
Delaware Register of Regulations

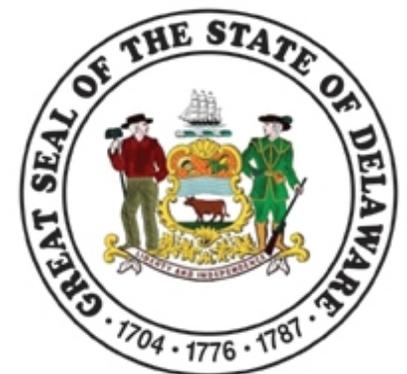
Issue Date: August 1, 2019

Volume 23 - Issue 2, Pages 77 - 136

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Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before July 15, 2019.

Blue Heron Sunrise
cover photo by
Dolores Michels



INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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

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

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

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

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

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

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 16	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 16	4:30 p.m.

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

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

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1103 Instructions for Preparation of Franchise Tax.....	23 DE Reg.	21 (Prop.)
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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

16 **DE Admin. Code** 14110 and 14340

PUBLIC NOTICE

Documentation of State Residency

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 the Division of Social Services Manual (DSSM) regarding state residency documentation requirements, specifically, to align policy with current practice.

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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on September 3, 2019. Please identify in the subject line: Documentation of State Residency.

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 the Division of Social Services Manual (DSSM) regarding state residency documentation requirements, specifically, to align policy with current practice.

Statutory Authority

42 CFR 435.403

Background

Each state must provide Medicaid to eligible residents including residents who are absent from the State. Additionally, evidence of immigration status may not be used to determine that an individual is not a State resident. The proposed amendment incorporates the current residency requirements at 42 Code of Federal Regulations §435.403 into the Delaware Division of Social Services Manual (DSSM).

Summary of Proposal

Effective for services provided on and after October 11, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Division of Social Services Manual (DSSM) sections 14340, 14340.1, 14110.1, 14110.2, 14110.3, 14110.4, 14110.6, 14110.7, 14110.5, 14110.6, 14110.7, 14110.8, 14110.8.1, and 14110.8.2 regarding state residency documentation requirements, specifically, to align policy with current practice.

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 September 3, 2019.

Provider Manuals and Communications Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

There is no anticipated fiscal impact to the agency.

***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/august2019/proposed/23 DE Reg 83RFA 08-01-19.pdf>

14110 State Residency

An applicant or beneficiary must be a Delaware resident.

14110.1 Definitions

The following words and terms, when used in the context of these policies, will have the following meaning unless the context clearly indicates otherwise:

~~“Incapable of Indicating Intent to Reside in Delaware” means one of the following applies to the individual:~~

- ~~a) individual has an I.Q. of 49 or less or has a mental age of 7 or less.~~
- ~~b) individual is judged legally incompetent.~~
- ~~e) individual is found incapable of indicating intent based on medical documentation obtained from physician, psychologist, or other person licensed by the State in the field of mental retardation.~~

Per 42 CFR 435.403(b), “**Institution**” has the same meaning as Institution and Medical Institution as defined in 42 CFR 435.1010. For purposes of state placement, the term also includes foster care homes, licensed as set forth in 45 CFR 1355.20, and providing food, shelter, and services to one or more persons unrelated to the proprietor.

Per 42 CFR 435.403(c), an individual is “Incapable of indicating intent” if the individual –

- a) Has an I.Q. of 49 or less or has a mental age of 7 or less, based on tests acceptable to the Delaware Division of Developmental Disabilities;
- b) Is judged legally incompetent; or
- c) Is found incapable of indicating intent based on medical documentation obtained from a physician, psychologist, or other person licensed by the State in the field of intellectual disability.

14110.2 Placement by State in an Out-Of-State Institution

(42 CFR 435.403 (e))

An individual who is placed in an institution in another State by a Delaware agency including an entity recognized under State law as being under contract with the State for such purposes is considered a Delaware resident. The State arranging or actually making the placement is considered as the individual's State of residence. Any action beyond providing information to the individual and the family constitutes arranging or making a State placement.

14110.3 Actions which do not Constitute State Placement

(42 CFR 435.403 (e))

The following actions do not constitute State placement:

- a. Providing basic information to the individual about another State's Medicaid program and information about the availability of services and facilities in another State.
- b. Assisting an individual in locating an institution in another State, provided the individual is capable of indicating intent and independently decides to move.
- c. A When a competent individual leaves the facility in which he/she is placed by State, the individual's State of residence for Medicaid purposes is the State where the individual is physically located.

14110.4 Lack of Appropriate Facility

(42 CFR 435.403 (e))

Where a placement is initiated by a State because the State lacks a sufficient number of appropriate facilities to provide services to its residents, the State making the placement is the individual's State of residence.

14110.5 [Reserved]

14110.6 Individuals Receiving a State supplementary payment (SSP)

Per 42 CFR 438.403(f)

Individuals of any age who are receiving an SSP, the State of residence is the State paying the SSP.

14110.7 Individuals Receiving Title IV-E Payments

Per 42 CFR 438.403(g)

Individuals of any age who are receiving Federal payments for foster care or adoption assistance under title IV-E of the Social Security Act, the State of residence is the State where the child lives.

~~44110.5~~14110.8 Individuals Under Age 21

42 CFR 435.403(i)

For an individual under age 21 who is not eligible for Medicaid based on receipt of assistance under title IV-E of the Act, as addressed 14110.7 of this section, and is not receiving a State supplementary payment, as addressed in paragraph 14110.6 of this section, the State of residence is as follows:

- a) For an individual who is capable of indicating intent and is married or emancipated from his or her parent, and is not residing in an institution, the State of residence is where the individual is living; and
 - intends to reside including without a fixed address, or
 - has entered the state with a job commitment or seeking employment (whether or not currently employed).
- b) For an individual not described in a) and not living in an institution, the State of residence is:
 - the state where the individual resides including without a fixed address; or

PROPOSED REGULATIONS

- the State of residency of the parent or caretaker, in accordance with 14110.9 of this section, with whom the individual resides.
- c) For an institutionalized individual who is neither married nor emancipated, the State of residence is:
 - the parent's or legal guardian's State of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's);
 - the parent's or legal guardian's current State of residence if the individual is institutionalized in that same State (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's); or
 - the State of residence of the individual who files an application is used if the individual has been abandoned by the parents (including deceased parents) ~~and~~ there is no legal guardian, and is institutionalized in that state.

~~14110.6~~**14100.9** Individuals Age 21 and Over

42 CFR 435.503 (h)

For an individual over age 21 who is not eligible for Medicaid based on receipt of assistance under title IV-E of the Act, as addressed 14110.7 of this section, and is not receiving a State supplementary payment, as addressed in paragraph 14110.6 of this section, the State of residence is as follows:

- a) For an individual not residing in an institution, the State of residence is the state where the individual is living and:
 - intends to reside including without a fixed address; or
 - has entered the state with a job commitment or seeking employment (whether or not currently employed).
- b) For an individual not residing in an institution and who is not capable of stating intent, the State of residence is the state where the individual is living.
- c) For any institutionalized individual who became incapable of indicating intent before age 21, the State of residence is: ~~the parent's or legal guardian's State of residence at the time of placement or if a legal guardian is appointed and parental rights are terminated, the State of residence of the guardian is used.~~
 - That of the parent applying for Medicaid on the individual's behalf, if the parents reside in separate States (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's);
 - The parent's or legal guardian's State of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's); or
 - The current State of residence of the parent or legal guardian who files the application if the individual is institutionalized in that State (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's).
 - The State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have a legal guardian and is institutionalized in that State.
- d) For any institutionalized individual who became incapable of indicating intent at or after age 21, (irrespective of any type of guardianship) the State of residence is the state in which the individual is physically present, except where another state makes a placement.
- e) For any other institutionalized individual, the State of residence is the state where the individual is living and intends to reside.

~~14110.7~~**14110.10** Specific Prohibitions for Denial or Termination of Eligibility

42 CFR 435.403(j); 42 CFR 435.956(c)(2)

Per 42 CFR 435.956(c)(2), Evidence of immigration status may not be used to determine that an individual is not a State resident.

A State cannot deny Medicaid eligibility to otherwise qualified resident of the State because:

~~a) to an otherwise qualified resident of the State because the The individual's residence is not maintained permanently or at a fixed address.~~

~~b) because of a durational residence requirement. The individual has not resided in the State for a specific period of time; or~~

~~c) to an institutionalized individual because the An institutionalized individual did not establish residence in the community prior to admission to an institution.~~

~~d) or terminate a resident's Medicaid eligibility due to temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.~~

~~e) or wait to approve Medicaid eligibility in situations where the individual has moved to Delaware from another State and the Medicaid case is still open in the former State. The individual is no longer a resident of the former State and is ineligible in that State. The case may not be closed yet due to administrative processes.~~

A State cannot terminate Medicaid eligibility for an otherwise qualified resident of the State due to temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.

A State cannot wait to approve Medicaid eligibility in situations where the individual has moved to Delaware from another State and the Medicaid case is still open in the former State. The individual is no longer a resident of the former State and is ineligible in that State. The case may not be closed yet due to administrative processes.

44110.814110.11 Exceptions to General Residency Rules

When one of the following exists, it supersedes the general residency rules:

~~a) An individual receiving a State Supplementary Payment is a resident of the State making the payment.~~

~~b) An individual receiving Federal payments for foster care under title IV E of the Social Security Act, and an individual for whom there is an adoption assistance agreement in effect under title IV E of the Social Security Act, is a resident of the State where the individual is living.~~

~~e) An individual to be placed in an institution in another state is a resident of the State that arranges the placement.~~

~~d)a) When two or more States cannot resolve which State is the State of residence, the State in which the individual is physically located is the State of residence.~~

~~e)b) An institutionalized individual capable of indicating their intent to return home to their principal place of residence is a resident of the State where their principal place of residence is located. When an institutionalized individual is capable of indicating their intent to return home to their principal place of residence located in another state, the individual will not be considered a Delaware resident since their intent is not to remain in Delaware.~~

44110.8.1 Prohibitions

A State cannot deny Medicaid eligibility:

~~a. to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.~~

~~b. because of a durational residence requirement.~~

~~c. to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.~~

~~d. or terminate a resident's Medicaid eligibility due to temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.~~

~~e. or wait to approve Medicaid eligibility in situations where the individual has moved to Delaware from another State and the Medicaid case is still open in the former State. The individual is no longer a resident of the former State and is ineligible in that State. The case may not be closed yet due to administrative processes.~~

44110.8.2 Exceptions

~~When one of the following exists, it supersedes the general residency policy.~~

a. ~~Exception for individuals receiving a State Supplementary Payment, the State of residence is the State making the payment.~~

b. ~~Exception for individuals of any age who are receiving Federal payments for foster care under title IV-E of the Social Security Act, and individuals for whom there is an adoption assistance agreement in effect under title IV-E, the State of residence is the State where the individual is living.~~

c. ~~Exception where a State or agency of the State, including an entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.~~

d. ~~Exception when residency is disputed—When two or more States cannot resolve which State is the State of residence, the State in which the individual is physically located is the State of residence.~~

e. ~~Exception when an institutionalized individual is capable of indicating their intent to return home to their principal place of residence located in another state, the individual will not be considered a Delaware resident since their intent is not to remain in Delaware.~~

~~14340 Ineligible Aliens~~

~~Some aliens may be lawfully admitted to the U.S. as a nonimmigrant for a temporary or specified period of time. These aliens are not eligible for Medicaid because of the temporary nature of their admission status. An ineligible alien is not eligible for emergency services and labor and delivery only. A U.S. born child of an ineligible alien is also not eligible for Medicaid.~~

~~The following categories of individuals are ineligible aliens:~~

- ~~- Foreign students~~
- ~~- Visitors for business or pleasure, including exchange visitors~~
- ~~- Temporary workers including agricultural contract workers~~
- ~~- Foreign government representatives on official business and their families and servants~~
- ~~- Aliens in travel status while traveling directly through the U.S.~~
- ~~- Crewmen on shore leave~~
- ~~- Treaty traders and investors and their families~~
- ~~- Members of foreign press, radio, film, or other information media and their families~~

~~Ineligible aliens may present the following documentation:~~

- ~~- Form I-94 Arrival-Departure Record with codes other than those listed for qualified aliens, such as a nonimmigrant code~~
- ~~- Form I-185 Canadian Border Crossing Card~~
- ~~- Form I-186 Mexican Border Crossing Card~~
- ~~- Form I-95A Crewman's Landing Permit~~

~~14340.1 Medicaid Eligibility for Certain Ineligible Aliens~~

~~In some cases, an alien in a currently valid nonimmigrant classification may meet state residency requirements. The alien may possess valid employment authorization documents such as Form I-688B or Form I-766.~~

~~In these cases, the nonimmigrant may be eligible for emergency services and labor and delivery only. Ineligible aliens are not eligible for any long term care Medicaid program. A U.S. born child of one of these aliens may be eligible for full Medicaid.~~

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 7406 (16 **Del.C.** §7406)
16 **DE Admin. Code** 4465

PUBLIC NOTICE

4465 Delaware Radiation Control Regulations

Pursuant to 16 **Del.C.** §7406, the Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Radiation Control. On August 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the Radiation Control regulations. The revisions include an amendment to the definition of “Licensed Practitioner” and modified sections in Part F, Sections 5.13.13 and 5.14.1 to ensure that the definition of a Licensed Practitioner for purposes of the radiation control regulations would not in any way restrict the authority of an APRN with respect to radiologic procedures.

Copies of the proposed regulations are available for review in the August 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Tuesday, September 3, 2019, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

*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/august2019/proposed/23 DE Reg 89RFA 08-01-19.pdf](http://regulations.delaware.gov/register/august2019/proposed/23%20DE%20Reg%2089RFA%2008-01-19.pdf)

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

[4465 Delaware Radiation Control Regulations](#)

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Sections 512 and 518 (31 **Del.C.** §§512 & 518)
16 **DE Admin. Code** 3012

PUBLIC NOTICE

TANF CMR School Attendance Requirement

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Temporary Assistance for Needy Families (TANF), specifically, to update policy regarding the school attendance element of the Contract of Mutual Responsibility (CMR).

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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on September 3, 2019. Please identify in the subject line: TANF CMR School Attendance Requirement.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual regarding TANF, specifically, to update policy regarding the school attendance element of the Contract of Mutual Responsibility (CMR).

Statutory Authority

- Social Security Act, Title IV, Part A
- CFR, Title 45, Subtitle B, Chapter II
- 31 Del.C. §512
- 31 Del.C. §518

Background

The Temporary Assistance for Needy Families (TANF) Contract of Mutual Responsibility (CMR) is an agreement between the TANF client and the Division of Social Services that sets obligations and expectations for helping the TANF household achieve self-sufficiency. The CMR lists the responsibilities of the family and the supports the State will provide. The family's responsibilities include, but are not limited to: employment-related activities, school attendance and immunization requirements for children, family planning, parenting education classes, and substance abuse treatment requirements.

Summary of Proposal

Purpose

The proposed rule includes a new section on TANF bonus payments for specific school milestones and incorporates CMR sanction guidelines.

Summary of Proposed Changes

Effective for services provided on and after October 11, 2019, Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual sections 3012 and 3012.1 regarding TANF, specifically, to update policy regarding the school attendance element of the Contract of Mutual Responsibility (CMR).

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/Division of Social Services (DHSS/DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on September 3, 2019.

Fiscal Impact

The policy is currently in place and there are no new financial responsibilities.

***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/august2019/proposed/23 DE Reg 89aRFA 08-01-19.pdf>

AMENDED

POLICY – AMENDMENT

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

3012 Requiring Satisfactory School Attendance Requirements

~~School attendance requirements exist for both adults and children. Children are expected to maintain satisfactory school attendance. Acceptable school attendance will be defined by the individual school. If the school does not define what is acceptable, use an 85% attendance rate.~~

~~Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. These penalties will differ depending upon whether a child is under the age of 16 or is 16 or over.~~

Ensuring TANF children maintain satisfactory school attendance is a required CMR element for all TANF clients.

1. School attendance requirements exist for both TANF adults and children.

- A. TANF adults are required to cooperate with school officials and other service providers when necessary to help their children maintain satisfactory school attendance.
- B. TANF children are required to maintain satisfactory school attendance as defined by their individual schools or at an 85% attendance rate.

2. TANF clients will receive one-time bonus payments when their children achieve specific school milestones.

- A. DSS will issue a one-time bonus payment for TANF children who graduate from high school by age 19. This bonus payment will be paid directly to the high school graduate.
- B. DSS case workers must disregard the bonus payment as income for TANF and Food Benefit cases.

3. Failure to comply (without good cause) with the school attendance element in the CMR will result in a sanction to the TANF case.

- A. For children under 16 years old:
 - i. The sanction will be an initial \$50.00 reduction in the household's TANF benefit amount if the TANF adult does not comply with the school or other service providers to ensure the child's satisfactory school attendance.
 - ii. This reduction increases each month by \$50.00 until there is compliance or the TANF case is closed.
 - iii. If the child does not comply, a sanction will not be imposed if the TANF adult is complying with the school or other service providers.
- B. For children over 16 years old:
 - i. If the child does not comply, the child is removed from the TANF grant and the household size is reduced.
- C. The client will receive written notification of compliance requirements.

PROPOSED REGULATIONS

- D. The sanction will end when DSS receives proof that TANF clients are complying with the school attendance element.
- i. The TANF adult must comply with the school or other service providers for four consecutive weeks for the sanction to end.
 - ii. TANF children over 16 years old must return to school, participate in employment and training, or work for four consecutive weeks for the sanction to end.

AMENDED

POLICY – AMENDMENT

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

~~3012.1 Sanctions and Cures for Unsatisfactory School Attendance~~

~~CHILDREN UNDER 16 YEARS OLD~~

~~The fiscal sanction for noncompliance, without good cause, with school attendance (including dropping out of school) or alternative participation requirements will be:~~

~~A \$50.00 reduction in the TANF grant each month if the parent does not work with the teen and the school to ensure school attendance. If the parent works with the school and the teen still does not comply with the requirement the sanction is removed.~~

~~CHILDREN AGE 16 AND OLDER, INCLUDING TEEN PARENTS WHO ARE DEPENDENT CHILDREN OR HEAD OF HOUSEHOLD~~

~~The fiscal sanction for noncompliance, without good cause, with school attendance, including dropping out of school, or alternative participation requirements will be:~~

~~The removal of the child from the grant and the subsequent reduction in household size.~~

~~To cure the sanction teens over 16 must first serve a full month sanction and either return to school, work, or participate in employment and training for four consecutive weeks whichever is longest.~~

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Sections 503(c),(d) and 512 (31 **Del.C.** §§503(c),(d) & 512)

16 **DE Admin. Code** 4006

PUBLIC NOTICE

TANF and GA Eligibility - Excluded Income

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Temporary Assistance for Needy Families (TANF) and General Assistance (GA), specifically, to revise eligibility policy related to excluded income.

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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on September 3, 2019. Please identify in the subject line: TANF and GA Eligibility – Excluded Income.

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

Background

Temporary Assistance for Needy Families (TANF) is a program that provides cash assistance and supportive services to assist families with children under age 18, helping them achieve economic self-sufficiency.

General Assistance (GA) is a state-funded program designed to provide cash assistance to low-income people who do not qualify for federally funded programs, such as TANF or Social Security benefits.

There are income and resource limits that apply to both TANF and GA. Some income may be excluded when determining financial eligibility and benefit amounts for TANF and GA.

Purpose

To improve the formatting and to list all types of excluded income in one policy.

Statutory Authority

- Social Security Act, Title IV, Part A
- CFR, Title 45, Subtitle B, Chapter II
- 31 Del.C. §503(c),(d)
- 31 Del.C. §512

Summary of Proposal

Summary of Proposed Changes

Effective for services provided on and after October 11, 2019, Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual sections 4006, 4006.1 and 4006.2 regarding TANF and GA, specifically, to revise eligibility policy related to excluded income.

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/Division of Social Services (DHSS/DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on September 3, 2019.

Fiscal Impact

The policy is currently in place and there are no new financial responsibilities.

***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/august2019/proposed/23 DE Reg 92RFA 08-01-19.pdf>

POLICY – AMENDMENT

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

4006 Excluded Excluding Income in TANF and GA Eligibility Determinations

45 CFR 233.20(a)

PROPOSED REGULATIONS

The following kinds of income are disregarded in DSS disregards the types of income listed in this policy when determining financial eligibility and grant amounts in for TANF and GA: GA.

- The value of USDA donated foods.
- The value of food benefits.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.

- A one-time bonus payment of \$50.00 will be paid from Temporary Assistance for Needy Family funds to teens who graduate from high school by age 19. This bonus will be paid directly to the high school graduate. Disregard as income and resource the bonus payment, for TANF and Food Benefit purposes.
- A cash payment made to the TANF unit responsible for household bills by a non-unit member for his or her share of the common household expenses.
- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:
 1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.
 2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:
 - a. Borrower's acknowledgement of obligation to repay; or
 - b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or
 - c. A written statement detailing borrower's plans to repay the loan when future anticipated income is received.
- Money received in the form of a non-recurring lump sum payment is to be counted as a resource in the month received unless specifically excluded from consideration as a resource by other Federal law or regulations.
- Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Incentive payments or reimbursement for training-related expenses derived from participation in Institutional and Work Experience Training or special work projects.
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.
- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked are equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.
- Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

- Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I. of P.L. 100-383.

- Restitution made by any Aleut who was relocated by authority of the United States from his or her home-village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100-383.
 - Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E. D. N. Y.).
 - Payments of supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.
 - Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203.
 - Payments of Experimental Housing Allowance Program made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended.
 - Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of P.L. 94-114.
 - Housing subsidies provided under Section 8 of the U.S. Housing Act.
 - Benefits paid to eligible households under the Home Energy Assistance Act of 1980.
 - Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:
 - Kingswood Community Center
 - Peoples' Settlement Association
 - Catholic Social Services, Inc.
 - Neighborhood House, Inc.
 - Community Housing, Inc.
 - Jewish Family Service of Delaware
 - Salvation Army
 - Community Action (Sussex County)
 - Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
 - For the TANF program: All federal tax refunds.
 - Earned income tax credits (EITC).
 - Income received from the Census Bureau April 01, 2000 through December 31, 2000.
1. **The value of U.S. Department of Agriculture (USDA) donated foods.**
 2. **The value of Supplement Nutrition Assistance Program (SNAP) food benefits.**
 3. **Foster care payments made to the foster family for foster children residing in the home.**
 4. **Supplemental Security Income (SSI) recipient's income and resources, including the SSI payment.**
 5. **Third-party payments made on behalf of a client.**
 6. **TANF program high school graduation bonus payments.**
 7. **Contributions for shared living expenses by a non-unit member.**
 8. **Any loans that must be repaid.**

PROPOSED REGULATIONS

9. Earnings of a minor student who is in the assistance unit, including 18-year-old students for whom an adult is receiving a grant.
10. Non-recurring lump sum payments.
 - A. A non-recurring lump sum payment is a resource in the month received unless specifically excluded as a resource by other federal laws or regulations.
11. Incentive payments or reimbursements for training-related expenses from participation in institutional and work experience training or special work projects.
12. Benefits from nutrition programs for the elderly or the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).
13. AmeriCorps VISTA program payments.
 - A. The AmeriCorps VISTA program payment is not excluded if the payment value is equal to or greater than the Fair Labor Standards Act's current minimum wage for the hours worked. In that case, the income is treated as earned income. Disregards applicable to the category of assistance are deducted from the payment.
14. Temporary part-time U.S. Census Bureau employment income received during the census period.
15. Disaster and emergency assistance provided by federal, state, and local governments and disaster assistance organizations under P.L. 100-707.
16. Earned income tax credits (EITC).
17. All federal tax refunds (TANF only).
18. Assistance from other agencies and organizations provided that no duplication in assistance exists between the other agency and DSS.
 - A. To assure that non-duplication exists, case workers will determine that the assistance from the other agency is for a different purpose. For example, vocational rehabilitation provides cash allowances to reimburse clients for costs such as transportation related to their participation in a training program.
19. Supportive services payments or reimbursements for out-of-pocket expenses made to foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 under P.L. 93-113.
20. Need-based home energy assistance.
21. Experimental Housing Allowance Program payments made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act as amended.
22. Benefits paid to eligible households under the Low-Income Home Energy Assistance Act.

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23. Housing subsidies under Section 8 of the U.S. Housing Act.
24. Receipts distributed to members of certain Indian tribes, which are referred to in Section 5 under P.L. 94-114.
25. Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act under P.L. 92-203.
26. Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y. 1984).
27. Payments distributed per capita to or held in trust for members of any Indian tribe under P.L. 92-254, P.L. 93-134, or P.L. 94-540.
28. Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I. under P.L. 100-383.
29. Restitution made to any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II under P.L. 100-383.
30. Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.
31. Financial assistance received from school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, educational loans, other loans that are expected to be repaid, and other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses (TANF only).
32. Grants, loans, and earnings from federally financed college work study to undergraduate students for educational purposes that are made or insured by programs administered by the U.S. Commissions of Education (GA only).
- A. For other grants, loans, or unearned income that are contingent upon attending a school, college, university, or course of vocational training, the amount that is available for current living expenses is counted as income for GA. To determine the amount that is available for current living expenses:
- Subtract the expenses for tuition, books, fees, equipment, special clothing needs, transportation to and from school, and child care necessary to attend school from the amount of the loan, grant, or other benefit;
 - Divide the balance by the number of months the amount available for living expenses is intended to cover to determine the countable monthly income.
- B. When a student's financial aid package includes both loans and grants that are completely disregarded and those that are countable after expenses are deducted, determine countable income for GA as follows:
- Compare the expenses to the disregarded loans or grants;
 - If the expenses are less than or equal to the disregarded funds, all other grants and loans are budgeted as unearned income.

POLICY – AMENDMENT

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

~~4006.1 Excluded Income – Grants and Loans to Students~~

~~Grants, Loans and Scholarships~~

~~Do not count Financial Assistance received from school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, educational loans, and other loans that are expected to be repaid as income for Temporary Assistance for Needy Families program purposes. Also exclude from TANF other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses. Continue to require documentation to verify the assistance received and its purpose.~~

POLICY – AMENDMENT

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

~~4006.2 Excluded income – grants and loans to students – General Assistance~~

~~Grants and loans to undergraduate students for educational purposes that are made or insured by programs administered by the United States Commissions of Education are disregarded. These include Basic Educational Opportunity Grants (BEOG), Supplemental Education Opportunity Educational Grants (SEOG), National Direct Student Loans (NDSL), Guaranteed Student Loans (GSL), all funds provided under the National Defense Education Act, and earnings from federally financed college work study.~~

~~For other grants, loans, or unearned income that is contingent upon attending a school, college, university, or course of vocational training, that part that is available for current living expenses is counted as income. To determine the amount that is available, subtract expenses for tuition, books, fees, equipment, special clothing needs, transportation to and from school, and child care necessary to attend school from the amount of the loan, grant, or other benefit. Divide the balance by the number of months the income is intended to cover to determine budgetable monthly income.~~

~~NOTE: When a student's financial aid package includes both loans and grants that are completely disregarded and those that are countable after expenses are deducted, determine countable income as follows:~~

- ~~1. Compare expenses to disregarded loans or grants.~~
- ~~2. If expenses are less than or equal to disregarded funds, all other grants and loans are budgeted as unearned income.~~

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

POC - Determining and Reviewing Child Care

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Purchase of Care (POC), specifically, to align policy with Federal 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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on September 3, 2019. Please identify in the subject line: POC - Determining and Reviewing Child Care.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual regarding Purchase of Care (POC), specifically, to align policy with Federal requirements.

Statutory Authority

45 CFR 98.21 (b)(2)

Background

On Nov. 19, 2014, President Barack Obama signed into law the Child Care and Development Block Grant (CCDBG) which is a comprehensive reauthorization with new requirements. The amended version of DSSM 11004.11, Determining and Reviewing Child Care, includes several of the new requirements mandated by CCDBG. The revised policy outlines the requirement for 12-month authorizations for eligible families, the prohibition from increasing copayments during the eligibility period, and the requirement to authorize an additional 90 days of child care in the event of a loss of need for assistance during the eligibility period. The revised policy also includes case processing guidance for DSS eligibility staff.

Summary of Proposal

Summary of Proposed Changes

Effective for services provided on and after October 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend section 11004.11 of the Division of Social Service Manual regarding Purchase of Care (POC), specifically, to align policy with Federal 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/Division of Social Services (DHSS/DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on September 3, 2019.

Fiscal Impact

The policy amendment will have no fiscal impact since the purpose is to revise the requirements of the program.

***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/august2019/proposed/23 DE Reg 98RFA 08-01-19.pdf>

AMENDED

POLICY – AMENDMENT

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

11004.11 ~~Review/Determination~~ Determining and Reviewing Child Care~~45-CFR 98.145~~ 45 CFR 98.21 (b)(2)

All ~~childcare applicants and recipients are continuously eligible for child care services for twelve months. This means that the applicants and recipients remain eligible for child care services unless:~~

- ~~A. The child moves out of or is removed from the parent's/caretaker's home, or~~
- ~~B. The child moves out of state, or~~
- ~~C. The child is deceased.~~

~~In the event of any of the above, close the child care case.~~

~~Additionally, the child care parent fee will not change during the authorization unless the parent/caretaker in a single parent home loses his or her job or one or both parents in a two parent home loses his or her job. (See DSSM 11004.12.1 Continuing Child Care after Loss of Need.)~~

~~Complete a review/redetermination of the circumstances of each parent/caretaker at least once every twelve months and just prior to the end of each authorization period.~~

~~Close the child care case if parents/caretakers fail to complete a review or return the six month interim report (See DSSM 9068.1 12-Month Certification Periods). Only child care/food benefit cases will require an interim report. If the parents/caretakers provide good cause for their failure to complete or return the report, the case should be processed.~~

~~Good cause can be anything believed to be reasonable, but generally includes things such as:~~

- ~~1. Illness;~~
- ~~2. Court required appearance;~~
- ~~3. Household emergency (fire, heating problem, family crisis, etc.);~~
- ~~4. Lack of transportation; or~~
- ~~5. Inclement weather.~~

~~Parents/caretakers whose child care cases close because they failed to complete a redetermination or provide verification, can reapply for service. However, if DSS is in a "wait list" situation, these parents/caretakers will be subject to DSS' priority service order (see Section 11004.3.1 Prioritizing Service Needs).~~

~~Do not allow an authorization to end or close a case without first ensuring the parents/caretakers were given timely and adequate notice.~~

All recipients of child care assistance are continuously eligible for 12 months of child care services as outlined in this policy.

1. **DSS must complete an interview with the client at application and redetermination as part of the child care eligibility process. The client can complete the interview with DSS in person or by telephone.**
2. **DSS must authorize 12 months of child care services for every eligible child.**
3. **DSS case workers must complete Form 636 “Child Care Checklist” when adding an additional child to an open, on-going child care case.**
4. **The child care copayment:**
 - Must decrease when a decrease in the family’s income is reported; and
 - Must not increase beyond the initial copayment amount during the authorization period.

Note: If a family’s income decreases during the child care authorization period and then increases, the adjusted copayment cannot exceed the original copayment amount.

5. **If a family has a loss of need for child care services during the authorization period, DSS must authorize the family for 90 days of continuing care before the child care case is closed (see DSSM 11004.12.1). If the family regains a need for child care services before the 90 days ends, the family will remain eligible and authorized for child care until their next review.**
6. **DSS will close a child care case at any time during the authorization period for the following reasons (see DSSM 11004.12):**
 - Excessive unexplained absences of the child from the child care site;
 - A permanent change in the child’s state residency;
 - The family’s income exceeding 85% of the state median income (SMI);
 - Substantiated fraud or intentional program violations;
 - A written request to close the case or to authorize child care for a specific length of time; or
 - The death of the case head or of the authorized child.
7. **DSS case workers must redetermine the eligibility of a child care case prior to the end of the authorization period.**
8. **A client must show good cause for not returning a redetermination application timely to avoid the closure of the child care case. Good cause can be anything believed to be reasonable, but generally includes things such as:**
 - An illness;
 - A court required appearance;
 - A household emergency (e.g., fire, heating problem, family crisis, etc.);
 - A lack of transportation;
 - A domestic violence situation; or
 - Inclement weather.
9. **A family whose child care case closed due to failure to complete a redetermination or provide verification may reapply for service. If DSS is using a wait list for child care assistance, the family will be subject to the DSS priority service order (see DSSM 11004.3.1).**

- 10. DSS must not end a child care authorization or close a child care case without providing the family with at least a 10-day notice.**

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 314 (18 Del.C. §314)
18 DE Admin. Code 1101

PUBLIC NOTICE

1101 Listed Surplus Lines Carriers Intending to Establish an Office in Delaware

A. Type of Regulatory Action Required

Repeal of Existing Regulation.

B. Synopsis of Subject Matter of the Regulation

Chapter 18 of the Delaware Administrative Code at Regulation 1101 sets forth regulations that are applicable to all surplus lines insurers who wish to establish offices in the State of Delaware.

Prior to the surplus lines laws being amended to adopt the Nonadmitted and Reinsurance Reform Act in 2011, there was a provision in Chapter 19 that allowed an eligible surplus lines insurer to maintain a Delaware office in accordance with rules and regulations established by the Commissioner (prior Section 1907(c)). In accordance with former Section 1907(c), Regulation 1101 was promulgated to set forth requirements for maintaining an office in Delaware.

Since Chapter 19 was amended and former Section 1907 was removed, Regulation 1101 is outdated and should be rescinded. Since this is the only Regulation in Chapter 11 of Title 18 of the Administrative Code, the Department is also deleting the title and replacing it with the word "Reserved."

The Department does not plan to hold a public hearing on the proposed repeal of Regulation 1101. The regulation proposed for repeal appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed repeal of the regulation. Any written submission in response to this notice and relevant to the proposed repeal must be received by the Department of Insurance no later than 4:30 p.m. EST, the 3rd day, September, 2019. Any such requests should be directed to:

Leslie W. Ledogar, Esq., Regulatory Specialist
Delaware Department of Insurance
1351 West North Street, Suite 101
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@delaware.gov

***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/august2019/proposed/23 DE Reg 102RFA 08-01-19.pdf>

1100 Reserved

~~1101 Listed Surplus Lines Carriers Intending to Establish an Office in Delaware~~

4.0 Authority and scope

Pursuant to 18 ~~Del.C.~~ §314, the following rules and regulations are hereby promulgated and adopted. They are applicable to all surplus lines insurers who wish to establish offices in this State.

- 2.0 No surplus lines insurer may maintain an office in Delaware pursuant to 18 Del.C. §1907(c) until:**
- 2.1 ~~The insurer is declared eligible to write surplus lines coverages in Delaware pursuant to 18 Del.C. §1907(b); and~~
 - 2.2 ~~The insurer has been authorized by the Commissioner to establish a Delaware office.~~
 - 2.3 ~~An eligible surplus lines insurer desiring to establish an office in Delaware shall apply to the Commissioner for authorization. In the application, the insurer shall:~~
 - 2.3.1 ~~State the address of the Delaware office and the name and residence address of the person regularly in charge of that office.~~
 - 2.3.2 ~~Specify whether the insurer's business at the Delaware office is to be managed by an independent agent or other person not directly employed by the insurer, and if so, the insurer shall state the name and address of the managing agent, and summarize the salient terms of the management agreement.~~
 - 2.3.3 ~~Describe the surplus lines coverages proposed to be offered through the Delaware office, including kinds or types of coverage or risks, and the limits of liability to be assumed under each.~~
 - 2.3.4 ~~State the ratio to be maintained between premium writings and the value of the trust funds established by the insurer for the benefit of its United States policyholders.~~
 - 2.3.5 ~~Certify that the insurer will issue insurance coverage to the public only through duly licensed surplus lines brokers in accordance with the surplus lines laws and regulations of this State, and the applicable laws and regulations of other states where the insurer may lawfully do business on a surplus lines basis.~~
 - 2.3.6 ~~Agree to maintain books and records at the Delaware office which accurately reflect all business affairs conducted at that office.~~
 - 2.3.7 ~~Authorize the Commissioner to inspect the books, records, and affairs of the insurer as often as the Commissioner reasonably deems advisable in order to determine the nature and extent of business conducted by the insurer at its Delaware office.~~
 - 2.4 ~~Upon receipt of notice that the Commissioner does not object to the application, the insurer may establish a Delaware office. However, the insurer shall not operate the office for any purpose until it deposits not less than \$50,000.00 with the Commissioner (in registered bonds, or funds in other form satisfactory to the Commissioner) for the benefit of its policyholders and creditors.~~
 - 2.5 ~~Within sixty days after end of its fiscal year, every insurer maintaining a Delaware office pursuant to 18 Del.C. §1907(c) shall submit a report summarizing the nature and extent of business conducted during the past year by the Delaware office, and the nature and extent of business proposed to be conducted by that office during the ensuing year. In a separate section denominated "Changes," the report must specify any change or proposed change in method of operation which departs from the representations made in the application to establish the Delaware office.~~
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PROPOSED REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES****TANK MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code, Sections 7406, 7407 and 7408 (7 Del.C. §§7406, 7407 & 7408)

7 DE Admin. Code 1351

**REGISTER NOTICE
SAN #2016-10****1351 Underground Storage Tank Systems****1. TITLE OF THE REGULATIONS:**

Administrative Code Section 1351, Underground Storage Tank Systems

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

The proposed regulations reflect regulatory changes promulgated at the federal level as well as advances in UST system technologies. The State of Delaware regulations must be at least as stringent as the federal regulations under the requirements of 40 CFR 281, State Program Approval. The proposed regulatory requirements will clarify and improve installation, operation and maintenance, release detection and remedial requirements.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date related to the proposed regulations.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

The statutory basis for these regulations is Title 7 Delaware Code Chapter 74, Section 7406, 7407, and 7408.

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

The Division of Air Quality is revising 7 DE Admin. Code 1124 Section 26 and Section 36 that regulate vapor recovery systems associated with gasoline dispensing facilities.

6. NOTICE OF PUBLIC COMMENT:

Two workshops were held on April 16 on the proposed amendments to 7 DE Admin. Code 1351 Regulations for Underground Storage Tank Systems. All questions were answered at the workshops; however formal public comments were accepted at the workshops and on April 17, 2019. Upon considering the comments that were submitted, the Department has made no substantive changes to the proposed amendments, and has scheduled a public hearing set for August 27, 2019 beginning at 6:00 PM in the Pat Ellis conference room at the Division of Waste and Hazardous Substances office at 391 Lukens Drive in New Castle. Written comments may be submitted at the hearing and up to September 11, 2019. Individuals desiring to provide comment may submit written comments regarding the proposed changes via email to Lisa.Vest@delaware.gov or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

7. PREPARED BY:

Name/Phone: Eileen Butler, 302-395-2500

Email: Eileen.Butler@delaware.gov

***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/august2019/proposed/23 DE Reg 104RFA 08-01-19.pdf>

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

1351 Underground Storage Tank Systems

DEPARTMENT OF STATE DIVISION OF CORPORATIONS

Statutory Authority: 29 Delaware Code, Sections 8703 and 8704 (29 Del.C. §§8703 & 8704)

PUBLIC NOTICE

102 Business Entity Name Standards and Procedures

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 29 Del.C. §§8703, 8704, the Delaware Department of State, Division of Corporations, proposes to introduce regulations governing business entity name standards and procedures.

In accordance with 29 Del.C. §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Kristopher Knight
Deputy Secretary of State
Department of State
820 N. French St., 4th Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to dos_corpregs@state.de.us. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Department of State no later than 4:30 p.m. EST, Friday, September 6, 2019.

The action concerning determination of whether to adopt the proposed regulations will be based upon the results of Department analysis and the consideration of the written comments and any other written materials filed by the public.

Background

The State of Delaware is the premiere home to more than one million business entities globally that take advantage of Delaware's complete package of business organization services, including modern and flexible business organization laws, a highly-respected Judiciary and legal community, a business-friendly government, and a highly-professional, customer service oriented staff. Keeping with its cutting-edge and unique position in the business world, the Division reviewed and decided to update its policies and practices pertaining to business names in filings submitted to the Division for its acceptance, on behalf of business entities.

In order to establish uniform expectations for business entities with respect to filings with the Division of Corporations, the Department has proposed these regulations to communicate to the public and business entities how these issues will be administered in the Department of State.

Summary of Proposal

The purpose of this notice is to advise the public that the Department of State proposes to promulgate rules and regulations to publicly establish the standards and procedures with respect to business entity names and filings submitted to the Department of State, Division of Corporations. The regulations provide a public framework to ensure that business entities understand the standards regarding entity names and the procedures followed within the Division of Corporations for entity names. The proposed regulations are to be implemented consistently, so as to ensure fair and uniform treatment of filings submitted to the Division of Corporations on behalf of entities.

*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/august2019/proposed/23 DE Reg 105RFA 08-01-19.pdf>

102 Business Entity Name Standards and Process

1.0 Enabling Legislation

- 1.1 29 Del.C. §§8703, 8704 enable the Secretary of State and the Division of Corporations to establish regulations in relation to all powers, duties and functions vested pursuant to the regulation of business organizations registered in Delaware, including but not limited to Titles 6 and 8 of the Delaware Code.
- 1.2 The Division has the power to perform and shall be responsible for the performance of all the powers, duties and functions vested in the Secretary of State pursuant to Titles 6 and 8. 29 Del.C. §8704. Such vested powers, duties, and functions include regulating the administration and operation of the Division as well as filings submitted to and accepted by the Division, for the creation and regulation of business organizations in Delaware. 8 Del.C. Ch. 1; 6 Del.C. Chs. 15, 17 and 18. As such, the Division is authorized to promulgate regulations for the administration and operation of the Division as well as for the regulation of corporations and other business entities in this State.

2.0 Purpose

- 2.1 The purpose of this regulation is to update and clarify the standards in Delaware regarding the names of businesses, while, in a narrowly-tailored fashion, preventing the naming of a business likely to violate the law, mislead the public or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or Delaware.
- 2.2 The Division expressly determines that it's Delaware Corporate Information System ("DCIS"), which is the State's computerized, online system for business organization filings, to be a non-public forum and not a platform for the exercise of legal rights. This regulation outlines the standards for entity names and the process of review, which carefully and narrowly tailors any alleged infringement on statutory requirements, public policies, or the rights of others, against the interests of the public and Delaware, including Delaware's interest in its reputation and brand in the global business world.

3.0 Definitions

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

"Business Entity" means any person, partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership), association, corporation, company, single or jointly with others, organized or to be organized under the Delaware Code and filing or will file the requirement documents with the Division of Corporations in the Department of State.

"Corporation" means an entity that is organized or incorporated in accordance with the Delaware Code and as expressly set forth at Title 8 of the Delaware Code.

"Department" means the Delaware Department of State.

"Division" means the Division of Corporations, Delaware Department of State.

"Limited Liability Company" means an entity that is organized or created in accordance with the requirements of a "limited liability company" or a "series" as set forth in the Delaware and as expressly defined at 6 Del.C. §18-101, as amended.

"Limited Partnership" means an entity that is organized or created in accordance with the requirements of a "limited liability partnership" as set forth in the Delaware Code and as expressly defined at 6 Del.C. §17-101, as amended.

"Partnership" means an entity that is organized or created in accordance with the requirements of a "partnership" as set forth in the Delaware Code at 6 Del.C. §15-202, as amended.

“Secretary” means the Secretary of the Delaware Department of State.

“Trust” means a statutory trust as set forth in the Delaware Code and as expressly defined in 12 Del.C. Ch. 38, as amended.

4.0 Standards

- 4.1 After receipt of a request to reserve a business name or to accept a filing submitted on behalf of an existing Delaware (or out of state) business entity, the Division will review the proposed name of the business entity, subject to any right of refusal by the Division, to ensure it meets the following standards:
- 4.1.1 Does not contain words that discriminate against, disparage, or denigrate any of the protected classes, as provided under Federal Law (including the U.S. Civil Rights Act of 1964, as amended), to include but not limited to race, color, religion, sex including pregnancy, sexual orientation, national origin, disability, age (40 years or older), marital status or genetic information;
 - 4.1.2 Does not contain words that could facilitate, incite or foster any criminal act or offense as prohibited under Delaware law, as amended, to include but not be limited to those set forth in Title 11 of the Delaware Code:
 - 4.1.2.1 Acts of terrorism, terroristic threatening or offensive touching (11 Del.C. Ch. 5);
 - 4.1.2.2 Endanger the life or physical safety of an individual or threatening public safety (11 Del.C. Ch. 5);
 - 4.1.2.3 Hate Crimes, Stalking, Cyberstalking, Bullying or Cyberbullying (11 Del.C. Ch. 5);
 - 4.1.2.4 Narcotic drug, opioid or controlled substances (16 Del.C. Ch. 47) (Example: “Opioids-R-Us”);
 - 4.1.2.5 Fraud (6 Del.C. Subtitle II, 11 Del.C. Ch. 5);
 - 4.1.2.6 Deadly weapon or dangerous instrument (11 Del.C. Ch. 5); or
 - 4.1.2.7 Obscene or libelous language (11 Del.C. Ch. 5).
 - 4.1.3 Does not contain words that could cause potential public deception or confusion or difficulty in administration (Example: five-hundred-letter entity name);
 - 4.1.4 Does not contain words likely to mislead the public about the nature of the business entity (8 Del.C. §102; 6 Del.C. §18-102); or
 - 4.1.5 Does not contain words likely to lead to a pattern and practice of abuse that might cause harm to the interests of the public or Delaware (8 Del.C. §102; 6 Del.C. §18-102).

5.0 Application

This regulation shall not be interpreted or applied by the Division in any manner that conflicts with existing statutory provisions in the Delaware Code regulating the inclusion of the term “bank” or “trust” in a corporate (or other legal entity) name. 8 Del.C. §102(a); 8 Del.C. §395.

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4504 (21 Del.C. §4504)
2 DE Admin. Code 2405

PUBLIC NOTICE

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual

Pursuant to the authority provided by 21 Del.C. §4504, the Delaware Department of Transportation (DelDOT), on behalf of the Delaware Transit Corporation, gives notice of the intent to revise Regulation 2405 to adopt permits and fees for governmentally owned/publicly operated Electrified Buses.

The Department, through its Division of Transportation Solutions, on behalf of the Delaware Transit Corporation, seeks to adopt these revisions to promote improved air quality by providing for a permit and associated fees for Zero Emission Buses.

Public Comment Period

DelDOT will take written comments on these proposed revisions to Regulation 2405 of Title 2, Delaware Administrative Code, from August 1, 2019 through September 3, 2019. The public may submit their comments to:

Donald D. Weber, P.E.

Asst. Director for Traffic Operations and Management

(Don.Weber@Delaware.gov) or in writing to his attention,

Delaware Department of Transportation

Division of Transportation Solutions, Traffic Section

169 Brick Store Landing Road

Smyrna, DE 19977

***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/august2019/proposed/23 DE Reg 107RFA 08-01-19.pdf](http://regulations.delaware.gov/register/august2019/proposed/23%20DE%20Reg%20107RFA%2008-01-19.pdf)

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

[2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual](#)

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, Section 1603 (14 **Del.C.** §1603)
14 **DE Admin. Code** 609

REGULATORY IMPLEMENTING ORDER

609 District and School Based Intervention Services

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to Title 14 **Del.C.** §1603, the Secretary of Education intends to reauthorize 14 **DE Admin. Code** 609 District and School Based Intervention Services. The Department has reviewed the regulation in order to comply with 29 **Del C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should be reauthorized without any changes.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on June 1, 2019, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 609 District and School Based Intervention Services in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should be reauthorized without any changes.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 609 District and School Based Intervention Services. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 609 District and School Based Intervention Services attached hereto as *Exhibit "B"* is hereby reauthorized.

Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 609 District and School Based Intervention Services hereby reauthorized shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 609 District and School Based Intervention Services reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 609 District and School Based Intervention Services in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 12, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 12th day of July 2019.

Department of Education

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

Approved this 12th day of July 2019

609 District and School Based Intervention Services

1.0 Provision of Services

Each school district shall provide services for students whose behavior disrupts the classroom setting and creates distractions that impede the learning process, but who are not eligible for placement in an alternative program pursuant to 14 **DE Admin. Code** 611. School districts may offer such services based on the identified needs of the district and its individual schools, subject to the requirements of this regulation.

2.0 Application for Funding

- 2.1 Any school district requesting an incentive or supplemental grant to provide intervention services shall apply for such funds using the LEA Consolidated Application process provided by the Department of Education.
- 2.2 Any incentive or supplemental grant approved as part of the LEA Consolidated Application process shall be in the amount appropriated for that purpose by law.

3.0 Student Population to be Served

Services funded under this regulation may be provided to any student in grades K to 12, subject to the terms of the district's approved LEA Consolidated Application. Notwithstanding any of the provisions to the contrary, IDEA-identified students with disabilities shall be served pursuant to the provisions in 14 **DE Admin. Code** 925 and students with disabilities identified under Section 504 of the Rehabilitation Act shall be served in conformity with 34 C.F.R. Part 104.

4.0 School Based Intervention Programs

- 4.1 If a district, through its LEA Consolidated Application, provides a School Based Intervention Program as part of the services provided to disruptive students, such Program shall meet the following requirements:

- 4.2 A School Based Intervention Program shall include both short term and long term intervention strategies. Such strategies may include character education, short or long term counseling to improve behavior which impacts educational performance, and methods to identify the need to refer students for additional services either within the district or to other agencies. The Program shall also include support services to provide a smooth transition for students who are returning to their regular school from a Consortium Discipline Alternative Program or from a Department of Services to Children, Youth and their Families (DSCYF) setting.
- 4.3 The decision to place a student in the School Based Intervention Program shall be made by the student's Intervention Team. The Intervention Team shall include the building principal or assistant principal, school nurse, counselor, social worker (if the student receives social work services), and a teacher familiar with the student. Other individuals, including parents, guardians or Relative Caregivers, may be invited as appropriate.
- 4.4 When placing an IDEA-identified student with a disability in a School Based Intervention Program, the Intervention Team and a student's IEP team may be the same as long as the membership of the Intervention Team also meets the requirements of 14 **DE Admin. Code** 925. When placing a student with a disability identified under Section 504 of the Rehabilitation Act, the Intervention Team may be the same as a multidisciplinary team authorized to make placement decisions as long the Intervention Team also meets the requirements of 34 C.F.R. 104.35

5.0 Evaluation of Services

Any local school district receiving a grant pursuant to this regulation shall submit an annual evaluation report on the effectiveness of its District and School Based Intervention Services. Such report shall be submitted as part of the LEA Consolidated Application process and shall conform to content and format standards.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 **Del.C.** §122)
14 **DE Admin. Code** 705

REGULATORY IMPLEMENTING ORDER

705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122, the Secretary of Education intends to reauthorize 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should be reauthorized without any changes.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on June 1, 2019, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should be reauthorized without any changes.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States hereby reauthorized shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 12, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 12th day of July 2019.

Department of Education

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

Approved this 12th day of July 2019

705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States

1.0 Leave for Training or Special Duty

- 1.1 Any permanent and full time employee shall be excused from work with pay to attend training camp or special duty on orders as a member of the military reserves of the United States or the National Guard, not to exceed fifteen (15) days or the equivalent hours as required by the **Delaware Code**, on a prorated basis in any calendar year.
 - 1.1.1 Such training or special duty leave shall not be deducted from their annual leave or in any other way result in loss of privileges or compensation to said employee.
 - 1.1.2 Any permanent or full time employee shall file a request for military leave with their employer at least two weeks prior to their leave, along with a copy of their official orders.

(Non regulatory Note: See 29 **Del.C.** §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees and 14 **Del.C.** §1327 Leave of Absence for Person in Military Service)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 **Del.C.** §122)
14 **DE Admin. Code** 1001

REGULATORY IMPLEMENTING ORDER

1001 Participation in Extra Curricular Activities

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122, the Secretary of Education intends to reauthorize 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should be reauthorized without any changes.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on June 1, 2019, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should be reauthorized without any changes.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities hereby reauthorized shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 12, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 12th day of July 2019.

Department of Education

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

Approved this 12th day of July 2019

1001 Participation in Extra Curricular Activities**1.0 Academic Eligibility Criteria**

Local school districts and charter schools shall establish their own academic eligibility criteria for participation in all extra curricular activities except for interscholastic athletics. The academic eligibility criteria for interscholastic athletics is established in 14 **DE Admin. Code** 1009.2.6 DIAA Senior High School Interscholastic Athletics, and in 14 **DE Admin. Code** 1008.2.6 DIAA Junior High and Middle School Interscholastic Athletics.

Comment: In establishing and implementing academic eligibility criteria applicable to students with disabilities, districts are reminded that some flexibility may be contemplated by Federal guidelines. See 34 CFR Sec. 104.4.

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, developed the amendments to 14 **DE Admin. Code** 1007. Subsection 1.2.1.1 is being amended to add constables who are appointed in accordance with 10 **Del.C.** Ch. 27.

Notice of the proposed regulation was published in *The News Journal* and *Delaware State News* on June 1, 2019 in the form attached hereto as Exhibit "A." In addition, notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2019 in the form attached hereto as Exhibit "B." Persons wishing to present their views concerning the amendments were invited to do so in writing by July 5, 2019. The Department did not receive any written submittals concerning the amendments.

On July 11, 2019, 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. 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 18, 2019. 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 18th day of July, 2019.

Department of Education

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

Approved this 18th day of July, 2019.

State Board of Education

Whitney Sweeney, President

Audrey J. Noble, Ph.D., Vice President

Nina Lou Bunting

Candice Fifer

Vincent Lofink

Provey Powell, Jr.

Wali W. Rushdan, II

1007 DIAA Sportsmanship

1.0 Definitions and Sportsmanship

1.1 Definitions

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

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 **Del.C.** Chapter 3.

"DIAA" means the Delaware Interscholastic Athletic Association.

"Executive Director" means the Executive Director of the Delaware Interscholastic Athletic Association.

"Member School" means a full or associate member school of the Delaware Interscholastic Athletic Association.

"Principal" or **"Headmaster"** means the chief or head individual in charge of a school who is traditionally referred to or generally known as the principal or headmaster, including Head of School, Administrator, Executive Director, or Charter Head.

"School Days" shall mean actual school attendance days during the regular academic school year including a partial day that children are in attendance at school for instructional purposes as adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.

1.2 Sportsmanship

1.2.1 Member Schools are required to conduct all of their athletic affairs with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of a failure to abide by this rule are those which are noted below and others of a similar nature which transgress the usually accepted code for good sportsmanship.

1.2.1.1 Failure to provide for proper control of spectators at a contest. When the number of spectators is expected to be large in relation to the seating capacity of the facility, uniformed state State, county, or local police or constables appointed in accordance with

- 10 Del.C. Ch. 27 shall be provided for crowd control. The host school is expected to take reasonable and proper steps to assure crowd control under any foreseeable conditions.
- 1.2.1.2 Failure of a team or competitor to stay in a contest until its normal end when failure to do so is related to dissatisfaction with the officiating of the contest, unless the physical safety of the team or competitor would have been endangered by continuing the contest.
- 1.2.1.3 Harassment of game officials by a coach. Going onto the playing surface to interrupt a contest in protest of a decision by an official; conduct by a coach, team member, or any individual in the official party which invokes a penalty against the team; continued and visible actions by a coach which indicate to the team and to the spectators that the coach believes the game is being improperly officiated; public demonstrations with game officials which indicate to others extreme dissatisfaction with the officiating; and such related actions when exhibited in aggravated form are evidence of poor sportsmanship.
- 1.2.1.4 Failure of a school to use every means at its disposal to impress upon its faculty, student body, team members, coaching staff, and spectators the importance of good sportsmanship before, during, and after athletic contests. The host school is encouraged to read a brief statement concerning sportsmanship prior to the start of each athletic contest.
- 1.2.1.5 Failure of an administrator, athletic director, coach, athlete, official, or spectator to comply with the directions stipulated in the following Code of Interscholastic Athletics:
- 1.2.1.5.1 The School Administrator and Athletic Director shall:
- 1.2.1.5.1.1 Encourage and promote friendly relations and good sportsmanship throughout the school by requiring courtesy and proper decorum at all times, by familiarizing students and others in the community with the ideals of good sportsmanship, and by publicizing these concepts and attitudes so that all members of the school community understand and appreciate their meaning.
- 1.2.1.5.1.2 Review the Sportsmanship Rule with all athletic staff.
- 1.2.1.5.1.3 Insist upon strict compliance with all DIAA rules and regulations.
- 1.2.1.5.1.4 Insist upon adequate safety provisions for both participants and spectators in all activities.
- 1.2.1.5.1.5 Encourage all to judge the success of the interscholastic athletic program based on the attitude of the participants and spectators rather than on the number of games won or lost.
- 1.2.1.5.1.6 Insist that all participants adhere to the highest standards of good sportsmanship as a means of ensuring desirable spectator attitudes.
- 1.2.1.5.1.7 Provide sanitary and attractive facilities for the dressing and housing of visiting teams and officials.
- 1.2.1.5.1.8 Develop and implement policies for their interscholastic athletic programs to discourage acts of bullying, hazing, and taunting.
- 1.2.1.5.2 Coaches: The function of coaches is to educate students through participation in interscholastic athletics. An interscholastic program shall be designed to enhance academic achievement and shall never interfere with opportunities for academic success. Each student shall be treated with the utmost respect and his welfare should be considered in decisions by the coach at all times. Therefore, coaches shall:
- 1.2.1.5.2.1 Demonstrate high ideals, good habits, and desirable attitudes in their personal and professional behavior and demand the same of their players. Coaches must uphold the dignity and honor of the profession of educator-coach. Their interaction with all students, officials, school staffs, athletic directors, administrators, the state association, the media and the general public (fans) shall be of the highest ethical and moral standard.
- 1.2.1.5.2.2 Recognize that the purpose of competition is to promote the physical, mental, social, and emotional well being of the individual players and that the most important

values of competition are derived from playing the game fairly. Coaches must recognize the tremendous influence they have on their student-athletes and must never place the value of winning above the value of instilling the highest ideals of character. Coaches must never exert pressure on faculty members to give students special consideration.

- 1.2.1.5.2.3 Be a modest winner and a gracious loser. Sportsmanship shall be a key component of their coaching.
- 1.2.1.5.2.4 Maintain self control at all times and accept adverse decisions without public display of emotion or dissatisfaction with the officials. Register disagreement through proper channels. Coaches shall exert their influence to enhance sportsmanship by spectators.
- 1.2.1.5.2.5 Employ accepted educational methods in coaching and give players an opportunity to develop and use initiative, leadership, and judgment.
- 1.2.1.5.2.6 Pay close attention to the physical well-being of players, refusing to jeopardize the health of an individual for the sake of improving their team's chances to win. Coaches must be properly informed of all required national, state and local safety policies and procedures.
- 1.2.1.5.2.7 Teach athletes that it is better to lose fairly than to win unfairly.
- 1.2.1.5.2.8 Establish policies which discourage the unlawful use of drugs, medications, and non-prescribed drugs. Coaches shall set an example to athletes by not using these products in their presence. Do not allow gambling, profanity, abusive language, and similar violations of the true sportsman's or sportswoman's code.
- 1.2.1.5.2.9 Refuse to disparage an opponent, an official, or others associated with interscholastic athletics and discourage gossip and rumors about them. Actively set an example of respect and support for contest officials and opponents. Coaches must be highly ethical in all forums, chat rooms and all forms of social media and communication regarding the sport and participants.
- 1.2.1.5.2.10 Properly supervise the athletes under their immediate care.
- 1.2.1.5.2.11 Enforce school policies regarding bullying, hazing, and taunting and never tolerate any of these actions by team members or others.
- 1.2.1.5.2.12 Know the playing rules and procedures of their sport and teach them to team members. Coaches shall insist upon strict compliance with all DIAA rules and regulations and never seek an advantage by circumvention of the spirit or letter of the rules.
- 1.2.1.5.2.13 Never illegally recruit athletes.
- 1.2.1.5.3 Participants (athletes and cheerleaders) shall:
 - 1.2.1.5.3.1 Be responsible for the perpetuation of interscholastic athletics. Strive to enhance the image of athletics not only as a member of a team but also as a member of their school and community.
 - 1.2.1.5.3.2 Be courteous to the visiting team. The opponent wants to excel as much as the home team. Respect their efforts.
 - 1.2.1.5.3.3 Play hard to the limit of personal ability regardless of discouragement. The true athlete does not give up, quarrel, cheat, bet, or grandstand.
 - 1.2.1.5.3.4 Be modest when successful and be gracious in defeat. A true sportsman or sportswoman does not offer excuses for failure.
 - 1.2.1.5.3.5 Understand and observe the playing rules of the game and the standards of eligibility.
 - 1.2.1.5.3.6 Respect the integrity and judgment of the officials and accept their decisions without complaint.
 - 1.2.1.5.3.7 Respect the facilities of the host school and do not violate the trust entailed in being a guest.

FINAL REGULATIONS

- 1.2.1.5.3.8 Refrain from participating in or encouraging the acts of bullying, hazing, and taunting.
- 1.2.1.5.3.9 Respect others including fellow students, athletes, opponents, coaches, officials in all areas including public forums and social media. Display highly ethical conduct in all forums, chat rooms and all forms of social media and communication.
- 1.2.1.5.4 Officials: Officials at an interscholastic athletic event are participants in the educational development of high school students. As such, they must exercise a high level of self-discipline, independence and responsibility. Therefore, officials shall:
 - 1.2.1.5.4.1 Know the rules and interpretations and mechanics of their sport and be thoroughly trained to administer them. Be prepared and qualified both mentally and physically for the contest they are officiating, dress neatly and appropriately, and comport themselves in a manner consistent with the high standards of the profession.
 - 1.2.1.5.4.2 Maintain self control in all situations and with all persons.
 - 1.2.1.5.4.3 When enforcing the rules, do not make gestures or comments that will embarrass the players or coaches. Be mindful that their conduct influences the respect and conduct of students, coaches and the public. Remember the field, court, pool or mat is a classroom.
 - 1.2.1.5.4.4 Be impartial and fair, yet firm, in all decisions. A good official will not attempt to compensate later for an unpopular decision.
 - 1.2.1.5.4.5 Refrain from commenting upon or discussing a team, player, or game situation with those not immediately concerned. This shall include all forms of public communication and social media. The official must be highly ethical in all forums, chat rooms and all forms of social media and communication regarding the sport and participants.
 - 1.2.1.5.4.6 Conduct the game so as to enlist the cooperation of the players, coaches, and spectators in promoting good sportsmanship. Set a professional example by being punctual and under control at all times. Uphold the honor and dignity of the profession in all interaction with student-athletes, coaches, athletic directors, school administrators, colleagues and the public.
 - 1.2.1.5.4.7 Refrain from participating in or encouraging the acts of bullying, hazing, and taunting. Do not tolerate nor let go unpenalized any of these actions.
 - 1.2.1.5.4.8 Be educated in all national, state and local safety procedures that are required of them. Work with event management and the state association to eliminate unsafe conditions or situations.
- 1.2.1.5.5 Spectators shall:
 - 1.2.1.5.5.1 Realize that they represent the school just as definitely as does a member of the team, and that they have an obligation to be a true sportsman or sportswoman and to encourage through their behavior the practice of good sportsmanship by others.
 - 1.2.1.5.5.2 Recognize that good sportsmanship is more important than victory by approving and applauding good team play, individual skill, and outstanding examples of sportsmanship and fair play exhibited by either team. The following are some examples of poor sportsmanship which shall not be tolerated:
 - 1.2.1.5.5.2.1 Profanity, vulgarity, obscene gestures, abusive language, or derogatory remarks.
 - 1.2.1.5.5.2.2 Throwing objects.
 - 1.2.1.5.5.2.3 Going onto the playing surface and interrupting a contest.
 - 1.2.1.5.5.2.4 Use of alcohol or other controlled substances.
 - 1.2.1.5.5.3 Respect the judgment and integrity of the officials, recognizing that their decisions are based upon game conditions as they observe them.
 - 1.2.1.5.5.4 Treat visiting teams and officials as guests extending to them every courtesy.

1.2.1.5.5.5 Be modest in victory and gracious in defeat.

1.2.1.5.5.6 Refrain from participating in or encouraging the acts of bullying, hazing, and taunting.

2.0 Processing Violations

2.1 Procedures

2.1.1 The Executive Director is specifically authorized to pursue any matter which, on the surface, has indications of being a sportsmanship violation.

2.1.2 Within twenty calendar days of the incident, an alleged sportsmanship violation must be reported in writing to the Executive Director by the administrative head of a Member School or by the Executive Board of an officials' association.

2.1.2.1 However, investigations involving contest ejections or altercations involving students or coaches may require an expedited procedure and must be reported to the Executive Director within 24 hours. The Executive Director is authorized to expedite the procedure in order to assure a ruling prior to the next contest played at that level of competition including post season play.

2.1.3 The Executive Director shall transmit a copy of the report to the Principal or Headmaster or official designee of the school(s) involved.

2.1.4 Each Principal or Headmaster concerned shall investigate and provide such information or answers to the report as are appropriate.

2.1.5 The Executive Director shall provide Member Schools and officials' associations with a specially designed form to facilitate the proper reporting of sportsmanship related incidents.

2.1.6 Upon receipt of all reports, the Executive Director shall review the documents and inform the school(s) involved of his disposition of the matter. The Executive Director may, in turn, refer the matter to the Sportsmanship Committee to investigate and adjudicate what appears to be a violation of the Sportsmanship Rule.

2.1.7 The Sportsmanship Committee shall review such available evidence as it deems necessary to reach a conclusion. Actions such as requesting reports and conducting interviews should not be interpreted as casting aspersions on a school adhering to DIAA regulations, but as an effort to keep all parties properly informed. Penalties up to and including suspensions of Member Schools may be imposed by the Sportsmanship Committee.

2.1.8 A copy of the Sportsmanship Committee's action shall be filed with the Executive Director and the administrative head of the school(s) involved.

2.2 Policies

2.2.1 The basis for the following policy statement is that a Member School shall not be represented by individuals whose conduct reflects discredit upon the school. Insofar as unsportsmanlike actions by participants and spectators are concerned, the Sportsmanship Committee shall refer to the items previously identified in the Code of Interscholastic Athletics as well as the following guidelines:

2.2.1.1 The school whose administrator or athletic director behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.1.1 Reprimanding its administrator or athletic director and providing written documentation to the Executive Director, or

2.2.1.1.2 Suspending its administrator or athletic director from representing the school in athletic events for a specified period of time not to exceed 180 School Days, or

2.2.1.1.3 Having the entire school disciplined by DIAA.

2.2.1.2 An athlete shall not strike an official, opponent, coach, or spectator or display gross misconduct before, during, or after an athletic event. The athlete, depending on the seriousness of the act, may be declared ineligible by the Principal, Headmaster, Executive

Director, or Sportsmanship Committee for a specified period of time not to exceed 180 School Days.

- 2.2.1.3 In the case of spectators physically assaulting an official, coach, or player, the school may be given the option of either taking punitive action against the offender or accepting discipline from DIAA.
- 2.2.1.4 Member Schools that do not fully cooperate in promoting the spirit of the Sportsmanship Rule may be disciplined by DIAA.
- 2.2.1.5 The school whose coach behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:
 - 2.2.1.5.1 Reprimanding its coach and providing written documentation to the Executive Director, or
 - 2.2.1.5.2 Suspending its coach from representing the school in athletic events for a specified period of time not to exceed 180 School Days, or
 - 2.2.1.5.3 Having the entire school disciplined by DIAA.
- 2.2.1.6 An administrator, athletic director, or coach may be considered as having committed an unsportsmanlike act if:
 - 2.2.1.6.1 He or she makes disparaging remarks about the officials during or after a game either on the field of play, from the bench, or through any public news media, or
 - 2.2.1.6.2 He or she argues with the official or indicates with gestures or other physical actions his or her dislike for a decision, or
 - 2.2.1.6.3 He or she detains the official on the field of play following a game to request a ruling or explanation of some phase of the game, or
 - 2.2.1.6.4 He or she makes disparaging or unprofessional remarks about another school's personnel.
- 2.2.1.7 All actions by a Member School resulting from an investigation relative to the above policies shall be subject to approval by the Executive Director or the Sportsmanship Committee.

2.3 Penalties

- 2.3.1 Unless otherwise limited, the Executive Director and Sportsmanship Committee may impose penalties on a Member School, a particular team of a Member School, a particular athlete, coach, or administrator of a Member School, an official, or a spectator, as deemed necessary based on the particular circumstances. The following are examples of possible penalties and represent degrees of discipline in enforcing the Sportsmanship Rule:
 - 2.3.1.1 Reprimand: a reprimand is official written notice that an unethical or unsportsmanlike action has occurred and that such an occurrence must not be repeated. A reprimand is a matter of record.
 - 2.3.1.2 Probation: probation is a more severe penalty and may be expressed in one of the following ways:
 - 2.3.1.2.1 Conditional probation wherein the offending individual or Member School may participate in regular season contests, sanctioned events, and conference and state championships provided he, she, or the school files with the DIAA office a plan indicating the measures that shall be taken to alleviate the problem which caused him or her or the school to be placed on probation; or
 - 2.3.1.2.2 Restrictive probation wherein a Member School or a particular team of a Member School may engage in its regular season schedule but may not enter any sanctioned events, participate in any playoff toward a conference or state championship, or be awarded a conference or state championship.
 - 2.3.1.3 Suspension: a suspension means that the offending individual or Member School shall not attend or participate in any DIAA sanctioned interscholastic competition and may also include tryouts.

2.3.2 Game Ejection

- 2.3.2.1 A player or coach disqualified before, during, or after a contest for an unsportsmanlike act shall be suspended from the next complete (a winner is determined or a tie is declared) contest at that level of competition and all other complete or suspended contests in the interim at any level of competition in addition to any other penalties which DIAA may impose.
- 2.3.2.1.1 A player who leaves the team bench area and enters the playing field, court, or mat during a fight or other physical confrontation shall be ejected from the contest. Additional penalties may be imposed if a player leaving the bench area becomes involved in the altercation.
- 2.3.2.2 A disqualified player or coach shall not be physically present at any contest in that sport during the suspension.
- 2.3.2.2.1 The coach or player shall not be present at any game-related activities immediately before the contest, during the intermission, or immediately after the contest. The coach or player must be "out of sight and sound" of the game and game-related activities regardless of whether the coach or player is physically on school premises.
- 2.3.2.2.2 If the offending coach or player is present at a game or game-related activity during the suspension in any capacity, including but not limited to: manager, statistician, site worker, spectator, etc., the coach or player shall be suspended for one additional game at that level of competition.
- 2.3.2.3 If a coach or athlete is disqualified from the final contest of the season, the suspension shall carry over to the next year in that sport.
- 2.3.2.3.1 Coaches who do not fulfill their penalty in the same sport shall be disqualified for the appropriate length of time in their subsequent coaching assignment.
- 2.3.2.3.2 Athletes who do not fulfill their penalty in the same sport or who do not retain eligibility shall be disqualified for the appropriate length of time in their next sport.
- 2.3.2.3.2.1 Seniors shall fulfill their penalty in another sport during the same season or another sport during a subsequent season.
- 2.3.2.3.2.2 When a senior is disqualified from the last game of his or her high school career, the Member School shall take appropriate administrative action to discipline the offending student, which may include withdrawing the student from a post-season all-star game. The Member School shall report the action taken to the Sportsmanship Committee.
- 2.3.2.4 A player or coach ejected for a second time during the same season shall be subjected to a two game suspension and shall meet, in a timely fashion, with the Sportsmanship Committee accompanied by the Principal or his or her designee and, in the case of an athlete, by the coach.
- 2.3.2.5 Appeal of a contest suspension resulting from a game ejection
- 2.3.2.5.1 A coach or player may appeal a contest suspension resulting from a game ejection to the DIAA Executive Director. Contest suspensions that may be appealed include suspensions from game ejections under the individual sport playing rules, other DIAA policies, or a suspension under subsections 2.3.1.1 or 2.3.1.1.1. The Executive Director may decide the appeal or, in his or her discretion, refer it to the Sportsmanship Committee or a subcommittee that may include the Board's Chairperson, the Sportsmanship Committee's Chairperson, the committee chairperson of the applicable recognized sports committee, the State rules interpreter for the applicable sport, a representative of the applicable officials' association, and any other individuals the Executive Director deems necessary.
- 2.3.2.5.2 If the Executive Director is unable to make a decision before the next contest, the suspension remains in effect. The Executive Director's, Sportsmanship Committee's,

or subcommittee's decision to uphold or rescind the suspension resulting from a game ejection may not be appealed to the Board.

2.4 Appeals

- 2.4.1 Decisions of the Executive Director or Sportsmanship Committee with the exception of those to uphold or rescind the suspension resulting from a game ejection may be appealed to the DIAA Board of Directors in accordance with the procedure found in 14 **DE Admin. Code** 1006.10. In accordance with subsection 1006.10.1.1.3.1, the notice of appeal shall be served by certified mail within ten calendar days after the appellant's receipt of the written notice that official action has been taken by the Executive Director or Sportsmanship Committee. An appeal shall not stay the decision of the Executive Director, the Sportsmanship Committee, or any other subordinate.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 303(a) (14 **Del.C.** §§122(b) & 303(a))
14 **DE Admin. Code** 1008

REGULATORY IMPLEMENTING ORDER

1008 DIAA Junior High and Middle School Interscholastic Athletics

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** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education, developed the amendments to 14 **DE Admin. Code** 1008. The amendments included adding the definitions of two terms in subsection 1.1; revising the practice and competition dates for the fall, winter, and spring sports seasons in subsection 4.1; adding subsection 5.3, which concerns the process for sanctioning out of season athletic camps and clinics; revising subsection 6.1, which concerns sponsoring out of season athletic camps and clinics; striking open gyms and conditioning programs in Section 6.0; and revising subsection 7.6, which concerns coaching out of season.

Notice of the proposed regulation was published in the *Register of Regulations* on April 1, 2019. Persons wishing to present their views concerning the amendments were invited to do so in writing by May 3, 2019. The Department received written submittals concerning the proposed changes to subsections 1.1, 5.3, 6.0, and 7.6. The Department did not receive any written submittals concerning the amendments to subsection 4.1 (*i.e.*, revising the practice and competition dates for the fall, winter, and spring sports seasons).

On July 11, 2019, the DIAA Board of Directors voted to withdraw the proposed changes to subsections 1.1, 5.3, 6.0, and 7.6 and to propose subsection 4.1 of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics, 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. Accordingly, the Department finds that it is appropriate to amend subsection 4.1 of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend subsection 4.1 of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), subsection 4.1 of 14 **DE Admin.**

Code 1008 DIAA Junior High and Middle School Interscholastic Athletics attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of subsection 4.1 of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics 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 18, 2019. 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 18th day of July, 2019.

Department of Education

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

Approved this 18^h day of July, 2019.

State Board of Education

Whitney Sweeney, President

Audrey J. Noble, Ph.D., Vice President

Nina Lou Bunting

Candice Fifer

Vincent Lofink

Provey Powell, Jr.

Wali W. Rushdan, II

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

1008 DIAA Junior High and Middle School Interscholastic Athletics

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 303(a) (14 **Del.C.** §§122(b) & 303(a))

14 **DE Admin. Code** 1009

REGULATORY IMPLEMENTING ORDER

1009 DIAA High School Interscholastic Athletics

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** 1009 DIAA High School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education, developed the amendments to 14 **DE Admin. Code** 1009. The amendments included adding the definitions of two terms in subsection 1.1; revising the practice and competition dates for the fall, winter, and spring sports seasons in subsection 4.1; adding subsection 5.3, which concerns the process for sanctioning out of season athletic camps and clinics; revising subsection 6.1, which concerns sponsoring out of season athletic camps and

clinics; striking open gyms and conditioning programs in Section 6.0; and revising subsection 7.6, which concerns coaching out of season.

Notice of the proposed regulation was published in the *Register of Regulations* on April 1, 2019. Persons wishing to present their views concerning the amendments were invited to do so in writing by May 3, 2019. The Department received written submittals concerning the proposed changes to subsections 1.1, 5.3, 6.0, and 7.6. The Department did not receive any written submittals concerning the amendments to subsection 4.1 (*i.e.*, revising the practice and competition dates for the fall, winter, and spring sports seasons).

On July 11, 2019, the DIAA Board of Directors voted to withdraw the proposed changes to subsections 1.1, 5.3, 6.0, and 7.6 and to propose subsection 4.1 of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics, 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. Accordingly, the Department finds that it is appropriate to amend subsection 4.1 of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend subsection 4.1 of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), subsection 4.1 of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of subsection 4.1 of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics 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 18, 2019. 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 18th day of July 2019.

Department of Education

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

Approved this 18^h day of July, 2019.

State Board of Education

Whitney Sweeney, President

Audrey J. Noble, Ph.D., Vice President

Nina Lou Bunting

Candice Fifer

Vincent Lofink

Provey Powell, Jr.

Wali W. Rushdan, II

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

1009 DIAA High School Interscholastic Athletics

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 122(3)y. and z. (16 **Del.C.** §122(3)y. & z.)
16 **DE Admin. Code** 3335

ORDER

3335 Office-Based Surgery

Nature of The Proceedings

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Office-Based Surgery. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122 (3)y. & z.

On June 1, 2019 (Volume 22, Issue 12), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by July 1, 2019, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

Summary

Effective August 1, 2019, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Office-Based Surgery.

Background

Previous legislation gave the DHSS the authority to promulgate regulations and require accreditation for "facilities that perform invasive medical procedures". The terminology and definition of an "invasive medical procedure" was frequently misinterpreted and caused a great deal of confusion amongst the medical community. More recent legislation revised the language to be consistent with nationally recognized terminology; therefore, the term "office-based surgery" replaced "invasive medical procedure". In addition, this legislation clarified the definition to ensure that all facilities that perform office-based surgery do so in a safe and sanitary environment.

Subsequently, the DHCQ published the amendments to the regulations governing Office-Based Surgery and held them out for public comment per Delaware law. The amendments updated the regulatory language to be consistent with nationally recognized terminology; clarify definitions associated with office-based surgery; and update general and accreditation organization requirements.

Statutory Authority

16 **Del.C.** §122(3)y. & z.

Purpose

The purpose of this proposed amendment is to update the language to be consistent with nationally recognized terminology. In addition, the regulations clarify definitions and requirements for facilities that perform office-based surgery.

Fiscal Impact

Not applicable.

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Office-Based Surgery were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (June 1, 2019 through July 1, 2019).

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

Alan Matarasso, MD, FACS, President, American Society of Plastic Surgeons

Comment: I am writing on behalf of the American Society of Plastic Surgeons (ASPS) in support of the proposed amendments to 16 **DE Admin. Code** 3335, which would update Delaware's office-based surgery rules. ASPS is the largest association of plastic surgeons in the world, representing more than 7,000 members and 94 percent of all board-certified plastic surgeons in the United States – including 17 board-certified plastic surgeons in Delaware. Our mission is to advance quality care for plastic surgery patients and promote public policy that protects patient safety.

Many ASPS member surgeons provide office-based surgery (OBS), and we therefore appreciate the division's commitment to improve existing policy in order to further protect patients. ASPS's commitment to patient safety is carried out in the Society's accreditation by law, which requires all board-certified plastic surgeons who perform surgery under certain levels of anesthesia in an office facility that is:

- Accredited by a national or state recognized accrediting agency/organization such as the American Association for Accreditation of Ambulatory Surgery Facilities, the Accreditation Association for Ambulatory Health Care or the Joint Commission on the Accreditation of Health Care Organizations;
- Certified to participate in the Medicare program under Title XVIII; or
- Licensed by the state in which the facility is located

We believe that facility accreditation provides the necessary oversight and standards to ensure that patients receive the safest surgical care. For the reasons outlined above, we strongly support the proposed changes to 16 **DE Admin. Code** 3335 as they reflect an improvement in policy that will increase patient safety in Delaware.

Response: Thank you for your comments.

Findings of Fact:

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

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Office-Based Surgery is adopted and shall become effective August 11, 2019, after publication of the final regulation in the Delaware *Register of Regulations*.

7/15/19
Date

Lisa Bond, Director, DMS, for
Kara Odom Walker, MD, MPH, MSHS, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the June 2019 issue of the *Register* at page 990 (22 DE Reg. 990). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3335 Office-Based Surgery

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 17000

ORDER

Delaware Social Services Manual (DSSM) Section 17000

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend the Delaware Social Services Manual (DSSM) regarding section 17000, specifically, to update the table of contents. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The following regulatory action is exempt from the Administrative Procedures Act in accordance with 29 Delaware Code, Ch. 101, §10113(b)(4), which exempts from the procedural requirements of the Administrative Procedures Act (APA) regulations for existing regulations to make non-substantive changes in existing regulations to alter style or form or to correct technical errors.

SUMMARY OF PROPOSAL

Purpose

The purpose of the amendment is to ensure consistency within the sections of the DSSM.

Effective for services provided on and after October 11, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Delaware Social Services Manual (DSSM) regarding section 17000, specifically, to remove the table of contents.

Background

Portals and websites provide the government with the opportunity to share details about operations, policy and practices. Information posted should be easy to access, clear and consistently formatted.

The Delaware Social Services Manual (DSSM) is part of Title 16 of the Delaware Administrative Code which is the official version of the regulation of the State of Delaware.

These are regulations used in determining eligibility for cash assistance, food benefits, medical assistance, and child subsidies. These are programs administered by the Division of Social Services (DSS) and the Division of Medicaid and Medical Assistance (DMMA).

Statutory Authority

31 **Del.C.** §512

Citation

29 **Del.C.** Ch. 101 §10113, Adoption of Regulations; Exemptions

Fiscal Impact Statement

There is no anticipated fiscal impact to the agency.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding section 17000, specifically, to remove the table of contents, is adopted and shall be final effective August 12, 2019.

6/25/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary,
DHSS

17000 SSI Related Programs

~~17000 Family and Community Medical Assistance—SSI Related Programs~~

The following section describes the eligibility groups that are categorically related to the SSI program.

~~17100 SSI Beneficiaries~~~~17110 Individuals Who Would Be SSI Beneficiaries Except for July, 1972 Increase in OASDI Benefits~~~~17120 Recipients of Mandatory State Supplementary Payments~~~~17130-1619 (b) Eligibles~~~~17130.1 Eligibility Determination~~~~17140 "Pickle Amendment"—Loss of SSI Benefits Due to COLA Increases~~~~17140.1 Eligibility Determination~~~~17140.2 Computation of COLA Disregard~~~~17140.2.1 Computation of COLA Disregard for Pickles~~~~17150 Widows/Widowers (Age 60-64)~~~~17150.1 Eligibility Determination~~~~17155 Widows/Widowers with Disabilities (Age 50-59)~~~~17155.1 Eligibility Determination~~~~17160 Adult Children with Disabilities~~~~17160.1 Eligibility Determination~~~~17170 Section 4913 Children with Disabilities~~~~17200 Disabled Children—Program Renamed (See 25000 Section)~~~~17300 Qualified Medicare Beneficiaries~~~~17300.1 Application Process~~~~17300.2 Medicare Entitlement~~~~17300.3 Financial Eligibility~~~~17300.3.1 COLA Disregard~~~~17300.3.2 Income~~~~17300.3.2.1 Excluded Income~~~~17300.3.2.2 What is Not Income~~~~17300.3.2.3 Gross Income~~~~17300.3.2.4 Earned Income~~~~17300.3.2.5 Unearned Income~~~~17300.3.2.6 Income Computation~~~~17300.4 Effective Date of Coverage~~~~17300.4.1 Retroactive Coverage Precluded~~~~17300.5 Benefits~~~~17300.6 Redetermination of Eligibility~~~~17300.7 Identification of Beneficiaries~~~~17300.8 Payments to Providers~~~~17400 Specified Low Income Medicare Beneficiaries~~~~17400.1 Income Limits~~~~17400.1 SLMB Income Limits~~~~17400.1.1 COLA Disregard~~

- ~~17400.2 Retroactive Coverage~~
- ~~17400.3 Redetermination of Eligibility~~
- ~~17500 Qualifying Individuals~~
- ~~17510 Qualifying Individuals 1~~
- ~~17520 Qualifying Individuals 2~~
- ~~17530 COLA Disregard~~
- ~~17540 Retroactive Coverage~~
- ~~17550 Capped Allocation~~
- ~~17560 Redetermination of Eligibility~~
- ~~17700 Qualified and Disabled Working Individuals (QDWI)~~
 - ~~17700 Income Limits~~
 - ~~17700.1 Application Process~~
 - ~~17700.2 Medicare Beneficiary~~
 - ~~17700.3 Financial Eligibility~~
 - ~~17700.3.1 Income~~
 - ~~17700.4 Effective Date of Coverage~~
 - ~~17700.4.1 Retroactive Coverage~~
 - ~~17700.5 Redetermination of Eligibility~~
 - ~~No Retroactive eligibility~~
- ~~17800 Medical Assistance During Transition to Medicare~~
 - ~~17801 Status Eligibility~~
 - ~~17802 Financial Eligibility~~
 - ~~17803 Determination Eligibility~~
 - ~~17804 Income Standard~~
 - ~~17805 Payment Level~~

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 701 and 4802 and 29 Delaware Code, Section 10113 (18 **Del.C.** §§311, 701 & 4802 & 29 **Del.C.** §10113)
18 **DE Admin. Code** 2001

ORDER

2001 Insurance Premium Finance Companies

Regulation 2001, entitled Insurance Premium Finance Companies, sets forth the requirements for applying for and maintaining a Delaware license as an Insurance Premium Finance Company. Subsections 1.1 and 1.2 state that annual license fees are \$300. In the July 3, 2017 amendments to the Department of Insurance's Fee schedule promulgated at 18 **Del.C.** §701, and the corresponding amendment to 18 **Del.C.** §4802, the licensing fee was raised from \$300 to \$500.

To ensure that the regulation need not be updated to conform to future fee increases, if any, the Department is replacing the fee amount with a cross-reference to 18 **Del.C.** §§701 and 4802. The Department is also taking the opportunity to update the regulation to confirm with current Delaware Administrative Code style conventions and to update Department contact information.

These amendments are exempt from the requirement of public notice and comment because they include “amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations” pursuant to 29 **Del.C.** §10113(b)(5), “nonsubstantive changes in existing regulations to alter style or form or to correct technical errors” pursuant to 29 **Del.C.** §10113(b)(4), and “descriptions of agency organization, operations and procedures for obtaining information” pursuant to 29 **Del.C.** §10113(b)(1).

This order shall be effective 10 days after publication in the *Register of Regulations*.

IT IS SO ORDERED.

This 2nd day of July, 2019

Trinidad Navarro
Commissioner, Delaware Department of Insurance

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

2001 Insurance Premium Finance Companies

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1900 BOARD OF NURSING

Statutory Authority: 24 Delaware Code, Section 1906(a)(1) (24 **Del.C.** §1906(a)(1))
24 **DE Admin. Code** 1900

ORDER

1900 Board of Nursing

The Delaware Board of Nursing pursuant to 24 **Del.C.** §1906(a)(1), proposed to revise its regulations. The proposed changes update the regulations pertaining to use of simulation in nursing schools, including setting forth what percentage of clinical experience in nursing school may be through simulation and the requirements related to the use of simulation. In addition, the proposed change to Regulation 8.14.9.2 clarifies the requirements an advanced practice registered nurse must meet to renew prescriptive authority.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on May 1, 2019 a public hearing was held on June 12, 2019. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*.

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

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

Board Exhibit 2 – Affidavit of publication of the public hearing notice in the *Delaware State News*;

There was no verbal testimony given at the public hearing on June 12, 2019, and no written comments were received by the Board during the initial thirty day public comment period or the second fifteen day public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the initial 30 day written public comment period, or the public hearing.

3. Pursuant to 24 Del. C. §1906(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The proposed amendments seek to update the regulations pertaining to use of simulation in nursing schools, including setting forth what percentage of clinical experience in nursing school may be through simulation and the requirements related to the use of simulation. In addition, the proposed change to Regulation 8.14.9.2 clarifies the requirements an advanced practice registered nurse must meet to renew prescriptive authority.

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

7. Having received no public comment, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 10th day of July, 2019 by the Delaware Board of Nursing.

Megan Williams, DNP, FNP-C, RN, President

Nancy Bastholm, RN

Krystal Little, RN (absent)

Danielle Gomez, RN

Kenyette Walters, LPN

Sandra Glenn-Vernon, RN (absent)

William Hare, Public Member

Ron Castaldo, RN, APRN

Precious Benson, Public Member (absent)

Carol Abdill, RN

Victoria Udealer, RN Member (absent)

Marlo Silverio, RN (absent)

Prameela Kaza, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the May 2019 issue of the *Register* at page 935 (22 DE Reg. 935). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1900 Board of Nursing

CALENDAR OF EVENTS/HEARING NOTICES

DELAWARE RIVER BASIN COMMISSION PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Wednesday, August 14, 2019** beginning at **1:30 p.m.** at the Commission's office building, 25 Cosey Road, West Trenton, New Jersey 08628. A business meeting will be held the following month on **Wednesday, September 11, 2019** beginning at **10:30 a.m.** at The Conference Center at Mercer, Mercer County Community College, 1200 Old Trenton Road, West Windsor, New Jersey 08550. The hearing and meeting are open to the public. For more information, visit the DRBC web site at www.drbc.gov or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203 and pamela.bush@drbc.gov.

DEPARTMENT OF EDUCATION PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, August 15, 2019 at 5:00pm in Sussex Tech High School (17099 County Seat Highway, Georgetown, DE).

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

Documentation of State Residency

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 the Division of Social Services Manual (DSSM) regarding state residency documentation requirements, specifically, to align policy with current practice.

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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on September 3, 2019. Please identify in the subject line: Documentation of State Residency.

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 4465 Delaware Radiation Control Regulations

Pursuant to 16 **Del.C.** §7406, the Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Radiation Control. On August 1, 2019, the Division of Public Health plans to publish as "proposed" revisions to the Radiation Control regulations. The revisions include an amendment to the definition of "Licensed Practitioner" and modified sections in Part F, Sections 5.13.13 and 5.14.1 to ensure that the definition of a Licensed Practitioner for purposes of the radiation control regulations would not in any way restrict the authority of an APRN with respect to radiologic procedures.

Copies of the proposed regulations are available for review in the August 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Tuesday, September 3, 2019, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

TANF CMR School Attendance Requirement

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 Social services (DSS) is proposing to amend the Division of Social Services Manual regarding Temporary Assistance for Needy Families (TANF), specifically, to update policy regarding the school attendance element of the Contract of Mutual Responsibility (CMR).

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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on September 3, 2019. Please identify in the subject line: TANF CMR School Attendance Requirement.

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 SOCIAL SERVICES

PUBLIC NOTICE

TANF and GA Eligibility - Excluded Income

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 Social services (DSS) is proposing to amend the Division of Social Services Manual regarding Temporary Assistance for Needy Families (TANF) and General Assistance (GA), specifically, to revise eligibility policy related to excluded income.

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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on September 3, 2019. Please identify in the subject line: TANF and GA Eligibility – Excluded Income.

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 SOCIAL SERVICES**PUBLIC NOTICE****POC - Determining and Reviewing Child Care**

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Purchase of Care (POC), specifically, to align policy with Federal 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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on September 3, 2019. Please identify in the subject line: POC - Determining and Reviewing Child Care.

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 INSURANCE**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****1101 Listed Surplus Lines Carriers Intending to Establish an Office in Delaware**

Chapter 18 of the Delaware Administrative Code at Regulation 1101 sets forth regulations that are applicable to all surplus lines insurers who wish to establish offices in the State of Delaware.

Prior to the surplus lines laws being amended to adopt the Nonadmitted and Reinsurance Reform Act in 2011, there was a provision in Chapter 19 that allowed an eligible surplus lines insurer to maintain a Delaware office in accordance with rules and regulations established by the Commissioner (prior Section 1907(c)). In accordance with former Section 1907(c), Regulation 1101 was promulgated to set forth requirements for maintaining an office in Delaware.

Since Chapter 19 was amended and former Section 1907 was removed, Regulation 1101 is outdated and should be rescinded. Since this is the only Regulation in Chapter 11 of Title 18 of the Administrative Code, the Department is also deleting the title and replacing it with the word "Reserved."

The Department does not plan to hold a public hearing on the proposed repeal of Regulation 1101. The regulation proposed for repeal appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed repeal of the regulation. Any written submission in response to this notice and relevant to the proposed repeal must be received by the Department of Insurance no later than 4:30 p.m. EST, the 3rd day, September, 2019. Any such requests should be directed to:

Leslie W. Ledogar, Esq., Regulatory Specialist

Delaware Department of Insurance

1351 West North Street, Suite 101

Dover, DE 19904

(302) 674-7379

Email: Leslie.Ledogar@delaware.gov

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF WASTE AND HAZARDOUS SUBSTANCES****TANK MANAGEMENT SECTION****PUBLIC NOTICE****1351 Underground Storage Tank Systems**

The proposed regulations reflect regulatory changes promulgated at the federal level as well as advances in UST system technologies. The State of Delaware regulations must be at least as stringent as the federal regulations under the requirements of 40 CFR 281, State Program Approval. The proposed regulatory requirements will clarify and improve installation, operation and maintenance, release detection and remedial requirements.

Two workshops were held on April 16 on the proposed amendments to 7 **DE Admin. Code** 1351 Regulations for Underground Storage Tank Systems. All questions were answered at the workshops; however formal public comments were accepted at the workshops and on April 17, 2019. Upon considering the comments that were submitted, the Department has made no substantive changes to the proposed amendments, and has scheduled a public hearing set for August 27, 2019 beginning at 6:00 PM in the Pat Ellis conference room at the Division of Waste and Hazardous Substances office at 391 Lukens Drive in New Castle. Written comments may be submitted at the hearing and up to September 11, 2019. Individuals desiring to provide comment may submit written comments regarding the proposed changes via email to Lisa.Vest@delaware.gov or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

DEPARTMENT OF STATE**DIVISION OF CORPORATIONS****PUBLIC NOTICE****102 Business Entity Name Standards and Procedures**

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 29 **Del.C.** §§8703, 8704, the Delaware Department of State, Division of Corporations, proposes to introduce regulations governing business entity name standards and procedures.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Kristopher Knight
Deputy Secretary of State
Department of State
820 N. French St., 4th Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to dos_corpregs@state.de.us. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Department of State no later than 4:30 p.m. EST, Friday, September 6, 2019.

The action concerning determination of whether to adopt the proposed regulations will be based upon the results of Department analysis and the consideration of the written comments and any other written materials filed by the public.

DEPARTMENT OF TRANSPORTATION**DIVISION OF TRANSPORTATION SOLUTIONS****PUBLIC NOTICE****2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual**

Pursuant to the authority provided by 21 **Del.C.** §4504, the Delaware Department of Transportation (DelDOT), on behalf of the Delaware Transit Corporation, gives notice of the intent to revise Regulation 2405 to adopt permits and fees for governmentally owned/publicly operated Electrified Buses.

The Department, through its Division of Transportation Solutions, on behalf of the Delaware Transit Corporation, seeks to adopt these revisions to promote improved air quality by providing for a permit and associated fees for Zero Emission Buses.

DelDOT will take written comments on these proposed revisions to Regulation 2405 of Title 2, Delaware Administrative Code, from August 1, 2019 through September 3, 2019. The public may submit their comments to:

Donald D. Weber, P.E.

Asst. Director for Traffic Operations and Management

(Don.Weber@Delaware.gov) or in writing to his attention,

Delaware Department of Transportation

Division of Transportation Solutions, Traffic Section

169 Brick Store Landing Road

Smyrna, DE 19977
