC+ slots and regular POC slots.
- Offer clients who pay zero parent fees a regular POC slot first (if available).
- Maintain current clients who pay zero parent fees in regular POC slots.
- Include the following specifications in the client's POC+ contract:
 - i. An explanation of the POC+ program.
 - ii. The length of the POC+ contract (if specified).
 - iii. The POC+ copayment amount (not to exceed the provider's current contracted rate).
 - iv. The provider's policy on non-payment of fees, and
 - v. A statement to verify that the POC+ program has been explained to the client and that the client agrees to participate. The statement must be signed by the client and the provider.

2. POC+ is an option primarily for DSS fee-paying clients; however, this option is available to all DSS clients who choose to enter into a POC+ arrangement.

- A. A new client without a parent fee may choose a regular POC slot or a POC+ slot; however, the client will be responsible for the additional POC+ provider fees.
- B. If a provider does not have a regular POC slot available, the client may choose to:
- Enter into a POC+ agreement,
 - Establish self-arranged child care, or
 - Find a provider who has a regular POC slot available.
- C. If a client is currently participating in POC+ and the client's DSS parent fee decreases to zero, the client may continue participating in POC+ or request a regular POC slot. If a regular POC slot is not available, the client may choose to:
- Remain in the POC+ slot,
 - Establish self-arranged child care, or
 - Find a provider who has a regular POC slot available.

Note: Clients who participate in POC+ and receive food benefits should inform DSS of their POC+ copayment amounts so that their food benefit cases may be updated.
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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 1147

REGISTER NOTICE SAN # 2018-03

1147 CO₂ Budget Trading Program

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 1147 - CO₂ Budget Trading Program

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

Since 2009 Delaware and nine other states have implemented a regional program to reduce CO₂ emissions; known as the Regional Greenhouse Gas Initiative (RGGI). The Regional Greenhouse Gas Initiative is composed of individual CO₂ Budget Trading Programs in each RGGI participating state. Each participating state's CO₂ Budget Trading Program is based on the RGGI Updated Model Rule, which was developed to provide guidance to states as they implemented the RGGI program. RGGI participating states have been conducting a Program Review, which is a comprehensive evaluation of program successes, program impacts, the potential for additional reductions, imports and emissions leakage, and offsets. In December 2017 Delaware and these other participating states announced revisions to the RGGI program and published an updated Model Rule.

The purpose of this action is to amend 7 DE Admin. Code 1147 to reflect these revisions announced by the RGGI participating states in December 2017. The proposed amendments to 1147 will include a reduction in the state's budget to reflect Delaware's portion of a new regional cap beginning in 2021-2030; adding the Emissions Containment Reserve; amending the quantity of allowances in the Cost Containment Reserve, private bank adjustments; deletion of two offset categories and other minor program adjustments.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

PROPOSED REGULATIONS

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, August 29, 2018 in the DNREC Auditorium in the Richardson & Robbins Building located at 89 Kings Highway, Dover, DE. If you are unable to attend or wish to submit your comments in advance of the public hearing, please send your comments to the address below or email to valerie.gray@state.de.us. Interested parties may also submit written comments to the Department, to the same address below, up until the end of the comment period, which will extend through September 14, 2018, unless a longer period is designated by the hearing officer at the public hearing.

This hearing will begin at 6:00PM.

DNREC - Division of Air Quality
Subject: 1147 Public Hearing 8/29/18
100 W. Water Street, Suite 6A
Dover, DE 19904

7. PREPARED BY:

Valerie Gray (302) 739-9402 valerie.gray@state.de.us July 10, 2018

***Please Note:**

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

[http://regulations.delaware.gov/register/august2018/proposed/22 DE Reg 141RFA 08-01-18.pdf](http://regulations.delaware.gov/register/august2018/proposed/22%20DE%20Reg%20141RFA%2008-01-18.pdf)

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

[1147 CO₂ Budget Trading Program](#)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) & (d) and 903(b), (e), (f) & (i); (7 Del.C. §§901(c) & (d) and 903(b), (e), (f) & (i))
7 DE Admin. Code 3531

REGISTER NOTICE SAN # 2018-08

[3531 Tautog; Size Limits, Creel Limits and Seasons](#)

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 3531 Tautog; Size Limits, Creel Limits and Seasons

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

The Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 1 to the Interstate Fishery Management Plan for Tautog in October 2017. Amendment 1 provides for the regional management of the tautog resource based on the most recent stock assessment findings. The stock assessment indicated that the Delaware, Maryland and Virginia (DelMarVa) component of the stock is overfished but overfishing is not occurring. The

recreational and commercial management measures proposed in this action will improve the stock condition and are required by Amendment 1.

Specifically, Amendment 1 requires that Delaware implement recreational and commercial management measures consisting of a 16-inch minimum size limit, a four fish possession limit and a closed season from May 16 through June 30. In addition, based upon evidence from law enforcement officials that indicated significant illegal sales of tautog, states with commercial tautog fisheries must implement a commercial harvest tagging program by January 1, 2019. Implementation of such a program will require preregistration, harvest tagging and tag reporting and accountability measures to deter the illegal sale of tautog.

Finally, to prevent or reduce mortality from lost commercial fishing gear, Amendment 1 requires certain degradable materials on pot and trap gear from which tautog are retained.

Although the required minimum size limit, possession limit and closed season and are currently in place through emergency Secretary's Order 2018-F-0035, these measures and the other proposed measures must be promulgated through the full provisions of the Administrative Procedures Act.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §901(c) & (d), § 903(b), (e), (f) & (i)

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

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3531 Tautog; Size Limits, Creel Limits and Seasons will open Wednesday, August 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on Thursday, August 23, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, September 7, 2018.

7. PREPARED BY:

Stewart Michels

Stewart.Michels@state.de.us

(302) 739-9914

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

<http://regulations.delaware.gov/register/august2018/proposed/22 DE Reg 142RFA 08-01-18.pdf>

3531 ~~Tautog; Size Limits, Creel Limits and Seasons~~

1.0 Recreational and Commercial Size Limits

~~4-01.1~~ Notwithstanding the provisions of 7 Del.C. §§~~929~~ and 939, it ~~shall be~~ is unlawful for any person to possess any tautog, *Tautoga onitis*, less than ~~fifteen (15)~~ sixteen (16) inches in total length.

2.0 Recreational and Commercial Possession Limits and Seasons

2.1 Notwithstanding the provisions of 7 Del.C. §§~~938~~, and 939, it ~~shall be~~ is unlawful for any person to ~~possess~~ take and reduce to possession more than ~~five (5)~~ four (4) tautog per day during the period beginning at 12:00 a.m. on January 1 and ending at 11:59 p.m. on ~~March 31~~ May 15, and during the period beginning at 12:00 a.m. on July 17 and ending at 11:59 p.m. on ~~August 31~~ December 31; ~~and during the period beginning at 12:00 a.m. on September 29 and ending at 11:59 p.m. on December 31~~, at or between the place where said tautog were caught and said person's personal

PROPOSED REGULATIONS

abode, or temporary or transient place of lodging or, for a licensed commercial foodfisherman, point of sale.

3.0 Notwithstanding the provisions of ~~7 Del.C. §§938, 939~~, it shall be unlawful for any person to possess more than three (3) tautog during the period beginning at 12:00 a.m. on April 1 and ending at 11:59 p.m. on May 11, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

4.02.2 Notwithstanding the provisions of subsections 1.0, 2.0 and 3.0 of this regulation ~~7 Del.C. §§938 and 939~~, it shall be is unlawful for any person to possess take and reduce to possession any tautog during the period beginning at 12:00 a.m. on May 12~~16~~ and ending at 11:59 p.m. on July 16 and during the period beginning at 12:00 a.m. on September 1 and ending at 11:59 p.m. on September 28, except in said person's personal abode or temporary or transient place of lodging June 30.

3.0 Commercial Tagging

3.1 After December 31, 2018, it is unlawful for a commercial fisherman to possess tautog in Delaware unless it is tagged prior to landing with a tautog harvest tag issued by the Division in accordance with this section.

3.1.1 Tautog harvest tags must be firmly affixed to the bony portion of the gill cover (operculum) such that the tag number faces outward from the body and can be readily viewed.

3.2 The Division of Fish and Wildlife may only issue tautog harvest tags to those commercial fishermen that apply to participate in the commercial tautog fishery using a form provided by the Division and returning said form to the Division by no later than September 1 in the calendar year preceding their participation.

3.3 After December 31, 2018, it is unlawful to buy, sell, barter or trade or offer to buy, sell, barter or trade tautog unless the fish has a firmly affixed and lawfully applied tautog harvest tag issued by a state in accordance with Amendment 1 to the Interstate Fishery Management Plan for Tautog (October 2017).

3.4 It is unlawful for any person issued tautog harvest tags by the Division to fail to report the loss, theft, damage or defect of a tag to the Division within 12 hours of discovery.

3.5 It is unlawful for any person issued tautog harvest tags to not file a complete and accurate monthly accounting of tag use by the last working day of the month following tag use on a form provided by the Division.

3.6 It is unlawful to buy, sell, barter or trade or offer to buy, sell or trade any tautog that has attached a tag reported as lost, stolen, damaged, defective or otherwise unusable in accordance with subsection 3.4 of this section.

3.7 Unless reported in accordance with subsection 3.4 or 3.5 of this section, it is unlawful for any person issued tautog harvest tag(s) to not return to the Division all unused tags by no later than February 15 of the year following their issuance.

4.0 Gear Requirements

4.1 It is unlawful to retain tautog from any pot or trap unless the hinges or fasteners of at least one panel or door of the pot or trap is equipped with one of the following degradable materials:

4.1.1 Untreated hemp or jute string of not more than 3/16-inch (4.8 mm) diameter;

4.1.2 Magnesium alloy fasteners, timed float released (pop-up devices) or similar device approved by the Division;

4.1.3 Non-galvanized or non-coated iron wire of not more than 0.094-inch (2.39 mm) diameter.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY OFFICE OF THE SECRETARY

Statutory Authority: 11 Delaware Code, Section 1444(f) (11 Del.C. §1444(f))

PUBLIC NOTICE

102 Regulations Governing the Destructive Weapon Compensation Program (DWCP)

The Department of Safety and Homeland Security (DSHS), pursuant to 11 Del.C. §1444(f)(1), seeks to adopt regulations that will clarify and provide more detailed information regarding the Destructive Weapon Compensation Program (DWCP), as identified in 11 Del.C. §1444(f)(2).

The DSHS will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Department of Safety and Homeland Security, Attn: Terry Pepper, Public Safety Building Suite 220, P.O. BOX 818, Dover, Delaware 19903-0818 or e-mail Terry.pepper@state.de.us. Any written submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on August 31, 2018. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Department of Safety and Homeland Security does hereby ORDER that the regulations be, and that they hereby are, proposed to be enacted as set forth below.

Robert M. Coupe
Secretary, Department of Safety and Homeland Security

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

[http://regulations.delaware.gov/register/august2018/proposed/22 DE Reg 145RFA 08-01-18.pdf](http://regulations.delaware.gov/register/august2018/proposed/22%20DE%20Reg%20145RFA%2008-01-18.pdf)

102 Regulations Governing the Destructive Weapon Compensation Program (DWCP)

1.0 Definitions

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

"Bump stock" means an after-market device that increases the rate of fire achievable with a semi-automatic rifle by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.

"Destructive weapon" means a destructive weapon as described in 11 Del.C. §1444(a)(6).

"DSHS" means Delaware Department of Safety and Homeland Security.

"DWCP" means the Destructive Weapon Compensation Program.

"Gift card" means type of payment used by a law enforcement agency to pay for surrendered destructive weapons such as a VISA or MasterCard gift card.

"Law enforcement agency" means the Delaware State Police.

"Program period" means July 1, 2018 to June 30, 2019.

"Secretary" means the Secretary of Delaware Department of Safety and Homeland Security.

"Trigger crank" means an after-market device designed and intended to be added to a semi-automatic rifle as a crank operated trigger actuator capable of triggering multiple shots with a single rotation of the crank.

PROPOSED REGULATIONS

2.0 Authorization

- 2.1 Funds allocated pursuant to 11 Del.C. §1444 shall be maintained in the DSHS, Office of the Secretary.
- 2.1.1 Funds will be distributed to the law enforcement agency locations in the form of gift cards.
- 2.2 The Secretary will designate which law enforcement agency locations will participate in the DWCP.
- 2.2.1 An agency location designated to participate in the DWCP and receive funds shall make public notice upon designation by the Secretary, at least 14 days in advance of starting their program, indicating the following:
 - 2.2.1.1 The dates, times, location and duration for collection;
 - 2.2.1.2 The contact person for the DWCP responsible for maintaining the funds and/or inventory allocated by DSHS.
- 2.3 Within seven (7) days after the conclusion of the DWCP program period, the law enforcement agency shall submit to the Secretary an accounting of all funds allocated by DSHS under these regulations.
- 2.4 All unused funds shall be returned to DSHS in the form it was received, within seven (7) days of the conclusion of the DWCP program period.

3.0 Collection and Disposition of Recovered Destructive Weapon

- 3.1 Upon surrender, all destructive weapons shall be tagged or marked by the collecting agency as to where collected, whom collected by, who collected from, the date of collection, make, model and serial number if applicable.
- 3.2 Funds shall be issued for destructive weapons which, upon preliminary inspection, appear to be operational, in amounts not to exceed the following:

<u>Bump Stock</u>	<u>\$100.00</u>
<u>Trigger Crank</u>	<u>\$15.00</u>
- 3.3 The law enforcement agency shall not have the discretion to pay an amount exceeding the amounts as described in subsection 3.2 during the DWCP program period.
- 3.4 Within seven (7) business days after the conclusion of the DWCP program period, a complete list of all destructive weapons collected shall be supplied to the Secretary containing information listed in subsection 3.1 of these regulations.
- 3.5 It shall be the responsibility of the law enforcement agency participating in the DWCP to dispose of the destructive weapons collected. Disposal may include any, or a combination, of the following:
 - 3.5.1 Destruction in a manner causing total destruction of the weapon through such methods as crushing, melting or shredding.
- 3.6 Agencies, upon destruction of weapons, shall furnish a list of all disposed destructive weapons to the Secretary within seven (7) business days.

4.0 General Rules

- 4.1 An agency conducting a DWCP shall be responsible for the security of the site, the surrounding area, the surrendered destructive weapons, transportation, unused funds and inventory.
- 4.2 To ensure safety, any agency conducting a DWCP shall have at least one person on site knowledgeable in the operation and safety of firearms.
- 4.3 Any individual who elects to surrender a destructive weapon anonymously at a DWCP designated location may do so; however, the individual will not be eligible for compensation.
- 4.4 Personal identification showing proof of Delaware residency shall be required to be presented at the time of the redemption.
- 4.5 The DWCP is only intended for individuals and does not apply to wholesale, retail, manufacturers and distributor business entities.
- 4.6 Destructive weapons relinquished to a law-enforcement agency of the state as part of the DWCP may be destroyed by that agency 30-days after relinquishment.

4.7 Notwithstanding any law to the contrary, any person, provided the person is, in good faith, on an immediate, direct route to a designated law enforcement agency in the DWCP shall be immune from criminal prosecution for the criminal offenses defined in 11 Del.C. §1444.

DEPARTMENT OF STATE
DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

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

PUBLIC NOTICE

901 Historic Preservation Tax Credit Program

Title:

Amendments to the Regulations Governing the Historic Preservation Tax Credit Program

Brief Synopsis:

The Historic Preservation Tax Credit Act (30 Del.C. Ch. 18, Subch. II) was first enacted by the General Assembly in 2001 and was amended in 2002, 2003, 2004, 2005, 2010 and 2014. Program regulations were adopted on July 11, 2002 (6 DE Reg. 108 published 07/01/02), and were amended on July 11, 2004 (8 DE Reg. 194 published 07/01/04), on January 11, 2005 (8 DE Reg. 1031 published 01/01/05), on October 11, 2010 (14 DE Reg. 485, published 11/01/2010) and on September 11, 2014 (18 DE Reg. 237 published 09/01/14). The purpose of these proposed regulatory amendments is to specify under what circumstances a Credit Award would be withdrawn, to establish a time frame during which rehabilitation work may qualify for a Credit Award, and to amend the fee schedule. Clarifications and technical corrections are also made throughout the regulation.

Section 5.5 proposes regulatory revisions that would limit applicants to applying for credits only for rehabilitation work that is proposed; work that has been completed prior to approval of the Part 2 application will now be ineligible for tax credits. A change to Section 4.4 eliminates the exemption for submitting a Part 1 application that had applied to certain applicants.

Sections 5.9, 5.10, and 6.3 propose or clarify circumstances in which an applicant must forfeit or the Delaware State Historic Preservation Officer can withdraw a Credit Award. Section 5.9 also eliminates the conflict between §1816(a) of the promulgating legislation which limits credit awards in any tax year to the amount authorized and §1816(c) which allows for re-assignment of forfeited credits. As forfeited tax credits were rarely available in the tax year in which they were awarded, they are essentially precluded from being awarded to other applicants. In §1815(b)(1) of the promulgating legislation, the State Office is given the power to charge a fee for inspections and other expenses. Section 7.1 proposes altering the timing for submittal of a Request for Credit Award, and subsection 7.2 is deleted as it would be rendered unnecessary by the change in 7.1.

Section 8.1 proposes an increase in the fees being charged for this activity, and indicates how the fees will be collected. Section 8.2 indicates how the State may use the fees collected. In addition, these proposed regulatory amendments modify definitions in Section 3.0 to update legal citations as well as clarify four definitions. Finally, there are minor changes made in sixteen sections of the regulations in order to clarify the regulatory process, particularly the coordination process with the Division of Revenue (Sections 5.1, 5.2, 5.4, 5.5, 5.6, 5.7, 5.9, 5.11, 5.12, 6.1, 6.2, 6.4, 6.5, 6.6, 7.3, and 7.5.). The Historic Preservation Tax Credit Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate a certified historic property.

Statutory Basis or Legal Authority to Act:

30 Del.C. Ch.18, Subch. II, §1815(b)

Other Regulations that may be affected by the Proposal:

The State Bank Commissioner and the Division of Revenue may adopt regulations or issue guidelines for tax elements of the Historic Preservation Tax Credit Act.

Notice of Public Comment:

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Ch. 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider all written comments on the proposed rules and regulations related to implementation of amendments to the Historic Preservation Tax Credit Act. Submit comments to the Division in care of Timothy A. Slavin, Director, Division of Historical and Cultural Affairs, 21 The Green, Dover, DE 19901. The final date to submit comments is September 4, 2018. Anyone wishing to obtain a copy of the proposed amendments to the rules and regulations should notify Timothy A. Slavin at the above address or call 302-736-7400. This notice will be published in two newspapers of general circulation.

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

<http://regulations.delaware.gov/register/august2018/proposed/22 DE Reg 147RFA 08-01-18.pdf>

901 Historic Preservation Tax Credit Program (Break in Continuity of Sections)

3.0 Definitions

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

(Break in Continuity Within Section)

“Certified rehabilitation” means rehabilitation of a certified historic property, or portion of the property, that has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation, and is in conformance with the Secretary of the Interior’s Standards for Rehabilitation (36 ~~CRF~~ CFR 67) or other standards as the State Office shall from time to time adopt.

“Credit award” means the amount of qualified expenditures as determined by the State Office ~~as part of the Part 2 approval~~ multiplied by the appropriate percentage as determined in 30 **Del.C.** §1813.

“Delaware State Historic Preservation Officer” means the person designated and appointed in accordance with the National Historic Preservation Act of 1966, as amended (~~46 USC §470a(b)(1)(A)~~ 54 USC §302301(1)). The Delaware State Historic Preservation Officer is an appointed position held by the Director, Division of Historical and Cultural Affairs.

(Break in Continuity Within Section)

“National Register of Historic Places” or **“National Register”** means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Section ~~401(a)(4)~~ 302101 of the National Historic Preservation Act of 1966, as amended (~~46 USC §470(a)(1)(A)~~ 54 USC §300101 et seq.).

(Break in Continuity Within Section)

“Owner-occupied historic property” means a certified historic property, or portion of the property, which is owned by the applicant and is being used, or within a reasonable period will be used, by an applicant as the applicant’s principal residence. The property may consist of part of a multiple dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to that portion shall be eligible under this subchapter to apply for tax credits calculated at the percentage available to owner-occupants.

(Break in Continuity Within Section)

“Qualified expenditure” means an amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

- acquisition of real property or acquiring an interest in real property, or costs associated with the acquisition of the property;

- additions to an existing structure except where the combined square footage of all additions is 20% or less than the total square footage of the historic portion of the property and each addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as: preserving the character-defining features of the certified historic property, adequately differentiating the new construction from the existing structure, and complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;
 - ~~preserving the character-defining features of the certified historic property;~~
 - ~~adequately differentiating the new construction from the existing structure; and~~
 - ~~complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize adverse impact on the certified historic property;~~
- sitework, paving or landscaping costs in excess of 10% of the total qualified expenditures;
- sales and marketing costs; or
- an expenditure not properly charged to a capital account, including, in the case of owner-occupied property, an expenditure that would not properly be charged to a capital account where the person using the such property is in a trade or business.

(Break in Continuity Within Section)

“**Substantial rehabilitation**” or “**full restoration**” means rehabilitation of a certified historic property for which the qualified expenditures, ~~during the 24-month period, or the 60-month period for a phased rehabilitation, selected by the applicant~~ exceeds:

- for an income-producing property, the current standard required by Section 47(c)(1)(C) of the Internal Revenue Code (26 USC 47(c)(1)(C)); and
- for an owner-occupied historic property, non-income producing property, or property under contract with a resident curator, a minimum expenditure of \$5,000.

4.0 Procedures for Certification of Historic Property

(Break in Continuity Within Section)

- 4.4 If a property is individually listed in the National Register, submission of a Part 1 application is ~~not~~ required, whether or not an application for the federal tax credit is submitted.

5.0 Procedures for Certification of Rehabilitation

- 5.1 An applicant may submit a Part 2 application to the State Office requesting that the Delaware State Historic Preservation Officer determine if a proposed rehabilitation ~~plan~~ work meets the criteria as a certified rehabilitation as defined in Section 3.0 of this regulation. The applicant shall file the Part 2 application on standard forms developed by the State Office.
- 5.2 An applicant shall submit Part 1 of the application prior to, or with, Part 2. The State Office shall not process the Part 2 application until an adequately documented and approved Part 1 application, ~~where required as outlined in Section 4.4 of these regulations,~~ is on file.
- 5.3 The State Office shall not process an incomplete Part 2 application until all required application information is received. Where adequate documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete a review.
- 5.4 Applicants may submit subsequent Part 2 applications for the same property as long as the following criteria are met:
- 5.4.1 For certified properties held for income (depreciable properties), a new application may be submitted as often as the project work qualifies for income tax credits under Section 47(c)(1)(C) of the Internal Revenue Code (26 USC 47(c)(1)(C))
 - 5.4.2 For all other certified properties, a new application may be submitted no sooner than 24 months from the date of the prior Part 2 approval as long as other program requirements have been met.
- 5.5 The Part 2 application shall include any proposed rehabilitation work. Any rehabilitation work that has been carried out prior to the approval of the Part 2 application is not eligible for consideration.

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- 5.6 An applicant requesting approval of a phased rehabilitation plan for a depreciable property shall provide the State Office with a description of the phases and their anticipated completion dates when submitting the Part 2 application. The Delaware State Historic Preservation Officer shall notify the applicant if the phased rehabilitation plan is approved. The final completion date for a phased rehabilitation is binding unless the applicant requests a change in writing. For a phased rehabilitation, the applicant is allowed up to 60 months to meet the substantial rehabilitation test.
- 5.67 The Delaware State Historic Preservation Officer shall determine whether the proposed rehabilitation for which a complete application is received under ~~Section~~ subsection 5.1 of this regulation meets the definition of a certified rehabilitation and shall send the applicant notice of the determination. The State Office may require modifications to the ~~plan~~ work as described in the Part 2 application in order to meet the definition of a certified rehabilitation.
- 5.78 The Delaware State Historic Preservation Officer may issue a Part 2 approval to an applicant who has obtained a Part 2 certification from the federal government pursuant to 36 CFR 67. Under this provision, an applicant shall file only the cover page of the Delaware Part 2 application.
- 5.89 Applicants shall begin construction on the approved certified rehabilitation ~~plan~~ work as described in the approved Part 2 application within one year of receiving the Part 2 approval. If construction on the rehabilitation ~~plan~~ work as described in the Part 2 application is not substantially commenced and diligently pursued within this time period, the State Historic Preservation Officer ~~may require that the applicant forfeit will withdraw~~ any assigned credit award Credit Award. ~~Any forfeited tax credits may become available for award to other applicants.~~ Substantially commenced and diligently pursued shall ~~mean~~ means the applicant can demonstrate that a minimum, 25% of the estimated rehabilitation costs was expended within the first year after the tax credits are assigned. The State Office reserves the right to obtain documentation from the applicant supporting the expenditure.
- 5.10 ~~If, at any time before a project receives its Certificate of Completion, the State Office requests documentation of on-going qualified expenditures for the previous year and the applicant does not produce such documentation, the Delaware State Historic Preservation Officer will withdraw any assigned Credit Reservation.~~
- 5.911 The Delaware State Historic Preservation Officer, or his/her designated representative, may inspect the historic property to determine if the work is consistent with the approved certified rehabilitation ~~plan~~ work as described in the Part 2 application, and if the project has substantially commenced and is being diligently pursued.
- 5.102 The applicant may request that the State Office review proposed changes to the ~~project plan~~ certified rehabilitation as described in the Part 2 application after ~~the Part 2 application~~ it is approved. The Delaware State Historic Preservation Officer shall determine whether the proposed change meets the definition of a certified rehabilitation and shall send the applicant notice of the determination.

6.0 Procedures for Certification of Completion

- 6.1 Upon completion of the rehabilitation work outlined in the Part 2 application, or an approved project phase, the applicant shall submit to the State Office a Part 3 application with documentation supporting any conditions in the Part 2 application approval, the form(s) required in the Division of Revenue's regulations indicating the name of the taxpayer who will claim the tax credit, and a final accounting of qualified expenditures. The State Office may prescribe the format in which the documentation of qualified expenditures is submitted. The costs are verified by and may be adjusted by the State Office if documentation is inadequate or costs are disallowed. Any submission of Part 3 of the application with qualified rehabilitation costs of more than \$750,000 shall include a certified statement by a certified public accountant verifying that the expenses statement includes only qualified rehabilitation costs.
- 6.2 The State Office shall not process an incomplete Part 3 application until all required application information is received. Where adequate documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete the review. The State Office may inspect the completed project to determine if the work meets the definition of a certified

rehabilitation. The applicant will permit the State Office to inspect the completed project to determine if the work meets the definition of a certified rehabilitation.

- 6.3 Prior to approval of a Part 3 application, if the State Historic Preservation Officer (or the Keeper of the National Register of Historic Places) determines that an individual historic property or a historic district is no longer eligible for listing in the National Register due to a loss of integrity, any application for tax credits that has not yet been assigned by the Delaware Division of Revenue shall have its Credit Award withdrawn.
- 6.34 Upon approval by the State Office that the completed rehabilitation, or an approved phase, meets the definition of a certified rehabilitation, the State Office shall submit the documentation of qualified expenditures to the Division of Revenue and request a determination of the value of the tax credit for the completed project or an approved phase, meets the definition of a certified rehabilitation, the Delaware State Historic Preservation Officer shall issue a Certificate of Completion for the project, or approved phase. For approved phased rehabilitations, each phase must receive a Certificate of Completion in order for the overall project to be considered a certified rehabilitation.
- 6.45 After issuing a Certificate of Completion for a project, or an approved phase, receives its Certificate of Completion, the State Office shall submit the documentation outlined in 6.3 of these regulations of qualified expenditures and an 1811AC 0905 form to the Division of Revenue, and request a determination of the value of the tax credit documented expenditures and assignment of the calculated tax credits to the applicant in accordance with subsection 7.4 of these regulations for the completed project or an approved phase. For all projects in which the tax credits are to be applied against franchise taxes, and at other times as requested by the Division of Revenue, the forms and documentation will also be submitted to the State Bank Commissioner's Office.
- 6.56 The Division of Revenue or the State Bank Commissioner's Office will return the forms certifying the value of the tax credit for credits assigned to the project, or an approved phase, to the State Office which shall transmit the Certificate of Completion and the Revenue form(s) to the applicant, or taxpayer who will claim the tax credits.
- 6.67 In the case of approved phased projects, a single rehabilitation project may receive more than one Certificate of Completion. Credits issued to the initial assignee, or in the case of a tax-exempt assignee, to the first taxable transferee after the associated phase completion, are subject to revocation and repayment to the Delaware Division of Revenue or the Office of the State Bank Commissioner if, under regulations issued by the State Office, a phased rehabilitation is not completed by the agreed upon completion date indicating that the applicant for the credit award is unable or unwilling to complete it; or in the event that the project does not meet the certification requirements previously agreed to with the State Office.

7.0 Procedures for Requesting a Credit Award

- 7.1 An applicant shall request a credit award by filing a Request for Credit Award application with the State Office. The Request for Credit Award application may be submitted at the same time or subsequent to the submission of the Part 2 application, but no later than simultaneously shall be submitted with the Part 3 application.
- 7.2 If submitted with the Part 2 application, the applicant shall support the amount of qualified expenditures indicated on the Request for Credit Award by submitting a cost estimate prepared or certified by a licensed architect or engineer; an accountant; a contractor or a certified construction cost estimator. Where the rehabilitation work is complete, documentation of costs may be prepared or certified by a licensed architect or engineer; an accountant; a contractor or a certified construction cost estimator; or may be documented by paid invoices or cancelled checks for contractual work; and store invoices for material purchases. The State Office may prescribe the format in which the documentation of qualified expenditures is submitted. The cost estimate is verified by and may be adjusted by the State Office if documentation is inadequate or costs are disallowed.
- 7.32 The State Office will not process an incomplete Request for Credit Award application until all documentation as required in Section 7.2 of the regulations is received. Where adequate

PROPOSED REGULATIONS

documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete the review.

7.43 The State Historic Preservation Officer shall notify the applicant of the amount of their credit award. The credit award is calculated as a percentage of the qualified expenditures and will be rounded down to the nearest whole dollar. The criteria for applying the percentages to establish the credit award are:

- For depreciable (income-producing) certified properties, 20% of qualified expenditures;
- For depreciable certified properties where the whole or a part, receives low income housing credits, 30% to be applied to that portion of the square footage;
- For all other certified properties, 30% except where an owner would meet HUD established low income criteria, then 40%; and
- For resident curators, 100% of the qualified expenses submitted up to \$5,000.

~~The State Historic Preservation Officer shall notify the applicant of the amount of their credit award.~~

7.54 The Delaware State Historic Preservation Officer may consider an increase in a credit award where there has been an increase in qualified costs of greater than 5% of the total.

7.65 Despite having been assigned a certain credit award, an applicant may only claim the amount of tax credits which are supported by their actual rehabilitation costs. ~~Excess tax credits made available in these circumstances are not eligible for subsequent award to other applicants.~~

7.76 Each fiscal year, ~~\$100,000 of the \$5 million of the total that is allocated for Credit Awards is to be distributed as follows:~~ assigned to make credit awards under these regulations is reserved for distribution to qualified resident curators. If in any fiscal year there are insufficient qualified resident curators to exhaust this allotment, the unused credit amount will be available in the next fiscal year for award to any eligible project.

7.6.1 \$100,000 is reserved for distribution to qualified resident curators. If, in any fiscal year, there are insufficient qualified resident curators to exhaust this allotment, the unused credit amount will be available in the next fiscal year for award to any eligible project.

7.6.2 \$1.5 million is reserved for projects receiving a credit award of not more than \$300,000. After April 1, any unassigned portion of the \$1.5 million is released to be available for credit awards to any eligible project.

7.6.3 \$1.5 million is reserved for projects located in Downtown Development Districts, of which \$500,000 is reserved for projects in DDDs receiving tax credits of not more than \$300,000. After April 1, any unassigned portion of the \$1.5 million is released to be available for credit awards to any eligible project.

~~7.8 Each fiscal year, \$1.5 million of the \$5 million assigned to make credit awards under these regulations is reserved for projects receiving a credit award of not more than \$300,000. After April 1, any unassigned portion of the \$1.5 million is released to be available for credit awards to any eligible project.~~

~~7.9 Each fiscal year, \$1.5 million of the \$5 million assigned to make credit awards under these regulations is reserved for projects located in Downtown Development Districts, of which \$500,000 is reserved for projects in DDDs receiving tax credits of not more than \$300,000. After April 1, any unassigned portion of the \$1.5 million is released to be available for credit awards to any eligible project.~~

8.0 Fees for Processing Rehabilitation Certification Request

~~8.1 The fee for review of rehabilitation work for projects where the qualified expenditures are over \$100,000 is \$250 for each separate application. Final action will not be taken on an application until the appropriate remittance is received. No fee will be charged for rehabilitation projects where the qualified expenditures are less than \$100,000. All applicants who seek a Credit Award for their certified rehabilitation are subject to a fee.~~

8.1.1 The fee for applicants of owner-occupied properties and resident curators is \$250. The fee is due at the time the applicant submits their Request for Certification of Historic Property application. All fees are non-refundable.

- 8.1.2 The fee for all other applicants is as follows: \$250 due at the time the applicant submits their Request for Certification of Historic Property Application; 1.5% of the credit reservation requested in the Part 2 Certification of Rehabilitation; and 1.5% of the credit reservation or credit award (whichever is more) in the Part 3 Certification of Completion. The fee will be calculated by the Delaware State Historic Preservation Office based on the qualified expenditures indicated in the Part 2 Certification of Rehabilitation and its associated documentation. If the applicant requests an increase the amount of tax credits to be awarded to a project, this will result in a supplemental fee. All fees are non-refundable.
- 8.1.3 The Delaware State Historic Preservation Officer may not pro-rate or waive the fee.
- 8.1.4 A Credit Award will not be made to an applicant until all applicable fees are paid.
- 8.1.4 Fees will be paid by check which are to be made payable to the State of Delaware. If the fee exceeds \$10,000, a certified check is required.
- 8.1.5 This fee schedule is applicable to all projects initiated after the effective date of these rules.
- 8.2 ~~The applicant shall submit the fee, where applicable, with the Part 3 application. For phased projects, the applicant shall submit the fee with the first Part 3 submitted. All checks shall be made payable to the State of Delaware. The revenue from fees charged for the Historic Preservation Tax Credit Program will be retained by the Division of Historical and Cultural Affairs for inspections and other expenses, which may include operational expenses and personnel costs.~~

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

901 Historic Preservation Tax Credit Program

**DIVISION OF PROFESSIONAL REGULATION
2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE**

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 Del.C. §2006(a)(1))
24 DE Admin. Code 2000

PUBLIC NOTICE

2000 Board of Occupational Therapy Practice

Pursuant to 24 Del.C. §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to continuing education are proposed to be amended.

A public hearing will be held on September 5, 2018 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address no later than the close of business on September 20, 2018, in accordance with 29 Del.C. §10118(a).

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

<http://regulations.delaware.gov/register/august2018/proposed/22 DE Reg 153RFA 08-01-18.pdf>

2000 Board of Occupational Therapy Practice

1.0 Supervision/consultation Requirements for Occupational Therapy Assistants

PROPOSED REGULATIONS

1.1 **“Occupational therapy assistant”** shall mean a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist. 24 Del.C. §2002(4).

“Under the supervision of an occupational therapist” means the interactive process between the licensed occupational therapist and the occupational therapy assistant. It shall be more than a paper review or co-signature. The supervising occupational therapist is responsible for insuring the extent, kind, and quality of the services rendered by the occupational therapy assistant.

1.1.1 The phrase, “Under the supervision of an occupational therapist,” as used in the definition of occupational therapist assistant includes, but is not limited to the following requirements:

~~4.1.41.1.2~~ Communicating to the occupational therapy assistant the results of patient/client evaluation and discussing the goals and program plan for the patient/client;

~~4.1.21.1.3~~ In accordance with supervision level and applicable health care, educational, professional and institutional regulations, reevaluating the patient/client, reviewing the documentation, modifying the program plan if necessary and co-signing the plan.

~~4.1.31.1.4~~ Case management;

~~4.1.41.1.5~~ Determining program termination;

~~4.1.51.1.6~~ Providing information, instruction and assistance as needed;

~~4.1.61.1.7~~ Observing the occupational therapy assistant periodically; and

~~4.1.71.1.8~~ Preparing on a regular basis, but at least annually, a written appraisal of the occupational therapy assistant’s performance and discussion of that appraisal with the assistant.

1.1.8.1 The supervisor may assign to a competent occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations and other elements of patient/client evaluation and reevaluation that do not require the professional judgment and skill of an occupational therapist.

(Break in Continuity Within Section)

1.3 Minimum supervision requirements:

1.3.1 Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.

1.3.1.1 Occupational therapy assistants with experience greater than one (1) full year must be supervised under either direct, routine or general supervision based upon skill and experience in the field as determined by the supervising OT.

(Break in Continuity Within Section)

2.0 Licensure Procedures:

(Break in Continuity Within Section)

2.5 To apply for inactive status: A licensee may, upon written request to the Board and payment of the fee established by the Division of Professional Regulation, have his/her license placed on inactive status if he/she is not actively engaged in the practice of occupational therapy in the State. To renew an inactive license, a licensee shall submit an online renewal application and renewal fee payable to the State of Delaware.

(Break in Continuity Within Section)

3.0 Continuing Education

~~3.4 Continuing Education Content Hours~~

~~3.4.43.1~~ Continuing education units (CEUs) ~~is~~ are required for license renewal and shall be completed by July 31st of each even numbered year. Occupational therapists and occupational therapy assistants are required to complete ~~20~~ 24 hours per biennial period. ~~Continuing education must be earned in two (2) or more of the seven (7) categories for continuing education described in subsection 3.5.~~

~~3.4.43.1.1~~ Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements ~~of Section 3.0;~~

- ~~3.1.1.23.1.2~~ Attestation shall be completed electronically;
- ~~3.1.1.3~~ Licensees selected for random audit are required to supplement the attestation with attendance verification as provided in subsection ~~3.1.2~~.
- ~~3.1.23.2~~ Random audits will be performed by the Board to ensure compliance with the CE requirement.
- ~~3.1.2.43.2.1~~ The Board will notify licensees after July 31 of each biennial renewal period that they have been selected for audit.
- ~~3.1.2.23.2.2~~ Licensees selected for random audit shall be required to submit verification within ten (10) business days of the date of notification of selection for audit.
- ~~3.1.2.33.2.3~~ Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Section 3.0, which may include, but is not limited to, the information noted for each type of CE ~~as set forth in subsection 3.3~~.
- ~~3.1.2.43.2.4~~ The Board shall review all documentation submitted by licensees pursuant to the continuing education audit. If the Board determines that the licensee has met the continuing education requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the continuing education requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying noncompliance with the continuing education requirements. Unjustified noncompliance with the continuing education requirements set forth in these rules and regulations shall constitute a violation of 24 **Del.C.** §2015(a)(5) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §2017.
- ~~3.1.33.3~~ Contact hours CEUs shall be prorated for new licensees in accordance with the following schedule:
- ~~3.1.3.43.3.1~~ *21 months up to and including 24 months remaining in the licensing cycle requires ~~20~~ 24 hours;
- ~~3.1.3.23.3.2~~ *16 months up to an including 20 months remaining in the licensing cycle requires 15 hours;
- ~~3.1.3.33.3.3~~ *11 months up to and including 15 months remaining in the licensing cycle requires 10 hours;
- ~~3.1.3.43.3.4~~ *10 months or less remaining in the licensing cycle - exempt
- ~~3.2~~ Definition of Acceptable Continuing Education Credits:
- ~~3.2.1~~ Continuing education must be earned in two (2) or more of the seven (7) categories for continuing education described in subsection ~~3.5~~.
- ~~3.33.4~~ Continuing Education Content:
- ~~3.3.43.4.1~~ Continuing education must be in a field of health and social services related to occupational therapy, must be related to a licensee's current or anticipated roles and responsibilities in occupational therapy, and must ~~directly or indirectly~~ serve to protect the public by enhancing the licensee's continuing competence.
- ~~3.3.23.4.2~~ Approval will be at the discretion of the Board. A licensee or continuing education provider may request prior approval by the Board by submitting an outline of the activity before it is scheduled. ~~The Board pre approves continuing~~ Continuing education sponsored or approved by NBCOT, AOTA or offered by AOTA-approved providers as long as the content is not within the exclusion in subsection 3.5.1.1 for courses covering documentation for reimbursement or other business matters is automatically approved.
- ~~3.3.33.4.3~~ CE earned in excess of the required credits for the two (2) year period may not be carried over to the next biennial period.
- ~~3.4~~ Definition of Contact Hours:
- ~~3.4.1~~ **"Contact Hour"** means a unit of measure for a continuing education activity. ~~One contact hour equals 60 minutes in a learning activity, excluding meals and breaks."~~
- ~~3.4.2~~ One (1) academic semester hour shall be equal to fifteen (15) contact hours.

PROPOSED REGULATIONS

3.4.3 One (1) academic quarter hour shall be equal to ten (10) contact hours.

3.4.4 The preparing of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

3.5 Continuing Education Categories:

3.5.1 Category 1: Courses: (Classroom or home study/correspondence/online) The maximum credit for course work shall not exceed nineteen (19) hours. Course work involving alternative therapies shall be limited to five (5) hours. Course work by home study, correspondence or online of a non-interactive nature shall be limited to ten (10) hours. Extension courses, refresher courses, workshops, seminars, lectures, conferences, and non patient-specific in-service training qualify under this provision as long as they are presented in a structured educational experience beyond entry-level academic degree level and satisfy the criteria in subsection 3.3.1.

3.5.1.1 Excluded are any job related duties in the workplace such as a fire safety, OSHA or CPR. Also excluded are courses covering documentation for reimbursement or other business matters.

3.5.1.2 Documentation for continuing education courses shall include a certificate of completion or similar documentation including name of course, date, author/instructor, sponsoring organization, location, and number of hours attended and amount of continuing education credit earned.

3.5.1.3 Documentation for academic coursework shall include an original official transcript indicating successful completion of the course, date, and a description of the course from the school catalogue or course syllabus.

3.5.1.4 Documentation for other courses in this category shall include information sufficient for the Board to determine whether the course is appropriate for CE credit and the number of hours of the course. This may include, but is not limited to, the forms of documentation cited above.

3.5.2 Category 2: Professional Meetings & Activities: The maximum number of credit hours shall not exceed ten (10) hours. Approved credit includes attendance at: DOTA business meetings, AOTA business meetings, AOTA Representative Assembly meetings, NBCOT meetings, OT Licensure Board meetings and AOTA National Round Table discussions. Credit will be given for participation as an elected or appointed member/officer on a board, committee or council in the field of health and social service related to occupational therapy. Seminars or other training related to management or administration are considered professional activities. Excluded are any job related meetings such as department meetings, supervision of students and business meetings within the work setting.

3.5.2.1 Excluded are any job related meetings such as department meetings, supervision of students and business meetings within the work setting.

3.5.2.2 Documentation includes name of committee or board, name of agency or organization, purpose of services, and description of licensee's role. Participation must be validated by an officer or representative of the organization or committee.

3.5.3 Category 3: Publications: The maximum number of credit hours shall not exceed fifteen (15) hours. These include writing chapters, books, abstracts, book reviews accepted for publication and media/ video for professional development in any venue.

3.5.3.1 Documentation shall include the full reference for publication including title, author, editor and date of publication; or a copy of acceptance letter if not yet published.

3.5.4 Category 4: Presentations: The maximum number of credit hours shall not exceed fifteen (15) hours. This includes workshops and community service organizations presentations that the licensee presents. The preparation of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

- ~~3.5.4.1 Credit will not be given for the presentation of information that the licensee has already been given credit for under another category.~~
 - ~~3.5.4.2 Excluded are presentations that are part of a licensee's job duties.~~
 - ~~3.5.4.3 Documentation includes a copy of the official program/schedule/syllabus including presentation title, date, hours of presentation, and type of audience or verification of such signed by sponsor.~~
 - ~~3.5.5 Category 5: Research/Grants: Credit may be awarded one time for contact hours per study/topic regardless of length of project, not to exceed ten (10) hours. Contact hours accumulated under this category may not be used under the publication category.~~
 - ~~3.5.5.1 Documentation for research includes verification from the primary investigator indicating the name of the research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project.~~
 - ~~3.5.5.2 Documentation for grants includes the name of the grant proposal, name of the grant source, purpose and objectives of the project, and verification from the grant author regarding the licensee's role in the development of the grant if not the grant author.~~
 - ~~3.5.6 Category 6: Specialty Certification: Approval for credit hours for specialty certification, requiring successful completion of courses and exams attained during the current licensure period will be at the discretion of the Board. Examples include Certified Hand Therapist (CHT) and Occupational Therapist, Board Certified in Pediatrics (BCP).~~
 - ~~3.5.6.1 Documentation includes a certificate of completion or other documentation from the recognized certifying body that identifies satisfactory completion of the requirements for obtaining board certification of specialty certification.~~
 - ~~3.5.7 Category 7: Fieldwork Supervision: The maximum number of credit hours shall not exceed ten (10) hours. One CE hour may be awarded for each Level I OT or OTA fieldwork student. One CE hour may be awarded for each week of participation as the primary clinical fieldwork educator for Level II OT or OTA fieldwork students.~~
 - ~~3.5.7.1 Documentation shall include verification provided by the school to the fieldwork educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form. Evaluation scores and comments should be deleted or blocked out.~~
- 3.5 A Continuing Education Unit is a measure for a continuing education activity. One continuing education unit equals 60 minutes in a learning activity, excluding meals and breaks.
- 3.6 Acceptable forms of continuing education include the following:
- 3.6.1 Attending Workshops, Courses, Independent Learning
 - 3.6.1.1 One (1) credit hour per semester shall be equal to ten (10) CEUs. Documentation for academic coursework shall include an official transcript with registrar's seal from accredited college/university. The transcript should be sent in a sealed envelope and should indicate successful completion of the course, dates, and a description of the course from the school catalogue or course syllabus.
 - 3.6.2 Courses:
 - 3.6.2.1 Workshops, seminars, lectures, conferences, and non-patient-specific in-service training qualify under this provision as long as they are presented in a structured educational experience beyond entry-level academic degree level.
 - 3.6.2.2 The same training may be claimed one-time only for CEU. Excluded are any job-related duties in the workplace such a fire safety, OSHA, new staff orientation, and corporate compliance training.
 - 3.6.2.3 One CPR course per biennial is acceptable.
 - 3.6.2.4 Documentation for continuing education courses shall include a certificate of completion or similar documentation including name of attendee, event title, date, instructor, sponsoring organization, location, and number of hours earned.
-

PROPOSED REGULATIONS

- 3.6.3 Independent learning with assessment element (Online courses, workshops, seminars, lectures, conference, or self-study series). 1 hour = 1 CEU. Documentation shall include a certificate of attendance from the provider verifying dates, event title, attendee name, agenda and successful completion of assessment component at the end of the program. (e.g., scored test, project, paper).
- 3.6.4 Independent learning without assessment element (audited coursework, etc.). 2 hours = 1 CEU (Maximum 12 CEUs). Documentation shall include a summary report of learning with notation of hours spent.
- 3.6.5 Reading peer-reviewed, role-related professional journal article and/or textbook chapter, and writing a report describing the implications for improving skills in one's specific role. (Cannot claim CEU purposed if textbook is required reading for academic coursework/audited course). 2 articles or 2 chapters = 1 CEU. Documentation shall include an annotated bibliography and a report with analysis of how articles impacted improving skills in one's role.
- 3.6.6 Participating in professional study group designed to advance knowledge through active participation. 2 hours = 1 unit. (Maximum 12 CEUs). Documentation shall include group attendance record verifying time spent, study group goals, and analysis of goal attainment and learning.
- 3.6.7 Receive mentoring from a professional in good standing to improve the skills of the protégé. 2 hours = 1 unit. (Maximum 12 CEUs). Documentation shall include goals and objectives established in collaboration with the mentor and self-analysis of performance.
- 3.6.8 Presenting
- 3.6.8.1 Serve as the primary or co-presenter at a state, national, or international workshop, seminar, or conference. One time presentation per topic. 1 hour = 2 CEUs. Documentation for a presentation shall be a copy of the presentation and a copy of the program listing that includes the presenter name, times and title of the presentation.
- 3.6.9 Primary or co-presenter for local organization/association/group on practice area-related topic: (energy conservation, back care and prevention of injury). Credit for preparation and presentation shall be given for the first presentation only of the same topic. One time presentation per topic. 1 hour = 2 CEUs. (Maximum 12 CEUs) Documentation for a presentation shall include a copy of the presentation and a program listing that includes the presenter's name, date, time, and location of presentation and contact person for the organization.
- 3.6.10 Primary or co-presenter making a poster presentation for state, national, or international workshop, seminar, or conference. Credit for presentation shall be given for the first presentation only. 1 poster = 2 CEUs (Maximum 12 CEUs). Documentation shall include a copy of presentation or program listing. Presenter name and times and title of presentation must be indicated on documentation.
- 3.6.11 Serving as adjunct faculty, teaching practice area-related academic course per semester (must not be one's primary role). Credit for presentation shall be given for first presentation of course title. 1 credit hour = 6 CEUs. Documentation shall include a letter of verification from school that includes dates, lecture/course title, length of session and course/lecture goals and objective or a copy of the course syllabus.
- 3.6.12 Provide professional in service training, instruction, or guest lecture as a primary or co-presenter for occupational therapists, occupational therapy assistant, or related professionals. One-time presentation per topic. 1 hour = 1 CEU. Documentation shall include a copy of attendance record and an outline of the presentation and a letter from the supervisor on letterhead verifying the presenter's name and the date/time/length of the presentation.
- 3.6.13 Professional Meetings and Activities
- 3.6.13.1 Approved credit includes attendance at: DOTA business meetings, AOTA business meetings, AOTA Representative Assembly meetings, NBCOT meetings, OT Licensure Board meetings. A licensee may only obtain credit for a maximum of 6 CEUs regardless of number of meetings attended beyond six.
- 3.6.13.2 Credit will also be given for participation as an elected or appointed member/officer on a board, committee or council in the field of health and social service related to occupational

therapy. (Maximum 6 CEUs). Documentation includes name of committee or board, name of agency or organization, purpose of services, and description of licensee's role. Participation must be validated by an officer or representative of the organization or committee.

- 3.6.14 Self-Assessment and Developing a Professional Development Continuing-Competency Plan
- 3.6.14.1 Only self-assessment and continuing competency plans sponsored by NBCOT or AOTA will be accepted.
- 3.6.14.2 Self-assessment (Maximum 1 CEU). Documentation shall include a certificate of completion.
- 3.6.15 Professional Development Continuing Competency Plan (Maximum 1 CEU). Documentation shall include a copy of the goal plan.
- 3.6.16 Competency Assessment Units (Maximum 10 CEUs). Documentation shall include certificate of completion.
- 3.6.17 Volunteering for an organization, population, or individual that adds to the overall development of one's practice roles. 5 hours = 1 unit. (Maximum 12 CEUs). Documentation shall include a verification of hours via a letter from the organization and a report describing the hours and outcomes of volunteer service.
- 3.6.18 Mentoring an OT colleague or other professional to improve skills of the protégé. 2 hours = 1 CEU. (Maximum 12 CEUs). Documentation shall include goals, objective, and analysis of mentee performance.
- 3.6.19 Peer review of practice-related research article or textbook. 5 CEU per review. (Maximum 12 CEUs.) Documentation shall include a letter from publishing organization.
- 3.6.20 Publications:
- 3.6.20.1 Primary or co-author of practice-area related article in non-peer reviewed professional publication. (OT Practice, SIS Quarterly, Advance) 1 article=5 CEUs (Maximum 24 CEUs). Documentation shall include copy of published article.
- 3.6.20.2 Primary or co-author of practice area related article in peer-reviewed professional publication (journal, book chapter, or research paper.) 1 article = 10 units. (Maximum 24 CEUs). Documentation shall include copy of published article.
- 3.6.20.3 Primary or co-author of practice area related article in lay publication (newspaper or newsletter) 1 article = 2 CEUs. Documentation shall include copy of published article.
- 3.6.20.4 Primary or co-author of chapter in practice-area related professional textbook. 1 chapter = 10 CEUs. Documentation shall include copy of published chapter and a letter from editor.
- 3.6.20.5 Primary or co-primary investigator in extensive scholarly research activities or outcome studies, or externally funded service/training projects associated with grants or post-graduate studies. 1 study = 10 CEUs (Maximum 12 CEUs). Documentation shall include copy of completed research/study that indicates licensee as primary/co-primary investigator.
- 3.6.21 Specialty Certification: Approval for credit hours for specialty certification, requiring successful completion of courses and exams attained during the current licensure period. Examples include Certified Hand Therapist (CHT) and Occupational Therapist, Board Certified in Pediatrics (BCP). Documentation includes a certificate of completion or other documentation from the recognized certifying body that identifies satisfactory completion of the requirements for obtaining board certification of specialty certification.
- 3.6.22 Fieldwork Supervision:
- 3.6.22.1 Level 1 fieldwork direct supervision (must not be one's primary role). 1 unit per student (Maximum 12 CEUs total for student supervision). Documentation shall include verification provided by the school to the fieldwork educator with the name of student, school, and dates of fieldwork.
- 3.6.22.2 Level II fieldwork direct supervision (must not be one's primary role). 1 unit per week of supervision per student supervised. (Maximum 12 CEUs total for student supervision)

PROPOSED REGULATIONS

Documentation shall include verification provided by the school to the fieldwork educator with the name of the student, school, and dates of fieldwork. Co-supervision is acceptable; record dates and times when acting as primary student supervisor and apply appropriate CEU number based on time spent supervising. Supervision of more than one student at a time is acceptable.

- ~~3-63.7~~ The Board may waive or postpone all or part of the continuing education activity requirements of these regulations if an occupational therapist or occupational therapy assistant submits written request for a waiver prior to renewal and provides evidence to the satisfaction of the Board of an illness, injury, financial hardship, family hardship, or other similar extenuating circumstance which precluded the individual's completion of the requirements.

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

2000 Board of Occupational Therapy Practice

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a) and 4112 (14 **Del.C.** §§122(a) and 4112)

14 **DE Admin. Code** 601

Secretary's Order

601 Schools and Law Enforcement Agencies

Pursuant to 29 **Del.C.** §10113(b)(5), and 14 **Del.C.** §122(a), the State of Delaware Department of Education issued on June 15, 2018 a Final Order amending 14 **DE Admin. Code** 601 to be consistent with the mandatory reporting requirements of 14 **Del.C.** §4112(b). Subsequently, the Department of Education realized that the regulation had already been amended in 2013 to bring it into compliance with 14 **Del.C.** §4112(b) and that the June 15, 2018 Order was not in compliance with 14 **Del.C.** §4112(b).

14 **Del.C.** §122(a) authorizes the Department to adopt regulations which are consistent with the laws of this State. 14 **Del.C.** §122(a) prohibits the publishing of regulations which conflict with any law of the State. Pursuant to 29 **Del.C.** §10119, the Department issued an Emergency Order withdrawing the Final Order dated June 15, 2018, to avoid the risk of harm to the health, safety and welfare of the citizens of Delaware that would result in the Regulation being adopted contrary to the statutory authority of the Department. Pursuant to 29 **Del.C.** §10119, the Department now issues a non-Emergency Final Order withdrawing its June 15, 2018 Final Order purporting to amend 14 **DE Admin. Code** 601.

ORDER

It is hereby ordered, the 13th day of July 2018, that the June 15, 2018 Final Order amending 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies is hereby withdrawn.

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

***Please Note:** The current 601 Schools and Law Enforcement Agencies regulation is available at: <http://regulations.delaware.gov/AdminCode/title14/600/601.shtml>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 303(a) (14 **Del.C.** §§122(b) and 303(a))
14 **DE Admin. Code** 1007

REGULATORY IMPLEMENTING ORDER

1007 DIAA Sportsmanship

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1007 DIAA Sportsmanship. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education ("Department"), developed the amendments to 14 **DE Admin. Code** 1007. The amendments include adding definitions for the terms "DIAA" and "Executive Director" to subsection 1.1; striking the terms Administrative Head of School," "Department," "Guardian or Legal Guardian," "Individualized Education Program or IEP," "Legally in attendance," and "State Board" from subsection 1.1 as those terms do not appear elsewhere in the regulation; and revising subsection 2.3, which concerns penalties for sportsmanship violations.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on May 1, 2018 in the form attached hereto as Exhibit "A." In addition, notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2018 in the form attached hereto as Exhibit "B." The Department received one written comment from Wendy Strauss, the Executive Director of the Governor's Advisory Council for Exceptional Citizens. Ms. Strauss questioned why the term IEP was stricken from the regulation.

On June 14, 2018, the DIAA Board of Directors discussed that the term IEP was stricken from subsection 1.1 because the term did not appear elsewhere in the regulation. The DIAA Board of Directors voted to propose 14 **DE Admin. Code** 1007 DIAA Sportsmanship, in the form that was published, for adoption by the Department subject to the State Board of Education's approval.

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement the provisions of 14 **Del.C.** Ch. 3. In addition, the Department finds that the term IEP was stricken from subsection 1.1 because the term did not appear elsewhere in the regulation and that further changes in response to the written comment are not necessary. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1007 DIAA Sportsmanship.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1007 DIAA Sportsmanship subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), 14 **DE Admin. Code** 1007 DIAA Sportsmanship attached hereto as Exhibit "B" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1007 DIAA Sportsmanship adopted hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited as 14 **DE Admin. Code** 1007 DIAA Sportsmanship 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 Department pursuant to 14 **Del.C.** §§122(b) and 303(a) on July 19, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 19th day of July, 2018.

Department of Education

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

Approved this 19th day of July, 2018.

State Board of Education

Whitney Townsend Sweeney, President

Nina Lou Bunting, Vice President

Candace Fifer

Vincent Lofink

Dr. Audrey J. Noble, Ed.D.

Wali W. Rushdan, II

Terry M. Whittaker, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the May 2018 issue of the *Register* at page 854 (21 DE Reg. 854). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1007 DIAA Sportsmanship

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4819A and 4805(a)(14), (a)(20), (a)(33), and (b)(14) (29 **Del.C.** §§4819A & 4805(a)(14), (a)(20), (a)(33), & (b)(14))

ORDER

205 Charitable Video Lottery Rules and Regulations

The Director of the Office of the Delaware State Lottery (Director) hereby gives notice of these finalized Delaware Charitable Video Lottery Regulations.

The Director seeks to finalize main rules of the Office of the Delaware State Lottery (29 **DE Admin. Code** 205) to govern charitable gaming organizations and charitable gaming vendors. These rules are both substantive and procedural in nature and apply to the licensing process, appeals, duties and rights of charitable gaming organizations and charitable gaming vendors, and the required operating procedures of charitable gaming organizations and charitable gaming vendors. The rules also serve in part to clarify the intent of the Director as enacted through these regulations. These new rules should not pose additional burdens on licensees or consumers. The Delaware Code authority for these proposed regulations is 29 **Del.C.** §4819A and well as 29 **Del.C.** §§4805(a)(14), (a)(20), (a)(33) and (b)(14).

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Office of the State Lottery does hereby ORDER that the regulations be, and that they hereby are, enacted as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Vernon A. Kirk, Director
Office of the State Lottery
July 11, 2018

*Please note that no changes were made to the regulation as originally proposed and published in the June 2018 issue of the *Register* at page 950 (21 DE Reg. 950). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

205 Charitable Video Lottery Rules and Regulations

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, and 24 Delaware Code, Section 716(c)
(18 Del.C. §311 & 24 Del.C. §716(c))

REGULATORY IMPLEMENTING ORDER

1318 Compensation for Chiropractic Services

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At 21 **DE Reg.** 19 (July 1, 2017), the Department published a notice of its intent to codify proposed new Regulation 1318, Compensation for Chiropractic Services, and solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

The proposed new regulation would prohibit insurance carriers and third party administrators who are regulated by the Department from including in any insurance policy terms and conditions that unreasonably discriminate against access to chiropractic care or services. It would also prohibit compensation of doctors of chiropractic that is unreasonable or discriminatory, as detailed in the proposed new rule. The Delaware Code authority for the proposed new regulation is 24 **Del.C.** §716(c) and 18 **Del.C.** §§102, 311 and 329.

The Department received several timely submitted comments, copies of which are on file with the Department. The Department did not hold a public hearing on the proposal. In response to the comments received, the Department redrafted the proposed new regulation, which was published at 21 **DE Reg.** 610 (February 1, 2018). The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the re-proposed regulation until the 5th day of March, 2018, which was thirty days from the date of publication.

The Department thereafter determined to further revise the proposed regulation. That proposal was published in the *Register of Regulations* at 21 **DE Reg.** 954 (June 1, 2017). The Department did not hold a public hearing on the re-proposal. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment until the 2nd day of July, 2018, which was thirty days from the date of publication. The Department received no comments on the June 1, 2018 proposal.

II. FINDINGS OF FACTS

The Commissioner finds that it is appropriate to adopt 18 **DE Admin. Code** 1318 as proposed in the June 1, 2018 *Register of Regulations*, for the reasons set forth above and in the proposal.

III. DECISION TO ADOPT THE NEW REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt 18 **DE Admin. Code** 1318, as discussed in the above Findings of Fact.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§311, 314, and 526A on the date indicated below. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*. The effective date of the Regulation shall be as stated in the text of the Regulation.

IT IS SO ORDERED.

Trinidad Navarro
Commissioner
Delaware Department of Insurance
The 12th day of July, 2018

*Please note that no changes were made to the regulation as originally proposed and published in the June 2018 issue of the *Register* at page 954 (21 DE Reg. 954). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1318 Compensation for Chiropractic Services

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 8003(7) (29 **Del.C.** §8003(7))
8 **DE Admin. Code** 900

Secretary's Order No.: 2018-OTS-0037

Date of Issuance: June 30, 2018

Effective Date of the Amendment: August 11, 2018

900 Policies and Procedures Regarding FOIA Requests

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 29 **Del.C.** §10113(b)(4), DNREC hereby revises Section 900 of Title 8 of the Delaware Administrative Code to correct all referencing errors contained therein by replacing all current citations of 29 **Del.C.** §10002(g) with 29 **Del.C.** §10002(j). This correction is necessitated as a result of changes made to Delaware Code subsequent to DNREC's promulgation of its FOIA Regulations, as set forth in then-DNREC Secretary Collin O'Mara's Order issued December 1, 2011, and as previously published in the December 1, 2011 edition of the State of Delaware *Register of Regulations*.

Findings of Fact

Based on Delaware law and the record as reflected in the prior Secretary's Order referenced above, I make the following findings of fact:

1. The proposed regulation is not in conflict with Delaware law; and
2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

Decision and Order Concerning the Regulation

NOW THEREFORE, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revisions to 8 **DE Admin. Code** 900: Policies and Procedures Regarding FOIA Requests, be adopted and promulgated as follows, to wit:

1. Section 3.7.1 shall be corrected to replace each instance of the citation, "29 **Del.C.** §10002(g)" with "29 **Del.C.** §10002(*l*)"; and
2. Section 6.7.1 shall be corrected to replace the citation, "29 **Del.C.** §10002(g)(2)" with "29 **Del.C.** §10002(*l*)(2)".

The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Shawn M. Garvin,
Secretary

900 Policies and Procedures Regarding FOIA Requests
(Break in Continuity of Sections)

3.0 Records Request, Response Procedures and Access

(Break in Continuity Within Section)

3.7 Review by Agency

- 3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 **Del.C.** ~~§10002(g)~~ §10002(*l*) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 **Del.C.** ~~§10002(g)~~ §10002(*l*) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

(Break in Continuity of Sections)

6.0 Requests for Confidentiality

(Break in Continuity Within Section)

- 6.7 Final Determination - The Secretary will make a final determination as to whether the information shall be considered public or confidential based upon a review of the information submitted pursuant to this Section. The person making the confidentiality request will be notified in writing of the Secretary's determination.
 - 6.7.1 If the Secretary determines that disclosure of the information would violate 29 **Del.C.** ~~§10002(g)(2)~~ §10002(*l*)(2), the information will be deemed confidential until such time as the basis for a determination of confidentiality changes. It is the responsibility of the person who requested that the information be given confidential status to notify DNREC in writing of such changes.

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

900 Policies and Procedures Regarding FOIA Requests

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

Proposed State Implementation Plan (SIP) Revision to Address the Clean Air Act Section 110 Infrastructure Elements For the 2015 Ozone NAAQS

1. TITLE OF THE REGULATIONS:

Proposed State Implementation Plan (SIP) Revision to Address the Clean Air Act Section 110 Infrastructure Elements For the 2015 Ozone NAAQS.

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

On October 1, 2015, the Environmental Protection Agency (EPA) promulgated a new National Ambient Air Quality Standard (NAAQS) for ground-level ozone at a level of 0.070 parts per million (ppm). Pursuant to sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA), each state is required to submit to the EPA a State Implementation Plan (SIP) to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. This SIP revision fulfills Delaware's requirement relative to the 2015 ozone NAAQS.

3. POSSIBLE TERMS OF THE AGENCY ACTION: None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. Ch. 60, Environmental Control

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL: None

6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, August 22, 2018 beginning at 6:00 PM at the Division of Air Quality's office located at State Street Commons, 100 W. Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to: Mark A. Prettyman, DNREC - Division of Air Quality, State Street Commons, 100 W. Water Street, Suite 6A, Dover, DE 19904. Comments will be accepted through Thursday, September 6, 2018.

7. PREPARED BY:

Mark A. Prettyman - mark.prettyman@state.de.us - 302-739-9402

***Please Note: Due to the size of the SIP and Appendix A, they are not being published here. PDF versions are available at the following locations:**

[DNREC Clean Air Act SIP - Proposed.pdf](#)

[http://regulations.delaware.gov/register/august2018/general/DNREC Clean Air Act SIP - Proposed.pdf](http://regulations.delaware.gov/register/august2018/general/DNREC%20Clean%20Air%20Act%20SIP%20-%20Proposed.pdf)

[Appendix A - Proposed.pdf](#)

[http://regulations.delaware.gov/register/august2018/general/Appendix A - Proposed.pdf](http://regulations.delaware.gov/register/august2018/general/Appendix%20A%20-%20Proposed.pdf)

CALENDAR OF EVENTS/HEARING NOTICES

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Wednesday, August 15, 2018** beginning at **1:30 p.m.** at the West Trenton Volunteer Fire Company, 40 West Upper Ferry Road, Ewing, New Jersey. A business meeting will be held the following month on **Thursday, September 13, 2018** beginning at **10:30 a.m.** at the RiverWinds Community Center, 1000 RiverWinds Drive, Thorofare, New Jersey. The hearing and meeting are open to the public. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203 and pamela.bush@drbc.nj.gov.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, August 16, 2018 at 5:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
CHIP Premium Requirements

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on August 31, 2018. Please identify in the subject line: **CHIP Premium Requirements**.

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
Asset Verification System

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the Asset Verification System, specifically, to identify the contractor selected to implement the system.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on August 31, 2018. Please identify in the subject line: Asset Verification System.

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

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4471 Massage and Bodywork Facilities

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

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

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, September 7, 2018, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4832

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
Purchase of Care Plus

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend the Division of Social Services Manual regarding Purchase of Care Plus, specifically, to clarify program policy and requirements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on August 31, 2018. Please identify in the subject line: Purchase of Care Plus.

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

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF AIR QUALITY****PUBLIC NOTICE****1147 CO₂ Budget Trading Program**

Since 2009 Delaware and nine other states have implemented a regional program to reduce CO₂ emissions; known as the Regional Greenhouse Gas Initiative (RGGI). The Regional Greenhouse Gas Initiative is composed of individual CO₂ Budget Trading Programs in each RGGI participating state. Each participating state's CO₂ Budget Trading Program is based on the RGGI Updated Model Rule, which was developed to provide guidance to states as they implemented the RGGI program. RGGI participating states have been conducting a Program Review, which is a comprehensive evaluation of program successes, program impacts, the potential for additional reductions, imports and emissions leakage, and offsets. In December 2017 Delaware and these other participating states announced revisions to the RGGI program and published an updated Model Rule.

The purpose of this action is to amend 7 **DE Admin. Code** 1147 to reflect these revisions announced by the RGGI participating states in December 2017. The proposed amendments to 1147 will include a reduction in the state's budget to reflect Delaware's portion of a new regional cap beginning in 2021-2030; adding the Emissions Containment Reserve; amending the quantity of allowances in the Cost Containment Reserve, private bank adjustments; deletion of two offset categories and other minor program adjustments.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, August 29, 2018 in the DNREC Auditorium in the Richardson & Robbins Building located at 89 Kings Highway, Dover, DE. If you are unable to attend or wish to submit your comments in advance of the public hearing, please send your comments to the address below or email to valerie.gray@state.de.us. Interested parties may also submit written comments to the Department, to the same address below, up until the end of the comment period, which will extend through September 14, 2018, unless a longer period is designated by the hearing officer at the public hearing.

This hearing will begin at 6:00PM.

DNREC - Division of Air Quality
Subject: 1147 Public Hearing 8/29/18
100 W. Water Street, Suite 6A
Dover, DE 19904

DIVISION OF FISH AND WILDLIFE**PUBLIC NOTICE****3531 Tautog; Size Limits, Creel Limits and Seasons**

The Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 1 to the Interstate Fishery Management Plan for Tautog in October 2017. Amendment 1 provides for the regional management of the tautog resource based on the most recent stock assessment findings. The stock assessment indicated that the Delaware, Maryland and Virginia (DelMarVa) component of the stock is overfished but overfishing is not occurring. The recreational and commercial management measures proposed in this action will improve the stock condition and are required by Amendment 1.

Specifically, Amendment 1 requires that Delaware implement recreational and commercial management measures consisting of a 16-inch minimum size limit, a four fish possession limit and a closed season from May 16 through June 30. In addition, based upon evidence from law enforcement officials that indicated significant illegal sales of tautog, states with commercial tautog fisheries must implement a commercial harvest tagging program by January 1, 2019. Implementation of such a program will require preregistration, harvest tagging and tag reporting and accountability measures to deter the illegal sale of tautog.

Finally, to prevent or reduce mortality from lost commercial fishing gear, Amendment 1 requires certain degradable materials on pot and trap gear from which tautog are retained.

Although the required minimum size limit, possession limit and closed season and are currently in place

through emergency Secretary's Order 2018-F-0035, these measures and the other proposed measures must be promulgated through the full provisions of the Administrative Procedures Act.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3531 Tautog; Size Limits, Creel Limits and Seasons will open Wednesday, August 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on Thursday, August 23, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, September 7, 2018.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

OFFICE OF THE SECRETARY

PUBLIC NOTICE

102 Regulations Governing the Destructive Weapon Compensation Program (DWCP)

The Department of Safety and Homeland Security (DSHS), pursuant to 11 **Del.C.** §1444(f)(1), seeks to adopt regulations that will clarify and provide more detailed information regarding the Destructive Weapon Compensation Program (DWCP), as identified in 11 **Del.C.** §1444(f)(2).

The DSHS will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Department of Safety and Homeland Security Attn: Terry Pepper, Public Safety Building Suite 220, P.O. BOX 818, Dover, Delaware 19903-0818 or e-mail Terry.pepper@state.de.us. Any written submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on August 31, 2018. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

DEPARTMENT OF STATE

DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

PUBLIC NOTICE

901 Historic Preservation Tax Credit Program

The Historic Preservation Tax Credit Act (30 **Del.C.** Ch. 18, Subch. II) was first enacted by the General Assembly in 2001 and was amended in 2002, 2003, 2004, 2005, 2010 and 2014. Program regulations were adopted on July 11, 2002 (6 DE Reg. 108 published 07/01/02), and were amended on July 11, 2004 (8 DE Reg. 194 published 07/01/04), on January 11, 2005 (8 DE Reg. 1031 published 01/01/05), on October 11, 2010 (14 DE Reg. 485, published 11/01/2010) and on September 11, 2014 (18 DE Reg. 237 published 09/01/14). The purpose of these proposed regulatory amendments is to specify under what circumstances a Credit Award would be withdrawn, to establish a time frame during which rehabilitation work may qualify for a Credit Award, and to amend the fee schedule. Clarifications and technical corrections are also made throughout the regulation.

Section 5.5 proposes regulatory revisions that would limit applicants to applying for credits only for rehabilitation work that is proposed; work that has been completed prior to approval of the Part 2 application will now be ineligible for tax credits. A change to Section 4.4 eliminates the exemption for submitting a Part 1 application that had applied to certain applicants.

Sections 5.9, 5.10, and 6.3 propose or clarify circumstances in which an applicant must forfeit or the Delaware State Historic Preservation Officer can withdraw a Credit Award. Section 5.9 also eliminates the conflict between §1816(a) of the promulgating legislation which limits credit awards in any tax year to the amount authorized and §1816(c) which allows for re-assignment of forfeited credits. As forfeited tax credits were rarely available in the tax year in which they were awarded, they are essentially precluded from being awarded to other applicants. In §1815(b)(1) of the promulgating legislation, the State Office is given the power to charge a fee for inspections and other expenses. Section 7.1 proposes altering the timing for submittal of a Request for Credit Award, and subsection 7.2 is deleted as it would be rendered unnecessary by the change in 7.1.

Section 8.1 proposes an increase in the fees being charged for this activity, and indicates how the fees will be collected. Section 8.2 indicates how the State may use the fees collected. In addition, these proposed regulatory amendments modify definitions in Section 3.0 to update legal citations as well as clarify four definitions. Finally, there are minor changes made in sixteen sections of the regulations in order to clarify the regulatory process, particularly the coordination process with the Division of Revenue (Sections 5.1, 5.2, 5.4, 5.5, 5.6, 5.7, 5.9, 5.11, 5.12, 6.1, 6.2, 6.4, 6.5, 6.6, 7.3, and 7.5.). The Historic Preservation Tax Credit Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate a certified historic property.

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Ch. 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider all written comments on the proposed rules and regulations related to implementation of amendments to the Historic Preservation Tax Credit Act. Submit comments to the Division in care of Timothy A. Slavin, Director, Division of Historical and Cultural Affairs, 21 The Green, Dover, DE 19901. The final date to submit comments is September 4, 2018. Anyone wishing to obtain a copy of the proposed amendments to the rules and regulations should notify Timothy A. Slavin at the above address or call 302-736-7400. This notice will be published in two newspapers of general circulation.

DIVISION OF PROFESSIONAL REGULATION
2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to continuing education are proposed to be amended.

A public hearing will be held on September 5, 2018 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address no later than the close of business on September 20, 2018, in accordance with 29 **Del.C.** §10118(a).
