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# Delaware Register of Regulations

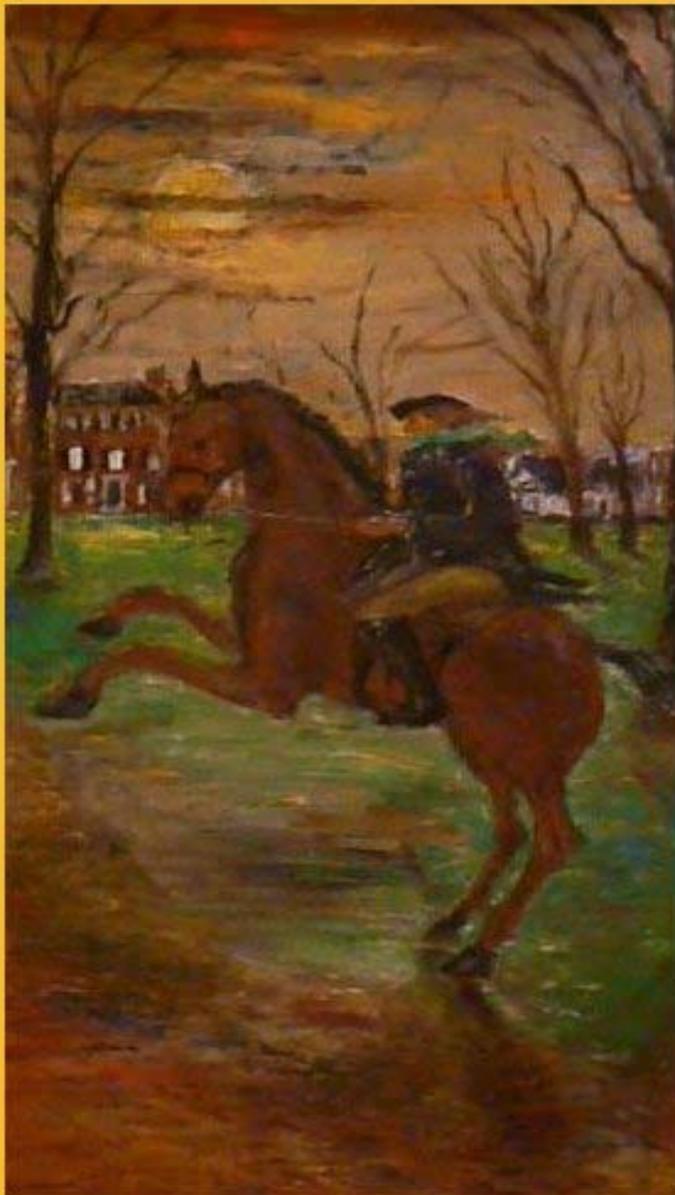
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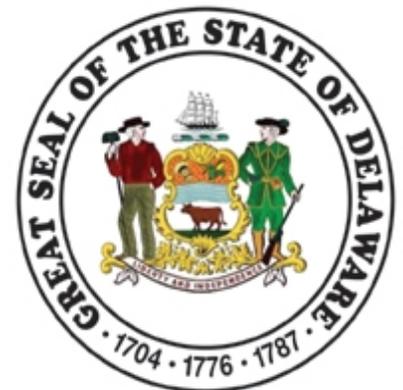


## IN THIS ISSUE:

Regulations:  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before November 15, 2012.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

15 **DE Reg.** 1728 - 1759 (06/01/12)

Refers to Volume 15, pages 1728 - 1759 of the *Delaware Register* issued on June 1, 2012.

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
January 1	December 17	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.

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**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))14 **DE Admin. Code** 601**Educational Impact Analysis Pursuant To 14 Del.C. Section 122(d)****601 Schools and Law Enforcement Agencies****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

The Secretary of Education intends to amend 14 **DE Admin. Code** 601 Schools & Law Enforcement. The regulation was reviewed pursuant to the five year review cycle and also reflects changes because of legislation passed during the 146th General Assembly, specifically Senate Bill No. 193; House Bill No. 268 with House Amendment No. 1; and House Bill No. 243 with House Amendments No. 1 & 2 and Senate Amendment No. 1. The legislation that has been enacted relates to work from the School Discipline Task Force and work in the area of bullying and cyberbullying.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2013 to Susan Haberstroh, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to reporting of specific incidents of misconduct and may improve student achievement as measured against the state achievement standards.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is intended to help ensure all students' health and safety is adequately protected.

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

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

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the local school boards for compliance with the amendments. The amendments are related to reporting.

### **601 Schools and Law Enforcement Agencies**

#### **1.0 Purpose**

The purpose of this regulation is to ensure that effective communication and working relationships exist between public schools and law enforcement agencies.

#### **2.0 Definitions**

"**Alternative Program**" mean a program established pursuant to 14 **Del.C.**, Chapter 16.

"**School Employee**" for purposes of this regulation shall mean all persons 18 years of age or older hired by a school district, attendance zone, or charter school; subcontractors such as bus drivers or security guards; employees of an Alternative Program provider; substitute employees; and persons hired by or subcontracted by other state agencies to work on school property. This definition shall be consistent with 14 **Del.C.** §4112.

#### **3.0 Written Policy and Memorandum of Agreement (MOA)**

3.1 All local school districts, charter schools, and Alternative Programs shall establish a written policy on effectively communicating and working with law enforcement agencies. Each school district, charter school and Alternative Program shall develop a Memorandum of Agreement (MOA) with each law enforcement agency which provides services to it. Each MOA shall be in a form substantially similar to a Model MOA as developed, approved and from time to time revised by the Department of Education.

3.2 The Department shall review the Model MOA and each school district, charter school, or Alternative Program shall review its current MOA at least once every three years.

#### **4.0 Training Component**

4.1 Any school administrator responsible for reporting school crimes or reporting school conduct incidents to law enforcement and to the Department of Education; or any school administrator responsible for reporting suspension and expulsion data to the Department; or any school administrator responsible for any disciplinary process involving staff or students shall complete Department of Education

# PROPOSED REGULATIONS

approved training and any such additional training the Department of Education may prescribe from time to time.

- 4.2 The approved training shall be primarily provided by staff at the Department of Education. The training may be provided by a school administrator at the district, charter school, or Alternative Program who is qualified to provide such training by having completed the Department of Education approved training within the last twenty-four (24) months. The district, charter school, or Alternative Program shall provide the name(s) of the trainer(s) conducting the training and the name(s) of those school administrator(s) attending the training if such training was provided by the district, charter school, or Alternative Program.
- 4.3 Each school district, charter school, and Alternative Program shall, at the time of hiring and at the beginning of each school year thereafter, advise each School Employee of his/her duty to report school crimes and the penalty for failure to so report as prescribed in 14 **Del.C.** §4112 (e).

## 5.0 Reporting of Crimes to the Delaware Department of Education

- 5.1 The superintendent or head administrator of each school district, charter school, and Alternative Program or his/her designee, shall ensure each school within his/her jurisdiction reports to the Department of Education all school crimes required to be reported pursuant to 14 **Del.C.** §4112, and any subsequent amendment thereto. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education within the time prescribed by Delaware statutes.

## 6.0 Reporting Specific Incidents of Misconduct

- 6.1 In addition to those school crimes required to be reported to law enforcement pursuant to 14 **Del.C.** §4112, the superintendent or head administrator of each school district, charter school, and Alternative Program, or his/her designee, shall report to the Department of Education incidents of misconduct 6.1.1 through 6.1.14. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident.
- 6.1.1 Pornography, possession and production
  - 6.1.2 Criminal mischief (vandalism)
  - 6.1.3 Tampering with public records
  - 6.1.4 Alcohol, possession and use
  - 6.1.5 Felony theft (\$1,000 or more)
  - 6.1.6 Bullying (allegations and substantiated incidents)
  - 6.1.7 Offensive Touching (student or employee victim)
  - 6.1.8 Terroristic Threatening (student or employee victim)
  - 6.1.9 Sexual Harassment
  - 6.1.10 Fighting/~~Disorderly Conduct~~
  - 6.1.11 Inhalants
  - 6.1.12 Drug Paraphernalia
  - 6.1.13 Teen Dating Violence
  - 6.1.14 Unlawful Drug Use/Influence

## 7.0 Compliance Component

A school that fails to comply with the reporting mandates as set forth herein shall be subject to identification as a "Persistently Dangerous School" as this term is defined in 14 **DE Admin. Code** 608. A school identified as Persistently Dangerous will retain that designation for the entire fiscal year.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1531

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

#### 1531 Middle Level English Language Arts Teacher

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1531 Middle Level English Language Arts Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Middle Level English Language Arts Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday January 2, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. IMPACT CRITERIA

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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

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

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

## 1531 Middle Level English Language Arts Teacher

### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Middle Level English Language Arts Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school. Notwithstanding the above requirement, the Secondary English Language Arts Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this certification.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

### 2.0 Definitions

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

### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Middle Level English Language Arts Teacher to an educator who has met the following:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1532

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

## 1532 Middle Level Mathematics Teacher

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Middle Level Mathematics Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday January 2, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from

the above address or may be viewed at the Professional Standards Board Business Office.

**C. IMPACT CRITERIA**

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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

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

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

**1532 Middle Level Mathematics Teacher****1.0 Content**

1.1 This regulation shall apply to the issuance of a Standard Certificate pursuant to 14 **Del.C.** §1220(a), for Middle Level Mathematics Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school. Notwithstanding the above requirement, the Secondary Mathematics Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this certification.

1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

**2.0 Definitions**

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

**3.0 Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Middle Level Mathematics Teacher to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.
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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1533

**Educational Impact Analysis Pursuant To 14 Del.C. Section 122(d)****1533 Middle Level Science Teacher****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1533 Middle Level Science Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Middle Level Science Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday January 2, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

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

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

### **1533 Middle Level Science Teacher**

#### **1.0 Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate pursuant to 14 **Del.C.** §1220(a), for Middle Level Science Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school. Notwithstanding the above requirement, the Secondary Science Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this certification.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

#### **2.0 Definitions**

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

#### **3.0 Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Middle Level Science Teacher to an educator who has met the following:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

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### **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1534

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

### **1534 Middle Level Social Studies Teacher**

#### **A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

## B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1531 Middle Level Social Studies Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Middle Level Social Studies Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday January 2, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

## C. IMPACT CRITERIA

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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

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

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

### 1534 Middle Level Social Studies Teacher

#### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate pursuant to 14 **Del.C.** §1220(a), for Middle Level Social Studies Teacher. This certification is required for grades 6, 7 and 8 in a Middle

Level school. Notwithstanding the above requirement, the Secondary Social Studies Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this certification.

- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

## **2.0 Definitions**

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

## **3.0 Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Middle Level Social Studies Teacher to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
- 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

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### **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1540

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

#### **1540 Secondary English Language Arts Teacher**

### **A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

### **B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Secondary English Language Arts Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday January 2, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

### **C. IMPACT CRITERIA**

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

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

instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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

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

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

## 1540 Secondary English Language Arts Teacher

### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Secondary English Language Arts Teacher. This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8 and may be used in lieu of the Middle Level English Language Arts Teacher certification in grades 6 to 8.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

### 2.0 Definitions

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

### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Secondary English Language Arts Teacher to an educator who has met the following:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1542

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

#### 1542 Secondary Mathematics Teacher

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1542 Secondary Mathematics Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Secondary Mathematics Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday January 2, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. IMPACT CRITERIA

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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

# PROPOSED REGULATIONS

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

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

## 1542 Secondary Mathematics Teacher

### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Secondary Mathematics Teacher. This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8 and may be used in lieu of the Middle Level Mathematics Teacher certification in grades 6 to 8.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

### 2.0 Definitions

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

### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Secondary Mathematics Teacher to an educator who has met the following:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1544

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

## 1544 Secondary Social Studies Teacher

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Secondary Social Studies Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday January 2, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from

the above address or may be viewed at the Professional Standards Board Business Office.

**C. IMPACT CRITERIA**

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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

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

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

**1544 Secondary Social Studies Teacher****1.0 Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Secondary Social Studies Teacher. This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8 and may be used in lieu of the Middle Level Social Studies Teacher certification in grades 6 to 8.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

**2.0 Definitions**

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

## 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Secondary Social Studies Teacher to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1549

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

#### 1549 Dance Teacher

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1549 Dance Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Dance Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday January 2, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in

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

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

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

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

### **1549 Dance Teacher**

#### **1.0 Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Dance Teacher. This certification is required for grades 9 to 12, and is valid in grades 5 to 8 in a Middle Level school.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

#### **2.0 Definitions**

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
  - “**Approved Accrediting Agency**” means a National, Regional, or Specialized Accrediting agency or association that appears on the list of recognized accrediting agencies published by the United States Secretary of Education or any other accrediting agency the Delaware Secretary of Education, deems within his or her discretion, to be reliable or be equivalent to those on the published list.
  - “**Accredited institution**” means an institution that has received accreditation from an approved accrediting agency.

#### **3.0 Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Dance Teacher to an educator who has met the following:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
  - 3.1.3 Has satisfied the additional requirements in this regulation.

#### **4.0 Additional Requirements**

If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:

- 4.1 If the educator is applying for their second Standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5;

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- 4.1.1 Has satisfactorily completed fifteen (15) credits or their equivalent in professional development related to Dance, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; or
- 4.1.2 Has obtained certification in Dance from an accredited institution.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1558

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

#### 1558 Theater Teacher

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1558 Theater Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. One small change has been deemed necessary. This regulation sets forth the requirements for a Theater Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday January 2, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. IMPACT CRITERIA

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state

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

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

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

## 1558 Theater Teacher

### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Theater Teacher. This certification is required for grades 9 to12, and is valid in grades 5 to 8 in a Middle Level school.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

### 2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
  - “**Approved Accrediting Agency**” means a National, Regional, or Specialized Accrediting agency or association that appears on the list of recognized accrediting agencies published by the United States Secretary of Education or any other accrediting agency the Delaware Secretary of Education, deems within his or her discretion, to be reliable or be equivalent to those on the published list.
  - “**Accredited institution**” means an institution that has received accreditation from an approved accrediting agency.

### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Theater Teacher to an educator who has met the following:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
  - 3.1.3 Has satisfied the additional requirements in this regulation.

### 4.0 Additional Requirements

If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:

- 4.1 If the educator is applying for their second Standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5;
  - 4.1.1 Has satisfactorily completed fifteen (15) credits or their equivalent in professional development related to Theater, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; or

4.1.2 Has obtained certification in Theater from an accredited institution.

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1574

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

**1574 Teacher of Students Who Are Deaf or Hard of Hearing**

**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1574 Teacher of Students Who Are Deaf or Hard of Hearing. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to update current coursework requirements and to accommodate current formatting. This regulation sets forth the requirements for a Teacher of Students Who Are Deaf or Hard of Hearing.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday January 2, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. IMPACT CRITERIA**

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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

with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

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

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

## 1574 Teacher of Students Who Are Deaf or Hard of Hearing

### 4-0 Content

~~This regulation shall apply to the requirements for a standard certificate for Teacher of Students Who Are Deaf or Hard of Hearing pursuant to 14 **Del.C.**, §1220.~~

### 2-0 Definitions

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

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

~~"**Department**" means the Delaware Department of Education.~~

~~"**Educator**" means a person licensed and certified by the State under 14 **Del.C.** §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. The term 'educator' does not include substitute teachers.~~

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

~~"**Fifteen (15) Credits or Their Equivalent in Professional Development**" means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.~~

~~"**Immorality**" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness.~~

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

~~"**Major or its Equivalent**" means a minimum of thirty (30) semester hours of course work in a particular content area.~~

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

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

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

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

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

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

## 3.0 ~~Standard Certificate~~

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

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

## 4.0 ~~Multiple Certificates~~

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

## 5.0 ~~Application Requirements~~

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

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

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

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

#### **7.0 ~~Effect of Regulation~~**

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

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

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

#### **9.0 ~~Secretary of Education Review~~**

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

#### **1.0 Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for a Teacher of Students Who Are Deaf or Hard of Hearing. Eighteen (18) months from the effective date of this regulation, this certification shall be required for all educators within the Delaware public school system whose primary assignment is teaching children who are deaf or hard of hearing.

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1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

## **2.0 Definitions**

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

## **3.0 Standard Certificate**

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher of Students Who Are Deaf or Hard of Hearing to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,

3.1.3 Has satisfied the additional requirements in this regulation.

## **4.0 Additional Requirements**

4.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:

4.1.1 Holding a master's degree from a regionally accredited college or university in Deaf Education from a program approved by the Council for Education of the Deaf; or

4.1.2 The successful completion of twenty-one (21) credits from a regionally accredited college or university or their equivalent in professional development as approved by the Department in the following areas:

4.1.2.1 Human Growth and Development Characteristics of the Deaf and Hard of Hearing (3 credits);

4.1.2.2 Assessment, Diagnosis and Prescriptive Techniques for the Deaf or Hard of Hearing (3 credits);

4.1.2.3 Curriculum and Instructional Methods for the Deaf or Hard of Hearing (3 credits);

4.1.2.4 Auditory Language Development (3 credits);

4.1.2.5 Audiology (3 credits);

4.1.2.6 Deaf and Hard of Hearing Practicum (3 credits); and either

4.1.2.7 Visual Language Development (3 credits); or

4.1.2.8 American Sign Language (3 credits).

## **5.0 Past Certification Recognized**

The Department shall recognize a Standard Certificate Teacher of Students Who are Deaf or Hard of Hearing issued by the Department between January 11, 2007 and the effective date of this regulation. A teacher holding a Standard Certificate Teacher of Students Who are Deaf or Hard of Hearing issued between January 11, 2007 and the effective date of this regulation shall be considered certified to teach children who are deaf or hard of hearing.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1575

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

#### 1575 Teacher of Students with Visual Impairments

##### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

##### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1574 Teacher of Students with Visual Impairments. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to update current course requirements and to accommodate current formatting. This regulation sets forth the requirements for a Teacher of Students with Visual Impairments.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday January 2, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

##### C. IMPACT CRITERIA

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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

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

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

## 1575 Teacher of Students with Visual Impairments

### 4.0 Content

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Teacher of Students with Visual Impairments. This regulation does not apply to Orientation and Mobility Specialists who are certified by the Academy of Certification of Vision Rehabilitation and Education Professionals.~~

### 2.0 Definitions

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

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

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

**“Educator”** means a person licensed and certified by the State under 14 **Del.C.** §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board approved by the State Board. The term ‘educator’ does not include substitute teachers.

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

**“Fifteen (15) Credits or Their Equivalent in Professional Development”** means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.

**“Immorality”** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness;

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

**“Major or Its Equivalent”** means a minimum of thirty (30) semester hours of course work in a particular content area.

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

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

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

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

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

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

**3-0 Standard Certificate**

In accordance with ~~14 Del.C. §1220(a)~~, the Department shall issue a Standard Certificate as a Teacher of Students with Visual Impairments, to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License, or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, who has met the requirements set forth below and in ~~14 Del.C. §206(d)~~:

- ~~3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
  - ~~3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or~~
  - ~~3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in educating Visually Impaired Students; or~~
  - ~~3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or~~
  - ~~3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactorily completing a minimum of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and
    - ~~3.1.4.1 A minimum of fifteen (15) graduate or undergraduate credits from a regionally accredited college or university, taken either as part of a degree program or in addition to it, to include:
      - ~~3.1.4.1.1 Anatomy and Physiology of the Eye;~~
      - ~~3.1.4.1.2 Braille and Nemeth Code;~~
      - ~~3.1.4.1.3 Orientation/Mobility for the Teacher of the Visually Impaired;~~
      - ~~3.1.4.1.4 Education for the Visually Impaired;~~
      - ~~3.1.4.1.5 Assistive Technology; or~~
      - ~~3.1.4.1.6 Diagnosis/Assessment/IEP Development.~~~~~~~~
- ~~3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieved a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or~~
- ~~3.3 Met the requirements for licensure and holding a valid and current license or certificate from another state as a Teacher of the Visually Impaired;
  - ~~3.3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or~~~~
- ~~3.4 Met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C §1203.~~

**4.0 Multiple Certificates**

Educators may hold certificates in more than one area.

**5.0 Application Requirements**

An applicant for a Standard Certificate shall submit:

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

**6.0 Application Procedures for License Holders**

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

**7.0 Effect of Regulation**

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

**8.0 Validity of a Standard Certificate**

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

**9.0 Secretary of Education Review**

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

## **1.0 Content**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Teacher of Students with Visual Impairments. Eighteen (18) months from the effective date of this regulation, this certification shall be required for all educators within the Delaware public school system whose primary assignment is teaching children with visual impairments. This regulation does not apply to Orientation and Mobility Specialists who are certified by the Academy of Certification of Vision Rehabilitation and Education Professionals.

## **2.0 Definitions**

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

## **3.0 Standard Certificate**

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher of Students with Visual Impairments, to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
  - 3.1.3 Has satisfied the additional requirements in this regulation.

## **4.0 Additional Requirements**

- 4.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:
- 4.1.1 Holding a bachelor's or master's degree from a regionally accredited college or university with a major or its equivalent in educating Visually Impaired Students from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or
  - 4.1.2 The successful completion of seventeen (17) credits from a regionally accredited college or university or their equivalent in professional development as approved by the Department in the following areas:
    - 4.1.2.1 Anatomy and Physiology of the Eye (3 credits);
    - 4.1.2.2 Braille and Nemeth Code (3 credits);
    - 4.1.2.3 Assessment of Students with Visual Impairments (3 credits);
    - 4.1.2.4 Methods of Instruction for Students with Visual Impairments (3 credits);
    - 4.1.2.5 Assistive Technology (3 credits); and
    - 4.1.2.6 Orientation/Mobility for the Teacher of Students with Visual Impairments (2 credits).

## **5.0 Past Certification Recognized**

The Department shall recognize a Standard Certificate Teacher of Students With Visual Impairments issued by the Department between January 11, 2007 and the effective date of this regulation. A teacher holding a Standard Certificate Teacher of Students With Visual Impairments issued between January 11, 2007 and the effective date of this regulation shall be considered certified to teach children with visual impairments.

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# PROPOSED REGULATIONS

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 Del.C. §7903(10))

### 3201 Skilled and Intermediate Care Nursing Facilities

#### PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3201, Skilled and Intermediate Care Nursing Facilities by delineating what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

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 Thomas Murray, Deputy Director, Division of Long Term Care Resident Protection, 3 Mill Road, Suite 308, Wilmington, Delaware 19806 by December 31, 2012.

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.

#### Background

Partly as result of circumstances encountered by the Division and the facilities it regulates during and after Hurricane Irene in 2011 the Division recognized a need to strengthen the emergency preparedness capabilities of our facilities. The Division joined with the University of Delaware College of Nursing and Emergency preparedness in conducting a two day seminar for long term care facility administrators was conducted in the spring of 2012. The Division also contracted with an emergency preparedness consulting firm that is presently working with each facility to develop an all hazards plan. This regulatory amendment delineates what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

#### Summary of Proposal

This regulatory amendment delineates what information must be contained in each facility's all hazards emergency plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training

#### Statutory Authority

29 Del.C. §7903(10), Powers, duties and functions of the Secretary

### 3201 Skilled and Intermediate Care Nursing Facilities

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

#### 8.0 Emergency Preparedness

- 8.1 Nursing facilities shall comply with the rules and regulations adopted and enforced by the State Fire Prevention Commission or the municipality with jurisdiction.
- 8.2 Regular fire drills shall be held at least quarterly on each shift. Written records shall be kept of attendance at such drills.
- 8.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The plan must be submitted to the Division and DEMA in a digital format and it must conform to the template prescribed by the Division.

- 8.4 The staff on all shifts shall be trained on emergency and evacuation plans. Evacuation routes shall be posted in a conspicuous place at each nursing station.
- 8.5 In the event of a facility evacuation, the evacuation plan shall, at a minimum, provide for the transfer or availability of resident medications and records.
- 8.6 Each facility shall submit with their its annual license renewal; ~~an updated Division of Public Health Residential Health Care Facilities Emergency Planning Checklist, electronically if possible.~~
- 8.6.1 A current all hazards emergency plan, and
- 8.6.2 Copies of the FEMA certificate of achievement which demonstrate that at least two active, full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months.
- 8.6.3 The Division may grant an extension of time for either requirement in 8.6 upon request and for good cause shown.

**\*Please note that no additional changes were made to the regulation, therefore the proposed regulation is not being published here in its entirety. A copy of the proposed regulation is available at:**

**3201 Skilled and Intermediate Care Nursing Facilities**

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## DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 Del.C. §7903(10))

### PUBLIC NOTICE

#### **3210 Nursing Homes Admitting Pediatric Residents**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3210, Nursing Homes Admitting Pediatric Residents by delineating what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

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 Thomas Murray, Deputy Director, Division of Long Term Care Resident Protection, 3 Mill Road, Suite 308, Wilmington, Delaware 19806 by December 31, 2012.

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.

#### **Background**

Partly as result of circumstances encountered by the Division and the facilities it regulates during and after Hurricane Irene in 2011 the Division recognized a need to strengthen the emergency preparedness capabilities of our facilities. The Division joined with the University of Delaware College of Nursing and Emergency preparedness in conducting a two day seminar for long term care facility administrators was conducted in the spring of 2012. The Division also contracted with an emergency preparedness consulting firm that is presently working with each facility to develop an all hazards plan. This regulatory amendment delineates what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

#### **Summary of Proposal**

This regulatory amendment delineates what information must be contained in each facility's all hazards emergency plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

**Statutory Authority**

29 Del.C. §7903(10), Powers, duties and functions of the Secretary

**3210 Nursing Homes Admitting Pediatric Residents***(Break in Continuity of Sections)***12.0 Emergency Preparedness**

- 12.1 Nursing facilities shall comply with the rules and regulations adopted and enforced by the State Fire Prevention Commission or the municipality with jurisdiction.
- 12.2 Regular fire drills shall be held at least quarterly on each shift. Written records shall be kept of attendance at such drills.
- 12.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The plan must be submitted to the Division and DEMA in a digital format and it must conform to the template prescribed by the Division.
- 12.4 The staff on all shifts shall be trained on emergency and evacuation plans. Evacuation routes shall be posted in a conspicuous place at each nursing station.
- 12.5 In the event of a facility evacuation, the evacuation plan shall, at a minimum, provide for the transfer or availability of resident medications and records.
- 12.6 Each facility shall submit with its annual license:
- 12.6.1 A current all hazards emergency plan, and
- 12.6.2 Copies of the FEMA certificate of achievement which demonstrates that at least two active, full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months.
- 12.6.3 The Division may grant an extension of time for either requirement in 12.6 upon request and for good cause shown.

**123.0 Miscellaneous Services**

- 123.1 The licensee shall ensure that each pediatric resident has adequate, clean, well-fitting clothing that is weather appropriate. Clothing must be used exclusively by one pediatric resident and not shared in common.
- 123.2 The licensee shall ensure that each pediatric resident has individual personal hygiene items that are in proper condition for use and are not shared for use with other residents. These items include, but are not limited to, bathing soap, toothbrush, toothpaste, hair brushes/comb, and other toiletries.
- 123.3 The licensee through licensed healthcare and educational professionals shall ensure that each pediatric resident engages in activities on a daily basis which directly relate to the following developmental areas:
- neurosensory,
  - fine motor development,
  - gross motor development,
  - social/emotional,
  - speech/language/communication,
  - hearing, audiology.
- 123.4 The licensee shall ensure adequate staff to enable pediatric residents to participate in daily play activities and crafts. The licensee shall provide indoor and outdoor play and activity equipment that is appropriate for the ages and developmental levels of the pediatric residents.
- 123.5 The licensee shall provide recreational therapy for the pediatric residents which will include supervised outdoor activity and play time, weather permitting and the pediatric resident's condition permitting.
- 123.6 The licensee though the Activities Director shall ensure that appropriate alternative recreational activities are provided for pediatric residents unable to participate in group activities.

- 123.7 The licensee shall ensure that all shared play equipment is properly disinfected and that needed infection control precautions are taken.
- 123.8 The licensee shall ensure that pediatric residents are transported in accordance with current national safety standards.
- 123.9 A registered nurse must accompany pediatric residents on all school-related field trips. Portable resuscitation equipment must be supplied and accompany the pediatric residents.

**134.0 Resuscitation Orders**

- 134.1 Upon admission to the facility, the PCP and PCN shall discuss with the parents/guardian of the pediatric resident procedures to follow in terms of a Do Not Resuscitate (DNR) status and shall include in the pediatric resident's chart, documentation of either DNR or Full Code status.
- 134.2 The DNR status of a pediatric resident shall not prohibit full participation by that pediatric resident in school/recreational field trips and/or events.

**145.0 Waiver**

Waivers may be granted by the Division for good cause.

**156.0 Severability**

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

**\*Please note that no additional changes were made to the regulation, therefore the proposed regulation is not being published here in its entirety. A copy of the proposed regulation is available at:**

**3210 Nursing Homes Admitting Pediatric Residents**

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**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 Del.C. §7903(10))  
16 DE Admin. Code 3225

**PUBLIC NOTICE****3225 Assisted Living Facilities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3225, Assisted Living Facilities by delineating what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

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 Thomas Murray, Deputy Director, Division of Long Term Care Resident Protection, 3 Mill Road, Suite 308, Wilmington, Delaware 19806 by December 31, 2012.

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.

## Background

Partly as result of circumstances encountered by the Division and the facilities it regulates during and after Hurricane Irene in 2011 the Division recognized a need to strengthen the emergency preparedness capabilities of our facilities. The Division joined with the University of Delaware College of Nursing and Emergency preparedness in conducting a two day seminar for long term care facility administrators was conducted in the spring of 2012. The Division also contracted with an emergency preparedness consulting firm that is presently working with each facility to develop an all hazards plan. This regulatory amendment delineates what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

## Summary of Proposal

This regulatory amendment delineates what information must be contained in each facility's all hazards emergency plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training

## Statutory Authority

29 Del.C. §7903(10), Powers, duties and functions of the Secretary

### 3225 Assisted Living Facilities (Break in Continuity of Sections)

## ~~18.0 Fire Safety and Other Emergency Plans~~

- ~~18.1 The assisted living facility shall comply with all applicable state and local fire and building codes. All applications for license or renewal of license shall include a letter certifying compliance by the Fire Marshal having jurisdiction. Notification by the Fire Marshal of non compliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for enforcement remedies in 16 Del.C. Ch. 11, Subchapter I, Licensing By The State.~~
- ~~18.2 The assisted living facility shall:~~
- ~~18.2.1 Develop and implement through staff training and drills a plan for use in fire and other emergencies, which clearly outlines the procedures to be followed and the responsibilities designated to staff.~~
- ~~18.3 Develop a plan for relocation and/or evacuation and continuous provision of services to residents in the event of permanent or temporary closure of the assisted living facility. The evacuation plan shall be approved by the Fire Marshal having jurisdiction and shall include the evacuation route, which shall be conspicuously posted on each floor and in each unit.~~
- ~~18.4 The assisted living facility shall promote staff knowledge of fire and other emergency safety by:~~
- ~~18.4.1 Orienting staff to the emergency plan and to individual responsibilities within 24 hours of the commencement of job duties;~~
  - ~~18.4.2 Documenting completion of orientation in staff member's personnel file with employee's signature;~~
  - ~~18.4.3 Conducting facility fire drills in accordance with State of Delaware Fire Prevention Regulations;~~
  - ~~18.4.4 Conducting other facility emergency drills or training sessions on all shifts at least annually; and~~
  - ~~18.4.5 Maintaining records for two years of facility fire and other emergency drills/training sessions.~~
- ~~18.5 The assisted living facility shall promote resident fire and other emergency safety by:~~
- ~~18.5.1 Orienting residents to the emergency plan within 24 hours of their admission into the assisted living facility;~~
  - ~~18.5.2 Documenting the orientation such that it is signed and dated by the resident; and~~
  - ~~18.5.3 Maintaining records identifying residents needing assistance for evacuation.~~

## 18.0 Emergency Preparedness

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- 18.1 Nursing facilities shall comply with the rules and regulations adopted and enforced by the State Fire Prevention Commission or the municipality with jurisdiction.
- 18.2 Regular fire drills shall be held at least quarterly on each shift. Written records shall be kept of attendance at such drills.
- 18.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The plan must be submitted to the Division and DEMA in a digital format and it must conform to the template prescribed by the Division.
- 18.4 The staff on all shifts shall be trained on emergency and evacuation plans. Evacuation routes shall be posted in a conspicuous place at each nursing station.
- 18.5 In the event of a facility evacuation, the evacuation plan shall, at a minimum, provide for the transfer or availability of resident medications and records.
- 18.6 Each facility shall submit with its annual license:
- 18.6.1 A current all hazards emergency plan, and
- 18.6.2 Copies of the FEMA certificate of achievement which demonstrate that at least two active, full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months.
- 18.6.3 The Division may grant an extension of time for either requirement in 18.6 upon request and for good cause shown.

**\*Please note that no additional changes were made to the regulation, therefore the proposed regulation is not being published here in its entirety. A copy of the proposed regulation is available at:**

**3225 Assisted Living Facilities**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### **Reimbursement Methodologies for Inpatient Psychiatric Hospital Services and Outpatient Hospital Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the *Reimbursement Methodologies for Inpatient Psychiatric Hospital Services and Outpatient Hospital Services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 31, 2012.

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

Pursuant to the public notice requirements of Social Security Act §1902(a)(13)(A) and 42 CFR §447.205, the Division of Medicaid and Medical Assistance (DMMA) publishes this notice of significant changes in the reimbursement methodologies for *Inpatient Psychiatric Hospital Services* and *Outpatient Hospital Services*.

#### Statutory Authority

- Social Security Act §1902(a)(13)(A), *Public process for determination of rates of payment;*

# PROPOSED REGULATIONS

- 42 CFR §440.20, *Outpatient Hospital Services and Rural Health Clinic Services*;
- 42 CFR §440.40, *Nursing Facility Services for Individuals Age 21 or Older (other than services in an institution for mental disease), EPSDT, and Family Planning Services and Supplies*;
- 42 CFR §440.160, *Inpatient Psychiatric Services for Individuals Under Age 21*;
- 42 CFR Part 447, *Payment for Services*;
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*

## Summary of Proposal

### Background

As part of the Companion Letter process to Delaware SPA #08-004, *School-Based Health Services*, the Centers for Medicare and Medicaid Services (CMS) required additional information regarding the reimbursement methodology for Prescribed Pediatric Extended Care (PPEC) services; specifically, how the cost reports were used to create rates for the three levels of care (LOC). That information is no longer available. In these circumstances, CMS has directed states to indicate the effective date for the rates and requires that the fee schedule be published on the State's Delaware Medical Assistance Program (DMAP) website.

### Proposal

Currently, the Division of Medicaid and Medical Assistance (DMMA) pays providers of inpatient psychiatric hospital services and partial hospital psychiatric services based on individually negotiated rates with each provider. CMS has indicated that such negotiated rates are not consistent with efficiency, economy and quality of care as required by Section 1902(a)(30)(A) of the Social Security Act. The proposed methodologies are based on the Medicare rates for the aforementioned services.

DMMA proposes to implement the changes to the methods and standards for setting payment rates effective January 1, 2013. Medicaid State Plan language on Attachment 4.19-A.1 and Attachment 4.19-B, Page 1b is revised to make this change. No change in payment for PPEC services will result from this regulatory action, so there is no change to the PPEC reimbursement language in the State Plan.

The provisions of these state plan amendments are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

### Fiscal Impact Statement

With a fairly small fiscal impact, this change in rates for private psychiatric hospital services will bring Delaware into compliance with federal reimbursement principles, will pay rates that will be consistent across providers and that will enable Delaware to meet the federal upper payment limit tests for inpatient and outpatient hospital services.

No change is proposed for the PPEC rates, so there is no fiscal impact.

Anticipated fiscal impacts:

*Inpatient Psychiatric Hospital rates:*

	Fiscal Year 2013	Fiscal Year 2014
General (State) funds	\$21,272	\$42,805
Federal funds	\$26,714	\$53,169

*Partial Hospitalization Psychiatric rates:*

	Fiscal Year 2013	Fiscal Year 2014
General (State) funds	\$4,569	\$9,195
Federal funds	\$5,738	\$11,421

## DMMA PROPOSED REGULATIONS #12-58 REVISIONS:

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

### METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES INPATIENT PSYCHIATRIC HOSPITAL CARE

~~Psychiatric Hospital reimbursement is a prospectively set per diem rate based on annually reported costs, not to exceed the Medicare rate for the same service. The rates are calculated by determining the previous year's total allowable cost (as defined by HIM 15) divided by the total number of patient bed days. The rates are recalculated annually for the reimbursement year (October 1 through September 30) and inflated using the inflation indices described in ATTACHMENT 4.19-D, Section I.3, which is obtained annually from the Department of Economics of the University of Delaware.~~

#### ~~Disproportionate Share Payments—Psychiatric Hospitals~~

~~Psychiatric hospitals which serve a disproportionate share of low income patients are eligible for a disproportionate payment adjustment when sixty percent (60%) or more of service revenue is attributable to any combination of the following:~~

- ~~▲ public funds, excluding Medicare and Medicaid~~
- ~~▲ bad debts~~
- ~~▲ free care~~

~~All psychiatric hospitals which meet the criteria will receive payment based at the rate of 90% of uncompensated care. Uncompensated care shall be calculated quarterly and disproportionate share payments authorized at the end of each quarter.~~

~~The psychiatric hospital definition meets the exception under 1923(d)(2) of the Social Security Act.~~

~~Outlier payments under Section 302(b) of the Medicare Catastrophic Coverage Act are not applicable to this class of provider.~~

~~Total payments under this plan will not exceed the Federally published Disproportionate Share Hospital allotment.~~

Reimbursement for public psychiatric hospitals is a prospectively set per diem rate based on annual reported allowable costs, using Medicare cost principles codified 42 CFR 413 and in the Medicare Provider Reimbursement manual (CMS-Pub.15) and consistent with OMB Circular A-87. The rate is computed by determining the previous year's total allowable cost divided by the total number of patient bed days. The rate is recalculated annually for the reimbursement year (October 1 through September 30) and inflated using the inflation indices described in Attachment 4.19-D, page 13. The per diem rate is not cost settled but is limited to the upper payment limit defined below.

Reimbursement for private psychiatric hospitals for inpatient psychiatric hospitalization services is paid as a per diem equal to 93% of the Medicare Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) rate for Delaware.

Reimbursement for inpatient psychiatric hospitalization shall not exceed the upper limit as defined at 42 CFR 447.272. The upper limit is defined as the Medicare IPFPPS rate for Delaware inpatient psychiatric facilities.

No supplemental payments are made for public or private inpatient psychiatric hospital services.

Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both government and private providers. The fee schedule and any annual/periodic adjustments to the fee schedule are available on the DMAP website at: <http://www.dmap.state.de.us/downloads>.

(Break in Continuity of Sections)

# PROPOSED REGULATIONS

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE  
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
OUTPATIENT HOSPITAL CARE

Hospital Specific Cost-to-Charge Ratios – Hospital specific cost-to-charge ratios were calculated for each hospital for defined groupings of revenue codes (for example, blood or anesthesia), not including the visit services above, based on charges and costs for outpatient services reported by each hospital for the base period (1992). Each Delaware hospital is paid based on a hospital specific% percentage of billed charges for these revenue codes.

Reimbursement for private psychiatric hospitals for partial hospital psychiatric services is paid at 100% of the Medicare Hospital Outpatient Prospective Payment System (OPPS) per diem rates for Hospital-Based Level 1 and Level II Partial Hospitalization Program (PHP) services.

Supplemental payments are not made for outpatient hospital services. Except as otherwise noted in the plan, State developed fee schedule rates are the same for both government and private providers. ~~The visit rates, the outpatient percent of charges and the fee schedule for laboratory services~~ Fee schedules for outpatient hospital services including laboratory services are available on the DMAP website at: <http://www.dmap.state.de.us/downloads>.

#### Outpatient Hospital UPL Methodology

UPL demonstrations are performed by applying the Medicare outpatient cost to charge ratios from the Medicare Cost Report to the provider's billed charges as recorded in Delaware's MMIS to calculate the Medicare payment. For UPL demonstrations for services not covered by Medicare, ~~DE~~ Delaware uses the Medicaid State Plan Fee Schedule rate as the reasonable estimate of what Medicare would have paid. Crossover claims are excluded from the demonstration.

Data required to perform the UPL test includes the following: Medicare Outpatient Cost to Charge Ratio – Worksheet c, Part I, Lines 37-61 from the most recently available Medicare Hospital Cost Report (CMS-2552-96) and hospital outpatient fee for service Billed Amount and Allowed Amount from Delaware MMIS for paid claims by date of service that corresponds to the Medicare Hospital Cost Reporting period for each Delaware hospital. The appropriate Medicare outpatient hospital cost category will be determined for each corresponding Delaware Medicaid Level of Reimbursement (grouping of like revenue codes). For each provider, the Medicare Cost to Charge Ratio for each Delaware Medicaid Level of Reimbursement is multiplied by the billed amount submitted by the provider to determine Medicare-defined cost. The results are compared to Delaware Allowed Amount as recorded in the MMIS. The "Allowed Amount" is the maximum allowable payment per Delaware outpatient reimbursement policy before TPL and other offsets are applied. For claims where there are no offsets, the "Allowed Amount" equals the actual paid amount. The difference between Medicare Cost and Delaware Medicaid Cost for each cost category is computed for each provider and aggregated. If the aggregate Medicare Cost exceeds the Medicaid Cost, then the Upper Payment Limit test is met. If the Medicare Cost is less than the Medicaid Cost, then an overpayment has been made by the amount by which the Medicaid Cost (i.e. Allowed Amount) exceeds the Medicare Cost.

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### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 3365 (16 **Del.C.** §3365)

#### PUBLIC NOTICE

#### **4102 School-Based Health Centers**

House Bill 303, signed into law on June 26, 2012, adds School-Based Health Centers to Title 18 of Delaware Code. The Department of Health and Social Services is proposing regulations for School-Based Health Centers.

On December 1, 2012, the Family Health Systems section, under the Division of Public Health, Department of Health and Social Services, plans to publish proposed regulations governing the State of Delaware School-Based Health Centers and hold them out for public comment per Delaware law.

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Copies of the proposed regulations are available for review in the December 1, 2012 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Family Health Systems Section at (302) 744-4821.

Any person who wishes to submit suggestions, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by December 31, 2012 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700  
Fax (302) 739-6659

## **4102 School-Based Health Centers**

### **1.0 Statement of Purpose**

These regulations are intended to implement the provisions of 18 Del.C. §3365 and 3517G, school-based health centers. These regulations apply to medical vendors who provide services at school-based health centers and health insurance plans who reimburse for covered medical services. These regulations define: (1) services offered in a school-based health center; (2) criteria for recognition as a school-based health center; (3) interactions with primary care providers; and (4) criteria for health promotion.

### **2.0 Definitions**

The following terms, when used in these regulations, should have the following meaning unless the context clearly indicates otherwise:

“Agency” means the Division of Public Health, Bureau of Adolescent and Reproductive Health, school-based health center program.

“Parent” means the parent or legal guardian authorized to enroll a student in the school-based health center.

“School-based health center” means a health care clinic located in or near a school facility that is organized through school and health provider relationships that provides services designated in section 4.0 of this regulation.

“Student” means a child or adolescent who is enrolled in school.

### **3.0 Designation as a School-Based Health Center**

3.1 School-based health centers (SBHC) are designed to reduce risk behaviors and improve health among children and adolescents through health promotion and education, early intervention, and preventive care. These services include physical examinations, treatment of minor acute medical conditions, counseling and community referrals. SBHC do not supplant the primary care provider, but rather serve to coordinate care between students and their primary care provider, as well as increase access to services.

3.2 A health care clinic may be designated as a school-based health center (SBHC) by the Agency if it has demonstrated that it meets the criteria provided in paragraphs 4.0-8.0 in these regulations. The Agency shall be the sole arbiter of the satisfaction of these criteria.

3.3 Application for designation shall be made to the Agency using a standard application form. The form is available by contacting the Division of Public Health, school-based health center program.

3.4 Designations are non-transferable and valid for a period of five years from date of issue. Application for renewal is available by contacting the Division of Public Health, school-based health center program.

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# PROPOSED REGULATIONS

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## **4.0 Service Provision**

- 4.1 A minor student must be enrolled in the SBHC by his or her parent/guardian in order to obtain services at the SBHC.
- 4.2 A SBHC shall be open during hours accessible to students. Information on hours of operation must be posted in areas frequented by students.
- 4.3 A SBHC is required to make services available under the categories of physical health, mental health, health education, and nutrition consultation/education, as outlined in this section.
  - 4.3.1 Physical Health
    - 4.3.1.1 Assessment, diagnosis and treatment of minor illness/injury.
    - 4.3.1.2 Immunizations, in accordance with recommendations from the Division of Public Health.
  - 4.3.2 Mental Health
    - 4.3.2.1 Individual and group counseling.
    - 4.3.2.2 Referral for long-term counseling and mental health evaluations and emergency treatment.
  - 4.3.3 Health Education
    - 4.3.3.1 Individual, group or classroom education, including but not limited to, healthy lifestyles and preventive health.
  - 4.3.4 Nutrition Consultation/Education
    - 4.3.4.1 Individual, group or classroom education, including but not limited to, healthy eating and weight management.
  - 4.3.5 Subject to school board approval
    - 4.3.5.1 Diagnosis and treatment of sexually transmitted diseases, reproductive health, provision of contraceptives, and HIV testing and counseling. Provision of these services by SBHCs is subject to the approval of the school board governing the SBHC locale.
  - 4.3.6 Promotion of vaccination among enrolled students
    - 4.3.6.1 SBHCs must promote provision of all vaccinations required or recommended by the Division of Public Health to enrolled students either on site or through referral to a primary care provider.
    - 4.3.6.2 SBHCs shall promote vaccination among students through education and awareness activities.

## **5.0 Staffing**

- 5.1 A SBHC shall provide services through health professionals who:
  - 5.1.1 Are experienced in community health and providing health services to school-aged children and adolescents.
  - 5.1.2 Have knowledge of health promotion and preventive health strategies for children and adolescents.
  - 5.1.3 Maintain up to date training and proper certification for the population to be served.
- 5.2 The organizational structure of the SBHC must be adequate to provide for appropriate clinic supervision of staff, and to ensure that staff are assigned responsibilities that are consistent with their education and experience and legally within their scope of practice. Staffing of the SBHC must include:
  - 5.2.1 An individual designated as having overall responsibility for the management of the SBHC.
  - 5.2.2 A licensed advanced practice nurse, physician assistant or physician, on a part-time basis at minimum.
  - 5.2.3 An individual trained and experienced in nutrition for school-aged children and adolescents.
  - 5.2.4 A licensed clinical social worker, psychologist or mental health counselor.
  - 5.2.5 An individual responsible for the management of medical records.

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## 6.0 Billing and Reimbursement

- 6.1 SBHCs are required to implement and maintain a third-party insurance billing process for services provided.
- 6.2 A SBHC shall not charge co-pays or any other out-of-pocket fees for use of SBHC services.
- 6.3 Any services provided by SBHCs pursuant to a student's Individualized Education Program (IEP) are not subject to third-party billing.
- 6.4 Insurance information on each student enrolled in the SBHC must be updated annually at minimum.

## 7.0 Information Storage and Sharing

- 7.1 A SBHC must keep detailed records on the treatment of students receiving services, including but not limited to, documentation of contact with primary care providers.
- 7.2 A SBHC shall establish written protocol that describes how information will be shared with the student's primary care provider.

## 8.0 Quality Improvement

- 8.1 A SBHC must implement and maintain a quality assurance plan. Components of the plan shall include at a minimum:
  - 8.1.1 Ongoing clinical and medical record reviews by peers to ensure conformity with current standards of practice. The plan must include provisions for implementing corrective actions when deficiencies are noted.
  - 8.1.2 Satisfaction assessments conducted with parents, students and/or school staff on a biennial basis.
  - 8.1.3 The Agency may perform such reviews as it determines necessary to ensure continued compliance with SBHC standards. Review may include site visits, reviews of records and documents, or such other oversight as determined necessary by the Agency.

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### DIVISION OF SOCIAL SERVICES

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

#### PUBLIC NOTICE

#### **Child Care Subsidy Program Proposed Phase-out Of Purchase Of Care Plus**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS)/Division of Social Services provides public notice regarding the Child Care Subsidy Program, specifically, *Purchase of Care Plus*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2012.

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

#### SUMMARY OF PROPOSAL

The proposed gives notice to the public regarding the Child Care Subsidy Program, specifically, *Purchase of Care Plus*.

**Statutory Authority**

Title 31 of the Delaware Code, Title XX of the Social Security Act, 7 CFR §273.7, and the Child Care Development Block Grant, as amended by the Personal Responsibility and Work Reconciliation Act of 1996, *Child Care Subsidy Program*

**Background**

Effective October 1, 1996, Congress enacted the Child Care Development Fund (CCDF) which consolidated funding for child care for low-income working families and families reentering the workforce. The Child Care Subsidy Program provides support for families with young children to enable the caretaker to hold a job, obtain training or meet special needs of the child. Child care may also be provided in child abuse cases to help protect the child.

**Summary of Proposed Changes**

Purchase of Care Plus (POC+) is a care option that allows providers to charge Division of Social Services (DSS) clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives the DSS rate, the DSS determined child care parent fee if applicable, and any additional provider determined co-pay.

Commencing January 1, 2013, the Division of Social Services proposes to phase-out the Purchase of Care Plus (POC+) care option. Effective January 1, 2013, no new providers will be approved for POC Plus.

The proposed phase-out changes will be adopted in proposed regulations in future issues of the Delaware *Register of Regulations*.

**DSS PUBLIC NOTICE #12-56****Child Care Subsidy Program Proposed Phase-out Of Purchase Of Care Plus**

Delaware Health and Social Services (DHSS) and the Division of Social Services (DSS) is committed to keeping our partners, stakeholders and community informed of any changes in rules and regulations in the Child Care Subsidy Program.

Pursuant to 31 Delaware Code, Section 512, DSS is required to give public notice of any significant proposed change in its services and operations.

Public Notice is hereby given that the DSS proposes to phase-out the Purchase of Care Plus (POC+) care option commencing January 1, 2013. Effective January 1, 2013, no new providers will be approved for POC Plus.

Currently, Purchase of Care Plus (POC+) is an option that allows child care providers to charge Division of Social Services (DSS) clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives the DSS rate, the DSS determined child care parent fee if applicable, and any additional provider determined co-pay. This option is primarily for DSS fee-paying clients. DSS chooses not to limit childcare options for any group of individuals. DSS will allow all DSS purchase of care clients eligible for POC with no parent fee the opportunity to waive their right to receive childcare with no additional provider co-pays and choose a POC+ slot. POC+ is an option for all DSS clients, not a requirement. If a provider does not have a regular POC slot available, the client can choose to self-arrange, enter into a POC+ arrangement or find another provider that will take the regular DSS payment.

The purpose and rationale for the proposed phase-out is: In 2011, the provider rates were raised to sixty five percent of the market rate plus fifty cents. In addition, providers who join the Quality Rating and Improvement System known as Stars can potentially receive up to one hundred percent of the market rate. Some providers may choose the option of not participating in Stars, but will make up the difference by collecting the additional POC Plus fees through the low income families. Phasing out POC+ will encourage providers to participate in Stars and give some financial relief to our low income families.

The proposed phase-out of the Purchase of Care Plus (POC+) option will take place according to the following schedule and all affected providers will be notified:

No longer enroll any new Providers in POC+	January 1, 2013
Disenroll any 5 star Providers in POC +	March 1, 2013
Disenroll any 4 star Providers in POC +	May 1, 2013
Disenroll any 3 star Providers in POC +	July 1, 2013
Disenroll any 2 star Providers in POC+	September 1, 2013
Disenroll any 1 star Providers in POC +	November 1, 2013
Disenroll any remaining Providers in POC+	January 1, 2014

Parents, caretaker relatives, or legal guardians may be able to find child care assistance through Delaware's Resource and Referral agency, Children and Families First at 1-800-220-3092.

The proposed phase-out changes will be adopted in proposed regulations in future issues of the Delaware *Register of Regulations*. Questions, written comments and additional information pertaining to the proposed changes may be sent to: Sharon L. Summers, Policy Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or via fax to 302-255-4425 for a period of thirty (30) days from the date of this notice. Please identify in the subject line: Proposed Phase-Out of Purchase of Care Plus.

Elaine Archangelo, November 8, 2012  
Director, Division of Social Services

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 1009 and 1010

### PUBLIC NOTICE

#### Case Administration Provisions

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding Case Administration, specifically, *Arranging Interpreter and Translation Services for Non-English Speaking Clients* and *Arranging Services for Clients with Hearing Impairments*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2012.

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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Case Administration, specifically, *Arranging Interpreter Services for Non-English Speaking Clients* and *Arranging Services for Clients with Hearing Impairments*.

#### Statutory Authority

- Title IV-A of the Social Security Act, *TANF Program* and the *Emergency Assistance Program*

- Title 31 of the **Delaware Code**, Chapter 5, *General Assistance Program*
- Title IV of the Immigration and Nationality Act, Refugee Resettlement Program
- Title 31 of the Delaware Code, Title XX of the Social Security Act, 7 CFR §273.7, and the Child Care Development Block Grant, as amended by the Personal Responsibility and Work Reconciliation Act of 1996, *Child Care Subsidy Program*
- Title 31 of the Delaware Code, Chapter 9, *Food Benefit Employment and Training Services*; and,
- 7 U.S.C. Chapter 51 and Title 31 of the **Delaware Code**, Chapter 6, *Food Supplement Program*
- House Bill 91, 146<sup>th</sup> Delaware General Assembly, *Use of Respectful Language When Referring to Persons with Disabilities*

## Background

The Department of Health and Social Services is the agency designated by the State as responsible for Delaware's public assistance programs. Within the Department, the Division of Social Services (DSS) administers the following programs: Temporary Assistance for Needy Families (TANF), General Assistance Program, Food Supplement Program, Refugee Resettlement Program, Child Care Subsidy Program, Emergency Assistance Program, and Employment and Training Services.

The purpose of Delaware's public financial assistance programs is to help its needy citizens in providing a standard of living that is compatible with human decency and good health and to provide opportunities for its recipients to gain skills that will enhance their ability to become financially independent.

## Summary of Proposed Changes

**DSSM 1009**, *Procedures for Serving Non-English Speaking Clients Arranging Interpreter and Translation Services for Non-English Speaking Clients* and **DSSM 1010**, *Procedures for Serving Hearing Impaired Clients Arranging Services for Clients with Hearing Impairments*: The language in DSSM §§ 1009 and 1010 is changed to People First and the titles are changed to more accurately reflect the activity performed. In addition, the outdated listing of contracted vendors is removed. Finally, procedure is removed from the manual.

## DSS PROPOSED REGULATIONS #12-52

### REVISIONS:

### 1009 Procedures for Serving Non-English Speaking Clients Arranging Interpreter and Translation Services for Non-English Speaking Clients

~~Non-English speaking clients who need an interpreter will be identified by the receptionist at the time of arrival. The receptionist will notify the unit supervisor who will make arrangements for a bilingual staff person to translate for the client.~~

~~DSS has contracts for translation services with the following:~~

~~EDS (1-800-996-9969 and press Option 8);  
Family and Children Services of Delaware, Inc. (655-6486);  
Cammie Santiago Hall (410-548-4740 or HARBORRD@aol.com);  
Latin American Community Center (655-7338), and  
Para Plus Translations, Inc. (1-800-558-3011).~~

~~For complete detailed procedures in accessing these services read the most recent administrative notice on translation services.~~

~~This policy applies to applicants and recipients who have limited English proficiency and require the services of an interpreter to provide information to, or receive information from DSS.~~

### DSS Workers Arrange for Interpreter Services

~~DSS provides interpreter services to non-English speaking clients who need an interpreter. The receptionist will identify the need for services when the applicant or recipient arrives at the office. Bilingual staff or a contracted vendor will provide the services. A listing of contracted vendors is available in the Interpreter and Translation Services Administrative Notice.~~

### DSS Workers Arrange for Translation Services

DSS translates forms and documents into languages common in Delaware. This includes translating an application for our customers. The DSS Worker will send requests for document or form translation to the DSS Policy Unit. See the Interpreter and Translation Services Administrative Notice.

## **1010 Procedures for Serving Hearing Impaired Clients Arranging Services for Clients with Hearing Impairments**

~~The Division of Social Services will obtain sign language interpreters for the hearing impaired. Clients requiring the aid of an interpreter will be identified by the receptionist at the time of arrival. The receptionist will notify the unit supervisor who will make arrangements for a sign language interpreter to translate for the client.~~

~~As there is a charge for using these services, approval must be obtained from the appropriate Operations Administrator prior to contacting these services.~~

~~They are:~~

~~Communication Connection 610-272-4948~~

~~Deaf Hearing Communication Center 610-534-5025~~

~~Deaf Communication Services 302-266-6877~~

~~To secure an interpreter follow the procedures outlined below:~~

~~1. Call one of the services listed above.~~

~~2. Inform the person you are making a request for an interpreter.~~

~~3. Provide the date, time and place of the interpreting assignment (interview).~~

~~4. Leave a call back name and phone number so the interpreter assigned can return your call to~~

~~confirm availability.~~

~~Requests should be made at least 3 days before the interpreter is needed.~~

~~If you need to have telephone contact with a hearing impaired or deaf customer the Delaware Relay Service is available at 800-232-5470~~

~~NOTE: The bill for services will come to the unit requesting the service. Please have the Supervisor sign the bill, "Okay to Pay" and forward it to the DSS fiscal office for payment.~~

This policy applies to applicants and recipients who have a hearing impairment and require auxiliary aids or services to provide information to, or receive information from DSS.

## **DSS Supervisors Arrange for Sign Language Interpreters**

DSS provides sign language interpreters for applicants and recipients who have a hearing impairment. The receptionist will identify the need for services when the applicant or recipient arrives at the office. Use of these services must be approved by the Supervisor.

A contracted vendor will provide the services. A listing of contracted vendors is available in the Interpreter and Translation Services Administrative Notice.

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### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 2022.1 and 9072

### **PUBLIC NOTICE**

#### **Food Supplement Program, General Information and Identification Cards**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program regarding *General Information and Identification Cards*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program &

Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2012.

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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *General Information and Identification Cards*. The Division of Social Services (DSS) is amending and removing regulations requiring the issuance of identification cards to each certified food benefit household that are no longer applicable. Food and Nutrition Service removed this requirement from the Code of Federal Regulations (CFR).

### Statutory Authority

7 CFR Part 274, *Issuance and Use of Program Benefits*

### Background

Electronic Benefits Transfer (EBT) is an electronic system that allows a recipient to authorize transfer of their government benefits from a Federal account to a retailer account to pay for products received. EBT is used in all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. EBT has been implemented in all States since June of 2004.

Each food benefit unit certified as eligible to participate in the program is issued an EBT card. This card is the required proof of eligibility issued to households to use food benefits.

Food benefits are electronically deposited into a household's EBT account on a monthly basis. Therefore, identification cards are no longer needed as proof of program eligibility to pick up benefits.

### Summary of Proposed Changes

**DSSM 2022.1, *General Information* and DSSM 9072, ~~Identification Cards~~ **RESERVED**:** With the implementation of the Electronic Benefit Transfer (EBT) Card, it is no longer necessary for food benefit clients to be issued a Division of Social Services (DSS) identification card.

## DSS PROPOSED REGULATIONS #12-51 REVISIONS:

### 2022.1 General Information

Issue a serially numbered photo-ID card to each ~~certified Food Stamp household and/or each approved Cash Assistance payee~~ as proof of program eligibility.

Issue the ID card in the name of the household/assistance unit member to whom the ~~food stamps/check~~ is issued. The participant/recipient and any authorized representative will sign the card in ink and it will be laminated in the DSS office.

For Voluntary Protective payees in TANF, GA, or RCA, issue the protective payee an ID card with his/her picture on the front of the ID card. The DCIS number of the case for whom he/she is the protective payee, will also be on the front of the ID card.

Limit issuance of ID cards to the time of initial certification with replacement made only in instances of loss, mutilation, destruction, changes in authorized representative, or when DSS determines that new ID cards are needed. Whenever possible, collect the ID card that is being replaced, and any other old ID cards that are in the client's possession.

Do not issue cards having typographical errors or other defects. Banks will not honor ID cards with characters whited out or strikeovers, and will confiscate these cards.

Use cameras for official purposes only. Destroy any pictures taken to test a camera.

Store cameras in a location which ensures that no unauthorized person can have access to them.

**At no time** may an ID photo be taken when an individual is wearing sunglasses.

Issue temporary (non-photo, unlaminated) ID cards when camera equipment/supplies are unavailable or inoperable. Using the usual ID card, limit use by indicating:

"valid for \_\_\_\_\_ only."

(current month/year)

Do not use letters of identification as they are not serially numbered and compromise the bank's mandated record keeping processes.

*(Break in Continuity of Sections)*

## **9072 Identification Cards RESERVED**

[274.10]

~~Issue a serially numbered photo ID card to each certified Food Stamp household as proof of program eligibility. Do not deny or delay Food Stamp benefits because of a household member's inability or refusal to be photographed.~~

~~Refer to 2022.1 for general information on issuing the ID cards for all programs.~~

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## **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 11006.4

### **PUBLIC NOTICE**

#### **Child Care Subsidy Program, Provider Reimbursement**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Provider Reimbursement*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2012.

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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Provider Reimbursement*.

#### **Statutory Authority**

45 CFR §98.40, *Compliance with applicable State and local regulatory requirements*

#### **Background**

Effective October 1, 1996, Congress enacted the Child Care Development Fund (CCDF) which consolidated funding for child care for low-income working families and families reentering the workforce. The Child Care Subsidy Program provides support for families with young children to enable the caretaker to hold a job, obtain

training or meet special needs of the child. Child care may also be provided in child abuse cases to help protect the child.

### *2011 Delaware Child Care Market Rate Study*

The 2011 Delaware Child Care Market Rate Study by Workplace Solutions was conducted to meet federal requirements of 45 Code of Federal Regulations Parts 98 & 99 to ensure that reimbursement rates allow subsidized low-income children equal access to early education and care. The goal of this Rate Study was to develop statistically credible information on the present market prices charged by licensed providers in Delaware. "Market prices" are prices providers charge parents for the care of their private-paying children. They are non-discounted prices charged to unrelated and unaffiliated parents.

### Summary of Proposed Changes

Based on the findings of the 2011 Delaware Child Care Market Rate Study, the Delaware Legislature increased budget monies to give a provider reimbursement rate increase to 65% of Market Rate plus 50 cents effective October 1, 2011. Child care subsidy rates for child care services were updated for those providers participating in the subsidized child care program.

Accordingly, **DSSM 11006.4**, *Provider Reimbursement* is amended reflecting minor language changes. Additionally, this regulatory action removes the Delaware Child Care Provider Rate chart and the Child Care Income Limits chart from the Division of Social Services Manual (DSSM). The provider rate chart will be posted on the Division of Social Services' (DSS) website. The income limits chart is already on the DSS website.

### DSS PROPOSED REGULATION #12-53

#### REVISION:

#### 11006.4 Provider Reimbursement

Reimbursement is monthly as indicated on the Day Care Contract (Compensation, Method of Payment, and Collection of Fee sections). Complete records must be retained by the provider for a period of three years, listing each child's daily attendance, accurately stating the number of authorized days present by type, and the number of absent days. These records will be monitored on a regular basis.

Payment will be made only for the number of days and type of authorization indicated on individual Form 648d the child's authorization notice and in accordance with absent day policy. Reimbursement rates differ for children under the age of two and children two years of age and older each type of child care setting.

#### FFY 2006 CHILD CARE PROVIDER RATES

##### NEW CASTLE COUNTY

	LICENSED HOMES		CENTERS		IN-HOME/RELATIVES	
	Regular	Special Needs	Regular	Special Needs	Regular	Special Needs
0	\$ 110.00	\$ 115.50	\$ 145.00	\$ 152.25	\$ 105.00	\$ 110.25
1	\$ 105.00	\$ 110.25	\$ 122.00	\$ 128.10	\$ 100.00	\$ 105.00
2 to 5	\$ 82.35	\$ 86.45	\$ 104.60	\$ 109.85	\$ 58.00	\$ 60.90
6 & over	\$ 84.30	\$ 88.50	\$ 104.60	\$ 109.85	\$ 58.00	\$ 60.90

##### KENT COUNTY

	LICENSED HOMES		CENTERS		IN-HOME/RELATIVES	
	Regular	Special Needs	Regular	Special Needs	Regular	Special Needs
0	\$ 80.00	\$ 84.00	\$ 97.50	\$ 102.40	\$ 75.00	\$ 78.75
1	\$ 75.00	\$ 78.75	\$ 85.00	\$ 89.25	\$ 75.00	\$ 78.75
2 to 5	\$ 66.20	\$ 69.50	\$ 70.00	\$ 73.50	\$ 45.90	\$ 48.20

# PROPOSED REGULATIONS

6 & over    \$ ~~68.15~~    \$ ~~71.55~~    \$ ~~71.95~~    \$ ~~75.55~~    \$ ~~45.90~~    \$ ~~48.20~~

**SUSSEX COUNTY**

	<i>LICENSED HOMES</i>		<i>CENTERS</i>		<i>IN-HOME/RELATIVES</i>	
	Regular	Special-Needs	Regular	Special-Needs	Regular	Special-Needs
0	\$ <del>75.50</del>	\$ <del>79.30</del>	\$ <del>97.50</del>	\$ <del>102.40</del>	\$ <del>75.00</del>	\$ <del>78.75</del>
4	\$ <del>75.00</del>	\$ <del>78.75</del>	\$ <del>85.00</del>	\$ <del>89.25</del>	\$ <del>75.00</del>	\$ <del>78.75</del>
2 to 5	\$ <del>66.20</del>	\$ <del>69.30</del>	\$ <del>70.00</del>	\$ <del>73.50</del>	\$ <del>45.90</del>	\$ <del>48.20</del>
6 & over	\$ <del>68.15</del>	\$ <del>71.53</del>	\$ <del>71.95</del>	\$ <del>75.55</del>	\$ <del>45.90</del>	\$ <del>48.20</del>

CHILD CARE INCOME LIMITS - EFFECTIVE 10/01/2005		
FAMILY SIZE		INCOME
1		\$1,596.00
2		\$2,140.00
3		\$2,682.00
4		\$3,226.00
5		\$3,770.00
6		\$4,312.00
7		\$4,856.00
8		\$5,400.00
Additional person add		\$544.00

**DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH**

Statutory Authority: 16 Delaware Code, Chapter 51 (16 Del.C. Ch. 51)

**PUBLIC NOTICE**

**6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 51, Delaware Health and Social Services (DHSS) / Division of Substance Abuse and Mental Health is proposing regulations for credentialing mental health screeners and paying for voluntary admissions to privately operated psychiatric hospitals.

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 Susan C. Sargent, USDOJ Settlement Project Director, Division of Substance Abuse and Mental Health, 1901 North DuPont Highway, New Castle, Delaware 19720 or by fax to (302) 255-4428 by December 31, 2012.

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

**SUMMARY OF PROPOSAL**

The proposed regulations described below implement provisions within 16 Del.C. §5122(m), as amended by HS 1 for House Bill 311 and provide guidelines within the Division of Substance Abuse and Mental Health (DSAMH) for credentialing mental health screeners and paying for voluntary admissions of adults whose admissions are eligible for payment by the State. The Division of Substance Abuse and Mental Health (DSAMH) is

amending and removing regulations relating to the admission, maintenance and discharge of patients with mental conditions that are no longer applicable.

**Statutory Authority:**

16 Del.C. § 5122(m)

**Background**

Title 16 Ch. 51, Subchapter II now requires an assessment by a credentialed mental health screener before an individual is detained on a 24-hour psychiatric hold, thereby helping to ensure that detainment and hospitalization only occur when it is clinically necessary and that the individual is afforded appropriate access to the less-restrictive alternatives being developed across the state in accordance with the United States Department of Justice and State of Delaware Settlement Agreement. The regulations proposed below set forth the qualifications, licensure, supervision, and training required for professionals to be credentialed as mental health screeners.

Previously, if an individual were detained for evaluation and required hospitalization, reimbursement to psychiatric facilities with state funds were linked to involuntary hospitalization. The amendments allow individuals in need of hospitalization the choice of being admitted voluntarily. The proposed regulations ensure that the treating facilities can be reimbursed with state funds pending the results of an independent review and confirmation that the admission represents the most appropriate and least restrictive treatment for the client in crisis, that the duration of stay for the admitted client is reviewed and deemed appropriate, and that the State is the payer of last resort.

**Summary of Proposed Changes**

With the issuance of these regulations, Delaware clients in crisis will be evaluated by a trained and credentialed mental health screener and afforded alternatives to detainment and involuntary hospitalizations.

**6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions****1.0 Mental Health Screener Credentialing**

Title 16, Chapter 51 of the **Delaware Code** states that only psychiatrists and people credentialed by the Delaware Department of Health & Social Services (DHSS) as a Mental Health Screener (MH Screener) have the authority to detain or abrogate a detainment of a person involuntarily for a psychiatric evaluation. No person shall hold himself or herself out to the public as a credentialed mental health screener unless the person is credentialed in accordance with this chapter. The Division of Substance Abuse and Mental Health (DSAMH) is the DHSS Division responsible for implementing and enforcing this law.

**2.0 Definitions**

As used in this subchapter:

**“Credentialed Mental Health Screener”** means an individual who has applied for and been approved to be credentialed as a mental health screener under Chapter 51 by the DSAMH or their designee.

**“Crisis experience in a mental health setting”** means a crisis experience in a mental health setting is defined as direct experience providing acute crisis services to people with mental health disorders in settings that include, but are not limited to, psychiatric assessment centers, hospital emergency rooms, crisis walk in settings, admission departments of psychiatric or general service hospitals, mobile crisis departments, drop in centers and certain settings found in the Department of Corrections.

**“Licensed Mental Health Professionals”** means individuals who are licensed by the State of Delaware and who are otherwise eligible to be credentialed as a mental health screener under Chapter 51 include licensed physicians (MD/DO) whose practice specialty is other than psychiatry; licensed registered nurses with a bachelor’s degree in nursing (BSN); licensed advanced practice registered nurses (APN); licensed physician assistants (PA-C); licensed clinical psychologists (PhD/Psy.D); licensed clinical social workers (LCSW); licensed mental health counselors (LMHC); and licensed marriage and family therapists (LMFT).

“Supervision of unlicensed mental health professionals by a psychiatrist” means an unlicensed mental health professional who needs to work under a psychiatrist licensed to practice medicine will perform this work under their agency’s by-laws and the requirements that the credentialed mental health screener discuss the individual in care’s issues on the phone or through telepsychiatry with the supervising psychiatrist at the time of the detainment decision and assure that this psychiatrist agrees and countersigns the decision made. A faxed or original detainment form with the supervising psychiatrist’s signature will need to be placed in the client’s medical record at the facility or site where the detainment occurred within 24 hours.

“Unlicensed mental health professional” means an individual who works under the direct supervision of a psychiatrist but does not hold a professional license issued by the State of Delaware.

## **3.0 Qualifications of Applicants for Credentialed Mental Health Screener**

### **3.1 Psychiatrists**

3.1.1 The psychiatrist must supply evidence that he or she is licensed to practice medicine in Delaware.

3.1.2 No mental health screener credentialing is required.

### **3.2 Board Certified Emergency Physicians**

3.2.1 Each physician applicant must submit qualifications; and

3.2.2 Each physician must supply evidence that such person is licensed to practice medicine in Delaware and is Board Certified by the American Board of Emergency Medicine.

3.2.3 Each physician will be required to receive and review an information packet on statewide resources for clients in crisis.

### **3.3 Physicians**

3.3.1 Each physician applicant must submit qualifications; and

3.3.2 Each physician must supply evidence that such person is licensed to practice medicine in Delaware.

3.3.3 Each physician will be required to attend four hours of training to be credentialed as a MH Screener.

### **3.4 Licensed Non-Physician Mental Health Professionals**

3.4.1 Each applicant must submit qualifications and supply evidence that:

3.4.1.1 If employed by DSAMH or a self-employed professional not affiliated with any Delaware health care facility, the applicant has five (5) years’ experience in mental health clinical and/or crisis settings as an employed or as a contracted professional.

3.4.1.2 If employed or contracted by any Delaware health care facility, the applicant has at least two (2) years experience in mental health clinical and/or crisis settings as an employed or as a contracted professional, and that that non-state health care facility will take responsibility for the years of experience required for their staff to be credentialed.

3.4.2 Licensed Non-Physician Mental Health Professionals must meet the following qualifications:

3.4.2.1 Registered Nurse. Each applicant shall document that they are licensed in the State of Delaware as a Registered Nurse with a BSN degree and in good standing, as set forth in 24 Del.C. Ch. 19, relating to Professions and Occupations.

3.4.2.2 Advanced Practice Nurse. Each applicant shall document that such person is licensed in the State of Delaware as an Advanced Practice Nurse in good standing, as set forth in Title 24 Del.C. Ch. 19 relating to Professions and Occupations and is working under a formal protocol with a Delaware licensed physician

3.4.2.3 Licensed Psychologist. Each applicant shall document that such person is licensed in the State of Delaware as a Licensed Clinical Psychologist in good standing, as set forth in 24 Del.C. Ch. 35 relating to Professions and Occupations.

3.4.2.4 Licensed Clinical Social Worker

## PROPOSED REGULATIONS

- 3.4.2.4.1 Each applicant shall document that such person is licensed in the State of Delaware as a Licensed Clinical Social Worker in good standing, as set forth in 24 Del.C. Ch. 39 relating to Professions and Occupations.
- 3.4.2.4.2 Each applicant shall document that such person has passed the American Association of State Social Work Boards.
- 3.4.2.5 Licensed Professional Counselor of Mental Health
  - 3.4.2.5.1 Each applicant shall document that such person is licensed in the State of Delaware as a Licensed Professional Counselor of Mental Health in good standing, as set forth in 24 Del.C. Ch. 30 relating to Professions and Occupations.
  - 3.4.2.5.2 Each applicant shall document that such person is certified by the National Board for Certified Counselors, Inc. (NBCC), or the Academy of Clinical Mental Health Counselors (ACMHC), or other national mental health specialty certifying organization acceptable to the Board.
- 3.4.2.6 Licensed Marriage and Family Therapist
  - 3.4.2.6.1 Each applicant shall document that such person is licensed in the State of Delaware as a Licensed Marriage and Family Therapist in good standing, as set forth in 24 Del.C. Ch. 30 relating to Professions and Occupations.
  - 3.4.2.6.2 Each applicant shall document that such person has passed the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) standardized examination or other examination acceptable to the Board.
- 3.4.2.7 Licensed Physician Assistant.
  - 3.4.2.7.1 Each applicant shall document that such person is licensed in the State of Delaware as a Physician Assistant in good standing, as set forth in 24 Del.C. Ch. 17 relating to Professions and Occupations and is working under the delegated authority of a licensed physician.
- 3.5 Unlicensed Mental Health Professionals under Direct Supervision of a Psychiatrist
  - 3.5.1 Each unlicensed mental health professional who is applying to become credentialed as a mental health screener must submit qualifications, pay the application fee, pay the credentialing fee, and supply evidence that:
    - 3.5.1.1 Such person has had two years of clinical and/or crisis experience if working as a State employee or contractor;
    - 3.5.1.2 Such person has at least two (2) years of clinical and/or crisis experience if working with a Delaware Health Care Facility as an employee or contracted staff member;
    - 3.5.1.3 Such person has at least a bachelors or masters degree in a mental health related field if working as a State employee or contractor;
    - 3.5.1.4 Such person has a master's degree in a mental health related field if working with a Delaware Health Care Facility as an employee or contracted staff member; and
    - 3.5.1.5 Such person has committed to completing forty (40) hours of crisis services in an employed position under direct supervision of a psychiatrist or credentialed mental health screener following completion of the mental health screener training and satisfactory score on the mental health screener credentialing exam.

#### 4.0 **Applications Process**

##### Definitions

**“Application for Credentialing”** means individuals who wish to be credentialed as a credentialed MH Screener to be able to perform detainments under Chapter 51 will need to fill out an application that includes their resume, school transcripts, current work history including experience in working with people in mental health crises, current employment, and all contact information including Delaware license numbers and titles.

“Application for Re-credentialing” means all Delaware credentialed mental health screeners will be required to re-apply every two years to DSAMH or their designee and to send in their applicable CEU’s to be re-credentialed. The only professionals that will not be required to do this re-credentialing process are licensed physicians whose specialty is psychiatry and physicians who are Board Certified Emergency Physicians. DSAMH will provide any changes in state mental health or associated resources to this group in a timely manner and when these services become available or are changed in any way.

## **5.0 Training, Credentialing and Re-credentialing Requirements for Licensed and Unlicensed Mental Health Professionals**

### **5.1 Definitions**

“Training Guidelines for credential mental health screener, licensed physicians other than psychiatrists” means training guidelines for applicants who are licensed physicians other than psychiatrists will include content that may change over time and is up to DSAMH to direct.

“Training Guidelines for credentialed mental health screener, licensed applicants” means training guidelines for applicants who are licensed professionals will include content that may change over time and is up to DSAMH to direct.

“Training Guidelines for credentialed mental health screener, unlicensed applicants” means unlicensed applicants will be trained under the same guidelines as for applicants who are licensed plus applicants will be required to participate in 40 hours of supervised crisis internship in a mental health setting. This content may change over time and is up to DSAMH to direct.

### **5.2 Credentialing**

#### **5.2.1 Board Certified Emergency Physicians.**

5.2.1.1 Compliance with qualifications specific above;

#### **5.2.2 Licensed physicians other than psychiatrists and Board Certified Emergency Physicians:**

5.2.2.1 Compliance with qualifications specified above;

5.2.2.2 Completion of 4 hours of training by the DHSS Division of Substance Abuse and Mental Health; and

5.2.2.3 Satisfactory score on the credentialing examination.

#### **5.2.3 Licensed Mental Health Professionals**

5.2.3.1 Compliance with qualifications specified above;

5.2.3.2 Completion of 40 hours of training by DSAMH; and

5.2.3.3 Satisfactory score on the credentialing examination.

#### **5.2.4 Unlicensed Mental Health Professionals**

5.2.4.1 Compliance with qualifications specified above;

5.2.4.2 Completion of 40 hours of mental health screener training by DSAMH;

5.2.4.3 Satisfactory score on the credentialing examination; and

5.2.4.4 Completion of 40 hours of crisis services under direct supervision of a psychiatrist or credentialed mental health screener.

### **5.3 Re-Credentialing**

#### **5.3.1 Licensed Physicians other than psychiatrists and Board Certified Emergency Physicians:**

5.3.1.1 Compliance with qualifications specified above; and

5.3.1.2 Completion of 4 hours of training by DSAMH every two years.

5.3.1.3 DSAMH will accept CEU’s that are generally related to psychiatric or crisis work.

#### **5.3.2 Licensed Mental Health Professionals**

5.3.2.1 Compliance with qualifications specified above; and

5.3.2.2 Completion of 4 hours of training by DSAMH every two years

5.3.2.3 DSAMH will accept CEU’s that are generally related to psychiatric or crisis work.

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# PROPOSED REGULATIONS

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## 5.3.3 Unlicensed Mental Health Professionals

- 5.3.3.1 Compliance with qualifications specified above; and
- 5.3.3.2 Completion of 8 hours of training by DSAMH every two years
- 5.3.3.3 DSAMH will accept CEU's that are generally related to psychiatric or crisis work.

## **6.0 Data**

- 6.1 Forms and Documentation required to detain, or undo a detainment, of an individual under this statute: Credentialed mental health screeners will be required to complete a DSAMH Crisis Intervention Assessment Tool and 24-Hour Emergency Admission Form for the purpose of ensuring a standardized approach to assessing the needs of clients in crisis and documenting the decision premised upon that assessment. These forms will become part of the client's records as well as be submitted to DSAMH. Data will be required on all detainments and sent to DSAMH as soon as possible and within 24 hours by the credentialed MH Screener that signs the detainment order. These detainments will be reviewed on a case by case basis going forward.
- 6.2 Data that will be documented daily in relation to detainments: DSAMH, as part of DHSS, will record a number of variables into a database. This database will include administrative information, such as the client MCI number, the date of contact, where the contact occurred, what staff member was lead in this response by name, the nature of the crisis, what was done including alternatives to inpatient care, who signed the detainment order, where the individual went once the detainment order was signed, and who transported the client; and clinical information as collected on the DSAMH Crisis Intervention Assessment Tool and 24-Hour Emergency Admission Form. In addition, if a detainment order was not signed, this database needs to document where the client went, to whom for care, what the plans were for follow-up, and transportation. DSAMH will also require a permanent data base that can render information on detainments every month going forward by April 2013.
- 6.3 Reports that will be publicly generated monthly on Delaware detainments: Aggregated data reports will be generated on detainments.

## **7.0 Essential Conflict of Interest Statement:**

The intent of the law is to ensure that no client is detained for any reason other than their having a mental condition that may result in danger to that person or others, and that any conflicts of interest as set forth in 16 Del.C. §5122 are disclosed on the 24-hour detention form filed with DSAMH within 24 hours of signature of the detention order. DSAMH will collect and monitor all assessments, detentions and non-detentions, whether a conflict of interest is disclosed or not, for purposes of ensuring that the intent of this law is met.

## **8.0 Suspension or Revocation of Mental Health Credential**

- 8.1 DSAMH will monitor individuals and general facilities who perform credentialed mental health screenings and who detain individuals for 24 hours under this regulation. Credentialed mental health screeners are expected to keep their own records on their work to detain or not detain individuals that they assess. Copies of the screening form are sufficient documentation if the individual mental health screener or organization that supports these screeners keeps this information protected and confidential under federal law. Compliance with federal laws on this documentation is the responsibility of the individual who has been credentialed as a MH Screener. All credentialed MH Screeners need to be aware of the federal laws pertaining to protection of health records. Failure to comply with this requirement will result in immediate suspension of this credential.
- 8.2 If a professional license is revoked or suspended, the MH Screener credential is immediately revoked. For unlicensed mental health professionals who cease to work under the supervision of a psychiatrist licensed to practice medicine, the MH Screener credential is immediately revoked. Compliance with notification of this revocation is the responsibility of the individual who has been credentialed as a MH Screener. Reinstatement of an individual with a revoked credential will be at the discretion of DSAMH, in light of circumstances surrounding the original revocation.

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**9.0 Payment for Voluntary and Involuntary Admissions.**

Payment to hospitals for voluntary and involuntary admissions of clients in crisis will be made pending approval by a psychiatrist designated by the Secretary of Health and Social Services following the conduct of an independent review and confirmation that the admission represents the most appropriate and least restrictive treatment for the client in crisis, that the duration of stay for the admitted client is reviewed and deemed appropriate, and that the State is the payer of last resort.

**10.0 Appeal Process.**

Any individual who has been denied credentialing as a mental health screener or who has had their screening credential suspended or revoked can appeal this decision by writing to the DSAMH Director with their appeal based on their knowledge and facts of this event within twenty (20) days of the denial. A response by the DSAMH Director will be forthcoming within thirty (30) days.

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 Del.C. §1713(a)(12))  
24 DE Admin. Code 1700

### PUBLIC NOTICE

#### 1700 Board of Medical Licensure and Discipline

The Delaware Board of Medical Licensure and Discipline ("Board"), in accordance with 24 Del.C. §1713(a)(12), has proposed amendments to its rules and regulations. Although the Board has updated various regulations over the years, other regulations remained outdated and/or inconsistent with changes to the law. As a result the Board established a Committee of its members to conduct a comprehensive review of the regulations. These amendments remove those outdated and inconsistent provisions and update the Board's substantially related crime regulation to include new crimes that have been added since the list was originally enacted and to revisit some of the existing crimes on the list in view of changes to the law related to the Board's authority to grant waivers of disqualification related to criminal convictions.

The Board will hold a public hearing on January 8, 2013 at 4:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments on the amendments to the regulations. Anyone wishing to receive a copy of the proposed amendments may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address.

In accordance with 29 Del.C. §100118(a) final date to receive written comments will be January 24, 2013 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on February 5, 2013 at 3:00 p.m., at which time it will determine whether to adopt the regulation as proposed or make additional changes due to the public comment.

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

**1700 Board of Medical Licensure and Discipline**

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# PROPOSED REGULATIONS

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## DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 132, 137 and 149; 29 Delaware Code, Section 8404 (17 Del.C. §§132, 137 & 149; 29 Del.C. §8404)  
2 DE Admin. Code 2309

### PUBLIC NOTICE

#### 2309 Standards and Regulations for Subdivision Streets and State Highway Access

##### Background

In the August 2012 *Register of Regulations*, DeIDOT advertised proposed changes to Section 1.5 and Chapter 2 of their Standards and Regulations for Subdivision Streets and State Highway Access for public comment. They held public hearings on them on September 13, 17 and 20, 2012, and continued to receive public comments through October 20, 2012. DeIDOT has prepared a table of the comments received and their responses thereto. It is available at [Table of Comments](#).

In response to some of the comments received, DeIDOT is proposing further changes to their regulations. Some of those differ substantively from the existing regulations and the changes previously proposed. Accordingly, DeIDOT is now advertising the proposed changes again, to allow a further opportunity for public comment. They will accept comments through January 15, 2013.

While it is not proposed as part of the regulations, DeIDOT proposes the following implementation process:

1. Changes to when a Traffic Impact Study (TIS) or Traffic Operational Analysis (TOA) may or shall be required, will be effective ten days from adoption for any development for DeIDOT has not issued a Letter of No Objection.
2. Changes to the required content of a TIS or TOA will be effective immediately on adoption for any such effort for which a scoping meeting has not been held or a scope of work issued.
3. Changes relating to mitigation measures will be effective immediately on adoption for any such effort for which a scoping meeting has not been held or a scope of work issued.
4. Changes relating to Transportation Improvement Districts (TIDs) will be effective immediately on adoption.
5. Changes relating to the Traffic Signal Revolving Fund will be effective immediately on adoption for any development for which DeIDOT has not specified a contribution to be paid with regard to the Fund.

Examples of substantive changes newly proposed include:

1. Section 2.3.1 is reworded to reduce DeIDOT's discretion in when to require a TIS.
2. Also in Section 2.3.1, language is added such that when a rezoning is proposed without an associated plan for the development of the land, DeIDOT shall distinguish between proposals for residential and non-residential zoning and for non-residential zonings shall recommend that the rezoning be considered without a TIS and that the need for a TIS be evaluated when a subdivision or land development plan is proposed.
3. Again in Section 2.3.1, language is removed under which DeIDOT would have recommended or required a TIS based on existing Levels of Service.
4. In Section 2.3.4, for situations in which a TID exists and no formula for contributions has been defined, the denominator in the default calculation for contributions is changed from the projected growth in traffic to the total forecast traffic.
5. In Section 2.5.2.2, language is added regarding additions to a TIS scope of work based on comments received through a local land use approval process.
6. In Section 2.9.11.6, language is added to allow DeIDOT to require corridor analysis and simulation analysis as a supplement or substitute for the use of Highway Capacity Software.
7. In Section 2.10, new paragraphs are added concerning mitigation measures on scenic byways, and mitigation measures pertaining to transit.
8. In Section 2.13.2.4, the usual target horizon year for a Transportation Improvement District is established as being initially 20 years from when the district is created.
9. In Section 2.14.1, the requirement to evaluate the 98th percentile maximum queue at signalized

intersections, as opposed to the 95th percentile maximum queue, is removed.

10. In Section 2.14.2, criteria are established for when DelDOT must require a Traffic Operational Analysis.

11. In Section 2.15.4.1, use of the Traffic Signal Revolving Fund to fund signals at school entrances without a contribution from the school district is disallowed.

12. In Section 2.15.4.3, it is clarified that any development for which it has been determined that a signal will be required at the access, will either be required to contribute to the Traffic Signal Revolving Fund or must execute a signal agreement, regardless of when the need for the signal is expected.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Shailen P. Bhatt, Secretary  
Delaware Department of Transportation  
P.O. Box 778  
Dover, DE 19903  
(302) 760-2303 (telephone)  
(302) 739-2895 (fax)  
shailen.bhatt@state.de.us

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

**[2309 Standards and Regulations for Subdivision Streets and State Highway Access](#)**

### 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.

## DELAWARE STATE FIRE PREVENTION COMMISSION

16 Delaware Code, Section 6604(1) (16 Del.C. §6604(1))

1 DE Admin. Code 701, 702, 703, 704, 705 & 706

### ORDER

**701 Administration and Enforcement**

**702 Fire Protection in Building Construction**

**703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems and Fire Extinguishers**

**704 Hazardous Processes and Operations**

**705 General Fire Safety**

**706 Specific Occupancy Requirements**

### NATURE OF THE PROCEEDINGS

The Delaware State Fire Prevention Commission ("Commission") conducted a properly noticed hearing on August 21, 2012 to consider adoption of proposed amendments to the Commission's rules and regulations. The Commission proposed to adopt changes and updates to current regulations 701 (Administration and Enforcement), 702 (Fire Protection in Building Construction), 703 (Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Protection Systems and Fire Extinguishers), 704 (Hazardous Processes and Operations) and 705 (General Fire Safety).

Pursuant to the Administrative Procedures Act, 29 Del.C. §10115, notice of the proposed amendments to the rules and regulations was published on July 1, 2012 in the Delaware *Register of Regulations*, Volume 16, Issue 1. In addition, the hearing notice was published in two newspapers of general circulation. The Commission deliberated and voted on the adoption of the regulations at its next regularly noticed and scheduled meeting on September 18, 2012.

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## SUMMARY OF THE EVIDENCE

As a preliminary matter three (3) exhibits were pre-marked and entered as part of record. Those exhibits are:

**Commission Exhibit 1:** *News Journal* Affidavit of Publication of notice of the September 18, 2012 hearing;

**Commission Exhibit 2:** *Delaware State News* Affidavit of publication of notice of the September 18, 2012, hearing; and

**Commission Exhibit 3:** A letter dated July 12, 2012, from Fire Marshal Grover to the Commission, bringing to the Commission's attention certain technical matters regarding the regulations:

**Grover Ingle**, State Fire Marshal, addressed the Commission with regard to the regulations and explained the changes to the regulations were mostly housekeeping format changes to comport with changes resulting from the Commission's Joint Sunset review that resulted in some title and statute changes. Fire Marshal Ingle highlighted some of the changes in the regulations including changes to the definition section throughout the regulations that were inconsistent with the NFPA national definitions. Changes were made to the definitions language to make it consistent with the language of NFPA, specifically in the Life Safety Code and the yellow standards that the Commission already adopted.

Fire Marshal Ingle noted that the biggest change in the regulations is to Regulation 705 dealing with the fire lane chapter. The language in 705 dealing with fire lanes dated back to 1981 and had changes little over the years. Changes to the times, technology, fire equipment and fire tactics for fighting structure fires in buildings, and the fire alarm and fire suppression equipment present different needs. In particular there were issues that involved with the parking front of buildings. The regulations make changes that are beneficial to everyone and allow for some parking in front of the primary fire lane in the building, providing for better accessibility. The changes to the chapter make the accessibility requirements more useable and easier to understand for everybody and give the fire department accessibility to all sides of a building and appropriate road widths. Fire Marshal Ingle added that the committee that worked on the regulation for over 2 years was very fortunate to have a very diverse group of people from the public as well as the industry involved in the recommendations.

There is a minor change to Regulation 706 dealing with the smoke detectors and wireless detection. The NFPA list of the codes and standards was pared down; instead of updating all of them as normally done on a three-year basis; taking into consideration what's actually used most frequently and what is needed to be updated to be more consistent with the technology out there.

For example; the Commission adopted the 2007 National Fire Alarm Code which doesn't address some of the technology that is out there. The 2010 Code is currently in use and addresses the technology better but all of the issues - that will hopefully change within 2013. The regulations now update 15 or so of the most common NFPA codes and standards that in use to the 2010 and 2011 current editions, which are basically NFPA 10, the fire extinguishers; NFPA 13, sprinkler systems; 13-D, sprinkler systems in one- and two- family dwellings; stand pipe systems in NFPA 14; 13-R, residential up to four stories; 25, testing and inspection of water-based systems; 30-A, motor fuel dispensing and repair garages; the 2011 edition of the NFPA 70 electrical code; 96, the commercial cooking code; fire pumps, which is NFPA 20; NFPA 30, flammable liquid code; NFPA 58, the LP gas code; and NFPA 72, the fire alarm code; and NFPA 101, the life safety code. The NFPA 30 and the life safety code are updated to the 2012 editions.

**Dan Muterspaw**, the chief administrator for the state's Architectural Accessibility Board. The board recently reviewed the proposed amendments, specifically the fire lane changes, and I wish to present to the Commission this morning the board's complete endorsement of the proposed amendment, and they encourage and hope that the Commission will favorably approve that amendment.

**Ring Laroner**, a professional engineer associate, with Davis, Bowen and Friedel commented that they reviewed the proposed provisions to the regulations, specifically section 705 and support the changes which conform to changes they are seeking in both residential and commercial while still protecting the citizens in the State of Delaware.

**Roger Boyce**, president of Systems Approach, commented that he was fortunate enough to be on the committee that helped write the fire lane regulation, and he supports the changes which he believes are much more beneficial to the fire service and much more beneficial to general industry than the original regulations.

**Jeff Clark**, a landscape architect with the firm Land Tech Land Planning, commented that he also served on the committee, and appreciated the collaboration they had with the private sector on the regulations. It was a great experience for learning from the fire protection side of the issues and, hopefully, the same can be said for the fire protection side from the design and engineering committee. He fully support and stands behind these new regulations.

#### FINDINGS OF FACT

Based upon the evidence received, the Commission finds the following facts to be supported by the evidence:

1. There was no public comment presented at the public hearing in opposition to any of the proposed regulations; to the contrary, the public comment supports the regulations as proposed particularly the fire lane updates in Section 705.
2. No written public comment was received during the 15 day extended written comment period required by 29 **Del.C.** §100118(a).
3. The objective of the Delaware State Fire Prevention Commission is to protect the general public, specifically those persons who are the direct recipients of services regulated by the Delaware State Fire Prevention Commission from unsafe practices.
4. The Regulation reflects the policy and procedures to implement the Delaware State Fire Prevention Commission's statutory objective.
5. The Commission relies upon its expertise in this area and the evidence presented in the testimony and documents submitted in support of adopting the regulations as proposed.
6. The Commission finds that the changes noted by Fire Marshal Ingle are non-substantive technical changes that should be incorporated into the final regulations and do not require further hearing.

#### THE LAW

The Delaware State Fire Prevention Commission has statutory authority to promulgate these regulations pursuant to 16 **Del.C.** §§6604(1).

#### DECISION AND EFFECTIVE DATE

The Commission hereby adopts the amendments to the regulations to be effective 10 days following publication of this Order in the *Register of Regulations* with the non-substantive technical corrections noted by the Fire Marshal and as shown on Exhibit A attached hereto.

#### TEXT AND CITATION

The Commission hereby adopts the Regulations as published in *Register of Regulations*, Volume 16, Issue 1, on July 1, 2012.

**IT IS SO ORDERED** this 16<sup>th</sup> day of October 2012.

#### STATE FIRE PREVENTION COMMISSION

David Roberts, Chairman  
 Alan Robinson, Vice Chairman  
 Tom DiCristofaro, Commissioner  
 Bob Ricker, Commissioner  
 Marvin C. Sharp, Jr. Commissioner  
 Charlie Frampton, Commissioner

**\*Please Note: Due to the size of the final regulations, they are not being published here. A copy of the regulations are available at:**

**Delaware State Fire Prevention Commission Regulations 701, 702, 703, 704, 705 and 706**

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## DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1501

### REGULATORY IMPLEMENTING ORDER

#### 1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize regulation 14 **DE Admin. Code** 1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators. It is necessary to review this regulation in order to comply with the 5 year regulation review process. No changes have been deemed necessary. This regulation sets forth the requirements for Knowledge, Skills, and Responsibility Based Salary Supplements for Educators.

Notice of the proposed reauthorization of the regulation was published in the Delaware *Register of Regulations* on October 1, 2012. The notice invited written comments. No comments were received.

#### II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to reauthorize this regulation to comply with changes in statute.

#### III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to reauthorize the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation reauthorized shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1501 of the *Administrative Code of Regulations* of the Professional Standards Board.

#### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

#### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2012

Kathleen Thomas, Chair  
Michael Casson  
Joanne Christian  
Samtra Devard  
Stephanie DeWitt  
Marilyn Dollard

Chris Kenton  
David Kohan  
Jill Lewandowski  
Wendy Murray  
Mary Pinkston  
Whitney Price

Karen Gordon  
Cristy Greaves

Shelley Rouser  
Jacque Wisnauskas

**IT IS SO ORDERED** this 15<sup>th</sup> day of November, 2012.

**Department of Education**  
Mark Murphy, Secretary of Education

**Approved** this 15<sup>th</sup> day of November, 2012

**State Board of Education**  
Teri Quinn Gray, Ph.D., President  
Jorge L. Melendez, Vice President  
G. Patrick Heffernan  
Barbara B. Rutt

Gregory Coverdale  
Terry M. Whittaker, Ed.D.  
Randall L. Hughes

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2012 issue of the *Register* at page 353 (16 DE Reg. 353). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators**

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1508

### REGULATORY IMPLEMENTING ORDER

#### 1508 Special Institute for Teacher Licensure and Certification

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize regulation 14 **DE Admin. Code** 1508 Special Institute for Teacher Licensure and Certification. It is necessary to review this regulation in order to comply with the 5 year regulation review process. No changes have been deemed necessary. This regulation sets forth the requirements for the Special Institute for Teacher Licensure and Certification.

Notice of the proposed reauthorization of the regulation was published in the Delaware *Register of Regulations* on October 1, 2012. The notice invited written comments. No comments were received.

#### II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to reauthorize this regulation to comply with changes in statute.

#### III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to reauthorize the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation reauthorized shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1508 of the *Administrative Code of Regulations* of the Professional Standards Board.

#### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2012**

Kathleen Thomas, Chair	Chris Kenton
Michael Casson	David Kohan
Joanne Christian	Jill Lewandowski
Samtra Devard	Wendy Murray
Stephanie DeWitt	Mary Pinkston
Marilyn Dollard	Whitney Price
Karen Gordon	Shelley Rouser
Cristy Greaves	Jacque Wisnauskas

**IT IS SO ORDERED** this 15<sup>th</sup> day of November, 2012.

**Department of Education**  
Mark Murphy, Secretary of Education

**Approved** this 15<sup>th</sup> day of November, 2012

**State Board of Education**

Teri Quinn Gray, Ph.D., President	Gregory Coverdale
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	Randall L. Hughes
Barbara B. Rutt	

\*Please note that no changes were made to the regulation as originally proposed and published in the October 2012 issue of the *Register* at page 354 (16 DE Reg. 354). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1508 Special Institute for Teacher Licensure and Certification**

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1509

**REGULATORY IMPLEMENTING ORDER**

**1509 Meritorious New Teacher Candidate Designation**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize regulation 14 **DE Admin. Code** 1509 Meritorious New Teacher Candidate Designation. It is necessary to review this regulation in order to comply with the 5 year regulation review process. No changes have been deemed necessary. This regulation sets forth the requirements for a Meritorious New Teacher Candidate Designation.

Notice of the proposed reauthorization of the regulation was published in the Delaware *Register of Regulations* on October 1, 2012. The notice invited written comments. No comments were received.

**II. FINDINGS OF FACTS**

The Professional Standards Board and the State Board of Education find that it is appropriate to reauthorize this regulation to comply with changes in statute.

**III. DECISION TO ADOPT THE REGULATION**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to reauthorize the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation reauthorized shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1509 of the *Administrative Code of Regulations* of the Professional Standards Board.

**V. EFFECTIVE DATE OF ORDER**

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2012**

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

Joanne Christian

Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Shelley Rouser

Cristy Greaves

Jacque Wisnauskas

**IT IS SO ORDERED** this 15<sup>th</sup> day of November, 2012.

**Department of Education**

Mark Murphy, Secretary of Education

**Approved** this 15<sup>th</sup> day of November, 2012

**State Board of Education**

Teri Quinn Gray, Ph.D., President  
Jorge L. Melendez, Vice President  
G. Patrick Heffernan  
Barbara B. Rutt

Gregory Coverdale  
Terry M. Whittaker, Ed.D.  
Randall L. Hughes

\*Please note that no changes were made to the regulation as originally proposed and published in the October 2012 issue of the *Register* at page 355 (16 DE Reg. 355). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1509 Meritorious New Teacher Candidate Designation**

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1543

### REGULATORY IMPLEMENTING ORDER

#### 1543 Secondary Science Teacher

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1543 Secondary Science Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide clarification regarding secondary science curricular areas and the necessity for secondary science teachers to hold the appropriate Standard Certificate in each secondary science curricular area they are teaching. This regulation sets forth the requirements for a Secondary Science Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on October 1, 2012. The notice invited written comments. No comments were received.

#### II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1543 of the *Administrative Code of Regulations* of the Professional Standards Board.

## V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2012**

Kathleen Thomas, Chair	Chris Kenton
Michael Casson	David Kohan
Joanne Christian	Jill Lewandowski
Samtra Devard	Wendy Murray
Stephanie DeWitt	Mary Pinkston
Marilyn Dollard	Whitney Price
Karen Gordon	Shelley Rouser
Cristy Greaves	Jacque Wisnauskas

**IT IS SO ORDERED** this 15<sup>th</sup> day of November, 2012.

**Department of Education**

Mark Murphy, Secretary of Education

**Approved** this 15<sup>th</sup> day of November, 2012

**State Board of Education**

Teri Quinn Gray, Ph.D., President	Gregory Coverdale
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	Randall L. Hughes
Barbara B. Rutt	

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2012 issue of the *Register* at page 356 (16 DE Reg. 356). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1543 Secondary Science Teacher**

**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1553

**REGULATORY IMPLEMENTING ORDER**

**1553 Driver Education and Traffic Safety Education Teacher**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to update the current required coursework/professional development and Driver's license requirements. This regulation sets forth the requirements for a Driver Education and Traffic Safety Education Teacher.

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Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on October 1, 2012. The notice invited written comments. No comments were received.

## II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1553 of the *Administrative Code of Regulations* of the Professional Standards Board.

## V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

### **APPROVED BY THE PROFESSIONAL STANDARDS BOARD THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2012**

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

Joanne Christian

Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Shelley Rouser

Cristy Greaves

Jacque Wisnauskas

**IT IS SO ORDERED** this 15<sup>th</sup> day of November, 2012.

### **Department of Education**

Mark Murphy, Secretary of Education

**Approved** this 15<sup>th</sup> day of November, 2012

### **State Board of Education**

Teri Quinn Gray, Ph.D., President

Gregory Coverdale

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

Randall L. Hughes

Barbara B. Rutt

\*Please note that no changes were made to the regulation as originally proposed and published in the October 2012 issue of the *Register* at page 359 (16 DE Reg. 359). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1553 Driver Education and Traffic Safety Education Teacher**

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**DEPARTMENT OF FINANCE  
DIVISION OF UNCLAIMED PROPERTY**

**Escheator of the State of Delaware**

Statutory Authority, 12 Delaware Code, Section 1155 (12 **Del.C.** §1155)

**ORDER**

**Abandoned or Unclaimed Property Examination Guidelines**

**NATURE OF PROCEEDINGS**

Delaware Department of Finance ("Department"), Division of Unclaimed Property, Escheator of the State of Delaware (the "State Escheator"), initiated proceedings to informally adopt a regulation amending certain abandoned or unclaimed property examination guidelines as described in 12 **Del.C.** §1155 and previously published in 10 **DE Reg.** 699 (10/01/06). The Department's proceedings to adopt its regulations were initiated pursuant to 29 **Delaware Code**, Section 10113, with authority prescribed by 12 **Del.C.** §1154 and §1208.

**SUMMARY OF PROPOSAL**

The regulation amends an existing regulation on abandoned or unclaimed property examinations by the State Escheator as described in 12 **Del.C.** §1155. The regulation sets forth the rules governing the historical periods for which the State Escheator will examine historical records to determine whether the person whose records are being examined has complied with any provision of 12 **Del.C.** Ch. 11.

**STATUTORY BASIS AND LEGAL AUTHORITY TO ACT**

12 **Del.C.** §1154, State Escheator to make regulations.

12 **Del.C.** §1155, Examination of records.

12 **Del.C.** §1208, Rules and regulations.

**OTHER REGULATIONS AFFECTED**

10 **DE Reg.** 699 (10/01/06), Abandoned or Unclaimed Property Voluntary Disclosure Agreement and Audit Programs.

**FINDINGS OF FACT:**

The Department, acting through the State Escheator, finds that the following amendments: (a) are rules of practice and procedure used by the State Escheator; (b) reflect nonsubstantive changes to an existing regulation to alter its form and to correct technical errors; and (c) make the existing regulation consistent with the plain language of 12 **Del.C.** §1155. The Department, acting through the State Escheator, therefore finds that the following amendments should be adopted.

**THEREFORE IT IS ORDERED**, that the following Amended Regulation on Abandoned or Unclaimed Property Examination Guidelines is adopted and shall be final effective December 10, 2012 and shall apply to all examinations not complete as of that date.

Mark Udinski, State Escheator  
Department of Finance

## Abandoned or Unclaimed Property ~~Audit~~ Examination Guidelines

### 1.0 Authority To Conduct Abandoned Property ~~Audits~~: Records Examinations

~~Section 1155 of Title 12, Delaware Code provides the~~ The State Escheator with the authority is authorized under 12 Del.C. §1155 to examine the records of any person or business association or organization to determine whether the person has complied with any provision of the Abandoned or Unclaimed Property Law of Delaware 12 Del.C. Ch. 11 (the "Delaware Unclaimed Property Law").

### 2.0 Auditing Examination Of Holders: Holders' Records

2.1 ~~As allowed by law, the State of Delaware will examine selected Holders' books and records for compliance with the Abandoned Property Law. The audit State Escheator will be assigned to assisted in the examination by an auditor in employed by the Division of Revenue Unclaimed Property or to a third-party auditing firm that the State has retained for such purposes. At the request of a Holder the State's third-party auditor will enter into a confidentiality agreement with the Holder in a form approved by the State Escheator before any of the Holder's confidential records are produced.~~

~~Notification of Audit:~~

2.2 ~~An official letter from the Abandoned Property Audit Manager (the "Audit Manager") will be issued to Holders selected for audit examination. The letter will outline the State's intention to examine the books and records of the Holder (including subsidiary subsidiaries and related entities) and identify the assigned auditor or third-party auditing firm. Third-party auditors are not authorized to engage in any examination or audit without prior written consent from the State of Delaware Division of Revenue Escheator. The issuance of an intent to audit the letter terminates the Holder's ability to enter into a Voluntary Self Disclosure Agreement (VDA) ("VDA").~~

~~Opening Conference:~~

2.3 ~~Once an audit examination is assigned, an opening conference will be scheduled with the auditor and representatives of the Holder. During the opening conference, the auditor will:~~

2.3.1 ~~Advise the Holder of the reporting requirements of the Delaware Abandoned or Unclaimed Property Law;~~

2.3.2 ~~Identify the time period to be covered by the examination;~~

2.3.3 ~~Schedule a time period for field work to be commenced; and~~

2.3.4 ~~Request records and materials necessary to initiate the audit examination.~~

2.4 ~~The State expects the Holder's cooperation and anticipates that with the Holder's cooperation the time to complete a typical audit examination should not exceed twelve (12) months. If an audit examination lasts longer than 12-months, the Abandoned Property Audit Manager will meet with the Holder to facilitate completion of the audit examination. Interest and penalty may be assessed pursuant to § Section 1159 of the Abandoned or Delaware Unclaimed Property Law on all abandoned property due for all reporting years under audit examination.~~

~~Examination:~~

2.5 ~~The auditor may conduct the examination on-site or remotely with the consent of the Holder if records are available electronically or can be shipped. On-site work may last a few days to several weeks depending on the size and complexity of the Holder the availability of records, and the availability of holder personnel necessary to explain and discuss the records. During the examination, the auditor will review all necessary books and records, interview key personnel and review relevant policies and procedures related to abandoned property. During the examination, the auditor may make subsequent requests to the Holder for additional books and records as required to complete the audit examination. The auditor will make copies of records deemed necessary or desirable in order to create a suitable record for the Internal Review Procedure described in 12 Del.C. §1156.~~

2.6 The Holder will be kept informed of the progress of the audit examination and may contact the State Escheator directly to address issues arising from or related to the audit examination. At the end of the examination, the auditor will present the preliminary findings to the Holder at an exit conference. These findings are not final. The auditor will allow the Holder reasonable time to complete required research and gather more records to address matters raised in the preliminary findings.

### 3.0 Third-party Advocates

Holders may retain third-party advocates (~~Advocate~~) ("Advocates") to assist them in the audit examination process. The retention of an Advocate is no basis to delay the commencement of the State's audit examination, and the State will not delay the audit examination so that the Advocate may conduct a review or ~~its own audit examination~~ of the Holder's books and records in advance of the State's audit examination. The State will cooperate with the Holder and its Advocate and keep both of them apprised of the records requests, interviews and the progress of the audit examination in general. ~~It is understood that the~~ The State will not audit examine or otherwise be limited to a review of work papers, compilations or record summaries prepared by the Holder or the Advocate but shall have access to such of the Holder's original books and records ~~that are~~ necessary to ascertain the Holder's compliance with the law Delaware Unclaimed Property Law. The State shall direct ~~all its~~ requests and communications ~~directly~~ to the Holder and, if requested by the Holder, will also direct copies to the Advocate.

### 4.0 ~~Final Report: Statement of Findings and Request for Payment~~

At the close of the audit examination, the Holder will receive a statement of findings ~~letter and request for payment~~ from the ~~Delaware's Abandoned Property Audit Manager~~ if the Audit Manager determines that the holder has underreported abandoned or unclaimed property under the Delaware Unclaimed Property Act. This letter will outline the findings of the audit examination and make a formal demand for the underreported property under question (if applicable). ~~The Holder has thirty (30) days to directly remit to the State of Delaware any abandoned property identified during the examination as owed to the State of Delaware.~~

#### General Information:

~~For more information on abandoned property audits, please contact Mark Udinski, Audit Manager at 302-577-8260 or mark.udinski@state.de.us or write to:~~

~~Delaware Division of Revenue~~

~~Attn: Mark Udinski, Abandoned Property Audit Manager~~

~~820 North French Street~~

~~Wilmington, DE 19804~~

~~Fax: 302-577-8982~~

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 3220

#### ORDER

### 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

#### NATURE OF THE PROCEEDINGS

The Department of Health and Social Services ("Department") / Division of Long Term Care Residents

Protection (DLTCRP) initiated proceedings to amend Regulation 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del.C.** §10115 in the October 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### **SUMMARY OF PROPOSED AMENDMENT**

The proposal amends the existing Regulation 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants. The proposed change will amend the regulation to incorporate updates deemed necessary by DLTCRP.

#### **Statutory Authority**

16 **Del.C.** Ch. 11, "Nursing Facilities and Similar Facilities"

#### **Background**

DLTCRP identified the need to update these regulations. Additionally, the existing regulation contains requirements for the training of Certified Nurse Aides which have become obsolete with the promulgation of Regulation 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants in 2012.

#### **Summary of Proposed Amendment**

This regulatory proposal amends the existing regulations by establishing reporting requirements for Certified Nurse Aide training program providers and makes some minor revisions in training curricula.

### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES**

The State Council for Persons with Disabilities (SCPD), the Churchman Village's Nurse Practice Educator, Christiana Visiting Nurse Association and the Silverchair Learning System offered the following observations and recommendations summarized below. DLTCRP has not included comments that merely endorsed specific proposed changes. DLTCRP has considered each comment and responds as follows:

1. The Division accepted and incorporated all comments submitted regarding grammar and punctuation.
2. Churchman Village suggested increasing the time to enter class attendance into CE Track from 14 days to 30 – 60 Days.

*Response: The Division's decision to require no longer than 14 days to enter class attendance into CE Track is to ensure that the CE Track data base contains all of the CNA courses taken at the time of CN A certification renewal. Not having all of the CNA courses in the CE Track data base at the time of certification renewal would delay the issuance of CNA renewal certificates.*

3. Christiana Care VNA's proposed have certifications expire in either June or December

*Response: Each C.N.A.'s initial certification date is different based on when the C.N.A completes the C.N.A. course and passes the test. Federal law and regulation require that C.N.A certifications be renewed every 24 months. This 24 month renewal requirement prohibits the Division from grouping certification renewals.*

4. The Division agrees with Silver Chair that the regulations are unclear as to whether a Curriculum Developer (Training Materials Developer) is required to enter C.N.A. class attendance into CE Track. Curriculum Developers (Training Materials Developers) only provide course materials to Education Providers who then offer classes. As such Curriculum Developers (Training Materials Developers) would not be required to enter class attendance.

*Response: The Division has made the following changes to the proposed regulations.*

*Added a definition for "Training Materials Developer";*

*Training Materials Developer- is an agency or other entity which markets Division approved continuing education training materials and courses to education providers.*

*Add a new 2.4.3;*

*2.4.3 Training Materials Developers shall enter courses in CE Track for Division approval prior to offering*

courses to education providers.

Renumber the current 2.4.3 to 2.4.4, 2.4.4 to 2.4.5, 2.4.5 to 2.4.6.

### FINDINGS OF FACT

The Department finds that the proposed changes set forth in the October 2012 *Register of Regulations* should be adopted, subject to the modification set forth above which are not substantive.

**THEREFORE, IT IS ORDERED**, that the proposed changes to Regulation 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants, with the modification indicated herein, is adopted and shall be final effective January 1, 2013.

Rita Landgraf, Secretary, DHSS

## 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

### 1.0 Definitions

**“Advanced Practice Nurse”** ~~[shall]~~ mean[s] an individual whose education and licensure meet the criteria outlined in 24 **Del.C.** Ch. 19 and who is certified in at least one of the following specialty areas: (1) Adult nurse practitioner; (2) Gerontological clinical nurse specialist; (3) Gerontological nurse practitioner; (4) Psychiatric/mental health clinical nurse specialist; (5) Family nurse practitioner.

**“Assisted Living Facility”** ~~Assisted living facility~~ **[is means]** a residential arrangement for fee licensed pursuant to 16 **Del.C.** Ch. 11.

**“CE Track”** **[is means]** the Division’s website [www.CNADECE.org](http://www.CNADECE.org) used for recording and tracking CNA continuing education hours counted toward CNA recertification requirements.

**“CE Hour”** **[means]** continuing education offered by an education provider consisting of 60 minutes of instruction. For formal college nursing courses completed, one (1) semester hour is equivalent to five (5) CE hours.

**“Certified Nursing Assistant (CNA)”** **[means]** a duly certified individual under the supervision of a licensed nurse, who provides care which does not require the judgment and skills of a licensed nurse. The care may include, but is not limited to, the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being of the person(s) to whom they are providing care.

**“Department”** **[means]** the Department of Health and Social Services.

**“Direct Supervision”** means actually observing students performing tasks.

**“Division”** **[means]** the Division of Long Term Care Residents Protection.

**“Education Provider”** **[is means]** a facility, agency or other entity that offers continuing education courses approved by the Division. Education Provider approval is contingent upon the education provider recording attendance, confirming participant identity and otherwise ensuring that CE hours are accurately recorded in CE Track.

**“General Supervision”** **[is means]** providing necessary guidance for the program and maintaining ultimate responsibility.

**“Intermediate Care Facility”** **[means a]** facility licensed pursuant to 16 **Del.C.** Ch. 11 with a license designated for intermediate care beds.

**“Licensed Nurse”** ~~[shall]~~ mean[s] a licensed practical nurse, registered nurse and/or advanced practice nurse whose education and licensure meet the criteria in 24 **Del.C.** Ch. 19.

**“Licensed Nursing Facility”** **[is means]** a residential institution, as defined in 16 **Del.C.**, §11042(4), which provides services to residents which include resident beds, continuous nursing services, and health and treatment services for individuals who do not currently require continuous hospital care. Care is given in accordance with physician's orders and requires the competences of a registered nurse (RN).

**“Licensed Practical Nurse (LPN)” [means]** a nurse who is licensed as a practical nurse in Delaware or whose license is recognized to practice in the State of Delaware, and who may supervise LPN’s, CNA’s, NA’s and other unlicensed personnel.

**“Nursing Assistant (NA)” [means]** an individual who has completed the requisite training to become a Certified Nursing Assistant but is awaiting certification.

**“Nursing Related Services” [means]** those health related services that include supervision of, and direct assistance to, individuals in their activities of daily living and/or those physical and psychosocial basic skills encompassed in the certified nursing assistant curriculum.

**“Nursing Services Direct Caregivers” [means]** those individuals, as defined in 16 Del.C., §1161(e), assigned to the direct care of nursing facility residents.

**“Physician” [means]** a physician licensed to practice in the State of Delaware.

**“Registered Nurse (RN)” [means]** a nurse who is a graduate of an approved school of professional nursing and who is licensed in Delaware or whose license is recognized to practice in the State of Delaware.

**“Rehabilitation” [means]** the restoration or maintenance of an ill or injured person to self-sufficiency at his or her highest attainable level.

**“Resident” [means]** a person admitted to a nursing facility or similar facility licensed pursuant to 16 Del.C. Ch 11.

**“Restraint” “Chemical Restraints” [~~are defined as mean~~] psychopharmacologic drug[s] that [~~is~~ **are**]** used for discipline or convenience and not required to treat medical symptoms.

**“Physical Restraints” [~~are defined as mean~~]** any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident’s body that the individual cannot remove easily which restricts freedom of movement or normal access to one’s body.

**“Senior Certified Nursing Assistant” [means]** a Certified Nursing Assistant who has met the requirements and training specified in Section 4 of these regulations.

**“Skilled Care Facility” [means a Ff] facility licensed pursuant to 16 Del.C. Ch. 11 with a license designated for skilled care beds.**

**“Student” [means]** a person enrolled in a course offering certification as a CNA.

**["Training Materials Developer” means an agency or other entity which markets Division approved continuing education training materials and courses to education providers.]**

6 DE Reg. 1505 (5/1/03)

14 DE Reg. 169 (09/01/10)

## **2.0 General Training Requirements And Competency Test**

Each Nursing Assistant/Certified Nursing Assistant employed by any nursing facility either as contract/ agency or facility staff shall be required to meet the following:

- 2.1 An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.
- 2.2 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.
- 2.3 Nursing Assistants shall take the competency test within 30 days of completion of an approved program. Nursing assistants who fail to obtain a passing score may repeat the test two additional times. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test. The certificate of completion of an approved program, a prerequisite to testing, must be dated within 24 months of the available testing date. Nursing assistants who are trained in a facility and are counted for staffing purposes pursuant to 16 Del.C. §1162(f) must pass the test within 90 days of completion of the facility program to continue to be counted in staffing calculations.

- 2.4 In order to qualify for recertification, a CNA must, during each 24 month certification period: (1) complete 24 hours of approved continuing education including 6 hours of dementia training and 2 hours of patient abuse prevention training and (2) perform at least 64 hours of nursing related services for pay under the supervision of a licensed nurse or physician. A CNA who does not perform at least 64 hours of nursing related services in a certification period, ~~or fails to complete the required continuing education, or fails to renew [their] certification before the expiration date,~~ must pass the competency test again. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before additional testing will be permitted.
- 2.4.1 All The CNAs ~~shall receive~~ dementia specific training ~~that~~ shall include:
- [2.4.1.1] communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and
- [2.4.1.2] safety measures which need to be taken with those persons; and ~~[All CNAs shall also receive training in the~~
- [2.4.1.3] prevention of patient abuse that shall include: definitions and signs and symptoms of abuse and neglect, reporting requirements and prevention strategies.
- 2.4.2 CE Track commenced operations January 1, 2012. CE hours earned after January 1, 2012, must be recorded in CE Track in order to be counted for recertification.
- [2.4.3 Training Materials Developers shall enter courses in CE Track for Division approval prior to offering courses to education providers.]**
- ~~2.4.[34] Education Providers shall enter courses in CE Track for Division approval prior to offering a class.~~
- ~~2.4.[45] Education Providers shall enter classes into CE Track.~~
- ~~2.4.[56] Education Providers shall enter CNA class attendance into CE Track within fourteen (14) working days from class completion. No CE hours will be considered for CNA recertification requirements if attendance is not entered by the Education Provider in CE Track.~~
- 2.5 A Certified Nursing Assistant trained and certified outside the State of Delaware in a program that equals or exceeds the federal nurse aide training program requirements in the Code of Federal Regulations §483.152 cannot work in Delaware without a Delaware certificate. Delaware certification is required prior to being employed as a CNA. The Department will grant reciprocity if the following conditions are met:
- 2.5.1 The CNA must have a current certificate from the jurisdiction where he or she currently practices, except that candidates from the State of Maryland must hold a current Geriatric Nursing Assistant certificate.
- 2.5.2 The CNA must have 3 months of full-time experience as a CNA performing nursing related services for pay under the supervision of a licensed nurse or physician, or have completed a training and competency evaluation program with the number of hours at least equal to that required by the State of Delaware.
- 2.5.3 The CNA must be in good standing in the jurisdiction where he/she is currently certified.
- 2.5.4 The CNA submits \$30 to the Department to cover the costs associated with granting the reciprocity.
- 2.6 Nursing students who are currently enrolled in a nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a 75 hour clinical component in a long term care setting will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.
- 2.7 Nursing students who have graduated from an RN or LPN program within 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training and competency evaluation program requirements and are eligible for certification upon submission of a sealed copy of their diploma. Individuals who have graduated from an RN or LPN program more than 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training program requirements and are eligible to take the competency test upon submission of a sealed copy of their diploma.

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- 2.8 For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program may be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.
- 2.9 A nursing assistant who is employed by, or who has received an offer of employment from, a federally certified nursing facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program including tuition, any tests taken and fees for textbooks or other required course materials.
- 2.10 If a Certified Nursing Assistant who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a federally certified nursing facility not later than 12 months after completing a nurse aide training and competency evaluation program, the federally certified nursing facility shall reimburse all documented personally incurred costs in completing the program. Facilities shall accept as documentation canceled checks, paid receipts, written verification from a training program or other written evidence which reasonably establishes the CNA's personally incurred costs. Such costs include tuition, tests taken and fees for textbooks or other required course materials. Such costs shall be reimbursed in equal quarterly payments with full reimbursement to coincide with the CNA's completion of one year of employment including the orientation period.
- 2.11 Any nursing facility which reimburses a Certified Nursing Assistant for documented personally incurred costs of a nurse aide training and competency evaluation program shall notify the Division of Long Term Care Residents Protection of such reimbursement. Notice of such reimbursement shall be entered in the CNA Registry database and information regarding such reimbursement shall be available to facilities upon request.

**\*Please Note: As the rest of the sections were not amended since the proposal in the October 2012 issue of the *Register*, they are not being published here. A complete copy of the final regulation is available at:**

**[3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants](#)**

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### **DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

Statutory Authority: 29 Delaware Code, Section 7971 (29 **Del.C.** §7971)  
16 **DE Admin. Code** 3230

### **ORDER**

### **3230 Rest (Residential) Home Regulations**

### **NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding the Rest (Residential) Homes. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114, with authority prescribed by 29 **Del.C.** §7971.

The Department published its notice of proposed regulatory change pursuant to 29 **Delaware Code** Section 10115 in the October 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### **SUMMARY OF PROPOSED CHANGE**

The proposal amends existing Regulation 3230 – Rest (Residential) Homes. DLTCRP identified the need to update these regulations as they had not been revised or amended since 1990.

**Statutory Authority**

29 Del.C. §7971, "Department of Health and Social Services, Division of Long Term Care Residents Protection.

**Summary of Changes**

The State Council for Persons With Disabilities offered the comments and recommendations summarized below. DLTCRP has considered each comment and respond as follows:

Ten comments addressed punctuation or grammatical errors. All ten were amended.

The Division's responses to the remaining comments are as follows:

The remaining comments:

1. In §2.0, definition of "Continuous", insert a comma after "cessation".  
Response: Corrected.
2. In §2.0, definition of "Department", capitalize "Department of Health and Social Services".  
Response: Corrected.
3. In §2.0, definition of "Homelike", do not capitalize "having".  
Response: Corrected.
4. In §2.0, definition of "Personal Care Services", SCPD assumes the Division does not intend to authorize "hosing down" the residents. Substitute "those services" for "hose services".  
Response: Adopted.
5. In §2.0, definition of "Rehabilitation", the reference to "at his highest" is grammatically incorrect.  
Response: Corrected.
6. SCPD noted that the definition of "Resident" limited residency in these facilities to those 18 years of age or older.  
*Response: Rest Residential homes are intended for mature persons generally capable of making their own decisions and handling their own ADLs. This would not be the case with minor residents.*
7. In §§4.2 and 4.3 there is a lack of punctuation (semi-colons. Compare §§3.5 and 8.1.8.  
Response: Corrected
8. There is an extraneous period after the word "ventilation" at §5.3.2.1.  
Response: Removed.
9. SCPD questioned the application of the local building codes as to ramp specification and recommended adoption of the ADA standards.  
*Response: 5.3.2.4 has been amended to say: Existing facilities accommodating residents who regularly require wheelchairs shall comply with the Americans With Disabilities Act standards.*
10. The period is missing at the end of §5.7.3.  
Response: Corrected
11. SCPD suggests the inclusion of ADA standards for door handles.  
*Response: 5.7.6 All doors for areas used by residents shall be capable of being opened from either side and shall comply with the Americans With Disabilities Act standards.*
12. SCPD pointed out that while these facilities are described as "homelike" in the regulations the term "institution" remained at §5.12.1.  
*Response: The word "institution" was replaced by the word "homelike."*
13. SCPD suggested inserting a temperature standard at §5.12.9.  
*Response: The suggestion was adopted.*
14. SCPD suggests the inclusion of language to require that dishwashers be capable of sanitizing dishes.  
*Response: Section 5.11 requires compliance with the Delaware Food Code. That code contains requirements for sanitization.*
16. SCPD commented that there is some "tension" between §8.1.3.4 and §8.1.4.  
*Response: Amended to eliminate the "tension."*
17. In §10.1.6, SCPD believes the Division intended to insert the word "or" after "facility". The published regulation contains only an "r".  
Response: Amended.
18. SCPD suggests including a specific requirement that the LTC Bill of Rights be posted and copies be provided to each resident.  
*Response: A new Section 3.11 was added: [3.11. The Patient's Bill of Rights (Title 16) is posted in a*

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*conspicuous location within the residence to ensure easy access by individuals served.*

## FINDINGS OF FACT

The Department finds that the proposed changes set forth in the October 2012 *Register of Regulations* should be adopted, subject to the modification set forth above which is not substantive.

**THEREFORE, IT IS ORDERED**, that the proposed changes to Regulation 3230 – Rest (Residential) Homes, with the modification indicated herein, is adopted and shall be final effective January 1, 2013.

Rita Landgraf, Secretary, DHSS

**\*Please Note: Due to the size of the final regulations, they are not being published here. A copy of the regulations are available at:**

**3230 Rest (Residential) Home Regulations**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 503(c) (31 **Del.C.** §503(c))  
16 **DE Admin. Code** 20320

## ORDER

### Medicaid Long-Term Care Services - Home Equity

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding *Home Equity Cap*. Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the October 2012 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance proposes to amend the Division of Social Services Manual (DSSM) regarding eligibility for payment of Medicaid Long-Term Care (LTC) services, specifically, *Home Equity Cap*.

#### Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

#### Background

The Deficit Reduction Act (DRA) of 2005 was signed into law on February 8, 2006. The DRA made changes to certain Medicaid eligibility provisions in Section 1917(c)(1)(B)(i) of Social Security Act affecting Long Term Care services and supports.

Section 6014 of the DRA amends section 1917 of the Social Security Act (the Act) to provide that in determining the eligibility of an individual to receive medical assistance payment for nursing facility services or other long-term care services, States must deny payment if the individual's equity interest in his or her home exceeds \$500,000. States have the option to substitute an amount exceeding \$500,000, but not in excess of \$750,000.

Included in section 6014(f) of the DRA was the provision that the dollar amount of value of the home equity is to be increased beginning in 2011. The amount is to be increased from year to year based on the percentage increase in the Consumer Price Index (CPI), rounded to the nearest \$1,000.

### Summary of Proposal

Under section 6014 of the Deficit Reduction Act of 2005 (DRA), Medicaid will not pay for long-term care services for individuals whose equity interested in their home exceeds a federally issued mandated home equity cap. As a State option, a higher limit may be set that does not exceed a maximum home equity cap. Delaware has elected to use the minimum cap.

Therefore, the corresponding sections of the Division of Social Services Manual, 20320.7.B and 20320.7.E, have been revised to reflect this provision and the Federal standard change of the excess home equity provisions based on the Consumer Price Index effective January 1, 2011 and effective January 1, 2012.

This statement of policy is retroactive to January 1, 2011.

### Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

Consistent with the "Summary of Proposal" section, federal law establishes a presumptive cap on Medicaid LTC eligibility of \$500,000 subject to annual increases based on the Consumer Price Index (CPI). DMMA is somewhat belatedly updating its standards to reflect the increases in the cap, i.e. to \$525,000 effective January 1, 2012.

The proposed regulation appears to be straightforward and we have only one (1) concern. The regulation recites as follows: "Equity value is determined by using the current market value of the home minus any mortgages or loans on the home." This is "underinclusive" and misleading. The attached CMS guidance recites as follows:

The equity value of a resource is the current market value minus any encumbrance on it. An encumbrance is a legally binding debt against the resource. This can be a mortgage, reverse mortgage, home equity loan, or other debt that is secured by the home.

Other states adopt the term "encumbrance" in their regulations. This would cover judgment liens, IRS liens, lis pendens claims, and other legally binding "encumbrances" on the home. The Councils recommend substitution of the following sentence: "Equity value is determined by using the current market value of the home minus any encumbrance (e.g. mortgage; loan; lien) on it." The APA allows such revision without pre-publication "to correct technical errors" or "to make (regulations) consistent with changes in basic law but which do not otherwise alter the substance of the regulations". Title 29 **Del.C.** §10112(b).

GACEC and SCPD endorse the proposed regulation subject to correction of the above underlined sentence which omits many forms of encumbrances which can reduce equity based on CMS guidance.

**Agency Response:** DMMA adopts the term "encumbrance" and revises the sentence accordingly. The agency thanks the Councils for their endorsement.

### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2012 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to update the Division of Social Services Manual regarding eligibility for payment of Medicaid Long-Term Care (LTC) services, specifically, *Home Equity Cap*, is adopted and shall be final effective December 10, 2012.

Rita M. Landgraf, Secretary, DHSS

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**DMMA FINAL ORDER REGULATION #12-57****REVISIONS:****20320.7.B Receiving LTC On/After 01-01-2006**

If a Medicaid recipient started receiving LTC Medicaid on or after January 1, 2006, evaluate home equity at the next redetermination.

Verification of the equity value of the home is required. Equity value is determined by using the current market value of the home minus any ~~[mortgages or loans]~~ encumbrance (e.g. mortgage; loan; lien) on the home.

Individuals with equity value in home property that exceeds \$500,000 the home equity cap as set by federal regulations are NOT eligible for Medicaid payment of long-term care services unless the home is lawfully occupied by:

- a spouse,
- a dependent child under age 21 years, or
- a blind or disabled child of any age.

\*Note: this This is not a change in the general rule that excludes a home of any value for purposes of determining eligibility for Medicaid. It applies only to medical assistance payment for nursing facility services, or other long-term care services referred to in 1917(c)(i)(C)(i).

Individuals with substantial home equity may be eligible for Medicaid payment of other covered services if they meet all the other Medicaid eligibility requirements.

See DSSM 20320.7.E for current home equity cap.

**20320.7.E Substantial Home Equity Cap**

Beginning in the year 2011, the limit on the substantial home equity will be increased yearly based on the Consumer Price Index (CPI).

<u>Effective Date</u>	<u>Home Equity Cap</u>
<u>January 1, 2006</u>	<u>\$ 500,000</u>
<u>January 1, 2011</u>	<u>\$ 506,000</u>
<u>January 1, 2012</u>	<u>\$ 525,000</u>

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**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Section 503(c) (31 **Del.C.** §503(c))  
16 **DE Admin. Code** 3034

**ORDER****3034 General Assistance Time Limits****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding General Assistance, specifically, *General Assistance Time Limits*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the October 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced October 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

## SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding General Assistance, specifically, *General Assistance Time Limits*.

**Statutory Authority**

31 Del.C. §503(c), *Eligibility for Assistance; General Assistance*

**General Assistance**

General Assistance is a State-funded program designed to provide cash assistance to families and unemployable individuals who meet the financial eligibility requirements of the program and who do not qualify for federally funded programs, such as Temporary Assistance for Needy Families (TANF) or Social Security benefits.

**Summary of Proposed Change**

**DSSM 3034, ~~General Assistance Time Limits~~ RESERVED:** The agency had created a twenty-four (24) month limit for the receipt of General Assistance, effective February 1, 2010. This rule has not been implemented and is being repealed. The Division of Social Services (DSS) had implemented a 24-month time limit for the receipt of General Assistance (GA). Many recipients if not most of the GA caseload are destitute and have no access to other cash resources to meet basic needs. Given the unavailability of other resources, the vulnerability of the population in the program, and the relative stabilization of the General Assistance caseload, DSS is repealing the 24-month time limit.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

As background, last year, DHSS proposed the elimination of the General Assistance (GA) program and the Joint Finance Committee opposed that initiative. The program, which pays qualified individuals \$95 per month and provides automatic Medicaid coverage [16 DE Admin. Code 16120], covers many unemployable adults with disabilities who do not qualify for other programs (e.g. SSI).

In April 2010, DSS had adopted a regulation contemplating a 24-month time limit on GA assistance. The Division recites that the 24-month limit was never implemented. DSS is now proposing to repeal the regulation authorizing the cap based on the following rationale:

Many recipients if not most of the GA caseload are destitute and have no access to other cash resources to meet basic needs. Given the unavailability of other resources, the vulnerability of the population in the program, and the relative stabilization of the General Assistance caseload, DSS is repealing the 24-month time limit.

GACEC and SCPD strongly endorse the proposed regulation.

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

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the October 2012 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed repeal regulation to amend the Division of Social Services Manual (DSSM) regarding General Assistance, specifically, *General Assistance Time Limits* is adopted and shall be final effective December 10, 2012.

Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REPEAL REGULATION #12-54**

**REVISION:**

**3034 ~~General Assistance Time Limits~~ RESERVED**

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## ~~3034.4 Determining Time Limits for General Assistance Recipients:~~

~~This policy applies to General Assistance recipients who are 18 years old and older.~~

- ~~1. Effective to February 1, 2010 General Assistance is a time limited program for adult recipients.~~
- ~~2. After January 31, 2010 adults may only receive GA for up to 24 months.~~

~~Exception: GA recipients who have applied for SSI and whose SSI determination is pending may continue to receive GA past the 24 month time limit.~~

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 503(c) (31 Del.C. §503(c))  
16 DE Admin. Code 11003.2.1

### 11003.2.1 Sanctioning TANF and Transitional Work Program Recipients

#### ORDER

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Sanctioning TANF and Transitional Work Program Recipients*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced October 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *TANF and Transitional Work Program Sanctions*.

#### Statutory Authority

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

#### Summary of Proposed Change

**DSSM 11003.2.1, *TANF and Transitional Work Program Sanctions*:** The policy on TANF Sanctions includes sanctions that may be applied as a result of noncompliance with the Transitional Work Program (TWP). The Division of Social Services (DSS) proposes to remove policy language that addresses the requirements for clients who are working to cure a second or subsequent TANF and/or TWP sanction. These requirements have not been implemented operationally. The Division may reconsider for future rulemaking once these provisions can be supported by the Delaware Client Information System (DCIS), Delaware's integrated eligibility system.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

The current regulation imposes restrictions on access to child care services for individuals working to cure a second or subsequent sanction. The Division proposes to repeal the specific restrictions which DSS acknowledges "have not been implemented operationally".

GACEC and SCPD endorse the proposed regulation since the amendment offers some flexibility in access to child care for individuals working to cure second or subsequent sanctions. Access to child care is an important support enabling individuals to pursue employment or training.

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

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the October 2012 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed repeal regulation to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Sanctioning TANF and Transitional Work Program Recipients* is adopted and shall be final effective December 10, 2012.

Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REGULATION #12-55**

**REVISIONS:**

**11003.2.1 Sanctioning TANF and Transitional Work Program Recipients**

Recipients who fail without good cause to meet requirements for the TANF Employment and Training or Transitional Work Program are sanctioned.

When TANF recipients receive a full family sanction or fail without good cause to comply with the Transitional Work Program (TWP), they lose their TANF Child Care. This means their child care case will close. In order to regain TANF Child Care, recipients must work to cure the sanction by cooperating with their TANF or TWP requirements.

Clients curing their TANF sanction may be eligible for child care under Presumptive Child Care Services (DSSM 11004.8).

~~Clients working to cure a second or subsequent TANF and/or TWP sanction may only use self arranged care. Clients may choose any child care option beginning the month after the sanction is cured.~~

~~[NOTE: Clients must use self arranged care each time they are sanctioned. This requirement applies until they cooperate with their TANF or TWP requirements for 12 consecutive months.]~~

~~See 11003.2.1 TANF & Transitional Work Program - History~~

~~See 11003.7.8 Special Needs~~

~~See 3017.1 Transitional Work Program~~

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)  
7 DE Admin. Code 1120

**Secretary's Order No.: 2012-A-0040**

**Date of Issuance: November 9, 2012**

**Effective Date of the Amendment: December 11, 2012**

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

**Background and Procedural History**

This Order considers the proposed regulatory amendments to 7 DE Admin. Code 1120, New Source Performance Standards, to repeal of Section 29, "Standards of Performance for Hospital/Medical/Infectious Waste

Incinerators”.

On September 15, 1997, the EPA adopted a New Source Performance Standard and Emission Guideline at 40 CFR Part 60, Subparts Ec and Ce, which were applicable to both new and existing hospital, medical, and infectious waste incinerator (HMIWI) units, respectively. At the same time, the EPA published a related emissions guideline to assist the States in developing their “Section 129 Plan” for existing sources under 40 CFR Part 60 Ce. EPA’s September 15, 1997 promulgation called for Delaware to submit its “Section 129 Plan” within one year.

Over the next twelve months, the Department determined that there were three HMIWI units in Delaware: The DuPont Experimental Station in Wilmington; Kent General Hospital in Dover; and Nanticoke Memorial Hospital in Seaford. DNREC then drafted its proposed Section 29 of Regulation 1120, as well as its “Section 129 Plan”, and conducted both a public workshop and public hearing regarding this matter. As required under the Clean Air Act, Delaware subsequently adopted Section 29, “Standards of Performance for Hospital/Medical/Infectious Waste Incinerators” into Regulation 1120 on September 1, 1998. Accordingly, the Department submitted its “Section 129 Plan” to the EPA, and EPA approved Delaware’s plan on April 14, 2000.

In 2007, the EPA completed its review for its aforementioned hospital, medical and infectious waste incinerator regulation, and determined that revisions to the same were warranted. In October of 2009, the EPA revised the New Source Performance Standard applicable to newly-built sources and published a revised emissions guideline for existing sources to assist the States in revising their “Section 129 Plan”. Once again, EPA’s revision to its emissions guideline called for Delaware to submit its revised “Section 129 Plan” within one year.

Upon the Department’s review of its “Section 129 Plan”, DNREC found that the three existing sources referenced above had since shut down and dismantled their incinerators, and that no newly-built hospital, medical or infectious waste incinerators had been installed. Thus, it was unnecessary to revise Delaware’s “Section 129 Plan”. On June 17, 2010, the Department submitted a request to EPA Region 3 to have Delaware’s “Section 129 Plan” withdrawn, and on November 30, 2010, the EPA formally withdrew Delaware’s plan.

Delaware is now proposing to repeal Section 29 of Regulation 1120, as its inherent regulatory requirements are currently outdated, and its continuance is no longer justified, due to the fact that there is no hospital, medical or infectious waste incinerator in Delaware that are subject to it. Should a facility wish to construct a *new* HMIWI unit in the future, such installation would be regulated under the amended 40 CFR Part 60, Subpart Ec, which EPA formally adopted on October 6, 2009.

The Department’s Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-10. The Department published the proposed regulatory amendment in the August 1, 2012 *Delaware Register of Regulation* and held a public hearing on August 22, 2012. The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated October 9, 2012 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the proposed Amendment is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department’s experts developed the record and drafted the proposed Amendment. As noted in the aforementioned Hearing Officer’s Report, no members of the public attended the aforementioned hearing on August 22, 2012, nor were any comments received from the public by the Department, either at the time of the hearing or prior to the record formally closing in this matter on September 6, 2012.

I find that the Department’s experts in the Division of Air Quality fully developed the record to support adoption of these Amendments. Promulgation of the aforementioned proposed amendment to 7 **DE Admin. Code** 1120 will repeal Section 29, as its inherent regulatory requirements are currently outdated, and its continuance is no longer justified, due to the fact that there is no hospital, medical or infectious waste incinerator in Delaware subject to it. Should a facility wish to construct a *new* HMIWI unit in the future, such installation would be regulated under the amended 40 CFR Part 60, Subpart Ec, which EPA formally adopted on October 6, 2009.

In conclusion, the following findings and conclusions are entered:

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

- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;
- 3.) The Department held a public hearing on the proposed Amendment on August 22, 2012;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendment does not reflect any change from the proposed regulation Amendment as published in the August 1, 2012, *Delaware Register of Regulations*;
- 6.) Promulgation of the aforementioned proposed amendment to 7 **DE Admin. Code** 1120 will repeal Section 29, as its inherent regulatory requirements are currently outdated, and its continuance is no longer justified, due to the fact that there is no hospital, medical or infectious waste incinerator in Delaware subject to it. Should a facility wish to construct a *new* HMIWI unit in the future, such installation would be regulated under the amended 40 CFR Part 60, Subpart Ec, which EPA formally adopted on October 6, 2009; and
- 7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2012 issue of the *Register* at page 181 (16 DE Reg. 181). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1120 New Source Performance Standards**

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**DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)  
**7 DE Admin. Code 1138**

**Secretary's order No.: 2012-A-0039**

**Date of Issuance: November 9, 2012**

**Effective Date of the Amendment: December 11, 2012**

**1138 Emission Standards for Hazardous Air Pollutants for Source Categories**

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

**Background and Procedural History**

This Order considers the proposed regulatory amendments to 7 **DE Admin. Code** 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 17.0, "Area Source Prepared Feeds Manufacturing Facilities". The proposed new Section 17.0 will specifically regulate both new and existing prepared feeds manufacturing facilities located at area sources which primarily engage in manufacturing animal feeds (except cat and dog feeds), and those that add chromium or manganese compounds to the animal feeds. This proposed new section is based upon a federal rule that the U.S. Environmental Protection Agency (EPA) promulgated at 40 CFR Part 63, Subpart DDDDDDD on January 5, 2010.

The purpose of this proposed regulatory action is to provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel

compounds. With regard to the potential health impact of these HAPs, the EPA has identified both manganese and trivalent chromium compounds as Group "D" carcinogens; thus, based upon current information, these compounds cannot be classified as to their human carcinogenicity. From a non-carcinogenic perspective, however, the EPA has indicated that both manganese and trivalent chromium compounds can contribute to health impacts associated with the respiratory system. Additionally, manganese compounds have been linked to health impacts associated with the central nervous system.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2011-11. The Department published the proposed regulatory amendment in the August 1, 2012 *Delaware Register of Regulation* and held a public hearing on August 22, 2012. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated October 9, 2012 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the proposed Amendment is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendment. While the Department received public comment from the regulated community at its workshop in June of 2012 (which was then incorporated into the proposed regulation), as noted in the Report, no members of the public attended the aforementioned hearing on August 22, 2012, nor were any comments received from the public by the Department, either at the time of the hearing or prior to the record formally closing in this matter on September 6, 2012.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these Amendments. With the adoption of the regulation amendment to 7 **DE Admin. Code** 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 15.0, "Area Source Prepared Feeds Manufacturing Facilities", Delaware will be able to mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart DDDDDDD and provide increased protection for Delaware citizens against potential adverse health effects linked to long-term exposure to manganese and trivalent chromium compounds, which can contribute to health impacts associated with, among other issues, the human respiratory system and the central nervous system.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;
- 3.) The Department held a public hearing on the proposed Amendment on August 22, 2012;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendment does not reflect any change from the proposed regulation Amendment as published in the August 1, 2012, *Delaware Register of Regulations*;
- 6.) The recommended Amendment should be adopted as final regulation Amendments because Delaware will then be enabled to (1) mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart DDDDDDD; and (2) provide increased protection for Delaware citizens against potential adverse health effects linked to long-term exposure to manganese and trivalent chromium compounds, which can contribute to health impacts associated with, among other issues, the human respiratory system and the central nervous system. Moreover, the regulation amendment is well supported by documents in the record; and
- 7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

**\*Please Note: Due to the size of the final regulations, they are not being published here. A copy of the regulations are available at:**

**1138 Emission Standards for Hazardous Air Pollutants for Source Categories**

## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1406(a)(1) (24 Del.C. §1406(a)(1))  
24 DE Admin. Code 1400

#### ORDER

#### 1400 Board of Electrical Examiners

Pursuant to 29 Del.C. §10118 and 24 Del.C. §1406(a)(1), the Delaware Board of Electrical Examiners issues this Order adopting proposed amendments to the Board's Rules. The Board proposed to define electrical work more broadly to include any work covered by the National Electrical Code and specifically adding solar, generators and windmills to the list of work that is considered electrical services or electrical work. The rule change will also add the continuing education credits required for licensed Journeypersons and Apprentices and exempt Journeypersons and Apprentices from rules that do not apply to them.

Following notice and a public hearing on September 5, 2012 and October 3, 2012, the Board makes the following findings and conclusions:

#### SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the August 1, 2012, *Register of Regulations* and in the *Delaware News Journal* marked as **Board Exhibit 1** and *Delaware State News* marked as **Board Exhibit 2**.

2. The Board received the following public and written comments during the September 5, 2012 and October 3, 2012 public hearings.

**Josh Young** of the Chemical Industry Council of Delaware submitted both public and written comments. Mr. Young requested that the rules allow for exemptions to protect the chemical industry by exempting multi craft mechanics, electrical engineers, manufacturer trained service representatives and in house electrical engineers from performing electrical services.

**Richard Honolulu** representing the American Chemical Panel also requested that electrical engineers should be exempt from performing electrical services.

**Tonya Deco** of the Dow Chemical Company also believes that the current exemption language does not cover the chemical industry and their engineers sufficiently. She believes without further language exempting their engineers, they could be prosecuted for practicing electrical services without a license.

**Robert Smith** of First State Inspections suggested that the language in the rule should be the same as the statute by including the language for roadway lighting and signaling.

**Paul Nicotra** asked the Board if working on robotics was within the definition of electrical services.

**David Smart** stated that he believes that Delaware needs an electrical license just for elevator repair.

**Richard Kearey** of Ken Corr believes that the wording of the definition of electrical services would allow for all licensed electricians to work on elevators which would be a risk to the public.

**Matt Donovan** asked the Board if switching breakers would be covered under the definition of electrical services.

**Walter Brittingham** suggested that the exemption for factory trained and authorized representatives should be clearer by adding "and/or" in the language.

**Dover Electric Supply** provided a written comment marked as **Board Exhibit 3**. The letter complained

about the impact of HB 180 on small electrical contractors. The letter also stated that the Board should cease implementation of the measure.

**Cushman and Wakefield** provided a written comment marked as **Board Exhibit 4**. The letter provided several questions for the Board about whether certain acts constitute electrical services.

**Dupont Engineering** provided a written comment marked as **Board Exhibit 5**. The letter addressed two main issues. First, the letter stated that the definition of electrical services is too broad. Second, they believe that the current proposed rules would require a professional engineer, master electrician, journeyman or apprentice electrician to troubleshoot their equipment.

**The Office of Management and Budget** provided a written comment marked as **Board Exhibit 6**. The letter proposed two changes to the proposed rules. First, was to include in the exemption for the Department of Transportation language that would include traffic signals, traffic signs and highway lighting. The second proposed addition to the rules would be an exception for trade mechanics working under a licensed electrician.

**Josh Young** of the Chemical Industry Council of Delaware provided a written comment marked as **Board Exhibit 7**. These are the same comments as the public comments of Mr. Young at the September 5, 2012 meeting.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

4. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's Rules. The board received both public and written comments to the proposed amendments to the Board's Rules.

5. In regard to Josh Young's comments, the Board believes that the Engineering statute under 28 **Del.C.** §2803(24) which provides:

"Practice of engineering" or practice engineering" includes any professional service performed for the general public such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction or operation in connection with any public or private buildings, structures, utilities, machines, equipment, processes, works, or projects wherein the public welfare or the safeguarding of life, health or property is concerned or involved when such professional service requires the application of engineering principles and data, but it does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, neither does it include engineering services performed by an employee of a firm or corporation that does not offer professional engineering services to the general public.

The Board believes that this definition provides the protection that Josh Young, Tonya Deya, Richard Holub and DuPont are concerned about by not including work done by persons who operate or maintain equipment as part of the practice of engineering. With this, the Board believes that the exemption concerning engineers is sufficient without the proposed language by Mr. Young. The Board is not persuaded that the comments require any change to the regulations on exemptions as proposed.

In regard to Paul Nicatora's public comment, the Board believes that equipment such as robotics are not covered by the National Electric Code, but it would be electric work to perform work on the wiring leading up to the piece of equipment.

In regard to David Smart's public comments, The Board believes that having an elevator electricians license would require a statutory change and not a rule change. With that, the Board is not persuaded that the comments require any change to the regulations as proposed.

In regard to Richard Kearey's public comments, the Board believes that the electrical statute under 24 **Del.C.** §1408(4) satisfies his concerns in that an individual has to be licensed in his or her specialty. The board is not persuaded that the comments require any change to the regulations as proposed.

In regard to Matt Donovan's public comments, the Board believes that switching breakers does not constitute electrical work.

In regard to Walter Brittingham's public comment, the Board believes the current language in the proposed rule change is correct and they do not want to include "and/or" language in the rules instead of Factory trained and authorized representatives. The Board is not persuaded that the comments require any change to the regulations as proposed.

In regard to Dover Electric's written comments, the Board believes that the comments have no relevance to the proposed rule change, but is a complaint about HB 180. The Board is not persuaded that the comments require any change to the regulations as proposed.

In regard to Cushman and Wakefield's written comments, the Board answered no to all of the questions presented to the Board in the letter concerning what constituted electrical services.

In regard to the Office of Management and Budget's written comment, the Board believes that their proposed addition of "including traffic signal, traffic signs and highway lighting" should be included at a later date to be consistent with the statute. However, the Board does not believe that trade mechanics should be exempt because the work they do is within the definition of electrical services and that for the protection of the public, that work should be done by a licensed electrician. The Board is not persuaded that the comments require any change to the regulations as proposed.

In regard to DuPont's written comments, the Board believes that their concern that the definition of electrical services is too broad is misplaced. The Board finds that the proposed language "which may include but is not limited to" in the definition is to allow for future change in the electrical field without changing the rules. As to DuPont's second and third comments concerning electrical engineers, the Board believes that 28 **Del.C.** §2803(24) provides the protection DuPont is looking for as discussed in Josh Young's comments. The Board is not persuaded that the comments require any change to the regulations as proposed.

6. Having considered the public and written comments, the Board makes no changes to the proposed regulations. Pursuant to 24 **Del.C.** §1406 the Board has statutory authority to promulgate rules and regulations to clarify or implement sections of its statute. The definition of electrical services is broadened in section 1.0 to reflect changes in the electrical trade such as solar, generators and windmills. The definition also clarified that any work covered by the National Electrical Code is considered electrical work. The amendments also correct a non substantive clerical error in Rule 1.2 by correctly using the full name as the Delaware Fire Prevention Commission. The amendments also exempt Journeypersons and Apprentice electricians from having to display the words "Licensed Electricians" on their vehicles. which was a rule intended for Master Electricians in Rule 1.3. The amendments also clearly define what is solar electrical work in Rule 1.4 since solar work is now included in the definition of electrical services in Rule 1.0. The amendments also exempt Journeypersons and Apprentice electricians from maintaining general liability insurance under Rule 6.1 since the Master Electrician they work under is required to maintain that insurance. The amendments require Journeypersons and Apprentice Electricians to complete 5 hours of continuing education credits each renewal period under Rule 8.4 to protect the public and uphold the standards of the profession. The amendments implemented further exemptions under Rule 10.0 since every person who performs electrical services must be licensed under the new statute requiring the licensing of Journeyperson and Apprentice Electricians. Lastly, the amendments under Rule 12.1 exempt Journeypersons and Apprentice Electricians from applying for an inspection since it will be the Master Electrician obtaining the inspection who the Journeyperson or Apprentice Electrician is working for.

7. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on December 1, 2012.

**IT IS SO ORDERED**, this day of November, 2012.

**BOARD OF ELECTRICAL EXAMINERS OF THE STATE OF DELAWARE**

Robert MacLennan, President  
Richard Millar  
Frank Beebe

Daniel Creedon, Vice President  
Thomas Hartley  
W. Donald Poore

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2012 issue of the *Register* at page 188 (16 DE Reg. 188). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1400 Board of Electrical Examiners**

## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 **Del.C.** §1713(a)(12))  
24 **DE Admin. Code** 1700

### ORDER

#### 1700 Board of Medical Licensure and Discipline

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 2, 2012 at a scheduled meeting of the Delaware Board of Medical Licensure and Discipline (the "Board") to receive comments regarding proposed changes to the Board's rules and regulations. The Board deliberated on the proposed amendments on November 13, 2012.

The Board proposed changes to its rules and regulations, specifically, Regulation 31 - Use of Controlled Substances for the Treatment of Pain - to address concerns related to the applicability of the regulation to the treatment of acute pain. The amendments clarify that the primary focus of the regulation is the use of controlled substances in the treatment of chronic pain. Instead of stating that the regulations "are" applicable to the use of controlled substances in the treatment of acute pain, the proposed amendments provide that the regulations "may be applicable to prescribing controlled substances for the treatment of acute pain when clinically appropriate." The amendments also give the Board discretion to refer to current clinical practice guidelines and/or expert review in approaching cases involving the management of pain.

The amendments to Regulation 31.8.1 require that the medical records contain documentation of the patient's interim history and "physical examination." The amendments Regulation 31.8.2 require that the medical records contain documentation of the patient's vital signs "as clinically appropriate" Finally, Regulation 31.10.4 clarifies the definition of a "licensed practitioner" for purposes of the regulations.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

**Board Exhibit 1**, the *News Journal* Affidavit of Publication, and Board Exhibit 2, the *Delaware State News* Affidavit of Publication, were made a part of the record.

The Board did not receive any written or oral public comment opposed to the proposed regulations. Nitin Rao, Medical Society of Delaware, submitted an e-mail dated October 2, 2012 to the Board's Executive Director which stated in relevant part that the amendments came from the Medical Society and that the Medical Society stands by them. He indicated that he wanted to formally support the changes in writing since he could not attend the meeting.

### FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION SUBMITTED

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's Rules and Regulations. The Board held multiple publicly noticed committee meetings and a properly noticed public hearing to give practitioners a chance to comment on the proposed regulations. In addition, the Board held the record open for a minimum of 15 days following the public hearing in accordance with 29 **Del.C.** §10118(a) to enable the public to submit additional written public comment. No additional written comment was submitted during the extended comment period.

The Board finds that amendments to the regulations are necessary to clarify the applicability of the regulation to the treatment of acute pain.

### THE LAW

Pursuant to 24 **Del.C.** §1713(a)(12) the Board has statutory authority to promulgate regulations clarifying specific statutory sections of its statute.

### DECISION AND EFFECTIVE DATE

The Board hereby adopts the amendments to Regulation 31 as effective 10 days following publication of this

Order in the *Register of Regulations*.

### TEXT AND CITATION

The text of Regulation 32 remains as published in *Register of Regulations*, Vol. 16, Issue 3, on September 1, 2012.

**IT IS SO ORDERED** this 13th day of November, 2012.

#### BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Stephen Cooper, M.D., President	Raymond Moore, Public Member
Gregory Adams, M.D., Vice-President	Joseph Parise, D.O.
Evelyn Ayala, Public Member	George Brown, Public Member
Garrett H. Colmorgen, M.D.	Karyl Rattay, M.D.
Thomas Desperito, M.D.	Anthony M. Policastro, M.D.
Leslie C. Ramsey, Public Member	Daryl Sharman, M.D.
Vincent Lobo, D.O.	Malvine Richard, Ed.D., Public Member
Vonda Calhoun, Public Member	Mary Ryan, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2012 issue of the *Register* at page 260 (16 DE Reg. 260). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1700 Board of Medical Licensure and Discipline**

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#### DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1799I(c) (24 Del.C. §1799I(c))  
24 DE Admin. Code 1799

#### ORDER

#### 1799 Genetic Counselor Advisory Council

The Genetic Counselor Advisory Council (Council) has determined that technical clarifications are needed to Regulation 5.3.2.2 to correct punctuation and a mathematical error in the example provided to assist licensees in determining how to scale the CEUs obtained in each category designated by ASBOG to fit the biennial license renewal period. The Council with the approval of the Board of Medical Licensure and Discipline (Board) is amending Regulation 5.3.2.2 by making deletions as shown by strike through and insertions as shown by underlining as follows:

5.3.2.2 The percentage of CEUs obtained in each category should be scaled to fit the biennial renewal period. The breakdown of CEUs should follow ABGC guidelines for recertification and be scaled for the renewal period. For example current guidelines state: at least 60% Category 1 CEUs, up to but no more than 40% Category 2 CEUs, PAC's may substitute for Category 1 CEUs for up to 20% of the total CEUs. Therefore, for a full 2 year renewal cycle the CEU breakdown should be comprised of at least ~~3.75~~ 3.00 Category 1 CEU's, up to but no more than ~~2.5~~ 2.0 Category 2 CEU's. If using PACs the breakdown would be as follows: at least ~~2.5~~ 2.0 Category 1 CEU's, up to but no more than ~~2.5~~ 2.0 Category 2 CEU's and up to but no more than ~~4.25~~ 1.0 PACs CEU's.

#### Summary of the Evidence

None required.

**Findings of Fact**

The Council and Board find that the clarifications are technical corrections only and do not substantively change the regulation or requirements of licensees. This regulation is exempted from the procedures for notice and public comment set forth in 29 **Del.C.** ch 100 pursuant to 29 **Del.C.** §10113(a)(b)(4).

**Text and Citation**

The text and citation for Regulation 5.3.2.2 is as shown in strikethrough and underline above.

**Decision and Effective Date**

The Council and Board hereby adopt Regulation 5.3.2.2 as amended effective 10 days following publication of this Order in the *Register of Regulations*.

**Recommendation**

It is the recommendation of the undersigned members of the Council to the Board that the Board approve these technical changes to the Rules and Regulations of the Council.

Respectfully submitted this 2nd day of November, 2012:

Zohra J. Ali-Khan Catts, Council Member, Chair

Sara Ennis, Council Member, Vice Chair

Beth A. Keena, Council Member

Marcie A. Parker, Council Member

Garrett H. Colmorgen, M.D.

**ORDER**

The Board has considered the recommendation of Council and approves the technical amendment to Regulation 5.3.2.2.

**SO ORDERED** this 13th day of November, 2012.

**BOARD OF MEDICAL LICENSURE AND DISCIPLINE**

Stephen Cooper, M.D., President

Gregory Adams, M.D., Vice-President

Evelyn Ayala, Public Member

Garrett H. Colmorgen, M.D.

Leslie C. Ramsey, Public Member

Vincent Lobo, D.O.

Vonda Calhoun, Public Member

Mary Ryan, Public Member

Raymond Moore, Public Member

Joseph Parise, D.O.

George Brown, Public Member

Karyl Rattay, M.D.

Anthony M. Policastro, M.D.

Daryl Sharman, M.D.

Malvine Richard, Ed.D., Public Member

**1799 Genetic Counselor Advisory Council*****(Break in Continuity of Sections)*****5.0 Continuing Education****5.1 Continuing Education Credit Hours Required for Renewal**

5.1.1 Licensees are required to complete five (5) Continuing Education Units (CEU) biennially. A continuing education unit is equivalent to ten contact hours (a contact hour is 60 minutes). Licensees shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (5) five years.

- 5.1.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of Rule 5.0.
  - 5.1.3 Attestation must be completed electronically at the time of renewal.
  - 5.1.4 Licensees selected for random audit pursuant to Rule 6.0 will be required to supplement the attestation with attendance verification.
  - 5.1.5 CEU hours shall be prorated for new licensees. A licensee for renewal shall follow the following schedule of reporting CEUs: if, at the time of renewal, you have been licensed for less than one year, NO continuing education is required; licensed for more than one year, but less than two years, half of the continuing education (2.5 CEUs) is required; licensed for two or more years, the full amount (5 CEUs) is required.
- 5.2 Exemptions
- 5.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Licensure and Discipline for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.
  - 5.2.2 A request for a waiver may be submitted up to the time of renewal
- 5.3 Acceptable Activities /Continuing Education Program Offerings
- 5.3.1 The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to professional competence in the practice of Genetic Counseling
  - 5.3.2 Licensees shall demonstrate that they have obtained CEUs in the categories and according to the criteria established by the American Board of Genetic Counselors (ABGC) for recertification, as may be amended from time to time.
    - 5.3.2.1 CEUs must be completed during the biennial renewal cycle.
    - 5.3.2.2 The percentage of CEUs obtained in each category should be scaled to fit the biennial renewal period. The breakdown of CEUs should follow ABGC guidelines for recertification and be scaled for the renewal period. For example current guidelines state: at least 60% Category 1 CEUs, up to but no more than 40% Category 2 CEUs, PACs may substitute for Category 1 CEUs for up to 20% of the total CEUs. Therefore, for a full 2 year renewal cycle the CEU breakdown should be comprised of at least 3.750 Category 1 CEUs, up to but no more than 2.50 Category 2 CEUs. If using PACs the breakdown would be as follows: at least 2.50 Category 1 CEUs, up to but no more than 2.50 Category 2 CEUs and up to but no more than 1.250 PACs.

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

**1799 Genetic Counselor Advisory Council**

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**DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 Del.C. §2506(a)(1))  
24 DE Admin. Code 2500

**ORDER**

**2500 Board of Pharmacy**

Pursuant to 29 Del.C. §10118 and 24 Del.C. §2506(a)(l), the Delaware Board of Pharmacy issues this Order adopting proposed amendments to the Board's Rules.

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Following notice and a public hearing on June 20, 2012 the Board makes the following findings and conclusions:

## SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the May 1, 2012 *Register of Regulations* and for two consecutive weeks in the *News Journal* and *Delaware State News*. The Board proposed changes create a requirement that Pharmacists in Charge complete annual self-inspections; clarifies that a cabinet is not an acceptable storage location for controlled substances; removes the requirement that the Office of Narcotics and Dangerous Drugs be notified in the event of pharmacy construction; makes a non-substantive change to 5.1.13.5; and adds a list of crimes to those defined as substantially related to the practice of pharmacy. **Board Exhibit 1** consisted of an affidavit of publication from the *News Journal* and the *Delaware State News* indicating publication of the notice.

2. The Board received no written comments during the public comment period. The Board held a public hearing on June 20, 2012 and received no public comment.

## FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's Rules.

4. Having received no public comment, the Board finds there is no reason to change the regulations as proposed.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on December 1, 2012.

**IT IS SO ORDERED** this 20th day of June, 2012.

Geoffrey N. Christ

Sebastian Hamilton

Matthew Maher

Sandra Robinson

Ron Sherman

Howard Simon

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2012 issue of the *Register* at page 1570 (15 DE Reg. 1570). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2500 Board of Pharmacy**

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## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 3105(a)(1) (24 **Del.C.** §3105(a)(1))  
24 **DE Admin. Code** 3100

## ORDER

**3100 Board of Funeral Services**

Pursuant to 29 **Del.C.** §10118 and 24 **Del.C.** §3105(a)(1), the Delaware Board of Funeral Services issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on September 25, 2012, the Board makes the following findings and conclusions:

## SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the September 1, 2012 *Register of Regulations* and in the *Delaware News Journal* and *Delaware State News*. Affidavits of publication in these two periodicals was accepted collectively as Board's Exhibit 1. The Board proposed to remove the pre-approval status

of continuing education courses approved by other state boards that license funeral directors.

2. The Board received no written comments during the thirty day comment period. The Board held a public hearing on September 25, 2012 and received no public comments. The Board then reopened the public comment period until October 10, 2012 and received no public comment.

3. The Board proposed to edit Regulation 9.4.3, as follows:

9.4.3 Programs approved by the Academy of Funeral Service Practitioners (AFSP) ~~or state boards that license funeral directors~~ are automatically approved and need not be submitted to the Board.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. The public was given notice and an opportunity to provide the Board with comments in writing or by testimony at the public hearing on the proposed amendments to the Board's Rules. No public comment was received and therefore no further revision of the rules need be considered.

5. There being no public comment to consider, the Board hereby adopts the regulation changes as originally published on September 1, 2012.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on December 1, 2012.

**IT IS SO ORDERED** this November, 2012

Chad H. Chandler

Marceline W. Knox

Harry Fletcher

William Torbert

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2012 issue of the *Register* at page 264 (16 DE Reg. 264). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3100 Board of Funeral Services**

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#### OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b) and 29 Delaware Code, Section 10113(b)

(5 Del.C. §121(b) & 29 Del.C. §10113(b))

5 DE Admin. Code 1109

#### ORDER

#### **1109 Instructions for Calculation of Employment Tax Credits (5 Del.C. §1105)**

IT IS HEREBY ORDERED on this 8th day of November, 2012, that Regulation 1109, Instructions for Calculation of Employment Tax Credits, is amended to make it consistent with changes in Section 1105 of Title 5 of the Delaware Code under 78 Del. Laws Ch. 72. A copy of the amendments to Regulation 1109 is attached hereto and incorporated herein by reference, with deleted language struck through and added language underlined. The amendments are being adopted to conform that Regulation to provisions of 78 Del. Laws Ch. 72 which amended the basic law for Regulation 1109. The amendments do not otherwise alter the substance of Regulation 1109, the remaining provisions of which are not affected by these amendments.

The effective date of the amendments is January 1, 2013. The amendments are adopted by the State Bank Commissioner in accordance with Title 5, and pursuant to the requirements of Chapter 11 and Section 10113(b) of Title 29 of the Delaware Code. A copy of this order and the amendments to Regulation 1109 are to be filed with the Registrar of Regulations.

Robert A. Glen, State Bank Commissioner

**1109 Instructions for Calculation of Employment Tax Credits (5 Del.C. §1105)**

Effective Date: ~~December 11, 2007~~ January 1, 2013

This regulation provides for the calculation of employment tax credits for the tax years 1997 through 2011 and 2012 through 2021 for entities subject to the bank franchise tax. These employment tax credits are provided in Section 1105(d) for tax years 1997 through 2011 and Section 1105(h) for tax years 2012 through 2021, and subject to requirements in Sections 1105(e), ~~and~~ 1105(f), and 1105(i) of Title 5 of the **Delaware Code**.

**1.0 Definitions**

**“Base Year”** means calendar year 1996 for tax years 1997 through 2011, and calendar year 2011 for tax years 2012 through 2021.

**“Full-time Employment”** means employment of any individual for at least 35 hours per week, not including absences excused by reason of vacations, illness, holidays or similar causes.

**“Health Care Benefits”** means financial protection against the medical care cost arising from disease and accidental bodily injury (for which the employer pays at least 50%) for workers employed by the employer for a continuous period of 6 months or more.

**“New Investment”** includes (1) machinery, (2) equipment and (3) the cost of land and improvements to land, provided that the new investment is placed into service within Delaware after December 1996 for tax years 1997 through 2011, or after December 2011 for tax years 2012 through 2021, and was not used by any person at any time within the one year period ending on the date the taxpayer placed such property in service in the conduct of the taxpayer’s business. If the new investment is leased or subleased by the taxpayer, the amount of the new investment shall be deemed to be eight times the net annual rent paid or incurred by the taxpayer. The net annual rent represents the gross rent paid or incurred by the taxpayer during the taxable year, less any gross rental income received by the taxpayer from sublessees of any portion of the facility during the taxable year.

**“Qualified Employee”** means an employee engaged in regular full-time employment, for whom the taxpayer provides health care benefits, who has been employed in Delaware by the taxpayer for a continuous period of at least 6 months and who was not employed at the same facility in substantially the same capacity by a different employer during all or part of the base year.

**2.0 Employment Tax Credit**

2.1 A tax credit for ~~the current tax year~~ tax years 1997 through 2011 shall be allowed against the tax imposed under subsection 1105(a) and 1101A of Title 5 of the **Delaware Code**. ~~The amount of the credit shall be~~ in the amount of \$400 for each new qualified employee in excess of 50 qualified employees above the number of employees employed by the taxpayer in full-time employment during the base year.

2.2 For tax years beginning after December 31, 2011, and ending before January 1, 2022, there shall be allowed as a credit against the tax imposed under subsection 1105(a) or 1101A of Title 5 of the Delaware Code an amount equal to \$1,250 for each new qualified employee above the number of employees employed by the taxpayer in full-time employment during the base year; provided, however, that the credit provided pursuant to this section shall be available only for taxable years in which the taxpayer has at least 200 new qualified employees above the number of employees employed by the taxpayer in full-time employment during the base year. The base year shall be the period after December 31, 2010, and before January 1, 2012.

**3.0 New Investment Required**

3.1 The employment tax credit provided above may not be claimed until the taxpayer has made new investments of at least \$15,000 per qualified employee in excess of the numbers of employees employed by the taxpayer in full-time employment during the base year.

**4.0 Annual Limit On Credit**

- 4.1 The amount of the employment tax credit allowable for the current tax year (including any credit carried forward as provided below) shall not exceed 50 percent of the amount of tax imposed on the taxpayer under Section 1105(a) and 1101A of Title 5 of the **Delaware Code** for the current tax year.

**5.0 Applicable Years**

- 5.1 The employment tax credit ~~provided~~ specified in Section 2.1 above may be earned and applied only in tax years beginning after December 31, 1996 and ending before January 1, 2012, subject to the credit carryover described below.
- 5.2 The employment tax credit specified in Section 2.2 above may be earned and applied only in tax years beginning after December 31, 2011 and ending before January 1, 2022, subject to the credit carryover described below.

**6.0 Credit Carryover**

- 6.1 The amount of the employment tax credit for any taxable year that is not allowable for such taxable year solely as a result of the limitation described above in Section 4.0 shall be a credit carryover to each of the succeeding 9 years in the manner described in Section 2011(f) of Title 30 of the **Delaware Code**.

**7.0 Calculation Worksheet**

- 7.1 The employment tax credit provided above shall be calculated on the ~~accompanying~~ appropriate Employment Tax Credit Calculation Worksheet accompanying this Regulation, which shall be submitted with the taxpayer's tax report.

**1109A.pdf** [Employment Tax Credit Calculation Worksheet For Years 1997 – 2011](#)

**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) and 2235B(e)  
(5 **Del.C.** §121(b) and 2235B(e))

**2210 Short-Term Consumer Loans****ORDER**

IT IS HEREBY ORDERED, this 14<sup>th</sup> day of November 2012, that new Regulation 2210, "Short-Term Consumer Loans", is adopted as a regulation of the State Bank Commissioner. A copy of Regulation 2210 is attached hereto and incorporated herein by reference. The effective date of Regulation 2210 is December 11, 2012. This Regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapter 11 and 101 of Title 29 of the **Delaware Code**, as follows:

1. Notice of proposed new Regulation 2210 and its text was published in the October 1 issue of the *Delaware Register of Regulations*. The notice also was published in both *The News Journal* and the *Delaware State News* on September 12, 2012, posted on the State of Delaware's electronic Public Meeting Calendar, and mailed to all persons who had made timely written requests to the Office of the State Commissioner for advance notice of regulation-making proceedings. The notice included, among other things, a summary of the proposed new regulation and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before November 7, 2012. The notice also stated that the proposed new regulation was available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on November 7, 2012 at 10:00 a.m. in the third floor hearing room of the Carvel State Office Building, 820 North French Street, Wilmington Delaware, 19801.

2. One written comment was received prior to the hearing. This was submitted by State Representative Helene M. Keeley and co-signed by Joe L. Myer of NCALL Research, Inc., Paul F. Callisto, Jr. of West End Neighborhood House, Michelle A Taylor of the United Way of Delaware, Rashmi Rangan of DE-Community Reinvestment Action Council, James R. Thornton of the Claymont Community Center, and Ginny Marino of the YWCA of Delaware. The comment expressed qualified support of the regulation. It briefly summarized the new statute that the regulation was implementing, 78 **Del. Laws** Chapter 278, and indicated that the proposed regulation fairly balanced the issues that this law presented. The comment also stated that because of the statute's novel approach to payday lending, the reporting provisions of 5 **Del.C.** §2235C should be clearly and fully implemented to understand fully how payday loans are used in Delaware and also to identify potential circumventions of the law.

3. A public hearing was held on November 7, 2012 at 10:00 a.m. regarding proposed new Regulation 2210. The State Bank Commissioner, Deputy Bank Commissioner Francis S. Babiarez, Deputy Attorney General Frank Broujos, members of the public, and a court reporter attended the hearing. Six members of the public commented at the hearing.

a. Representative Helene Keeley read her comment letter into the hearing record and then noted that the new statute had passed the legislature overwhelmingly and was also supported by the Governor's Office.

b. Jon Geidel, Chief Operating Officer of Sure Advance, a Delaware licensed lender offering online payday loans nationwide, commented that because of the new statute, expansion plans for his business had been put on hold. He briefly described the history of his company and stated that it offered payday loans exclusively online. Because his company would not be able to import non-Delaware customers under the new law, it would not be able to expand and likely would contract. He added that only about 2% of this company's customers were from Delaware and they would still be able to receive payday loans' from non-Delaware licensed lenders. Mr. Geidel therefore requested that the proposed regulation be amended to permit small-dollar, short-term, unsecured loans to non-Delaware customers without the statutory restrictions.

c. Michael Beatty, president of Cash Cure, another Delaware licensed nationwide internet payday lender, commented that under the new statute, Delaware residents would still be able to receive payday loans from internet lenders not licensed in Delaware, and for that reason those borrowers would not receive the consumer protections provided them under current Delaware law. He also briefly explained how his company operated, and added that his company had hired employees previously laid off by other financial institutions. He also noted that only about 1% of his company's customers were Delaware residents. Mr. Beatty further stated that 11 of the approximately 60 Delaware licensed payday lenders had been surveyed and that these companies had 235 Delaware employees and paid approximately \$2.1 million in state taxes.

d. Jason Crook, Vice President of Operations for Government Employees Credit Center, a Delaware licensed payday lender, commented that the new statute would not protect Delaware borrowers since the legislation targeted only Delaware lenders. He stated that "bad actors" not regulated in Delaware would still lend to consumers in this state and thus have an unfair advantage over the "good actors" in the non-depository lending industry based in Delaware. He added that the legislation represented an over regulation that would drive good lenders from Delaware leaving this state's consumers at risk to bad lenders. He explained that his company currently employed 32 people in Delaware and paid approximately \$500,000 in corporate, city and licensing fees, in addition to \$10,000 in philanthropic contributions. His company was a national operation with less than 2% its customers in Delaware. Mr. Crook concluded that the legislation would adversely affect business growth and that his company would reduce staff and cease Delaware operations.

e. David Swayze, representing the Delaware members of the Online Lenders Alliance commented that applying the new statute to Delaware online lenders would be impractical and unreasonable for the reasons given in the previous testimony. Such an application would cost Delaware both a significant number of well-paying jobs and jobs and a large amount of revenue with no countervailing benefit. In addition, doing so would also be inconsistent with the Financial Center Development Act, whose purpose was to facilitate the exportation of Delaware law. If the legislation were applied as proposed, Delaware licensed lenders would be burdened, and borrowers throughout the country would be disadvantaged. Mr. Swayze also stated that no members of the Delaware online lending industry were consulted about the legislation before it was introduced into the General Assembly, and that while the legislation was pending, discussions with legislative caucuses indicated the bill would not affect non-Delaware borrowers. The industry therefore mistakenly had not opposed the legislation in the Senate. Mr. Swayze concluded by explaining his belief that exemptions from the new law were permitted and requested that all loans non-Delaware borrowers should be exempted.

f. Greg Wilson from the Delaware Community Reinvestment Action Council commented that he supported Representative Keeley's comments. The new statute had broad support from the public and the non-profit community. The legislation was a bipartisan compromise that will benefit Delaware's economy because Delaware residents will have more money to spend when they do not have to pay high interest rates on payday loans. Mr. Wilson also stated that the database established by the statute was important to an understanding of the effect of payday loans in Delaware.

g. No other comments were made or received at the hearing.

4. After review and consideration, the State Bank Commissioner finds that no changes should be made to proposed Regulation 2210. 5 **Del.C.** §2235B(e) requires the State Bank Commissioner to adopt rules or regulations for the administration and enforcement of §2235B and proposed Regulation 2210 conforms to all of the specified requirements. In addition, the proposed new regulation properly applies and implements the provisions of 5 **Del.C.** §§2235A, 2235B and 2235C, as enacted by the General Assembly and as set forth in 78 **Del. Laws** Chapter 278.

5. Therefore, the State Bank Commissioner hereby adopts new Regulation 2210 as proposed.

Robert A. Glen, State Bank Commissioner

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2012 issue of the Register at page 398 (16 DE Reg. 398). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2210 Short-Term Consumer Loans**

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## DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 134 and 141; 21 Delaware Code, Chapter 41  
(17 **Del.C.** §134, 141 and 21 **Del.C.** Ch. 41)  
2 **DE Admin. Code** 2402

### ORDER

#### 2402 Delaware Manual on Uniform Traffic Control Devices

Under Title 17 of the Delaware Code, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department drafted revisions to the Delaware MUTCD, and sought comments through the public notice appearing in 16 **DE Reg.** 274 (09/01/12).

The Department took written comments on these draft changes to the Delaware MUTCD from September 1, 2012 through September 30, 2012.

No comments were received.

#### Summary of the Evidence and Information Submitted

The proposed changes to the 2011 version of the Delaware MUTCD are editorial, or are corrections of errors that were discovered by FHWA during the past two (2) years since the publication of the 2009 Federal MUTCD. Additionally, DelDOT also developed minor modifications to the manual based on experience using the Delaware MUTCD since its last major revision.

#### Findings of Fact

Based on the record in this docket, I make the following findings of fact:

1. The proposed amendments to the Delaware version of the MUTCD are useful and proper, as amended

pursuant to the comment period process required under the Administrative Procedures Act.

2. The adoption of these proposed changes to the MUTCD for Delaware is in the best interests of the State of Delaware.

### Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended MUTCD, as set forth in the version attached hereto, to be effective on December 10, 2012.

**IT IS SO ORDERED** this 15th day of November, 2012.

Shailen Bhatt, Secretary

Delaware Department of Transportation

\*Please Note: Due to the size of the final regulation, the Delaware Manual on Uniform Traffic Control Devices is not being published here. A PDF version is available at the following location:

<http://regulations.delaware.gov/register/december2012/final/16 DE Reg 660 12-01-12.htm>

The 2011 Delaware MUTCD, Revision 1 was posted in draft form as a proposed regulation in the September 2012 edition of the Delaware *Register*. During the 30-day public comment period that followed, no public comments were received.

However, in the period since the draft manual was published in the September 2012 edition of the Delaware *Register*, DelDOT made a number of additional changes. Most of the changes were editorial, or were corrections of errors that were discovered during the internal review process. Each modification, along with the justification for the change, is listed below:

Page	Sec/ Fig	Para.	DelDOT Comment / Proposed Change	Modification
2C-6	2C.04	Table 2C-2	Revise size of W16-8aP plaques to match federal requirements	<i>Table was modified accordingly.</i> <b>Justification:</b> Revised to meet federal requirements.
2D-3	2D.04	Table 2D-1	Update sign heights for D3-1, 1a and D3-1-DE1 in Table 2D-1 to match federal requirements	<i>Table was updated accordingly.</i> <b>Justification:</b> Revised to meet federal requirements.
2D-29	2D.43	Table 2D-2	Update sign heights in Table 2D-2 to match federal requirements	<i>Table was updated accordingly.</i> <b>Justification:</b> Revised to meet federal requirements.
6H- 107	6H- 35H	--	Add a note indicating that the vehicle on the right shoulder is a police vehicle with full light bar (or simply add an arrow from the note pointing to the vehicle on the left shoulder)	<i>Figure modified accordingly.</i> <b>Justification:</b> Clarification of intended operation

PDF Versions of each part are available at the following locations:

- [Introduction](#)
- [Part 1 - General](#)
- [Part 2 - Signs](#)
- [Part 3 - Markings](#)
- [Part 4 - Highway Traffic Signals](#)
- [Part 5 - Low Volume Roads](#)
- [Part 6 - Temporary Traffic Control](#)
- [Part 7 - School Areas](#)
- [Part 8 - Railroad](#)
- [Part 9 - Bicycle Facilities](#)

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**FINAL REGULATIONS**

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**EXECUTIVE DEPARTMENT  
DELAWARE ECONOMIC DEVELOPMENT OFFICE**Statutory Authority: 29 Delaware Code, Section 5029(a), (29 **Del.C.** §5029(a))**ORDER****402 Procedures Governing The Delaware Strategic Fund, 451 Matching Grants Program, 452 Direct Grants Program, 453 Co-Op Advertising Program, 454 Procedures Governing Delaware Tourism Grant Program**

Proposed changes to Regulation 402 relating to the Strategic Fund, Regulation 451 relating to the Matching Grants Program, Regulation 452 relating to the Direct Grants Program, Regulation 453 relating to the Co-Op Advertising Program, and Regulation 454 relating to the Tourism Grant Program were published in the Delaware *Register of Regulations* on August 1, 2012. The comment period remained open until September 30, 2012. There was no public hearing on the proposed changes to Regulations 402, and 451-454. Public notice of the proposed changes to Regulations 402 and 451-454 in the *Register of Regulations* was in conformity with Delaware law.

**Summary of the Evidence and Information Submitted**

No comments were submitted by the public.

**Findings of Fact**

Based on Delaware law and the record in this docket, I make the following findings of fact:

The purpose of Regulation 402 is to establish criteria for the administration of the Strategic Fund. The Regulations contain procedures governing the process for applying to the Authority for economic assistance under the Fund, pre-closing and post-closing procedures and criteria for the Authority's approval or disapproval of an application for economic assistance under the Fund. The requirements of the amended Regulation 402 best serve the interests of the public in that they reflect the actual process for processing and approving an application. The purpose of the changes to Regulations 451-454 is to delete those regulations for programs that are no longer operating and have been declared to be obsolete by DEDO.

**Decision and Effective Date**

Pursuant to 29 **Del.C.** §§5027-5029 (the "Act"), as amended, the Delaware Strategic Fund (the "Fund") was established. The Fund was created to assist the Delaware Economic Development Office (the "Office") through The Delaware Economic Development Authority (the "Authority") with efficiently administering financing programs as well as with developing new programs to retain, attract and expand Delaware employment. Section 5029(a) of the Act directs the Authority to draft rules and regulations pertaining to Fund eligibility. The following regulations (the "Regulations") have been adopted by the Authority pursuant to the foregoing provision of the Act. 29 **Del.C.** §5005(11) also gives the Director of the Office general power to promulgate rules and regulations governing the Office.

The Authority hereby adopts these regulations effective November 1, 2012.

**Text and Citation**

The text of the proposed amendments to Regulations 402 and 451-454 last appeared in the *Register of Regulations* Vol. 16, Issue 2, page 47.

**IT IS SO ORDERED** this 1st day of November 2012.

Alan B. Levin, Chairman, Delaware Economic Development Authority

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\*Please note that no changes were made to the regulation as originally proposed and published in the August 2012 issue of the *Register* at page 194 (16 DE Reg. 194). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**402 Procedures Governing The Delaware Strategic Fund, 451 Matching Grants Program, 452 Direct Grants Program, 453 Co-Op Advertising Program, 454 Procedures Governing Delaware Tourism Grant Program**

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# GENERAL NOTICES

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

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

#### REGISTER NOTICE

**1. TITLE OF THE REGULATIONS:**

State Implementation Plan (SIP) Revision to address the Clean Air Act Section 110 Infrastructure Elements for the 2010 Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS)

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

The Department of Natural Resources and Environmental Control (DNREC), Division of Air Quality (DAQ) is proposing to revise the SIP to address the implementation, maintenance, and enforcement of the 2010 NO<sub>2</sub> NAAQS.

Effective April 12, 2010, the Environmental Protection Agency (EPA) promulgated a new NAAQS for the pollutant NO<sub>2</sub>. The level of the NAAQS was established at 100 parts per million (ppm), based on a 3-year average of the 98<sup>th</sup> percentile of the yearly distribution of 1-hour daily maximum concentrations. Pursuant to sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA), each State is required to submit to EPA a SIP to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. The Department is proposing to revise the SIP to include a document that demonstrates Delaware has fulfilled this requirement relative to the 2010 NO<sub>2</sub> NAAQS.

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

None

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

7 Delaware Code, Chapter 60

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

None

**6. NOTICE OF PUBLIC COMMENT:**

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Thursday, January 3, 2013 beginning at 6:00 PM in the DNREC's Richardson & Robbins Building Auditorium, 89 Kings Hwy, Dover, DE 19901. Interested parties may submit comments in writing to: Ron Amirikian, DNREC Division of Air Quality, 655 S. Bay RD, Suite 5N, Dover, DE 19901.

**7. PREPARED BY:**

Ronald A. Amirikian (302) 739-9402 ronald.amirikian@state.de.us November 14, 2012

**State Implementation Plan Revision to address the Clean Air Act Section 110 Infrastructure Elements For the 2010 Nitrogen Dioxide NAAQS**

**November 14, 2012 Proposal**

**1.0 Background**

Effective April 12, 2010, the Environmental Protection Agency (EPA) established a new 1-hour primary National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO<sub>2</sub>) at a level of 100 parts per billion (ppb), based on a 3-year average of the 98<sup>th</sup> percentile of the yearly distribution of 1-hour daily maximum concentrations.<sup>1</sup> Pursuant to sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA), each state is required to

submit a State Implementation Plan (SIP) to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. This SIP revision fulfills this requirement relative to the 2010 NO<sub>2</sub> NAAQS.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

Delaware's initial SIP was approved by the EPA on May 31, 1972. Since this initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and adding new and revised regulatory control requirements. Delaware's SIP is compiled in the Code of Federal Regulations at 40 C.F.R. Part 52 Subpart I.

Section 2.0 of this document is a revision to Delaware's SIP. The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by the CAA, specifically, CAA §110(a)(2), relative to the 2010 NO<sub>2</sub> NAAQS. Under the heading "*Delaware's Plan*" in Section 2.0 of this document Delaware provides a revision to its SIP to address those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how the 2010 NO<sub>2</sub> NAAQS is being implemented, maintained and enforced. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(1) and (2) requirements of the CAA.

Legislative authority for the Delaware air quality program relating to the responsibilities in the CAA is codified in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law<sup>2</sup>, which gives the Delaware Department of Natural Resources and Environmental Control (DNREC) the power and duty to implement the provisions of the CAA in the State of Delaware.

Many of the miscellaneous requirements of Section 110(a)(2)(A)-(M) of the CAA relevant to the 2010 NO<sub>2</sub> NAAQS are already contained in Delaware's SIP. The following Table identifies those SIP provisions. The following Table also identifies those infrastructure requirements which are not applicable to Delaware.

**Table - 110(a)(2)(A)-(M) Requirements Already Addressed in the Delaware SIP**

Section 110(a) element	Summary of element	Provisions in the Current Delaware SIP or recent SIP revisions Submittals	Where Codified or approved by EPA
§110(a)(2)(A)	Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.	<p>For the 2010 NO<sub>2</sub> NAAQS, the following emission limitations and schedules are contained in Delaware's approved SIP.</p> <ul style="list-style-type: none"> <li>• 7 <b>DE Admin. Code</b> 1101<sup>a</sup>, Definitions And Administrative Principles</li> <li>• 7 <b>DE Admin Code</b> 1112, Control of Nitrogen Oxides Emissions</li> <li>• 7 <b>DE Admin Code</b> 1142, Section 1.0, Control of NO<sub>x</sub> Emissions from Industrial Boilers</li> <li>• 7 <b>DE Admin Code</b> 1142, Section 2.0, Control of NO<sub>x</sub> Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries</li> <li>• 7 <b>DE Admin Code</b> 1144, Control of Stationary Generator Emissions</li> <li>• 7 <b>DE Admin Code</b> 1146, Electric Generating Unit Multi-pollutant Regulation</li> <li>• 7 <b>DE Admin Code</b> 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions</li> <li>• 7 <b>DE Admin. Code</b> 1127, Stack Heights</li> </ul>	40 CFR 52.420(c)

1. 75 FR 6474  
 2. Referred to in this document as "7 Del.C." followed by the specific section citation (e.g., §6005).

# GENERAL NOTICES

- Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to -
- §110(a)(2)(B)** (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.
- 7 **DE Admin. Code** 1103, Ambient Air Quality Standards, provides for the establishment and operation of procedures necessary to monitor, compile and analyze data related to ambient air quality. 40 CFR 52.420(c)
- Delaware implements its Construction and Operation Permit Program requirements under 7 **DE Admin. Code** 1102 and 1125. These existing permitting programs ensure that the construction and modification of both major and minor stationary sources do not cause or contribute to a violation of the NO<sub>2</sub> NAAQS.
- 7 **DE Admin. Code** 1125 fulfills parts C and D of Title I of the CAA, governing preconstruction review and permitting of any new or modified major stationary sources of air pollutants. 1125 is approved in the DE SIP. Under 1125 any major source or modification that results in a net significant increase of NO<sub>x</sub> (25 TPY in Kent and New Castle County; 40 TPY in Sussex County) must apply Lowest Achievable Emission Rate (LAER) technology to reduce NO<sub>x</sub> emissions, and must secure emission offsets such that there is a net air quality benefit. In addition, any 100/250 TPY source of NO<sub>x</sub> emissions is also subject to the attainment review provisions of Section 3.0 of 1125, PSD.
- §110(a)(2)(C)** Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;
- 40 CFR 52.420(c)
- 7 **DE Admin. Code** 1102 provides for the evaluation and necessary regulation of any stationary source that emit equal to or greater than 0.2 lb of any air contaminate, including NO<sub>2</sub>, in any one day.
- In addition, the measures described in CAA 110(a)(2)(A) are enforced, in part, through permits issued pursuant to 1102 and 1125.
- (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;
- §110(a)(2)(E)(i ii)** Require, as may be prescribed by the Administrator—
- The requirements of §110(a)(2)(E)(iii) are not applicable to Delaware because Delaware does not rely on localities for SIP implementation.
- (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,
- §110(a)(2)(F)** (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and
- §110(a)(2)(F)(i): Specific monitoring requirements are found in 7 **DE Admin. Code** 1103 and 1117. These requirements are included in Delaware's SIP.
- §110(a)(2)(F)(ii): Specific reporting requirements are found in 7 **DE Admin. Code** 1103 and 1117. These requirements are included in Delaware's SIP. 40 CFR 52.420(c)
- (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;
- These regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the 2010 NO<sub>2</sub> NAAQS.

<b>§110(a)(2)(G)</b>	Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;	7 <b>DE Admin. Code</b> 1115, Air Pollution Alert and Emergency Plan, contains emergency episode plan provisions that are currently approved in Delaware's SIP. 40 CFR 52.420(c)
<b>§110(a)(2)(I)</b>	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);	Part D pertains to general requirements for nonattainment areas. This does not apply because no part of Delaware is designated nonattainment for the 2010 NO <sub>2</sub> NAAQS.
<b>§110(a)(2)(J)</b>	Meet the applicable requirements of ... part C (relating to prevention of significant deterioration of air quality and visibility protection);	Delaware's PSD requirements are promulgated in 7 <b>DE Admin. Code</b> 1125, Preconstruction Review. 40 CFR 52.420(c)

a. Delaware's air quality regulations are codified in Delaware's administrative code, - Title 7 Natural Resources and Environmental Control, 1100 Air Quality Management Section. Citations are expressed in this document as "7 DE Admin. Code" followed by the specific subpart of 1100. All portions of the DE Admin. Code referred to in this document are already included in Delaware's SIP.

## 2.0 SIP Revision

This SIP revision addresses those requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) for the 2010 NO<sub>2</sub> NAAQS, which have not been addressed in other SIP revisions. Each of the requirements of §110(a)(2) of the CAA (Subparagraphs A–M) is presented below, along with a discussion of Delaware's plan revision to meet the requirement.

**(A) §110(a)(2)(A) Requirement:** Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

**Delaware's Plan:** Delaware has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA, to include the requirements associated with the 2010 NO<sub>2</sub> NAAQS. Delaware may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, Delaware's statutory authority is set out in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law. Legislative authority giving the Secretary of the Delaware Department of Natural Resources and Environmental Control the authority to promulgate Regulations is codified at 7 Del.C., Chapter 60. This authority is applicable to the 2010 NO<sub>2</sub> NAAQS.

**(B) §110(a)(2)(B) Requirement:** Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

**Delaware's Plan:** Delaware has established and currently operates appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality, and upon request, makes such data available to the Administrator. Delaware will continue to operate devices, methods, systems and procedures and may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does this as follows for the 2010 NO<sub>2</sub> NAAQS:

- Delaware maintains and operates a multi-station network of ambient monitors throughout the State to measure ambient air quality levels within Delaware for comparison to each NAAQS as required by 40 CFR Part 58. Delaware currently measures and reports NO<sub>2</sub> concentrations from our monitoring site located in Wilmington near Martin Luther King Boulevard.
- All data is measured using U.S. EPA approved methods as either Reference or Equivalent monitors; all monitors are subjected to the quality assurance requirements of 40 CFR Part 58; Appendix A; and all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E. The data is submitted to the EPA's Air Quality System (AQS) system, in a timely manner in accordance to the scheduled prescribed by the U.S. EPA in 40 CFR Part 58.

## GENERAL NOTICES

- In order to keep EPA informed of changes to the sampling network Delaware provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, Delaware sends EPA a monitoring network plan as required by 40 CFR Part 58 Section 10: Annual monitoring network plan and periodic network assessment. This plan contains all required information including site and monitor description, analysis methods, operating schedule, monitoring objectives and scale of representativeness, as well as information on any planned changes. Delaware submits data to the AQS system, in a timely manner, pursuant to the schedule prescribed by the EPA in 40 CFR Part 58.
- Delaware has and will continue to submit data to EPA's Air Quality System ("AQS") in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.

- (C) **§110(a)(2)(C) Requirement:** Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.

**Delaware's Plan:** Delaware has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. At present, Delaware, through its Division of Air Quality, exercises its programmatic authority to utilize the enforcement powers set out in 7 Del.C. §6005 entitled "Enforcement; civil and administrative penalties; expenses"; 7 Del.C. §6013 entitled "Criminal penalties"; and 7 Del.C. §6018 entitled "Cease and desist order." Delaware will continue to operate this program and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

- (D) **§110(a)(2)(D) Requirement:** Contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126<sup>3</sup> and 115<sup>4</sup> (relating to interstate and international pollution abatement).

3. §126(a) - Each plan shall (1) require each major proposed new or modified source (A) subject to Part C or (D) which may significantly contribute to pollution in excess of the NAAQS in any AQCR outside the State in which such source intends to locate or modify, to provide written notice to all nearby States the pollution levels of which may be affected by such source 60 days prior to the date on which commencement of construction is to be permitted by the State, and (2) identify all major existing stationary sources which may have the impact described in (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources. (b) Any State may petition EPA for a finding that any major source or group of stationary sources emits or would emit any pollutant in violation of the prohibition of §110(a)(2)(D)(ii) or this section. (c) Notwithstanding any permit which may have been granted by the State, it shall be a violation of this section and the plan - (1) for any major proposed new or modified source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of §110(a)(2)(D)(ii) or this section, or (2) for any major existing source to operate more than 3 months after such finding has been made. EPA may permit the continued operation of a source beyond the expiration of the 3-month period if the source complies with the emission limitations and compliance schedules as may be provided by EPA to bring about compliance with the requirements of §110(a)(2)(D)(ii). Nothing shall be construed to preclude any such source from being eligible for an enforcement order under §113(d) after the expiration of such period during which EPA has permitted continuous operation.

**Delaware's Plan:** Delaware's SIP presently contains adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with maintenance with any NAAQS, to include the NO<sub>2</sub> NAAQS, and to prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware's legal authority is contained in the following:

- 7 Del.C., § 6010(c). Rules and regulations; plans. The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Since 110(a)(2)(D) is in the CAA, and thus a law, Delaware has the legal authority to regulate sources of interstate transport to areas in nonattainment, or in those areas maintaining the NAAQS, if they were previously nonattainment.
- 110(a)(2)(D)(i)(I): The pollutant NO<sub>2</sub> is a subset of the broader pollutant NO<sub>x</sub>. Delaware has submitted to the EPA prior SIP revisions that demonstrate all NO<sub>x</sub> emitting sources in Delaware are well controlled. In addition, on January 20, 2012, based on 2008-2010 air quality monitoring data, the U.S. Environmental Protection Agency determined that no area in the country is violating the 2010 NO<sub>2</sub> NAAQS. Given that EPA has determined no area of the country is violating the 2010 NO<sub>2</sub> NAAQS, Delaware emissions cannot significantly contribute to nonattainment in any area.

All major stationary sources of NO<sub>2</sub> are subject to both Prevention of Significant Deterioration (PSD) and the Emission Offset Provisions (EOP) provisions of 7 DE Admin. Code 1125, Preconstruction Review (i.e., both the attainment and the nonattainment area permitting provisions). The requirements of 1125 ensure that no new or modified NO<sub>2</sub> emitting source will cause or contribute to non-attainment in any area.

- 110(a)(2)(D)(i)(II): The requirements of CAA 110(a)(2)(D)(i)(II) are met by new major sources and major modifications in Delaware being subject to the EOP and PSD requirements which are contained in Sections 2.0 and 3.0 of 7 DE Admin. Code 1125, Preconstruction Review.
- 110(a)(2)(D)(ii): Nothing in Delaware's statutory or regulatory authority prohibits or otherwise interferes with Delaware's ability to exercise sections 126 and 115 of the CAA.

- (E) **§110(a)(2)(E) Requirement:** Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128,<sup>5</sup> and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the

4. §115(a) - Whenever EPA, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any pollutants emitted in the US cause or contribute to pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests it to do so, EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under §110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable plan as is inadequate to prevent or eliminate the endangerment. Any foreign country so affected by such emission of pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable plan. (c) This section shall apply only to a foreign country which EPA determines has given the US the same rights with respect to the prevention or control of air pollution occurring in that country. (d) Recommendations issued following any abatement conference conducted prior to CAA 1977 shall remain in effect with respect to any pollutant for which no NAAQS has been established under § 109 unless EPA, after consultation with all agencies, which were party to the conference, rescinds any such recommendation.

## GENERAL NOTICES

implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The elements of §110(a)(2)(E)(iii) are not applicable to Delaware as discussed in Section 1.0 of this document.

**Delaware's Plan:** For §110(a)(2)(E)(i), Delaware has adequate authority under state law pursuant to 7 **Del.C.** Chapter 60 to carry out its SIP obligations with respect to the 2010 NO<sub>2</sub> NAAQS. DNREC does not believe that there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Further, DNREC assures EPA that it has, through the State of Delaware General Fund and through the Title V fee program, and will continue to have, funding to carry out its SIP obligations. Further, DNREC believes its funding sources are sufficient to provide adequate personnel for those purposes; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Delaware fulfills this obligation by virtue of having adequate personnel and funding through the CAA §105 grant process (federal grant funds), the State of Delaware general fund (state tax revenues), and appropriated special funds collected by the State of Delaware from application fees, permit fees, renewal fees, and civil or administrative penalties or fines under 7 **Del.C.** Chapter 60. The Division of Air Quality is responsible for developing, implementing, and enforcing the SIP. Delaware does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

Delaware complies with the requirements of §110(a)(2)(E)(ii) through compliance with the applicable requirements of 29 **Del.C.**, Ch. 58, "Laws Regulating the Conduct of Officers and Employees of the State." A public hearing on SIP revision detailing how the requirements of 29 **Del.C.**, Ch. 58 satisfy this requirement, and that proposed to submit such requirements to the EPA for inclusion into the Delaware SIP, was held on October 23, 2012. Final action will be taken by Delaware on that SIP revision by December 2012.

- (F) **§110(a)(2)(F) Requirement:** Require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.

**Delaware's Plan:** Delaware requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of NO<sub>x</sub> (which includes NO<sub>2</sub>) emissions and emissions related-data from the sources. This may include the installation, maintenance and replacement of equipment, where appropriate. This information submitted to DNREC is available to the public at reasonable times for public inspection pursuant to Delaware law. Delaware will continue to require reporting of emissions but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

Except as specifically exempted by the Delaware Freedom of Information Act, 29 **Del.C.** Chapter 100, Delaware makes all records, reports or information obtained by the Department or referred to at public hearings available to the public pursuant to the provisions of the Delaware Freedom of Information Act, 29 **Del.C.** Chapter 100.

- (G) **§110(a)(2)(G) Requirement:** Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;<sup>6</sup>

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5. §128 (a) each plan shall contain requirements that - (1) any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be disclosed. A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of (1) and (2).

**Delaware's Plan:** Delaware has authority comparable to that in section 303 and adequate contingency plans to implement such authority but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

7 **Del.C.** § 6003(a)(1) requires a permit from the Secretary prior to discharging any air contaminant. 7 **Del.C.** §6002(2) defines air contaminant essentially as any substance other than uncombined water. 7 **Del.C.** §6005 allows the Secretary to seek a preliminary or permanent injunction or temporary restraining order for any discharge of an air contaminant without a permit, and issue cease and desist orders for violations (7 **Del.C.** §6018). Thus, it necessarily follows that any discharge of an air contaminant, including NO<sub>2</sub>, that would cause imminent & substantial endangerment to the health, safety and welfare of the people of the State of Delaware or the environment would constitute a sufficient basis for the Secretary to seek an injunction or temporary restraining order to halt the violation.

- (H) **§110(a)(2)(H) Requirement:** Provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act.

**Delaware's Plan:** Delaware will review and revise its SIP from time to time as may be necessary to take account of revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standard and whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements established under the CAA.

- (I) **§110(a)(2)(I) Requirement:** In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).

**Delaware's Plan:** This does not apply because no part of Delaware is designated nonattainment for the 2010 NO<sub>2</sub> NAAQS.

- (J) **§110(a)(2)(J) Requirement:** Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).<sup>7</sup>

**Delaware's Plan:** Delaware will meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection); but may make changes that it believes

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6. Sec. 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does so utilizing the following:

- **7 DE Admin. Code** 1132, Transportation Conformity, provides a legal platform for the various consultation procedures that have been developed between DNREC, DELDOT, and the Metropolitan Planning Organizations (MPOs). The MPOs provide a forum for consultation with local governments. Delaware's MPOs are: WILMAPCO, Kent County MPO, and the Salisbury-Wicomoco MPO. Regional planning organizations provide the forum for inter-state consultations. Additionally, consultations with Federal Land Managers are on-going in accordance with EPA Rules. All SIP revisions and new/amended regulations undergo public notice and hearing, pursuant to **7 Del.C.** Chapters 29 and 60, which include publication in the newspapers and in the Delaware Register, and which have allowed for comment by the both the public and local political subdivisions. Delaware believes the public notice and hearing processes also fulfills the section 121 consultation process. The submitted attainment plans and regulations in the approved Delaware SIP specify the organizations responsible for implementing and enforcing the plans.
- DNREC makes real-time and historical air quality information available on its Web site.
- PSD requirements necessary to implement the 2010 NO<sub>2</sub> NAAQS are SIP approved and implemented through the requirements of **7 DE Admin. Code** 1125, Preconstruction Review.
- With regard to visibility protection, there are no new applicable visibility protection obligations under section 110(a)(2)(J) as a result of the 2010 NO<sub>2</sub> NAAQS. Delaware is complying with, and will continue to comply with the visibility protection and regional haze program requirements under Part C of the CAA.

- (K) §110(a)(2)(K) Requirement:** Provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

**Delaware's Plan:** Delaware has the authority and technical capability to conduct air quality modeling in order to assess the effect on ambient air quality of relevant pollutant emissions, and will continue to perform modeling as necessary, but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Delaware will continue to submit to the EPA the Air Quality modeling data as part of Delaware's relevant SIP submissions, permit actions, and through federal grant commitments or in other ways that EPA may request.

- (L) §110(a)(2)(L) Requirement:** Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs

7. §121. - In carrying out requirements for plans to contain - (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of pollution, or (2) any measure referred to - (A) in part D), or (B) in part C, and in carrying out the requirements of §113(d), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the State plan applies. Such process shall be in accordance with regulations promulgated by EPA. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of EPA approving any portion of a plan may petition for judicial review.

§127. (a) - Each plan shall contain measures to regularly notify the public of when any NAAQS is exceeded or was exceeded during the preceding year, to advise the public of health hazards associated with such pollution, and to enhance awareness of measures which can be taken to prevent the standards from being exceeded and ways in which the public can participate in regulatory and other efforts to improve air quality.

associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V.

**Delaware's Plan:** In a manner consistent with Delaware law, Delaware will continue to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V pursuant to Delaware law. Delaware currently fulfills this under the enabling authority of 7 **Del.C.** §§6095 to 6099 and fee legislation that currently is renewed every three years. Delaware has a fully approved Title V operating permits program. See paragraphs (b) and (c) under "*Delaware*" in Appendix A to 40 CFR Part 70—Approval Status of State and Local Operating Permits Programs. Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

**(M) §110(a)(2)(M) Requirement:** Provide for consultation and participation by local political subdivisions affected by the plan.

**Delaware's Plan:** Delaware will continue to provide for consultation and participation by local political subdivisions affected by the SIP pursuant to the public notice laws found in 7 **Del.C.** §§ 6006 and 6010 and 29 **Del.C.** Chapters 10003, 10004 and 10115, as applicable. Furthermore, all SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. The public notice and hearing processes fulfill the requirements for consultation with local political subdivisions affected by the SIP.

### 3.0 Conclusion

Based on the discussion provided above, Delaware fully complies with the requirements of §110(a)(2)(A) through §110(a)(2)(M) relative to the 2010 NO<sub>2</sub> NAAQS.

**DELAWARE RIVER BASIN COMMISSION**  
**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, December 5, 2012 beginning at 11:00 a.m. at the Commission's office building, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION****PUBLIC NOTICE**  
**501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 6.6.6.3, 6.6.6.4, 6.6.6.9, 6.6.6.11, 6.6.6.12.1, 6.6.6.12.2, 6.6.6.12.3 & 6.6.6.12.4. The Commission will hold a public hearing on the proposed rule changes on December 11, 2012, at Dover Downs, Dover, DE 19901. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on November 1, 2012.

The proposed changes are for the purpose of updating Rule 6 and reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml)

A copy is also available for inspection at the Harness Racing Commission office.

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

The State Board of Education will hold its monthly meeting on Thursday, December 20, 2012 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION****PUBLIC NOTICE**  
**3201 Skilled and Intermediate Care Nursing Facilities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3201, Skilled and Intermediate Care Nursing Facilities by delineating what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

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 Thomas Murray, Deputy Director, Division of Long Term Care Resident Protection, 3 Mill Road, Suite 308, Wilmington, Delaware 19806 by December 31, 2012.

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 LONG TERM CARE RESIDENTS PROTECTION****PUBLIC NOTICE****3210 Nursing Homes Admitting Pediatric Residents**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3210, Nursing Homes Admitting Pediatric Residents by delineating what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

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 Thomas Murray, Deputy Director, Division of Long Term Care Resident Protection, 3 Mill Road, Suite 308, Wilmington, Delaware 19806 by December 31, 2012.

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 LONG TERM CARE RESIDENTS PROTECTION****PUBLIC NOTICE****3225 Assisted Living Facilities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3225, Assisted Living Facilities by delineating what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

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 Thomas Murray, Deputy Director, Division of Long Term Care Resident Protection, 3 Mill Road, Suite 308, Wilmington, Delaware 19806 by December 31, 2012.

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Reimbursement Methodologies for Inpatient Psychiatric Hospital Services  
and Outpatient Hospital Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the *Reimbursement Methodologies for Inpatient Psychiatric Hospital Services and Outpatient Hospital Services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 31, 2012.

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**  
**School-Based Health Centers**

House Bill 303, signed into law on June 26, 2012, adds School-Based Health Centers to Title 18 of Delaware Code. The Department of Health and Social Services is proposing regulations for School-Based Health Centers.

On December 1, 2012, the Family Health Systems section, under the Division of Public Health, Department of Health and Social Services, plans to publish proposed regulations governing the State of Delaware School-Based Health Centers and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the December 1, 2012 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Family Health Systems Section at (302) 744-4821.

Any person who wishes to submit suggestions, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by December 31, 2012 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700  
Fax (302) 739-6659

**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

**Child Care Subsidy Program Proposed Phase-out Of Purchase Of Care Plus**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS)/Division of Social Services provides public notice regarding the Child Care Subsidy Program, specifically, *Purchase of Care Plus*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2012.

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**

**Case Administration Provisions**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding Case Administration, specifically, *Arranging Interpreter and Translation Services for Non-English Speaking Clients* and *Arranging Services for Clients with Hearing Impairments*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2012.

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**  
**Food Supplement Program**  
**General Information and Identification Cards**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program regarding *General Information and Identification Cards*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2012.

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**  
**Child Care Subsidy Program**  
**Provider Reimbursement**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Provider Reimbursement*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2012.

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 SUBSTANCE ABUSE AND MENTAL HEALTH**  
**PUBLIC NOTICE**  
**6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 51, Delaware Health and Social Services (DHSS) / Division of Substance Abuse and Mental Health is proposing regulations for credentialing mental health screeners and paying for voluntary admissions to privately operated psychiatric hospitals.

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 Susan C. Sargent, USDOJ Settlement Project Director, Division of Substance Abuse and Mental Health, 1901 North DuPont Highway, New Castle, Delaware 19720 or by fax to (302) 255-4428 by December 31, 2012.

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 STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**  
**1700 Board of Medical Licensure and Discipline**

The Delaware Board of Medical Licensure and Discipline ("Board"), in accordance with 24 **Del.C.** §1713(a)(12), has proposed amendments to its rules and regulations. Although the Board has updated various regulations over the years, other regulations remained outdated and/or inconsistent with changes to the law. As a result the Board established a Committee of its members to conduct a comprehensive review of the regulations. These amendments remove those outdated and inconsistent provisions and update the Board's substantially related crime regulation to include new crimes that have been added since the list was originally enacted and to revisit some of the existing crimes on the list in view of changes to the law related to the Board's authority to grant waivers of disqualification related to criminal convictions.

The Board will hold a public hearing on January 8, 2013 at 4:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments on the amendments to the regulations. Anyone wishing to receive a copy of the proposed amendments may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. In accordance with 29 **Del.C.** §100118(a) final date to receive written comments will be January 24, 2013 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on February 5, 2013 at 3:00 p.m., at which time it will determine whether to adopt the regulation as proposed or make additional changes due to the public comment.

**OFFICE OF THE STATE BANKING COMMISSIONER**  
**PUBLIC NOTICE**  
**1109 Instructions for Calculation of Employment Tax Credits (5 Del.C. §1105)**

IT IS HEREBY ORDERED on this 8th day of November, 2012, that Regulation 1109, Instructions for Calculation of Employment Tax Credits, is amended to make it consistent with changes in Section 1105 of Title 5 of the Delaware Code under 78 **Del. Laws** Ch. 72. A copy of the amendments to Regulation 1109 is attached hereto and incorporated herein by reference, with deleted language struck through and added language underlined. The amendments are being adopted to conform that Regulation to provisions of 78 **Del. Laws** Ch. 72 which amended the basic law for Regulation 1109. The amendments do not otherwise alter the substance of Regulation 1109, the remaining provisions of which are not affected by these amendments.

The effective date of the amendments is January 1, 2013. The amendments are adopted by the State Bank Commissioner in accordance with Title 5, and pursuant to the requirements of Chapter 11 and Section 10113(b) of Title 29 of the Delaware Code. A copy of this order and the amendments to Regulation 1109 are to be filed with the Registrar of Regulations.

Robert A. Glen, State Bank Commissioner

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**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF PLANNING AND POLICY****PUBLIC NOTICE****2309 Standards and Regulations for Subdivision Streets and State Highway Access  
Background**

In the August 2012 *Register of Regulations*, DelDOT advertised proposed changes to Section 1.5 and Chapter 2 of their Standards and Regulations for Subdivision Streets and State Highway Access for public comment. They held public hearings on them on September 13, 17 and 20, 2012, and continued to receive public comments through October 20, 2012. DelDOT has prepared a table of the comments received and their responses thereto. It is available at [insert URL].

In response to some of the comments received, DelDOT is proposing further changes to their regulations. Some of those differ substantively from the existing regulations and the changes previously proposed. Accordingly, DelDOT is now advertising the proposed changes again, to allow a further opportunity for public comment. They will accept comments through January 15, 2013.

While it is not proposed as part of the regulations, DelDOT proposes the following implementation process:

1. Changes to when a Traffic Impact Study (TIS) or Traffic Operational Analysis (TOA) may or shall be required, will be effective ten days from adoption for any development for DelDOT has not issued a Letter of No Objection.

2. Changes to the required content of a TIS or TOA will be effective immediately on adoption for any such effort for which a scoping meeting has not been held or a scope of work issued.

3. Changes relating to mitigation measures will be effective immediately on adoption for any such effort for which a scoping meeting has not been held or a scope of work issued.

4. Changes relating to Transportation Improvement Districts (TIDs) will be effective immediately on adoption.

5. Changes relating to the Traffic Signal Revolving Fund will be effective immediately on adoption for any development for which DelDOT has not specified a contribution to be paid with regard to the Fund.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Shailen P. Bhatt, Secretary  
Delaware Department of Transportation  
P.O. Box 778  
Dover, DE 19903  
(302) 760-2303 (telephone)  
(302) 739-2895 (fax)  
shailen.bhatt@state.de.us