
Delaware Register of Regulations

Issue Date: December 1, 2013

Volume 17 - Issue 6, Pages 573 - 660



IN THIS ISSUE:

Regulations:
Emergency
Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before November 15, 2013.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

575

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
January 1	December 16	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 17	4:30 p.m.
April 1	March 17	4:30 p.m.
May 1	April 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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

TABLE OF CONTENTS

Cumulative Tables.....	578
------------------------	-----

EMERGENCY

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Pregnant Women and Infants Under Age 1 – 212% of the Federal Poverty Level and DSSM: 15200.4 Financial Eligibility; 15300.3 Financial Eligibility.....	584
---	-----

PROPOSED

DEPARTMENT OF EDUCATION

Office of the Secretary

275 Charter Schools.....	588
--------------------------	-----

Professional Standards Board

1517 Paraeducator Permit.....	591
-------------------------------	-----

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Medicaid Expansion under the Affordable Care Act 2014 – Delaware Medicaid Program – Alternative Benefit Plan.....	594
--	-----

Pregnant Women and Infants Under Age 1 – 212% of the Federal Poverty Level and DSSM: 15200.4 Financial Eligibility; 15300.3 Financial Eligibility.....	597
---	-----

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Energy and Climate

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions.....	600
---	-----

103 Regulations for State Energy Conservation Code.....	604
---	-----

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

1300 Board of Examiners of Private Investigators & Private Security Agencies.....	607
---	-----

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

Division of Family Services, Office of Child Care Licensing

201 Child Placing Agencies.....	608
---------------------------------	-----

DEPARTMENT OF STATE

Division of Professional Regulation

3500 Board of Examiners of Psychologists.....	609
---	-----

FINAL

DEPARTMENT OF EDUCATION

Professional Standards Board

1510 Issuance of Initial License.....	610
---------------------------------------	-----

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - MAGI-Based Eligibility Groups.....	612
--	-----

TABLE OF CONTENTS

577

Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Eligibility Process.....	616
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - MAGI Income Methodology.....	619
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Single State Agency.....	622
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Residency.....	625
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Citizenship and Immigration Status.....	628
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Children's Health Insurance Program (CHIP) MAGI Eligibility.....	631
Title XIX Medicaid State Plan Regarding Medicaid Rehabilitative Services.....	634
Division of Social Services	
Delaware's Temporary Assistance for Needy Families (TANF) State Plan Amendment.....	638
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Air Quality	
1140 Delaware Low Emission Vehicle Program.....	640
1147 CO2 Budget Trading Program.....	644
Division of Fish and Wildlife	
3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit.....	646
3588 Atlantic Menhaden.....	648
Division of Watershed Stewardship	
7402 Shellfish Sanitation Regulations.....	650
DEPARTMENT OF SAFETY AND HOMELAND SECURITY	
Division of State Police	
5500 Bail Enforcement Agents.....	652
DEPARTMENT OF STATE	
Division of Professional Regulation	
2500 Board of Pharmacy.....	653
5200 Board of Examiners of Nursing Home Administrators.....	655
Office of the State Banking Commissioner	
905 Loan Limitations: Credit Exposure to Derivative Transactions.....	656
EXECUTIVE DEPARTMENT	
Office of Management and Budget	
2001 Group Health Care Insurance Eligibility and Coverage Rules.....	656

CALENDAR OF EVENTS/HEARING NOTICES

Delaware River Basin Commission, Notice of Public Hearing and Business Meeting.....	658
Dept. of Education, Notice of Monthly Meeting.....	658
Dept. of Health and Social Svcs., Div. of Medicaid and Medical Assistance, Notices of Public Comment Periods.....	658
Dept. of Natural Resources and Environmental Control, Div. of Energy & Climate, Notice of Public Hearing	659
Dept. of Safety and Homeland Security, Div. of State Police, Notice of Public Comment Period.....	659
Dept. of Svcs. for Children, Youth and Their Families, Div. of Family Services, Notice of Public Comment Period.....	660
Dept. of State, Div. of Prof. Regulation, Notices of Public Hearings and Comment Periods.....	660

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

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

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY

201 Delaware Manufactured Home Relocation Trust Fund Regulations.....	17 DE Reg. 466 (Prop.)
202 Rent Increase Dispute Resolution Procedures.....	17 DE Reg. 267(Emer.)

DELAWARE RIVER BASIN COMMISSION

Revised Notice of Proposed Rulemaking and Public Hearing.....	17 DE Reg. 143 (Prop.)
Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for pH.....	17 DE Reg. 365 (Prop.)

DELAWARE SOLID WASTE AUTHORITY

501 Regulations of the Delaware Solid Waste Authority.....	17 DE Reg. 313 (Final)
502 Statewide Solid Waste Management Plan.....	17 DE Reg. 314 (Final)
503 Differential Disposal Fee Program, Repealed.....	17 DE Reg. 315 (Rep.)

DELAWARE STATE FIRE PREVENTION COMMISSION

710 Ambulance Service Regulations.....	17 DE Reg. 469 (Prop.)
--	------------------------

DEPARTMENT OF AGRICULTURE**Office of the Secretary**

101 On-Farm Home Processing of Non-Potentially Hazardous Foods.....	17 DE Reg. 25 (Prop.)
	17 DE Reg. 316 (Final)
1201 Nutrient Management Certification Regulations.....	17 DE Reg. 28 (Prop.)
	17 DE Reg. 317 (Final)

Delaware Forest Service

401 Forest Service Erosion and Sedimentation Regulations.....	17 DE Reg. 145 (Prop.)
---	------------------------

Harness Racing Commission

502 Delaware Standardbred Breeders' Fund Regulations.....	17 DE Reg. 203 (Final)
---	------------------------

Pesticides Section

601 Delaware Pesticide Rules and Regulations.....	17 DE Reg. 146 (Prop.)
---	------------------------

DEPARTMENT OF EDUCATION**Office of the Secretary**

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II), Repealed.....	17 DE Reg. 204 (Rep.)
106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	17 DE Reg. 205 (Final)
107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II), Repealed.....	17 DE Reg. 214 (Rep.)
107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	17 DE Reg. 216 (Final)
108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II), Repealed.....	17 DE Reg. 224 (Rep.)
275 Charter Schools.....	17 DE Reg. 275 (Prop.)
	17 DE Reg. 497 (Final)
501 State Content Standards.....	17 DE Reg. 148 (Prop.)
	17 DE Reg. 423 (Final)

614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion.....	17 DE Reg. 367 (Prop.)
805 The School Health Tuberculosis (TB) Control Program.....	17 DE Reg. 361(Emer.)
851 K to 12 Comprehensive Health Education Program.....	17 DE Reg. 150 (Prop.)
910 Delaware Requirements for Issuance of the GED® Test Credential.....	17 DE Reg. 425 (Final)
917 Accelerated Academic Programs.....	17 DE Reg. 469 (Prop.)
	17 DE Reg. 152 (Prop.)
	17 DE Reg. 427 (Final)
Professional Standards Board	
1502 Professional Growth Salary Increments.....	17 DE Reg. 65 (Final)
1503 Educator Mentoring.....	17 DE Reg. 472 (Prop.)
1510 Issuance of Initial License.....	17 DE Reg. 372 (Prop.)

DEPARTMENT OF FINANCE

Office of the State Lottery

205 Charitable Video Lottery Rules and Regulations.....	17 DE Reg. 10 (Emer)
206 Internet Lottery Regulations.....	17 DE Reg. 29 (Prop.)
	17 DE Reg. 317 (Final)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

1915(c) Home and Community-Based Services Waiver.....	17 DE Reg. 156 (Prop.)
	17 DE Reg. 432 (Final)
Attachment 3.1-A Page 5 Addendum, Multi-State Purchasing Pool Supplemental Rebate Agreement.....	17 DE Reg. 285 (Prop.)
	17 DE Reg. 501 (Final)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Children’s Health Insurance Program (CHIP) MAGI Eligibility.....	17 DE Reg. 392 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Citizenship and Immigration Status.....	17 DE Reg. 389 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Eligibility Process.....	17 DE Reg. 377 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - MAGI-Based Eligibility Groups.....	17 DE Reg. 374 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - MAGI Income Methodology.....	17 DE Reg. 380 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Residency.....	17 DE Reg. 386 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Single State Agency.....	17 DE Reg. 383 (Prop.)
Diamond State Health Plan Plus 1115 Demonstration Waiver.....	17 DE Reg. 225 (Final)
Medicaid Expansion under the Affordable Care Act of 2014 - DSSM 14000, 15000, 16000 and 18000.....	17 DE Reg. 126(Emer.)
	17 DE Reg. 162 (Prop.)
	17 DE Reg. 503 (Final)
Medicaid Expansion under the Affordable Care Act of 2014 - Modified Adjusted Gross Income (MAGI) Methodology - Reasonable Classification of Individuals Under Age 21 and Household Composition.....	17 DE Reg. 477 (Prop.)
Medicaid Provider Screening Requirements and Provider Enrollment Fee and Program Integrity	17 DE Reg. 282 (Prop.)
	17 DE Reg. 519 (Final)
Title XIX Medicaid State Plan Regarding Medicaid Rehabilitative Services.....	17 DE Reg. 395 (Prop.)

Division of Public Health

4104 Delaware Conrad State 30 / J-1 Visa Waiver Program.....	17 DE Reg. 233 (Final)
4202 Control of Communicable and Other Disease Conditions.....	17 DE Reg. 320 (Final)

4303 Delaware Early Defibrillation Program.....	17 DE Reg. 165 (Prop.)
4305 Trauma System Regulation.....	17 DE Reg. 438 (Final)
	17 DE Reg. 288 (Prop.)
4408 Facilities that Perform Invasive Medical Procedures.....	17 DE Reg. 523 (Final)
4456 Hazardous Chemical Act, Repealed.....	17 DE Reg. 397 (Prop.)
4459B Residential Property Renovation, Repair and Painting.....	17 DE Reg. 234 (Rep.)
4462 Public Drinking Water Systems.....	17 DE Reg. 485 (Prop.)
	17 DE Reg. 30 (Prop.)
	17 DE Reg. 439 (Final)
4470 State of Delaware Medical Marijuana Code.....	17 DE Reg. 405 (Prop.)
Division of Social Services	
Delaware's Temporary Assistance for Needy Families State Plan Amendment	17 DE Reg. 406 (Prop.)
9018.2 Time Limit for Able-bodied Adults.....	17 DE Reg. 66 (Prop.)
11002.9 Definitions and Explanations of Terms.....	17 DE Reg. 289 (Prop.)
	17 DE Reg. 526 (Final)
11003.7.5 Income Eligible/Education and Post-Secondary Education (Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility Participation).....	17 DE Reg. 486 (Prop.)
Division of Substance Abuse and Mental Health	
6002 Credentialing Mental Health Screeners & Payment for Vol. Admissions..	17 DE Reg. 72 (Prop.)
DEPARTMENT OF INSURANCE	
Office of the Commissioner	
302 Captive Insurance Financial Regulation.....	17 DE Reg. 293 (Prop.)
	17 DE Reg. 532 (Final)
802 Delaware Workplace Safety Regulation.....	17 DE Reg. 166 (Prop.)
	17 DE Reg. 533 (Final)
804 Workers Compensation Ratepayer Advocate.....	17 DE Reg. 169 (Prop.)
	17 DE Reg. 534 (Final)
1003 Credit for Reinsurance.....	17 DE Reg. 235 (Final)
DEPARTMENT OF LABOR	
Division of Industrial Affairs	
1341 Workers' Compensation Regulations.....	17 DE Reg. 34 (Prop.)
	17 DE Reg. 322 (Final)
	17 DE Reg. 488 (Prop.)
1342 Health Care Practice Guidelines, PARTS A - G.....	17 DE Reg. 35 (Prop.)
	17 DE Reg. 322 (Final)
Division of Unemployment Insurance	
1202 Unemployment Insurance Regulations	17 DE Reg. 36 (Prop.)
	17 DE Reg. 325 (Final)
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Air Quality	
Amendment to the Inspection and Maintenance (I/M) State Implementation Plan (SIP) concerning Section 11(e) - Program Compliance.....	17 DE Reg. 342 (Gen.)
Dioxide (NO ₂) National Ambient Air Quality Standard (NAAQS).....	17 DE Reg. 96 (Gen.)
Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan.....	17 DE Reg. 565 (Gen.)
1101 Definitions and Administrative Principles.....	17 DE Reg. 36 (Prop.)
	17 DE Reg. 536 (Final)
1103 Ambient Air Quality Standards.....	17 DE Reg. 38 (Prop.)
1104 Particulate Emissions from Fuel Burning Equipment.....	17 DE Reg. 44 (Prop.)
	17 DE Reg. 536 (Final)

1108 Sulfur Dioxide Emissions From Fuel Burning Equipment.....	17 DE Reg.	79 (Prop.)
1114 Visible Emissions	17 DE Reg.	45 (Prop.)
1125 Requirements for Preconstruction Review, Section 1.9, Definitions	17 DE Reg.	536 (Final)
	17 DE Reg.	6 (Errata)
	17 DE Reg.	408 (Prop.)
	17 DE Reg.	326 (Final)
1138 Emission Standards for Hazardous Air Pollutants for Source Categories, Sections 6.0 & 10.0.....	17 DE Reg.	328 (Final)
1139 Nitrogen Oxides (NOx) Budget Trading Program.....	17 DE Reg.	47 (Prop.)
	17 DE Reg.	538 (Final)
1140 Delaware Low Emission Vehicle Program.....	17 DE Reg.	295 (Prop.)
1143 Heavy Duty Diesel Engine Standards, Repealed.....	17 DE Reg.	48 (Prop.)
	17 DE Reg.	540 (Final)
1147 CO ₂ Budget Trading Program.....	17 DE Reg.	303 (Prop.)
Division of Fish and Wildlife		
3200 Horseshoe Crabs.....	17 DE Reg.	49 (Prop.)
	17 DE Reg.	441 (Final)
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas (3.0, 5.0 & 6.0) Section 12.0.....	17 DE Reg.	50 (Prop.)
	17 DE Reg.	542 (Final)
	17 DE Reg.	172 (Prop.)
	17 DE Reg.	543 (Final)
3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit....	17 DE Reg.	304 (Prop.)
3545 Invasive Finfish.....	17 DE Reg.	7 (Errata)
3581 Spiny Dogfish.....	17 DE Reg.	236 (Final)
3588 Atlantic Menhaden.....	17 DE Reg.	305 (Prop.)
3900 Wildlife, Sections 2.0, 5.0, 10.0, 14.0 and 16.0.....	17 DE Reg.	174 (Prop.)
	17 DE Reg.	238 (Final)
Division of Waste and Hazardous Substances		
1301 Regulations Governing Solid Waste (DRGSW).....	17 DE Reg.	58 (Prop.)
	17 DE Reg.	545 (Final)
1352 Regulations Governing Aboveground Storage Tanks	17 DE Reg.	59 (Prop.)
Division of Water		
7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.....	17 DE Reg.	488 (Prop.)
7503 Oil Gas and Mineral Exploration Regulations, Repealed.....	17 DE Reg.	61 (Prop.)
	17 DE Reg.	547 (Final)
Division of Watershed Stewardship		
5101 Sediment and Stormwater Regulations.....	17 DE Reg.	240 (Final)
7402 Shellfish Sanitation Regulations	17 DE Reg.	53(Prop.)
DEPARTMENT OF SAFETY AND HOMELAND SECURITY		
Division of State Police		
5500 Bail Enforcement Agents.....	17 DE Reg.	409 (Prop.)
Office of Highway Safety		
1205 Electronic Red Light Safety Program (ERLSP).....	17 DE Reg.	182 (Prop.)
	17 DE Reg.	549 (Final)
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES		
Division of Family Services		
105 Residential Child Care Facilities and Day Treatment Programs.....	17 DE Reg.	182 (Prop.)
201 Child Placing Agencies	17 DE Reg.	62 (Prop.)
301 Criminal History Record Checks for Child Care Persons.....	17 DE Reg.	331 (Final)
302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons.....	17 DE Reg.	339 (Final)

DEPARTMENT OF STATE**Division of Professional Regulation**

Uniform Controlled Substances Act Regulations, Section 2.0, Requirements...	17 DE Reg. 186 (Prop.)
300 Board of Architecture.....	17 DE Reg. 188 (Prop.)
	17 DE Reg. 550 (Final)
1100 Board of Dentistry and Dental Hygiene, Section 12.0 Unprofessional Conduct Defined.....	17 DE Reg. 307 (Prop.)
1900 Board of Nursing, Sect. 6.0 Requirements and Procedures for Licensure	17 DE Reg. 85 (Final)
Section 9.0 Regulations Pertaining to Mandatory Continuing Education....	17 DE Reg. 490 (Prop.)
Section 10.0 Disciplinary Proceedings.....	17 DE Reg. 86 (Final)
Section 14.0 Nurse Licensure Compact Rules & Regs.....	17 DE Reg. 83 (Final)
2500 Board of Pharmacy.....	17 DE Reg. 192 (Prop.)
2900 Real Estate Commission.....	17 DE Reg. 242 (Final)
2925 Real Estate Commission Education Committee.....	17 DE Reg. 443 (Final)
2930 Council on Real Estate Appraisers.....	17 DE Reg. 444 (Final)
	17 DE Reg. 490 (Prop.)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	17 DE Reg. 410 (Prop.)
3300 Board of Veterinary Medicine.....	17 DE Reg. 445 (Final)
3500 Board of Examiners of Psychologists.....	17 DE Reg. 89 (Final)
	17 DE Reg. 417 (Prop.)
3600 Board of Geologists.....	17 DE Reg. 494 (Prop.)
4100 Board of Home Inspectors.....	17 DE Reg. 243 (Final)
	17 DE Reg. 309 (Prop.)
	17 DE Reg. 551 (Final)
5200 Board of Examiners of Nursing Home Administrators.....	17 DE Reg. 196 (Prop.)
	17 DE Reg. 552 (Final)
5300 Board of Massage and Bodywork.....	17 DE Reg. 342 (Final)
Office of the State Bank Commissioner	
905 Loan Limitations: Credit Exposure to Derivative Transactions.....	17 DE Reg. 418 (Prop.)
Public Service Commission	
1001 Rules of Practice and Procedure of the DE Public Service Commission..	17 DE Reg. 554 (Final)
3001 Rules for Certification and Regulation of Electric Suppliers.....	17 DE Reg. 310 (Prop.)

DEPARTMENT OF TRANSPORTATION**Division of Motor Vehicles**

2202 Issuance of Duplicate Drivers' Licenses.....	17 DE Reg. 197 (Prop.)
2214 Waiver of Written Examinations for Certain New Residents.....	17 DE Reg. 197 (Prop.)
2251 Assessment of a Fee When Assigning a Special Serial Number on a Motor Vehicle.....	17 DE Reg. 197 (Prop.)
2264 Use of Dealer License Plates on Boat Trailers.....	17 DE Reg. 197 (Prop.)
2272 Authorization of Police Agencies to Issue Vehicle Inspection Notices.....	17 DE Reg. 197 (Prop.)
2274 Distribution of Literature Advertising Businesses.....	17 DE Reg. 197 (Prop.)
2275 Requirements for Licensing of Vehicle Dealers.....	17 DE Reg. 197 (Prop.)

Division of Planning and Policy

2309 Standards and Regulations for Subdivision Streets and State Highway Access	17 DE Reg. 198 (Prop.)
--	------------------------

Division of Transportation Solutions

2405 Oversize/Overweight Hauling Permit Policy and Procedures.....	17 DE Reg. 202 (Prop.)
--	------------------------

EXECUTIVE DEPARTMENT**Delaware Economic Development Authority**

401 Procedures Regarding Non-State Guaranteed Bonds	17 DE Reg. 90 (Final)
403 Administration and Operation of Council on Development Finance	17 DE Reg. 90 (Final)

OFFICE OF MANAGEMENT AND BUDGET**Division of Facilities Management**Regulation Governing the State of Delaware Asbestos Certification and
Training Program.....

17 DE Reg. 63 (Prop.)

17 DE Reg. 446 (Final)

2001 Group Health Care Insurance Eligibility and Coverage Rules

17 DE Reg. 91 (Final)

STATE BOARD OF PENSION TRUSTEES**The Delaware Public Employees' Retirement System**

The Delaware Public Employees Pension System.....

17 DE Reg. 91 (Final)

Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

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

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

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

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

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

PUBLIC NOTICE**Pregnant Women and Infants Under Age 1 – 212% of the Federal Poverty Level****NATURE OF THE PROCEEDINGS:**

This emergency regulation is being promulgated to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) in preparation for healthcare reform in the State of Delaware. This includes aligning Medicaid and Children's Health Insurance Program (CHIP) eligibility determination rules with the Medicaid eligibility provisions of the Affordable Care Act (ACA), particularly the switch to Modified Adjusted Gross Income (MAGI) methodologies. This emergency regulation adoption is necessary while the proposed rulemaking process is being completed to implement the required provisions of the ACA. Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) finds that federal law for receipt of federal funds requires immediate adoption of these rule revisions to provide Delawareans with the opportunity to apply for and enroll in Delaware's public health benefits programs. The Department has determined that a threat to the public welfare exists if it is not implemented without prior notice or hearing.

NATURE OF PROPOSED AMENDMENT:

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to increase the Federal Poverty Level (FPL) for pregnant women and infants under age one (1) in Medicaid to 212% of the FPL.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act
- Section 1902(r)(2) of the Social Security Act, *More Liberal Methods of Treating Income*

Background

In determining eligibility for Medicaid, the Agency's rules and regulations are governed by the Social Security Act, applicable sections of the Code of Federal Regulations and, the Title XIX Medicaid State Plan.

Section 1902(r)(2) of the Social Security Act permits states to have more liberal policies than those of the old AFDC program for resources and income allowances. Under the more liberal policies permitted by section 1902(r)(2), states may modify their Medicaid eligibility process to make more liberal the review of certain resource and income elements in determining financial eligibility.

Modified Adjusted Gross Income (MAGI) Conversion Plan

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

SUMMARY OF THE PROPOSED AMENDMENT:

The Division of Medicaid and Medical Assistance (DMMA) intends to submit a Medicaid state plan amendment to the Centers for Medicare and Medicaid Services (CMS) to change the percentage of earned income disregard applied to poverty level pregnant women and infants under age one (1).

Currently, in Delaware, pregnant women and infants under age one (1) under Medicaid and children ages 1 through 18 under CHIP are both covered at 200% of the Federal Poverty Level (FPL). However, the conversion of net income standards to Modified Adjusted Gross Income (MAGI) equivalent income standards resulted in 209% FPL for the Medicaid pregnant women and infants under age one (1) but 212% FPL for CHIP children ages 1 through 18. Delaware wants to cover both Medicaid and CHIP at the same income standard in 2014.

To align both Medicaid and CHIP, CMS recently advised Delaware that it needs to amend the Medicaid state plan and its eligibility rules immediately in order to bring the Medicaid pregnant women and infants under age one (1) up to the CHIP converted limit of 212% FPL for children aged 1 through 18. DMMA would use the authority under section 1902(r)(2) of the Social Security Act to disregard a block of income between the current net income standard of 200% FPL and a gross income standard of 212% FPL for Medicaid pregnant women and infants under age one (1) under section 1902(a)(10)(A)(ii)(IX) of the Act. Then, that gross income standard in effect on December 31, 2013 under the Medicaid state plan, would be the state's maximum income limit for that group which the state may continue to use in 2014.

Effective December 31, 2013, the levels for determining income eligibility for optional groups of pregnant women and infants under age one (1) under the provisions of sections of 1902(a)(10)(A)(ii)(IX) and 1902(r)(2) of the Social Security Act are as follows on state plan page Supplement 8c to Attachment 2-6-A:

"For pregnant women and infants under age one (1) in the optional poverty-level related eligibility group under section 1902(a)(10)(A)(ii)(IX) of the Act, the State of Delaware will disregard an equal amount to the difference between a net income standard of 200% and a gross income standard of 212% of the Federal Poverty Level for the same family size as updated annually in the Federal Register."

DSSM Sections 15200.4 and 15300.3 of the Division of Social Services Manual (DSSM) will also be amended to reflect the above-referenced change.

The provisions of this state plan amendment are subject to approval by CMS.

Please note that this proposed regulation is also published concurrently herein under "Emergency Regulations" to allow for a thirty-day public comment period.

FINDINGS OF FACT:

The Department finds that a compelling public interest exists which necessitates promulgation of an emergency regulation and requests emergency approval of these rule amendments to change the percentage of earned income disregard applied to poverty level pregnant women and infants under age one (1). The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, to assure compliance with relevant Federal Medicaid rules, that the proposed revisions to the Title XIX Medicaid State Plan regarding Medicaid Eligibility Conditions and Requirements, specifically, *to update the earned income disregard percentage used for the treatment of income for poverty level pregnant women and infants under age one (1) to 212% of the Federal Poverty Level (FPL)*, be adopted on an emergency basis without prior notice or hearing.

Rita M. Landgraf, Secretary, DHSS

DMMA EMERGENCY REGULATION #13-53a**REVISION:**

Supplement 8c to ATTACHMENT 2.6-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: DELAWARE

**MORE LIBERAL METHODS OF TREATING INCOME
FOR PREGNANT WOMEN AND INFANTS UNDER AGE 1
UNDER SECTION 1902 (r) (2) OF THE ACT**

~~For Pregnant Women and Infants Under Age 1, the State of Delaware will disregard an equal amount to the difference between 185% and 200% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.~~

For pregnant women and infants under age one (1) in the optional poverty-level related eligibility group under section 1902(a)(10)(A)(ii)(IX) of the Act, the State of Delaware will disregard an equal amount to the difference between a net income standard of 200% and a gross income standard of 212% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.

DMMA EMERGENCY REGULATION #13-53b**REVISION:****15200.4 Financial Eligibility**

Financial eligibility is determined using the modified adjusted gross income (MAGI) methodologies described in Section 16000. The pregnant woman counts as at least two family members for the financial eligibility determination. If a pregnant woman is diagnosed with a multiple pregnancy, the unborn fetus count is increased accordingly.

Household income must not exceed ~~200%~~ 212% of the Federal Poverty Level (FPL).

15300.3 Financial Eligibility

Financial eligibility is determined using the modified adjusted gross income (MAGI) methodologies described in Section 16000.

Household income for children under age 1 must not exceed ~~209%~~ 212% of the Federal Poverty Level (FPL).

Household income for children age 1 through age 5 must not exceed 142% of the Federal Poverty Level (FPL).

Household income for children age 6 through age 18 must not exceed 133% of the Federal Poverty Level (FPL).

PROPOSED REGULATIONS

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 275

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

275 Charter Schools

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 275 Charter Schools. The amendments reflect revisions in the regulation regarding the administration of the new Performance Fund, as well as other amendments to align with specific Delaware Code revised during the 147th General Assembly.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 6, 2014 to Susan Haberstroh, Associate Secretary, Education Supports and Innovative Practices, 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 intended to help improve student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not specifically address students receiving an equitable education but does address the operation and review of charter schools.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation does not specifically address student health and safety but does address the operation and review of charter schools.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not specifically address students' legal rights but does address the operation and review of charter schools.

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 the decision making at the local board and school level as delineated in Delaware Code.

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 the decision makers at the local board or school level.

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

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 the 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? The regulation is consistent with Delaware Code.

275 Charter Schools

(Break in Continuity of Sections)

2.0 Definitions

2.1 The following definitions apply for purposes of interpreting the Charter School Law and these regulations:

(Break in Continuity Within Section)

"Charter School Performance Fund": means a fund established pursuant to 14 Del.C. §509(m) with eligibility guidelines and criteria to evaluate applications developed by the Department. The Fund shall be subject to appropriation as outlined in Delaware Code.

(Break in Continuity Within Section)

"High-Need Students": means students that qualify as low economic status pursuant to Department determination.

3.0 Application Process

(Break in Continuity Within Section)

3.8 In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter, the renewal of a charter, or the formal review of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the Charter Contract, the Performance Review (not applicable for new applications), reports of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee's final report and any written or electronic comments received ~~at or before any such public hearing~~ during the period of public comment. In the case of the renewal, major modification, or formal review of a charter, the record shall also include performance

PROPOSED REGULATIONS

documentation generated during the term of the charter or related to the subject of the formal review, including but not limited to, compliance with the school's Charter Contract and Performance Agreement, renewal report, audits and performance reviews, student testing data, and parent complaint documentation. No other evidence shall be considered. Written and electronic comments must be received by the ~~Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record~~ Department of Education's Charter School Office during the period of public comment established for the application and published by the Department.

(Break in Continuity of Sections)

14.0 Performance Fund ~~RESERVED~~

14.1 Eligible applicants may apply to the Department for grants from the Charter School Performance Fund established pursuant to 14 Del.C. §509(m).

14.2 Eligibility

14.2.1 In order to be eligible to apply for funds, an applicant shall be:

14.2.1.1 A Delaware charter school that meets or exceeds the expectations established in its Performance Agreement as measured by Performance Framework; or a school receives a satisfactory performance review.

14.2.1.2 A Delaware corporation seeking to establish a charter school in Delaware, including but not limited to an out of state charter school or other partnering organization with a proven track record of academic, operational and financial success.

14.3 Criteria to Evaluate Applications for Funding

14.3.1 In addition to the eligibility considerations set forth in Section 14.2 of these regulations, the Department shall further establish criteria for evaluating applications for funding and shall prioritize applications from applicants that have:

14.3.1.1 Developed high-quality plans for start-up or expansion; or

14.3.1.2 Serve high-need students, as defined in 2.1 of this regulation.

14.3.2 In evaluating applications, the Department shall also consider the availability of supplemental funding to the applicant from non-state sources.

14.4 Applications for Funding

14.4.1 The Department will establish and utilize a process for annually soliciting and reviewing applications for funding that is consistent with these regulations and pursuant to 14 Del.C. §509(m). The application and evaluating criteria rubric shall be published on the Department's public website.

14.5 Awards

14.5.1 The Department has the authority to determine the number of grantees, the size of awards and to determine which applications, if any, shall be approved. The Department's determinations are final and not subject to review or State Board of Education appeal.

14.6 Submission of Applications and Award Notifications

14.6.1 Funding applications shall be submitted to the Department in a format acceptable under the Department's published application process, no later than the deadlines published by the Department annually. The Department shall inform all applicants as to whether or not their application has been approved in accordance with those deadlines and post the approved applicants applications as required.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for Charter Schools is available at:**

275 Charter Schools

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1517

PUBLIC NOTICE

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

1517 Paraeducator Permit

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, 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** 1517 ParaEducator Permits. The regulation applies to the issuance of a Paraeducator Permit, pursuant to 14 **Del.C.** §1205. It is necessary to amend this regulation in order to update and clarify some of the definitions, requirements and to update the application procedures.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on the 1st day of December, 2013 to Donna Lee Mitchell, 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 and expectations for paraeducators who provide support services, or instructional assistance or support in the classroom or laboratory; provides one-on-one or small group instruction; assists in training and support with functional skill activities, such as personal care or assistive technology; or provides instructional services to students under the direct supervision of a teacher contributing to the improvement of student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all paraeducators employed to assist students meet high standards and have acquired the prescribed general knowledge, skill and/or education to support in a particular area, as a Service, Instructional or Title I paraeducator.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses paraeducator permitting, and addresses students' legal rights within the realm of their role as a paraeducator.

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 1517? 14 **Del.C.** requires that we promulgate this regulation for Paraeducator Permits.

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.

1517 Paraeducator Permit

(Break in Continuity of Sections)

3.0 **Title I Paraeducators and Instructional Paraeducators**

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

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

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

3.1.1.2 Receipt of an associate's or higher degree; or

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

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

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

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

3.1.1.4 Submits sufficient verifiable evidence of qualifications to the Department and meets all the requirements.

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

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

3.1.2.2 Receipt of an associate's or higher degree; or

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

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

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

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

3.1.2.4 Submits sufficient verifiable evidence of qualifications to the Department and meets all the requirements.

3.2 Application Procedures.

3.2.1 ~~The district, charter school, or other employing authority shall~~ applicant must submit the a Department approved application, form, ~~The applicant must include~~ official transcripts or official scores on an assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics, ~~to the Department on behalf of the applicant.~~ The district, charter school

~~or other employing authority applicant shall certify as part of the application form that the applicant, in their opinion, meets the requirements of Section 3.0 that answers on the application are true and accurate.~~

3.2.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope ~~to the district, charter school or other employing authority.~~

3.2.1.2 Test scores shall be official and sent directly from Educational Testing Service or other test vendor ~~to the district, charter school or other employing authority.~~ Unopened, unaltered envelopes containing test scores sent to an individual may be accepted as official. The Department shall determine whether the scores, as presented, are acceptable.

~~3.2.2 Unemployed applicants shall submit sufficient verifiable evidence of qualifications to the Department.~~

4.0 ~~Instructional Paraeducators and Service Paraeducators~~

4.1 All ~~Instructional Paraeducators and Service Paraeducators~~ Must Hold the Appropriate Permit in accordance with 14 **Del.C.** §1205(a).

4.2 The Department shall issue a Permit to ~~an Instructional Paraeducator applicant or a Service Paraeducator applicant for whom the district, charter school, or other employing authority~~ has submitted a Department approved application form and who provides evidence of a high school diploma or its recognized equivalent.

5.0 Validity

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

5.2 The Department shall renew a Paraeducator Permit, valid for an additional five (5) years, to a Paraeducator ~~whose school district, charter school, or other employing authority~~ provides evidence ~~to the Department~~ of successful completion of a minimum of fifteen (15) clock hours of approved professional development.

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

6.0 Options for Renewal

6.1 Options for Renewal: are listed in Sections 6.2 and 6.3. These professional development activities are approved options for the renewal of a Paraeducator Permit. Unless otherwise stated, there is no limit to the number of hours that may be taken in any of the options listed below:

6.2 Options listed in Section 6.2 shall be valid for paraeducators holding a Permit whose expiration date does not exceed December ~~49~~ 10, 2015.

(Break in Continuity of Sections)

8.0 Denial and Revocation

8.1 ~~A Paraeducator Permit~~ An applicant may be denied ~~an applicant a paraeducator permit~~ upon a finding that ~~an the~~ applicant has failed to meet the requirements set forth herein or is unfit to be issued a permit in the State.

8.2 A Paraeducator Permit may be revoked upon the dismissal of the permit holder for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty, and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her permit application.

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

8.3.1 The Secretary's decision shall be final.

<http://regulations.delaware.gov/register/december2013/proposed/17 DE Reg 591 12-01-13.pdf>

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for Paraeducator Permit is available at:**

1517 Paraeducator Permit

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

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

PUBLIC NOTICE

**Medicaid Expansion under the Affordable Care Act 2014 – Delaware Medicaid Program –
Alternative Benefit Plan**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to file a state plan amendment with the Centers for Medicare and Medicaid Services (CMS) to establish an *Alternative Benefit Plan (ABP)* for the eligibility category created pursuant to section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, effective January 1, 2014.

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, 2013.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that the Division of Medicaid and Medical Assistance (DMMA) intends to file a state plan amendment with the Centers for Medicare and Medicaid Services (CMS) to establish an *Alternative Benefit Plan (ABP)* for the eligibility category created pursuant to section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, effective January 1, 2014.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*
- Section 1937 of the Social Security Act, *State Flexibility in Benefit Packages*
- 45 CFR 156.110, *Essential Health Benefits-Benchmark Plan Standards*
- 42 CFR 440.305(d), *Advance Public Notice*

Background

Enacted as part of the Deficit Reduction Act of 2005, section 1937 of the Social Security Act (hereafter referred to as the Act) provides states with significant flexibility to design Medicaid benefit packages under the State plan. There are many options in selecting an Alternative Benefit Plan, including the option to offer the Medicaid state plan adult benefit package, and states may offer different Alternative Benefit Plans to targeted populations to appropriately meet their needs.

Through section 1937 Alternative Benefit Plans, State Medicaid programs have the option to provide certain groups of Medicaid enrollees with "benchmark" or "benchmark-equivalent" coverage based on one of three

commercial insurance products, or a fourth, "Secretary-approved" coverage option. "Benchmark" means that the benefits are at least equal to one the statutorily specified benchmark plans, and "benchmark-equivalent" means that the benefits include certain specified services, and the overall benefits are at least actuarially equivalent to one of the statutorily specified benchmark coverage packages. The four benchmarks are:

- 1) The Standard Blue Cross/Blue Shield Preferred Provider Option offered through the Federal Employees Health Benefit program (hereafter referred to as "FEHBP");
- 2) State employee coverage that is offered and generally available to state employees (hereafter referred to as "State Employee Coverage");
- 3) The commercial HMO with the largest insured commercial, non-Medicaid enrollment in the state (hereafter referred to as "Commercial HMO") and
- 4) Secretary-approved coverage, which, as noted above, can include the Medicaid state plan - benefit package offered in that state.

These section 1937 benchmark options are minimum standards and states can augment coverage with additional benefits as described below. In addition, for children under age 21, states must ensure Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services are included either as part of the benefit package itself or through a combination of the benefit package and additional services. Services provided to individuals age 21 or older will be deemed to meet Medicaid amount, duration and scope requirements when provided in accordance with the parameters of the commercial market product selected by the state, as reflected in items (1)-(3) above.

Certain populations such as people who are blind and disabled are exempt from mandatory enrollment in an Alternative Benefit Plan, as identified at section 1937(a)(2)(B) of the Act and 42 CFR 440.315. States are, however, permitted to offer voluntary enrollment in an Alternative Benefit Plan to those exempt groups. 42 CFR 440.320 outlines the procedures that apply when such voluntary enrollment is offered.

The Affordable Care Act made a number of changes related to section 1937 that are effective on January 1, 2014. These changes include:

- Any Alternative Benefit Plan must cover Essential Health Benefits (EHBs) as described in section 1302(b) of the Affordable Care Act and applicable regulations;
- EHBs include the following ten benefit categories, recognizing that some of the benefit categories include more than one type of benefit: (1) ambulatory patient services, (2) emergency services, (3) hospitalization, (4) maternity and newborn care, (5) mental health and substance use disorder services, including behavioral health treatment, (6) prescription drugs, (7) rehabilitative and habilitative services and devices, (8) laboratory services, (9) preventive and wellness services and chronic disease management, and (10) pediatric services, including oral and vision care.
- The Mental Health Parity and Addiction Equity Act (MHPAEA) applies to Alternative Benefit.

Administrative Procedures Pertaining to the Alternative Benefit Plan

Medicaid State Plan Amendments (SPAs) describing section 1937 Alternative Benefit Plans must be submitted to CMS for individuals in the new adult group effective January 1, 2014. Three major sections pertaining to *eligibility* for the program, *benefits/services* covered by the program, and *fee-for-service reimbursement methodology* must be submitted together as a package and approved by CMS through the SPA process.

States implementing Alternative Benefit Plans in a managed care delivery system will also need to submit for CMS review any contracts with health plans, consistent with current practice. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. CMS has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed benefit/services framework.

Summary of Proposal

Section 2001 of the Affordable Care Act requires State Medicaid agencies to design and implement an Alternative Benefit Plan (ABP). The proposed amendments to the State Plan effective January 1, 2014 will establish an alternative benefit plan (ABP) for the new adult group in accordance with section 1902(a)(10)(A)(i)(VIII) of the Social Security Act in compliance with the Affordable Care Act (ACA).

The ABP intends to cover the ten (10) essential health benefits as described in 42 C.F.R. 440.347 to include family planning services, early periodic screening, diagnostic and treatment services for individuals under age 21

years; mental health or substance use disorder benefits in accordance with the Mental Health Parity and Addiction Equity Act; and, a compliance statement regarding section 5006(e) of the American Recovery and Reinvestment Act. In fact, the alternative benefit plan will be an identical plan with the Delaware Medicaid State Plan in effect on January 1, 2014 and will include all of the same Medicaid benefits and services provided to current Medicaid beneficiaries.

Cost Sharing

Cost sharing in the Alternative Benefit Plan (ABP) is the same as in the Medicaid State plan. Delaware's ABP will have cost sharing obligations consistent with both the State Plan and with the cost-sharing rules of 42 CFR §§447.51 through 447.59.

DMMA is in the process of completing a draft version of the corresponding ABP State Plan Amendment (SPA) incorporating continuing guidance from the Center for Medicaid Services (CMS).

The provisions of the ABP state plan amendment are subject to approval by CMS.

Fiscal Impact

As these eligible populations are to be covered with 100% federal funding through September 2016, there is no immediate State fiscal impact as a result of the establishment of the alternative benefit package.

DMMA PROPOSED REGULATION #13-52

ALTERNATIVE BENEFIT PLAN

The Patient Protection and Affordable Care Act (ACA) defines a new, mandatory eligibility group of non-pregnant adults, between ages 19 and 65, with modified adjusted gross income up to 138 percent of the federal poverty level. Section 2001 of the ACA requires State Medicaid agencies to design and implement a plan that offers this population an alternative benefits package that covers the essential health benefits described under section 1937 of the Social Security Act, and modified by the ACA, including early periodic screening, diagnostic and treatment services for individuals under age 21 years and mental health or substance use disorder benefits in accordance with the Mental Health Parity and Addiction Equity Act.

To satisfy the requirements of 42 CFR 440.305(d) and all other federal notice requirements, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) announces its intent to file a federally required state plan amendment with the Centers for Medicare and Medicaid Services (CMS) to define and implement the Delaware Medicaid Program's Alternative Benefit Plan (ABP), cost sharing and enrollment assurances to conform to the requirements under the Affordable Care Act (ACA).

Effective January 1, 2014, Delaware's Alternative Benefit Plan (ABP) intends to cover the required ten (10) Essential Health Benefits (EHB) as described in section 1302(b) of the ACA and in 42 CFR 440.347. The ABP will be an identical plan with the Delaware Medicaid State Plan in effect on January 1, 2014 and will include all of the same Medicaid benefits and services provided to current Medicaid beneficiaries.

To assure compliance with the provisions of 42 CFR 440.345 and in accordance with section 5006(e) of the American Recovery and Reinvestment Act of 2009, DHSS/DMMA provides the following assurances:

Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) Assurance (42 CFR 440.345)

The State assures that there will be full access to EPSDT services (42 CFR 440.345) for individuals under 21 years of age through the adoption of a benchmark plan which will mirror the State's current Medicaid State Plan benefits, including the provision of the EPSDT benefit. EPSDT services include all medically necessary, federally allowed services for individuals under age 21 regardless of their avenue of Medicaid eligibility. As such, newly eligible adults under age 21 will automatically be covered for EPSDT services. These services are covered both as fee-for-service benefits and through the State's Managed Care delivery system. EPSDT services are described in the managed care organization (MCO) member handbooks. The State's Diamond State Health Plan 1115 Demonstration Waiver and MCO contracts require coverage of EPSDT medical services. Dental services are covered as FFS. The State will alert providers about the continuity of EPSDT services for qualifying newly eligible individuals through its periodic provider alerts and newsletters.

Compliance with Section 5006(e) of the American Recovery and Reinvestment Act

The Division of Medicaid and Medical Assistance (DMMA) did not seek advice regarding its alternative benefit plan from an Indian Health Program or Urban Indian Organization as no Indian Health Program or Urban Indian Organization exists in Delaware.

Cost Sharing

Cost sharing in the Alternative Benefit Plan (ABP) is the same as in the Medicaid State plan. Delaware's ABP will have cost sharing obligations consistent with both the State Plan and with the cost-sharing rules of 42 CFR 447.51 through 447.59.

State Plan Amendment

DMMA is in the process of completing a draft version of the corresponding ABP State Plan Amendment (SPA), incorporating continuing guidance from the Center for Medicaid Services (CMS).

The provisions of this state plan amendment are subject to approval by CMS.

Public Comments

The public is invited to comment on the State's proposed Alternative Benefit Plan amendment request. Written comments may be sent 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 via fax to 302-255-4425. For consideration, written comments must be received by 4:30 p.m. on December 31, 2013. Please identify in the subject line: Proposed Delaware Medicaid Program Alternative Benefit Plan Amendment.

Fiscal Impact Statement

As these eligible populations are to be covered with 100% federal funding through September 2016, there is no immediate State fiscal impact as a result of the establishment of the alternative benefit plan package.

Stephen M. Groff 11/5/13
Director, Division of Medicaid and Medical Assistance

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Pregnant Women and Infants Under Age 1 – 212% of the Federal Poverty Level

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 Delaware Medicaid State Plan and the Division of Social Services Manual (DSSM) *to update the earned income disregard percentage used for the treatment of income for poverty level pregnant women and infants under age one (1)*.

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, 2013.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to increase the Federal Poverty Level (FPL) for pregnant women and infants under age one (1) in Medicaid to 212% of the FPL.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act
- Section 1902(r)(2) of the Social Security Act, *More Liberal Methods of Treating Income*

Background

In determining eligibility for Medicaid, the Agency's rules and regulations are governed by the Social Security Act, applicable sections of the Code of Federal Regulations and, the Title XIX Medicaid State Plan.

Section 1902(r)(2) of the Social Security Act permits states to have more liberal policies than those of the old AFDC program for resources and income allowances. Under the more liberal policies permitted by section 1902(r)(2), states may modify their Medicaid eligibility process to make more liberal the review of certain resource and income elements in determining financial eligibility.

Modified Adjusted Gross Income (MAGI) Conversion Plan

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

Summary of Proposal

The Division of Medicaid and Medical Assistance (DMMA) intends to submit a Medicaid state plan amendment to the Centers for Medicare and Medicaid Services (CMS) to change the percentage of earned income disregard applied to poverty level pregnant women and infants under age one (1).

Currently, in Delaware, pregnant women and infants under age one (1) under Medicaid and children ages 1 through 18 under CHIP are both covered at 200% of the Federal Poverty Level (FPL). However, the conversion of net income standards to Modified Adjusted Gross Income (MAGI) equivalent income standards resulted in 209% FPL for the Medicaid pregnant women and infants under age one (1) but 212% FPL for CHIP children ages 1 through 18. Delaware wants to cover both Medicaid and CHIP at the same income standard in 2014.

To align both Medicaid and CHIP, CMS recently advised Delaware that it needs to amend the Medicaid state plan and its eligibility rules immediately in order to bring the Medicaid pregnant women and infants under age one (1) up to the CHIP converted limit of 212% FPL for children aged 1 through 18. DMMA would use the authority under section 1902(r)(2) of the Social Security Act to disregard a block of income between the current net income standard of 200% FPL and a gross income standard of 212% FPL for Medicaid pregnant women and infants under age one (1) under section 1902(a)(10)(A)(ii)(IX) of the Act. Then, that gross income standard in effect on December 31, 2013 under the Medicaid state plan, would be the state's maximum income limit for that group which the state may continue to use in 2014.

Effective December 31, 2013, the levels for determining income eligibility for optional groups of pregnant women and infants under age one (1) under the provisions of sections of 1902(a)(10)(A)(ii)(IX) and 1902(r)(2) of the Social Security Act are as follows on state plan page Supplement 8c to Attachment 2-6-A:

"For pregnant women and infants under age one (1) in the optional poverty-level related eligibility group under section 1902(a)(10)(A)(ii)(IX) of the Act, the State of Delaware will disregard an equal amount to the difference between a net income standard of 200% and a gross income standard of 212% of the Federal Poverty Level for the

same family size as updated annually in the Federal Register.”

DSSM Sections 15200.4 and 15300.3 of the Division of Social Services Manual (DSSM) will also be amended to reflect the above-referenced change.

The provisions of this state plan amendment are subject to approval by CMS.

Please note that this proposed regulation is also published concurrently herein under “Emergency Regulations” to allow for a thirty-day public comment period.

Fiscal Impact Statement

The proposed regulation changes impose no increase in costs on the General Fund as the income conversion takes into account current disregards so the net effect is zero.

DMMA PROPOSED REGULATION #13-54a REVISION:

Supplement 8c to ATTACHMENT 2.6-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: DELAWARE

MORE LIBERAL METHODS OF TREATING INCOME FOR PREGNANT WOMEN AND INFANTS UNDER AGE 1 UNDER SECTION 1902 (r) (2) OF THE ACT

~~For Pregnant Women and Infants Under Age 1, the State of Delaware will disregard an equal amount to the difference between 185% and 200% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.~~

For pregnant women and infants under age one (1) in the optional poverty-level related eligibility group under section 1902(a)(10)(A)(ii)(IX) of the Act, the State of Delaware will disregard an equal amount to the difference between a net income standard of 200% and a gross income standard of 212% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.

DMMA PROPOSED REGULATION #13-54b REVISION:

15200.4 Financial Eligibility

Financial eligibility is determined using the modified adjusted gross income (MAGI) methodologies described in Section 16000. The pregnant woman counts as at least two family members for the financial eligibility determination. If a pregnant woman is diagnosed with a multiple pregnancy, the unborn fetus count is increased accordingly.

Household income must not exceed ~~209%~~ 212% of the Federal Poverty Level (FPL).

15300.3 Financial Eligibility

Financial eligibility is determined using the modified adjusted gross income (MAGI) methodologies described in Section 16000.

Household income for children under age 1 must not exceed ~~209%~~ 212% of the Federal Poverty Level (FPL).

Household income for children age 1 through age 5 must not exceed 142% of the Federal Poverty Level (FPL).

Household income for children age 6 through age 18 must not exceed 133% of the Federal Poverty Level (FPL).

PROPOSED REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF ENERGY AND CLIMATE**

Statutory Authority: 26 Delaware Code, Section 354(i) and (j) (26 Del.C. §354(i) & (j))

**REGISTER NOTICE
SAN #2012-03****102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions****1. TITLE OF THE REGULATION:**

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

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

The purpose of this action is to propose rules to govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 Del.C. §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of Delaware's Renewable Energy Portfolio Standards as provided for in 26 Del.C. §354(a).

Start Action Notice 2012-03 initiating this rule making process was issued April 16, 2012.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

26 Del.C. §354(i) & (j)

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on 102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions (Proposed Rules to Implement 26 Del.C. §354(i) & (j)) will open December 1, 2013.

Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on January 8, 2014 beginning at 6:00 p.m. in the Public Service Commission Hearing Room, Cannon Building, 861 Silver Lake Blvd., Dover, DE, 19904.

7. PREPARED BY:

Thomas Noyes Thomas.Noyes@state.de.us (302) 735-3356

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions**1.0 Purpose**

These rules govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 Del.C. §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of the Renewable Energy Portfolio Standards as provided for in 26 Del.C. §354(a).

2.0 Definitions

As used in these rules:

"Alternative compliance payment" means a payment of a certain dollar amount per megawatt hour, which a retail electricity supplier or municipal electric company may submit in lieu of supplying the

minimum percentage from Eligible Energy Resources required as defined and set by 26 Del.C. §§352(1) and 358(d).

“Average QFCP offset cost” means the dollar amount to be attributed to the cost of a MWh of output from a QFCP during a compliance year.

“Avoided system costs” means reductions in electric generation, transmission or distribution costs.

“Compliance year” means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a retail electricity supplier or municipal electric company must demonstrate that it has met the requirements of this subchapter.

“Division” means the Division of Energy & Climate, the successor agency to the Delaware Energy Office.

“Director” means the Director of the Division of Energy & Climate, who is considered the State Energy Coordinator for the purpose of these rules.

“End-use customer” means a person or entity to whom electrical energy at retail prices is delivered over the distribution facilities of an electric distribution utility regulated by the PSC.

“Exempt load” means the retail customer load of a retail electrical supplier that is either exempt from RPS compliance or supplied by a third party supplier.

“Externality benefits” means reductions in environmental, health and mortality costs.

“Freeze” means suspension of enforcement or implementation of the RPS as provided for under 26 Del.C. §§352(3) & 354(a).

“Green Energy Fund” means the grant program authorized under 29 Del.C. §8057.

“Non-exempt load” means the retail customer load of a retail electrical supplier that is not subject RPS compliance or supplied by a third party supplier.

“PJM” or “PJM interconnection” means the regional transmission organization that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

“Price suppression effects” means reductions in energy costs due to competitive pressures from renewable resources.

“PSC” means the Delaware Public Service Commission.

“Qualified fuel cell project” or “QFCP” shall mean an entity defined by 26 Del.C. §352(17) and authorized to receive surcharge payments paid by customers of an electric distribution company under 26 Del.C. §364(d)(1)f., g., j., & k. and a tariff approved by the PSC.

“REC costs of compliance” means the total costs expended by retail electric suppliers or electric distribution utilities to achieve the applicable RPS percentage standards for RECs during a particular compliance year.

“REC offset hours” and “SREC offset hours” mean the MWh of output from a QFCP that is utilized under 26 Del.C. §353(d) to offset or fulfill the number of RECs and SRECs that might otherwise be required to be surrendered to meet REC and SREC percentage requirements in a compliance year.

“REC percentage requirements” and “SREC percentage requirements” mean the renewable energy portfolio requirements for each compliance year as set forth in 26 Del.C. §354(a).

“Renewable Energy Credit” or “REC” means the instrument defined by 26 Del.C. §352(18) used to demonstrate compliance with the percentage requirements set forth in 26 Del.C. §354(a).

“Renewable Energy Credit payment amounts” or “REC payment amounts” means the dollar amounts expended to produce or procure RECs that are utilized to meet REC percentage requirements in a particular compliance year.

“Renewable Energy Cost of Compliance” means the total costs expended by retail electric suppliers or electric distribution utilities to achieve the applicable RPS percentage standards for all renewable energy during a particular compliance year.

“Retail electricity supplier” means a person or entity that sells electrical energy to end-use customers delivered over the distribution facilities of an electric distribution utility regulated by the PSC.

PROPOSED REGULATIONS

“RPS” means the renewable portfolio standard, the minimum percentage requirements of eligible energy resources and solar photovoltaics established under 26 Del.C., §354.

“RPS load” means the total volume of electricity sold or delivered during a compliance year, excluding sales or deliveries made to any industrial customer (as designated by the PSC) with a peak demand in excess of 1,500 kilowatts.

“Solar alternative compliance payment amounts” mean the dollar amounts expended for alternative solar compliance payments as defined and set by 26 Del.C. §§352(24) and 358(e).

“Solar Renewable Energy Credit” or “SREC” means the instrument defined by 26 Del.C. §352(25) used to demonstrate compliance with the percentage requirements set forth in 26 Del.C. §354(a).

“Solar Renewable Energy Credit amounts” or “SREC payment amounts” mean the dollar amounts expended to produce or procure SRECs that are utilized to meet SREC percentage requirements in a particular compliance year.

“Solar Renewable Energy Cost of Compliance” means the total costs expended by retail electric suppliers or electric distribution utilities to achieve the applicable RPS percentage standards for solar photovoltaic renewable energy during a particular compliance year.

“Surcharge payments” means the dollar amounts (whether positive or negative) paid to, or received by, customers of DP&L from a QFCP and DP&L under 26 Del.C. §364(d)(1) and an implementing tariff approved by the PSC.

“Third party supplier” means an electricity supplier that sells power to end-use customers delivered over the distribution facilities of an electric distribution utility regulated by the PSC.

“Total Retail Costs of Electricity” means the total costs expended by retail electric suppliers to produce, purchase, distribute and deliver retail energy to serve the non-exempt load during a particular compliance year.

3.0 Application

- 3.1 These rules shall apply only in the case of retail electric supply delivered over the distribution facilities of an electric distribution utility regulated by the Public Service Commission. These rules shall not apply to electric supply provided by either:
- 3.1.1 an exempted municipal electric company or a municipal utility (as set forth in 26 Del.C. §363); or
 - 3.1.2 an exempted rural electric cooperative (as set forth in 26 Del.C. §363).
- 3.2 These rules will be applied beginning in compliance year 2013, as defined in 26 Del.C. §§352(3) and 354(a).

4.0 Calculation of the Cost of Compliance

- 4.1 The Division shall calculate the Renewable Energy Cost of Compliance, the Solar Renewable Energy Cost of Compliance and the Total Retail Cost of Electricity.
- 4.2 The Division shall calculate the Renewable Energy Cost of Compliance for a particular compliance year to be:
- 4.2.1 the total of contributions to that portion of the Green Energy Fund used to support the development of renewable resources, plus
 - 4.2.2 the cost of RECs and SRECs retired to satisfy the RPS requirement, plus
 - 4.2.3 all Alternative Compliance Payments, plus
 - 4.2.4 the cost of QFCP offsets to the RPS.
- 4.3 The Division shall calculate the Solar Renewable Energy Cost of Compliance for a particular compliance year to be:
- 4.3.1 the total of contributions to that portion of the Green Energy Fund used to support the development of photovoltaic renewable resources, plus
 - 4.3.2 the cost of SRECs retired to satisfy the RPS requirement, plus
 - 4.3.3 all Alternative Compliance Payments for the solar photovoltaic requirement, plus

4.3.4 the cost of QFCP offsets to the photovoltaic carve-out.

4.4 The Division will determine the Total Retail Costs of Electricity as all customer costs for non-exempt load customers for a particular compliance year.

5.0 Determination by the Director

5.1 The Director shall review the calculations of the Division.

5.2 If the Division calculations show that the Renewable Energy Cost of Compliance is equal to or greater than 3 percent of the Total Retail Cost, the Director shall determine whether a freeze should be implemented.

5.3 If the Division calculations show that the Solar Renewable Energy Cost of Compliance is equal to or greater than 1 percent of the Total Retail Cost, the Director shall determine whether a freeze should be implemented.

5.4 In making a determination, the Director may consider:

5.4.1 the overall energy market conditions;

5.4.2 the avoided cost benefits from the RPS;

5.4.3 the externality benefits of changes in energy markets; and

5.4.4 the economic impacts of the deployment of renewable energy in Delaware.

5.5 Overall market conditions may include shifts in energy prices, long term market trends, adjustments for short term fluctuations, changes in compliance costs, consumer benefits of other state energy policies such as the implementation of energy efficiency programs, and the overall cost of energy to consumers.

5.6 Avoided cost benefits from the RPS may include avoided system costs and price suppression effects attributable to the deployment of renewable energy.

5.7 Externality benefits of changes in energy markets may include externality savings in health and mortality costs due to policies promoting cleaner energy in Delaware and regional energy generation.

5.8 Economic development benefits may include the overall economic activity attributed to jobs created by the development of renewable energy in Delaware.

6.0 Implementation

6.1 If a freeze is imposed under section 5.0 above, the Director will declare the freeze and notify, electronically and by mail, all retail electric suppliers and electric distribution utilities that filed reports on RPS compliance. The Director will also:

6.1.1 provide notice of the freeze to the PSC; and

6.1.2 publish notice of such freeze in the next appropriate issue of the Delaware Register of Regulations.

6.2 In implementing a freeze under these rules, existing contracts for the production or delivery of RECs, SRECs, renewable energy supply or other environmental attributes shall not be abrogated.

7.0 Lifting of a Freeze

7.1 If a freeze has been imposed, the Division will calculate compliance costs, using the methods described in Section 4.0 of these regulations.

7.2 The Director will review the calculation and determine whether to lift a freeze using the methods and criteria described in Section 5.0 of these rules.

7.3 The Director may determine when and whether to lift a freeze in consultation with the Commission.

7.4 If a freeze is lifted, the Director will promptly notify, electronically and by mail, all retail electric suppliers and electric distribution utilities that filed reports on RPS compliance. The Director will also:

7.4.1 provide notice of the freeze to the PSC; and

7.4.2 publish notice of such freeze in the next appropriate issue of the Delaware Register of Regulations.

8.0 Administration

- 8.1 Within 90 days after the end of any compliance year, each retail supplier and electric distribution company shall submit to the Division in writing and electronically the following information for the applicable compliance year:
- 8.1.1 the Renewable Energy Cost of Compliance for that retail supplier or electric distribution utility for that compliance year;
 - 8.1.2 the Solar Renewable Energy Cost of Compliance costs for that retail supplier or electric distribution company for that compliance year;
 - 8.1.3 the Total Retail Costs of Electricity for that retail supplier or electric distribution company for that compliance year.
 - 8.1.4 the total MWh of output (either actual or deemed) produced by a QFCP during the compliance year;
 - 8.1.5 the total amount of surcharge payments paid by its customers during the compliance year;
 - 8.1.6 the calculation of the average QFCP offset cost for the compliance year under section 7.0; and
 - 8.1.7 the number of output hours that it would allocate to SREC and REC offset hours for the compliance year.
- 8.2 Within 30 days from receipt of the information described in Section 8.1 from each retail supplier and electric distribution company the Division shall calculate the cost of compliance as described in Section 4.0 of these Regulations and present the results to the Director.
- 8.3 Within 30 days of receipt of the calculations of the cost of compliance from the Division, the Director shall make a determination as described in Section 5.0 of these regulations and present to the Registrar for publication.
- 8.4 The public will have 30 days from the publication of the Director's determination to offer comment. The Director may alter or amend the determination based on review of the public comments.
- 8.5 The Director shall make a final determination and present to the Registrar for publication within 15 days of receipt of public comments. The determination shall be effective upon its publication.

DIVISION OF ENERGY AND CLIMATE

Statutory Authority: 16 Delaware Code, Section 7602 (16 Del.C. §7602)

REGISTER NOTICE SAN #2013-27

103 Regulations for State Energy Conservation Code

1. TITLE OF THE REGULATIONS:

Regulations for the State Energy Conservation Code

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

Delaware's Energy Conservation Code Act (16 Del.C. §7602) requires DNREC to adopt the most recent and/or highest available version of the International Energy Conservation Code, and the latest ASHRAE/IESNA energy standard. The regulations must also set out procedures for certification of compliance with these codes and standards to be utilized by the respective local governments.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for this regulation.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Chapter 76, §7602 of 16 Delaware Code

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

None

6. NOTICE OF PUBLIC COMMENT:

DNREC will hold a public hearing for builders and other interested parties on the regulations for the State Energy Conservation Code on Thursday, January 2, 2014 at 6:00 pm in the DNREC Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover. The hearing will present information about the proposed draft regulations and collect input from the public and stakeholders regarding these changes.

Interested parties may obtain a copy of the proposed regulations by emailing Crystal.nagyiski@state.de.us.

Written comments on the proposed regulations will be accepted until January 2, 2014 and may be submitted to the DNREC Division of Energy and Climate, attention: Crystal Nagyiski, 1203 College Park Drive, Suite 101, Dover, DE 19904, or by emailing crystal.nagyiski@state.de.us.

7. PREPARED BY:

Crystal Nagyiski

Division of Energy & Climate

1203 College Park Drive Suite 101

Dover, DE 19904

(302)739-9072

Crystal.nagyiski@state.de.us 11/6/2013

103 Regulations for State Energy Conservation Code

1.0 Purpose and Statutory Authority

- 1.1 The purpose of these regulations is to provide the Department of Natural Resources and Environmental Control's determination of the most recent and/or highest available version of the International Energy Conservation Code and the latest ASHRAE/IESNA standard. The goal of establishing these regulations is to provide a statewide building energy conservation code.
- 1.2 These regulations provide rules of practice and procedures for certification of compliance with these codes and standards to be utilized by the respective local governments.
- 1.3 Delaware Code Title 16 Section 7602 provides the authority for adopting Delaware Energy Conservation Code. These regulations are promulgated under the authority of 16 **Del.C.** §7602.

2.0 Definitions

For purposes of these regulations, the following words and phrases shall have the meanings set forth below.

"ASHRAE" means the ANSI/ASHRAE/IES Standard 90.1: Energy Standard for Buildings except Low-Rise Residential Buildings published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

"Department" means the Department of Natural Resources and Environmental Control, the Division of Energy and Climate or the Delaware Energy Office.

"DET verifier" means a certified Duct and Envelope Tightness verifier. A certified DET verifier shall be a certified Home Energy Rating Systems (HERS) rater, or be a certified Home Performance with ENERGY STAR contractor, or be a Building Performance Institute (BPI) Analyst, or successfully complete a course that is approved by the Department of Natural Resources and Environmental Control.

"IECC" means the International Energy Conservation Code published by the International Code Council, Inc.

3.0 Incorporation by Reference

- 3.1 The 2012 International Energy Conservation Code (IECC), published by the International Code Council, Inc., is hereby adopted and incorporated by reference with revisions as the Delaware Residential Building Energy Code and is an enforceable part of the Delaware Building Codes. The revisions to the 2012 IECC code are stated in Section 4.0 of these regulations.
- 3.2 The American Society of Heating, Refrigerating and Air-Conditioning Engineers Standards (ASHRAE) 90.1-2010: Energy Standard for Buildings except Low-Rise Residential Buildings and Commercial Provisions of the 2012 International Energy Conservation Code are hereby adopted and incorporated by reference in their entirety as the Delaware Commercial Building Energy Code and is an enforceable part of the Delaware Building Codes.

4.0 Revisions to the 2012 IECC

- 4.1 The following additions, insertions, deletions, and other changes are hereby made to the 2012 International Energy Conservation Code.
- 4.1.1 R403.2.2 amend to add: Supply duct tightness shall be verified by either of the following:
1. Post-construction test: Total leakage less than or equal to 6 cfm (169.9/min) per square feet (9.29 m²) of conditioned floor area when tested at the pressure differential of 0.1 inches w.g. (25 Pa)....
 2. Rough-in test: Total leakage less than or equal to 6 cfm (169.9/min) per square feet (9.29 m²) of conditioned floor area when tested at the pressure differential of 0.1 inches w.g. (25 Pa) (remainder unchanged – If the air handler is not installed.... ≤ 4 cfm...)
- 4.1.2 R403.4.2: amend list to:
1. Piping larger than 3/4 inch nominal diameter.
 2. Piping serving more than one dwelling unit.
 3. ~~Piping from the water heater to kitchen outlets.~~
 4. Piping located outside the conditioned space.
 5. Piping from the water heater to a distribution manifold.
 6. Piping located under a floor slab.
 7. Buried piping.
 8. Supply and return piping in recirculation systems other than demand recirculation systems.
 9. ~~Piping with run lengths greater than the maximum run lengths for the nominal pipe diameter given in Table R403.4.2.~~

All remaining piping shall be insulated to at least R-3 or meet the run-length requirements of Table R403.4.2. Delete Table R403.4.2 without substitution.

4.1.3 R402.4.1.2:

Exception: A building or dwelling unit with 2,000 ft² or less of conditioned floor area (CFA) may satisfy R402.4.1.2 if it:

(1) attains a HERS Score of 69, using ResNET appliance and plugload defaults:

AND

(2) is tested to have an air leakage rate no greater than:

5 ACH-50 for homes with < 1,500 ft² of CFA, or

4 ACH-50 for homes with 1,500 – 2,000 ft² of CFA.)

4.1.4 R403.2.3 Building framing cavities shall not be used as ducts or plenums.

Exception: Returns run exclusively through conditioned space.

4.1.5 R403.5 The building shall be provided with ventilation that meets the requirements of the International Residential Code (IRC) or International Mechanical Code (IMC), as applicable, or with other approved means of ventilation. Outdoor air intakes shall have automatic or gravity dampers that close when the ventilation system is not operating. Required ventilation rates shall

also include adequate provisions for fuel-fired appliance, stove and fireplace makeup air supply; kitchen, bath, clothes dryer, and central vacuum exhausts; and other makeup air system supplies and/or exhausts as required in either the IRC or IMC.

(remainder of section unchanged)

5.0 Implementation and Enforcement

- 5.1 All buildings must meet all requirements of the applicable referenced code six months after date of promulgation.
- 5.2 All projects may utilize the new applicable reference codes at any time after the date of promulgation, provided such choice is stated on the construction documents.

6.0 Certified duct and envelope tightness (DET) verifier.

Testing for duct and building envelope tightness shall be conducted by a certified DET verifier.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304)
24 DE Admin. Code 1300

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 Del.C. Ch. 13, proposes to amend Rule 4.0 – Training Requirements requiring all individuals to take a mandatory test for the 16 hour training certification. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by December 31, 2013, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903.

1300 Board of Examiners of Private Investigators & Private Security Agencies

(Break in Continuity of Sections)

4.0 Training Requirements

- 4.1 Each person licensed as a security guard under 24 Del.C. Ch. 13 shall undertake a total of sixteen (16) hours of training through a program approved by the Board, and any such additional training as the Board deems appropriate. Satisfactory completion of the sixteen (16) hours of training shall be certified by mandatory testing with a passing grade of 75%. The test will be administered by Delaware Technical Community College (DTCC).
- 4.2 The required training shall include instruction in legal requirements and limitations, use of force, ethics, emergency services, diversity, communication, asset protection, and terrorism. The Board, in its discretion, may require such additional topics as it finds necessary.
- 4.3 The Professional Licensing Section shall have the authority to require regular reports on training from licensees and employers, and shall report to the Board on compliance with this regulation.
- 4.4 Training certifications shall be submitted with each new application or re-application and the training shall be completed no more than one year prior to submission of the application.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for Private Investigators and Private Security Agencies is available at:**

1300 Board of Examiners of Private Investigators & Private Security Agencies

PROPOSED REGULATIONS

**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND
THEIR FAMILIES****DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING**

Statutory Authority: 31 Delaware Code, Section 343(c) (31 **Del.C.** §343(c))
9 **DE Admin. Code** 201

PUBLIC NOTICE**201 Child Placing Agencies****Summary**

The Office of Child Care Licensing proposes to amend the Delaware Requirements for Child Placing Agencies to provide clarity, reflect changes in laws and treaties, align with current best practices, and improve standards of care. A proposed draft was originally published in the July, 2013 *Register of Regulations*. During the period of public comment, comments were received from the *Governor's Advisory Council for Exceptional Citizens* and the *State Council for Persons with Disabilities*. A public hearing was held on July 24, 2013. A third set of comments was received after the close of the comment period from *A Better Chance for Our Children*. These last comments have also been considered.

Comments

A copy of the revised proposed regulations is being published in the December 1, 2013 edition of the *Delaware Register of Regulations*. Interested parties wishing to offer comments on the revised proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on January 17, 2014.

Public Comments Not Incorporated Into This Draft

The State Council for Persons with Disabilities and Governor's Council for Exceptional Citizens both question the rationale for the general ban on children wearing helmets when not using riding toys as found in:

103.2.4.3 A helmet shall be removed before allowing a child to use playground equipment unless a helmet has been medically prescribed by a health care provider for the safety of a particular child.

This prohibition is consistent with the recommendations of the American Academy of Pediatrics as found in Caring for Our Children, National Health and Safety Performance Standards, Guidelines for Early Care and Education, Third Edition which states that "helmets can be a potential strangulations hazard if ...worn for activities other than when using riding toys." (p. 286.)

Summary

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

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

201 Child Placing Agencies

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION 3500 Board of Examiners of Psychologists

Statutory Authority: 24 Delaware Code, Section 3506 (24 Del.C. §3506)
24 DE Admin. Code 3500

PUBLIC NOTICE

3500 Board of Examiners of Psychologists

The Delaware Board of Examiners of Psychologists, pursuant to 24 Del.C. §3506(a)(1), proposes to revise its regulations. The proposed additions to the regulations seek to add rules regarding inactive status of a psychology license and the requirements to reactive a license from inactive status. A prior proposed amendment was published in the October 1, 2013 volume of the *Register of Regulations* including the same amendments with one small exception. The previously published amendment stated at 5.4.1.4.2 that the number of ethics credits required to return from more than one year of inactive status was six credits, not three. The proposed amendment has been changed to comply with the Board's current continuing education ethics requirements of three credits.

The Board will hold a public hearing on the proposed rule change on January 6, 2014 at 9:00 a.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

3500 Board of Examiners of Psychologists

(Break in Continuity of Sections)

5.0 Procedures for Licensure

(Break in Continuity Within Section)

5.4 Inactive Status: A licensee may be placed on inactive status by the Board for a period of no more than five years. Requests for inactive status shall be made, in writing, to the Board and requests which exceed one year shall be renewed biennially at the time of regular license renewals.

5.4.1 To apply for reactivation of an inactive license, a licensee shall:

5.4.1.1 Submit a letter requesting reactivation;

5.4.1.2 Submit a prorated reactivation fee;

5.4.1.3 Be required to be fingerprinted by the State Bureau of Identification and provide all other necessary information in order to obtain a criminal background check; and

5.4.1.4 Submit proof of completion of the continuing education requirements below;

5.4.1.4.1 Inactive status for one year or less: 20 CE hours, including three hours of continuing education in ethics;

5.4.1.4.2 Inactive status for more than one year: 40 CE hours, including three hours of continuing education in ethics, completed within 24 months prior to reapplication.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Examiners of Psychologists is available at:**

3500 Board of Examiners of Psychologists

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1510

REGULATORY IMPLEMENTING ORDER**1510 Issuance of Initial License****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 amend regulation 14 **DE Admin. Code** 1510 Issuance of Initial License. The regulation applies to the issuance of an Initial License for educators, pursuant to 14 **Del.C.** §1210. It is necessary to amend this regulation in order to update and clarify some of the definitions, requirements and to adopt a new examination of general knowledge (CORE).

Notice of the proposed adoption of the regulation was published in the *Delaware Register of Regulations* on October 1, 2013. The notice invited written comments. Similar comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Both Councils questioned the narrow definition for "suspension" in relation to Praxis I. As a result of their comments, the definition was amended to clarify and include language aligned to 7.0. The phrase [an approved examination of general knowledge, such as] was added to the definition for "suspension". The councils also questioned the requirement for initial license to include meeting requirements for certification; they also questioned the reference to "one year" in 5.2.1, asking if this referenced a calendar year or fiscal year; and finally they commented on the inactive license status for applicants who remain unemployed as an educator in Delaware. The Standard Board is continuing to look at this regulation to implement SB51 prior to July 1, 2014; therefore, these comments will be considered in the amendment process. The Professional Standards Board received comments from, as well as entertained public comments during the November Public Meeting, the Delaware School Nurses' Association. The primary concerns

of the written comments and public statements centered around Senate Bill 51 in the areas of Clinical Experience, considering the requirements for Nursing Preparation Programs to meet the requirements of student teaching; and consideration of the Nursing Exam required in that same program as an approved test of general knowledge currently Praxis I. The concerns raised will be considered in the amendment process. The regulation was brought forward for the primary purpose of approving the CORE Academic Skills Assessment with a September 1, 2013 effective, while future amendments will have an effective date that aligns with Senate Bill 51 effective July 1, 2014.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt 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 adopt the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby adopted 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 adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1510 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 THE 7th DAY OF NOVEMBER, 2013

Chris Kenton, Chair

Rosaria Macera

Diane Albanese

Byron Murphy

Michael Casson

Wendy Murray

Joanne Christian

Mary Pinkston

Samtra Devard

Whitney Price

Stephanie DeWitt

JoAnn Reynolds

Cristy Greaves

Stephanie Smith

David Kohan

Jacque Wisnauskas

IT IS SO ORDERED THIS 12th DAY OF NOVEMBER, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 12th day of November, 2013.

State Board of Education

Teri Quinn Gray, Ph.D., President

Gregory B. Coverdale, Jr.

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

Randall L. Hughes

Barbara B. Rutt

1510 Issuance of Initial License

*(Break in Continuity of Sections)***2.0 Definitions**

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

(Break in Continuity Within Section)

"Suspension" means the temporary removal of an Initial License for failure to pass ~~the PRAXIS-I test~~ an approved examination of general knowledge] within the timeframe permitted.

*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2013 issue of the *Register* at page 372 (17 DE Reg. 372). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1510 Issuance of Initial License

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

**Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State
Plan Amendments
MAGI-Based Eligibility Groups**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Modified Adjusted Gross Income (MAGI) Based Eligibility Groups*. 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 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2013 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 (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Modified Adjusted Gross Income (MAGI) Based Eligibility Groups*.

Statutory Authority

Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*

Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will

make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

State Plan Amendments

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

Description of State Plan Amendments and Effective Date

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is ~~October 1, 2013~~ **January 1, 2014**.

Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group
This SPA identifies the mandatory and optional coverage groups that Delaware will cover.
2. Eligibility Process
This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.
3. MAGI Income Methodology
This SPA identifies certain MAGI options Delaware has chosen.
4. Single State Agency
This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.
5. Residency
This SPA identifies the state's residency requirements.
6. Citizenship and Immigration Status
This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods

These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).

2. Title XXI Medicaid Expansion

This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.

3. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.

4. Non-Financial Eligibility

These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

REMINDER: In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

Summary of Proposal

Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.

MAGI-based Eligibility Groups

MAGI-based Eligibility Groups is the first of seven (7) SPA actions. State plan pages S25, S28, S30, S32, S33, S50, S51, S52 and S53 describe the mandatory and optional Medicaid eligibility group that Delaware will cover. State plan page S14 describes the income eligibility standards for certain eligibility groups. The plan pages provide the criteria for coverage under this group, the MAG-based income standard to be used, and the choice related to presumptive eligibility. Effective ~~October 1, 2013~~ **January 1, 2014**, DMMA will use modified adjusted gross income (MAGI) standards to determine income eligibility for some eligibility groups. Some of these groups must be covered and others are provided Medicaid coverage at the State's option.

The groups for which the State will be providing coverage are identified below:

State Plan Page Number	Eligibility Group and Citations	Description
Mandatory Groups		
S25	Parents and Other Caretakers 1902(a)(10)(A)(i)(I) and 1931(b)(d) 42 CFR 435.110	Parents and other caretaker relatives of dependent children with household income at or below a standard established by the state.
S28	Pregnant Women 1902(a)(10)(A)(i)(III) and (IV), 1902(a)(10)(A)(ii)(I), (IV) and (IX), 1931(b) and (d), 1920 42 CFR 435.116	Women who are pregnant or post-partum, with household income at or below a standard established by the state.
S30	Infants and Children Under Age 19 1902(a)(10)(A)(i)(III), (IV), (VI) and (VII); 1902(a)(10)(A)(ii)(IV) and (IX); 1931(b) and (d) 42 CFR 435.118	Infants and children under age 19 with household income at or below standards established by the state based on age group.
S32	Individuals Below 133% of the Federal Poverty Level (FPL) 1902(a)(10)(A)(i)(VIII) 42 CFR 435.119	Non-pregnant individuals aged 19 through 64, not otherwise mandatorily eligible, with income at or below 133% FPL.

FINAL REGULATIONS

615

S33	Former Foster Children up to age 26 1902(a)(10)(A)(i)(IX) 42 CFR 435.150	Individuals under the age of 26, not otherwise mandatorily eligible, who were on Medicaid when they turned age 18 or aged out of foster care.
Optional Groups		
S50	Individuals Above 133% of the FPL 1902(a)(10)(A)(ii)(XX), 1902 (hh) 42 CFR 435.218	Individuals under 65, not otherwise mandatorily or optionally eligible, with income above 133% FPL and at or below a standard established by the state.
S51	Optional Parents and Caretakers 1902(a)(10)(A)(ii)(I) 42 CFR 435.220	Individuals qualifying as parents or caretaker relatives who are not mandatorily eligible and who have income at or below a standard established by the State.
S52	Reasonable Classifications of Individuals 1902(a)(10)(A)(ii)(I) 1902(a)(10)(A)(ii)(IV) 42 CFR 435.222	One or more reasonable classifications of individuals under age 21 who are not mandatorily eligible and who have income at or below a standard established by the state.
S53	Non IV-E Adoption Assistance 1902(a)(10)(A)(ii)(VIII) 42 CFR 435.227	Children with special needs for whom there is a non IV-E adoption assistance agreement in effect with a state, who were eligible for Medicaid, or who had income at or below a standard established by the state.

State Plan Page Number	Citation	Description
S14	AFDC Income Eligibility Standards 42 CFR Part 435	S14 is provided for states to enter various income standards from their AFDC or TANF programs.

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

Fiscal Impact Statement

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$ 124,986	\$ 254,855
ACA Expansion	\$ 11,924,412	\$ 26,689,670
Transitional	\$ 187,657	\$ 566,356
Former Foster Children	\$ -	\$ -
Total	\$ 12,237,055	\$ 27,510,882

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DMMA received no public comments regarding these state plan amendments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan regarding *Modified Adjusted Gross Income (MAGI) Based Eligibility Groups and Income Eligibility Standards* is adopted and shall be final effective December 10, 2013.

Rita M. Landgraf, Secretary, DHSS

A file containing all the aforementioned PDFs for MAGI-Based Eligibility Groups is available here:

MAGI-Based Eligibility Groups

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

**Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State
Plan Amendments
Eligibility Process**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with the *Eligibility Process*. 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 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2013 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 (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with the *Eligibility Process*.

Statutory Authority

Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*

Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid

coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

State Plan Amendments

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

Description of State Plan Amendments and Effective Date

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is ~~[October 1, 2013]~~ **January 1, 2014**.

Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group
This SPA identifies the mandatory and optional coverage groups that Delaware will cover.
2. Eligibility Process
This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.
3. MAGI Income Methodology
This SPA identifies certain MAGI options Delaware has chosen.
4. Single State Agency
This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.
5. Residency
This SPA identifies the state's residency requirements.
6. Citizenship and Immigration Status
This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods

These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).

2. Title XXI Medicaid Expansion

This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.

3. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.

4. Non-Financial Eligibility

These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

REMINDER: In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

Summary of Proposal

Note: The regulation cited is Code of Federal Regulations.

Eligibility Process

42 CFR 435.10

42 CFR 435, Subpart J and Subpart M

Eligibility Process is the second of seven (7) SPA actions. State plan page S94 is used to indicate the application forms and methods for individuals to apply for and renew Medicaid coverage. Section 1413 of the Affordable Care Act provides for a streamlined process by which individuals seeking health coverage can receive eligibility determinations and enroll in the coverage for which they are eligible. On this plan page, states also provide assurances relative to the eligibility process. The state plan page further captures the state's choice of the frequency of redeterminations of eligibility for individuals whose eligibility is not based on a MAGI income standard. The state plan page also includes an assurance related to redetermination requirements for individuals whose eligibility is based on a MAGI income standard.

The Affordable Care Act requires that the state agency enter into agreements with the Exchange and other agencies administering insurance affordability programs for the coordination of eligibility and enrollment. The state plan page captures information concerning such agreements.

Hospital Presumptive Eligibility

42 CFR 435.1110

The Affordable Care Act added section 1902(a)(47)(B) of the Social Security Act to give hospitals the option, as of January 1, 2014, to determine presumptive eligibility for Medicaid. Unlike other types of presumptive eligibility, the Act provides this option to Medicaid hospital providers whether or not the state has elected to permit qualified entities to make presumptive eligibility determinations under other sections of the statute. A qualified hospital may elect to make presumptive eligibility determinations on the basis of preliminary information and according to policies and procedures established by the state Medicaid agency.

State plan page S21 contains assurance that no qualified hospitals in Delaware have elected to make presumptive eligibility determinations under 42 CFR 435.1110 at this time.

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

Fiscal Impact Statement

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$ 124,986	\$ 254,855
ACA Expansion	\$ 11,924,412	\$ 26,689,670
Transitional	\$ 187,657	\$ 566,356
Former Foster Children	\$ -	\$ -
Total	\$ 12,237,055	\$ 27,510,882

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DMMA received no public comments regarding these state plan amendments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan regarding the *Eligibility Process* is adopted and shall be final effective December 10, 2013.

Rita M. Landgraf, Secretary, DHSS

A file containing the PDFs associated with the MAGI-Based Eligibility Process is available here:

<http://regulations.delaware.gov/register/december2013/final/S21-94.pdf>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

**Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments
MAGI Income Methodology**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *MAGI Income Methodology*. 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 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2013 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 (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *MAGI Income Methodology*.

Statutory Authority

Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*

Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

State Plan Amendments

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

Description of State Plan Amendments and Effective Date

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is [~~October 1, 2013~~ **January 1, 2014**].

Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group
This SPA identifies the mandatory and optional coverage groups that Delaware will cover.
2. Eligibility Process
This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.
3. MAGI Income Methodology
This SPA identifies certain MAGI options Delaware has chosen.
4. Single State Agency

This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.

5. Residency

This SPA identifies the state's residency requirements.

6. Citizenship and Immigration Status

This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods

These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).

2. Title XXI Medicaid Expansion

This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.

3. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.

4. Non-Financial Eligibility

These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

REMINDER: In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

Summary of Proposal

Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.

MAGI Income Methodology

1902(e)(14)

42 CFR 435.603

MAGI Income Methodology is the third of seven (7) SPA actions. State plan page S10 is used to describe the options elected by the state with respect to MAGI-based income methodologies, which is the income methodology that will be used effective January 1, 2014 for determining eligibility for most children, pregnant women and parents and caretaker relatives and adults described in 42 CFR 435.119.

The ACA also eliminated the use of disregards or other less restrictive income methodologies under sections 1902(r)(2) and 1931(b)(2)(C) of the Act when determining the income of individuals whose income eligibility is determined using MAGI- based methodologies.

Effective Date of MAGI-Based Income Methodologies

MAGI-based income methodologies become effective January 1, 2014. However, when determining continuing eligibility for beneficiaries who were determined eligible for Medicaid on or before December 31, 2013, MAGI-based income methodologies will not be applied until the later of:

- March 31, 2014, or
- The next regularly scheduled re-determination of eligibility,

if application of MAGI-based methodologies results in a determination that the individual would be ineligible prior to such date.

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

Fiscal Impact Statement

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$ 124,986	\$ 254,855
ACA Expansion	\$ 11,924,412	\$ 26,689,670
Transitional	\$ 187,657	\$ 566,356
Former Foster Children	\$ -	\$ -
Total	\$ 12,237,055	\$ 27,510,882

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DMMA received no public comments regarding this state plan amendment.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan regarding *Modified Adjusted Gross Income (MAGI) Income Methodology* is adopted and shall be final effective December 10, 2013.

Rita M. Landgraf, Secretary, DHSS

A file containing the PDFs associated with the MAGI Income Methodology is available here:

<http://regulations.delaware.gov/register/december2013/final/S10.pdf>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments Single State Agency

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Single State Agency*. 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 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2013 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 (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with the *Single State Agency*.

Statutory Authority

Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*

Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

State Plan Amendments

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

Description of State Plan Amendments and Effective Date

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is [~~October 1, 2013~~ January 1, 2014].

Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group

This SPA identifies the mandatory and optional coverage groups that Delaware will cover.

2. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.

3. MAGI Income Methodology

This SPA identifies certain MAGI options Delaware has chosen.

4. Single State Agency

This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.

5. Residency

This SPA identifies the state's residency requirements.

6. Citizenship and Immigration Status

This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods

These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).

2. Title XXI Medicaid Expansion

This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.

3. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.

4. Non-Financial Eligibility

These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

REMINDER: In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

Summary of Proposal

Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.

Single State Agency

1902(a)(5)

42 CFR 431.10

Single State Agency is the fourth of seven (7) SPA actions. State plan pages A1-Designation and Authority; A2-Organization and Administration; and, A3-Assurances are about the basic administration of the Medicaid program and the legal authority of the state to submit and administer the state plan: the name of the single state agency, appropriate state statutory authorities, any other agencies or organizations involved in the administration of the plan, and entities that have authority and responsibility to determine eligibility and to conduct fair hearings.

States must designate a single state agency to administer or supervise the administration of the state's Medicaid plan. They must also provide certification by the state Attorney General, citing the legal authority for the single state agency to administer or supervise the administration of the Medicaid plan and to make rules and regulations that it follows in administering the plan or that are binding upon local agencies that administer the plan, as appropriate.

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

Fiscal Impact Statement

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$ 124,986	\$ 254,855
ACA Expansion	\$ 11,924,412	\$ 26,689,670
Transitional	\$ 187,657	\$ 566,356
Former Foster Children	\$ -	\$ -
Total	\$ 12,237,055	\$ 27,510,882

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DMMA received no public comments regarding this state plan amendment.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan regarding *Single State Agency: A1-Designation and Authority; A2-Organization and Administration; and, A3-Assurances* is adopted and shall be final effective December 10, 2013.

Rita M. Landgraf, Secretary, DHSS

A file containing the PDFs associated with the MAGI Single State Agency is available here:
<http://regulations.delaware.gov/register/december2013/final/A1-A3.pdf>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments Residency

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Residency*. 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 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2013 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 (DMMA) hereby affords the public notice of the filing of

federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with the *Residency*.

Statutory Authority

Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*

Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

State Plan Amendments

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

Description of State Plan Amendments and Effective Date

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is [~~October 1, 2013~~ **January 1, 2014**].

Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group
This SPA identifies the mandatory and optional coverage groups that Delaware will cover.
2. Eligibility Process
This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.
3. MAGI Income Methodology
This SPA identifies certain MAGI options Delaware has chosen.
4. Single State Agency
This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.

5. Residency

This SPA identifies the state's residency requirements.

6. Citizenship and Immigration Status

This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods

These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).

2. Title XXI Medicaid Expansion

This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.

3. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.

4. Non-Financial Eligibility

These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

REMINDER: In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

Summary of Proposal

Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.

Residency

1902(b)(2)

42 CFR 435.403

Residency is the fourth of seven (7) SPA actions. State plan page S88 includes specific requirements for what constitutes state residency and solicits information from the state regarding its interstate agreements (if any), policies for individuals who are temporarily out of the state or temporarily living in the state.

States are required to provide Medicaid to eligible residents of the state, including residents who are absent from the state in certain circumstances, who are otherwise Medicaid eligible in the state. The definition of who is considered a resident of the state includes criteria to be used to determine the residency of individuals who are not capable of indicating intent, who are institutionalized, or who may be absent from the state.

Regulatory changes simplify and clarify residency rules and align those rules with those that apply under the other insurance affordability programs.

This state plan page begins with the state providing assurance that it meets the requirement of providing Medicaid to otherwise eligible residents of the state, including individuals who are absent from the state under certain conditions. The state plan page provides a list of the individuals that must be considered to be residents of the state under certain specified conditions, as required by 42 CFR 435.403.

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

Fiscal Impact Statement

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$ 124,986	\$ 254,855
ACA Expansion	\$ 11,924,412	\$ 26,689,670
Transitional	\$ 187,657	\$ 566,356
Former Foster Children	\$ -	\$ -
Total	\$ 12,237,055	\$ 27,510,882

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DMMA received no public comments regarding this state plan amendment.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan regarding *Residency* is adopted and shall be final effective December 10, 2013.

Rita M. Landgraf, Secretary, DHSS

A file containing the PDFs associated with the MAGI Residency is available here:

<http://regulations.delaware.gov/register/december2013/final/S88.pdf>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments Citizenship and Immigration Status

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Citizenship and Immigration Status*. 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 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2013 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 (DMMA) hereby affords the public notice of the filing of

federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Citizenship and Immigration Status*.

Statutory Authority

Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*

Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

State Plan Amendments

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

Description of State Plan Amendments and Effective Date

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is [~~October 1, 2013~~ **January 1, 2014**].

Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group

This SPA identifies the mandatory and optional coverage groups that Delaware will cover.

2. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.

3. MAGI Income Methodology

This SPA identifies certain MAGI options Delaware has chosen.

4. Single State Agency

This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.

5. Residency

This SPA identifies the state's residency requirements.

6. Citizenship and Immigration Status

This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:1. MAGI Eligibility & Methods

These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).

2. Title XXI Medicaid Expansion

This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.

3. Eligibility Process

This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.

4. Non-Financial Eligibility

These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

REMINDER: In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

Summary of Proposal

Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.

Citizenship and Immigration Status

1902(a)(46)(B); 1903(v)(2), (3) and (4)

Proposed 42 CFR 435.4; 435.406; 435.956,

78 FR 4594 (issued on January 22, 2013)

State plan page S89 describes the rules concerning Medicaid requirements related to U.S. citizenship and non-citizen eligibility.

Regulations at 42 CFR 435.406 require states to provide Medicaid to otherwise eligible individuals who are citizens or nationals of the United States, or qualified non-citizens as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (8 U.S.C. 1641) and whose eligibility is not prohibited during the five year waiting period, required at 8 U.S.C. 1613 for certain qualified non-citizens.

Section 1137(d)(4) of the Social Security Act requires states to provide Medicaid to individuals having satisfactory immigration status during a reasonable period of time (known as a reasonable opportunity period) while their immigration status is being verified, if they are otherwise eligible for Medicaid.

Section 211 of the Children's Health Insurance Program Reauthorization Act (CHIPRA) added the requirement to provide a reasonable opportunity period for an individual verifying their citizenship, if otherwise Medicaid eligible. Section 211 of CHIPRA amended section 1903(x) of the Act (requirement to provide documentary evidence of citizenship or nationality), and built upon existing regulation at §435.407(k) to require states to provide individuals who have declared themselves to be U. S. citizens, and who must have their citizenship or nationality status verified, the same reasonable opportunity to provide evidence of citizenship and to provide Medicaid coverage

during this reasonable opportunity period, if the individual is otherwise Medicaid eligible, as is afforded to individuals who are verifying their immigration status.

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

Fiscal Impact Statement

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$ 124,986	\$ 254,855
ACA Expansion	\$ 11,924,412	\$ 26,689,670
Transitional	\$ 187,657	\$ 566,356
Former Foster Children	\$ -	\$ -
Total	\$ 12,237,055	\$ 27,510,882

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DMMA received no public comments regarding this state plan amendment.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan regarding *Citizenship and Immigration Status* is adopted and shall be final effective December 10, 2013.

Rita M. Landgraf, Secretary, DHSS

A file containing the PDFs associated with the MAGI Citizenship and Immigration Status is available here:

<http://regulations.delaware.gov/register/december2013/final/S89.pdf>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments Children's Health Insurance Program (CHIP) MAGI Eligibility

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XXI Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *CHIP Modified Adjusted Gross Income (MAGI) Eligibility*. 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 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2013 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 (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with the *Children's Health Insurance Program (CHIP) MAGI Eligibility*.

Statutory Authority

Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*

Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

State Plan Amendments

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state's single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of "fillable" preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state's proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

Summary of Proposal

Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.

CHIP Modified Adjusted Gross Income (MAGI) Eligibility

2102(a)(2)

2102(b)(1)(B)(v)

2102(b)(3)(C)

2102(b)(3) and 2107(E)(1)(O)

42 CFR Part 457

To implement several provisions of the Affordable Care Act, Delaware intends to make changes to its Delaware

Healthy Children Program State Plan concerning the methodology used to determine eligibility for Targeted Low Income Children. We have summarized the CHIP State plan amendments below.

It is important to note that many of the required pages simply replace pages in the current CHIP State Plan and do not include substantive change to present eligibility and enrollment policy or practice.

Proposed CHIP MAGI Eligibility State Plan Amendments (SPAs) include:

1. MAGI Eligibility & Methods

These SPA pages designate the eligibility and income methodology for Targeted Low-Income Children. The plan pages assure that Delaware will provide coverage not to exceed twelve (12) months for children ineligible for Medicaid as a result of the elimination of income disregards as required by the Affordable Care Act (ACA). The SPA page also assures that Delaware does not apply a spenddown process for households that have income that exceeds the CHIP limit.

State Plan Page Number: CS 7-Targeted Low-Income Children

State Plan Page Number: CS 15-MAGI-Based Income Methodology

State Plan Page Number: CS 16-Spenddowns

2. Title XXI Medicaid Expansion

This SPA sets MAGI-based income standards for CHIP Medicaid Expansions coverage for children age 6-18 year olds with incomes between 100% -133% of the Federal Poverty Level (FPL).

State Plan Page Number: CS3-MAGI Income Standards for CHIP Medicaid Expansion

3. Eligibility Process

These SPA pages detail Delaware's eligibility and enrollment process, including the single, streamline application, the methods by which Delaware Medicaid can accept an application, the renewal process, and assurance that the state will coordinate eligibility and enrollment with federally facilitated marketplaces.

State Plan Page Number: CS 24-General Eligibility

4. Non-Financial Eligibility

These SPAs identify the CHIP program's non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

Residency

These SPA pages assure that Delaware provides medical assistance to eligible residents of the State of Delaware.

State Plan Page Number: CS 17-Residency

Citizenship

These SPA pages assure that Delaware provides medical assistance to eligible citizens of the United States and lawfully residing immigrants.

State Plan Page Number: CS 18-Citizenship/Lawfully Residing Immigrants

Social Security Number

These SPA pages assure that Delaware Medicaid requires individuals to furnish their Social Security number as a condition of eligibility unless they meet the requirements for an exception.

State Plan Page Number: CS 19-Social Security Number

The following SPA pages contain additional assurances relating to eligibility, including a mechanism to assure that CHIP is not used as a substitution of coverage, an assurance the state does not have a premium lock out period; an assurance the state does provide continuous coverage regardless of the family's changing circumstances, and, clarifies that the state does not allow presumptive eligibility for children or pregnant women.

State Plan Page Number: CS 20-Substitution of Coverage

State Plan Page Number: CS 21-Premium Lock-Outs

State Plan Page Number: CS 27-Continuous Eligibility

FINAL REGULATIONS

State Plan Page Number: CS 28-Presumptive Eligibility – Children

State Plan Page Number: CS 29-Presumptive Eligibility – Pregnant Women

These SPAs will be effective [~~October 1, 2013~~ **January 1, 2014**] as required by federal law.

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

Fiscal Impact Statement

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$ 124,986	\$ 254,855
ACA Expansion	\$ 11,924,412	\$ 26,689,670
Transitional	\$ 187,657	\$ 566,356
Former Foster Children	\$ -	\$ -
Total	\$ 12,237,055	\$ 27,510,882

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DMMA received no public comments regarding these state plan amendments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XXI Medicaid State Plan regarding *CHIP Modified Adjusted Gross Income (MAGI) Eligibility* is adopted and shall be final effective December 10, 2013.

Rita M. Landgraf, Secretary, DHSS

A file containing all the aforementioned PDFs for CHIP Eligibility is available here:

<http://regulations.delaware.gov/register/december2013/final/Chip.pdf>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XIX Medicaid State Plan Medicaid Rehabilitative Services

NATURE OF THE PROCEEDINGS:

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

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the October 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2013 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 (DMMA) hereby affords the public notice of its intention to amend the Title XIX Medicaid State Plan regarding its methods and standards for coverage and reimbursement of *Medicaid Rehabilitative Services*.

Statutory Authority

- §1905 of the Social Security Act (a)(13), *Other diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §440.130(d), *Rehabilitative services*
- 42 CFR §440.60, *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.225, *Optional services*
- 42 CFR §440.20, *Outpatient hospital services and rural health clinic services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

Background

Section 1905(a)(13) of the Social Security Act (the Act) includes rehabilitative services as an optional Medicaid State plan benefit. Current Medicaid regulations at 42 CFR §440.130(d) provides a definition of rehabilitative services. Rehabilitative services are defined as “any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice under State law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level.” The broad general language in this regulatory definition has afforded States considerable flexibility under their State plans to meet the needs of their State's Medicaid population.

Rehabilitative services are specialized services of a medical or remedial nature delivered by uniquely qualified practitioners designed to treat or rehabilitate persons with mental illness or substance use disorder diagnoses. These services will be provided to recipients on the basis of medical necessity.

The Delaware Medical Assistance Program (DMAP) covers rehabilitative services provided to eligible Medicaid recipients by eligible providers. Rehabilitative services are medically related treatment, rehabilitative, and support services for persons with disabilities caused by mental illness and substance use disorder.

Summary of Proposal

Purpose and Rationale

This proposed State plan amendment (SPA) targets service delivery, specifically, substance use disorder treatment services, crisis intervention services, and other licensed behavioral health practitioners. This plan amendment makes the changes and clarifications necessary for Delaware to be responsive to the United States Department of Justice (DOJ) Settlement through the addition of new services and modifications to existing services.

The proposed SPA is designed to ensure that quality rehabilitative services are provided in a coordinated manner that is in the best interest of the individuals, are limited to rehabilitative purposes and, are furnished by qualified providers.

This proposed SPA would also provide guidance to ensure that services claimed under the optional Medicaid rehabilitative benefit are rehabilitative out-patient services, are furnished by qualified providers, and are provided to Medicaid eligible individuals according to a goal-oriented rehabilitation plan.

Proposed Amendment

Pursuant to the notice requirements of 42 CFR §447.205, Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of its intention to file a state plan amendment regarding the rehabilitative services option. If implemented as proposed, the coverage and reimbursement methodology plan amendments will accomplish the following, effective October 2, 2013:

1. Remove mental health clinics from the Medicaid Clinic Option and cover the services provided by those facilities in the Other Licensed Practitioner Section of the State Plan. This will allow Medicaid to

reimburse Psychologists, Licensed Clinical Social Workers, Licensed Professional Counselors of Mental Health, and Licensed Marriage and Family Therapists (LMFTs) services when provided in a clinic or community setting when permitted under State practice laws.

2. Include Crisis Intervention and Outpatient and Residential Substance Use Disorder Treatment in the Rehabilitation State Plan. This will allow the State to provide Medicaid eligible individuals with mobile and site-based crisis intervention for individuals experiencing a behavioral health crisis. In addition, the State will be able to provide recovery-oriented treatment for individuals with substance use disorders.
3. Remove the Community Support Service Program from the State Plan effective July 1, 2014. On that date, a new 1915(i)-like service under the 1115 demonstration waiver will begin operating for individuals under the DOJ settlement agreement to ensure that individuals with serious Mental illness (SMI) receive the supports necessary to remain in the community.

IMPORTANT NOTE: Federal law and regulations use the term “intermediate care facilities for the mentally retarded”. DHSS/DMMA prefers to use the accepted term “individuals with intellectual disability” (ID) instead of “mental retardation.” However, as “intermediate care facilities for the mentally retarded (ICF/MR)” is the term/acronym currently used in all Federal requirements, that term/acronym will be used on applicable amended State plan pages.

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

Fiscal Impact Statement

- There is no increase in cost on the General Fund.
- The proposed services in this State plan amendment will be budget neutral.
- Federal budget impact for federal fiscal years 2014 and 2015 are projected as follows:

Federal Fiscal Year 2014	Federal Fiscal Year 2015
\$13,685,958.92	\$17,469,215.07

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

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

First, in Attachment 3.1-A, Page 6a, the definition of "crisis intervention services" recites that it is "a face-to-face intervention". This may be unduly limiting and could prove problematic if DMMA contemplates provider billing for many of the "specific activities" listed in the same section, including contact with collateral sources for information, follow-up with the individual and family members, and consultation with a physician. The listed activities would often occur by phone and would not be "face-to-face".

Agency Response: Medicaid federal policies do not permit billing for phone consultations with collateral sources of information under the Rehabilitation section of the Medicaid State Plan. However, Medicaid policies do permit billing for face-to-face interaction with the individual's caretaker and/or family members and other collateral contacts for the benefit of the client. It is anticipated that Delaware will set rates consistent with this federal Medicaid reimbursement policy for face-to-face interaction. However, there will be an administrative allowance built into the rate to reimburse providers for the expected average amount of time that will be required for the crisis intervention team to contact other collateral contacts, family members, and clients via non-face-to-face interventions.

Second, in Attachment 3.1-A, Page 6b, there are multiple references to "consumers". In contrast, there are also references to "Medicaid eligible individuals" or "individuals". The term "consumer" is not a common description of Medicaid beneficiaries. The Division may wish to adopt alternate and consistent language.

Agency Response: This change will be incorporated and consistent alternative language will be utilized.

Third, in Attachment 3.1-A, Page 6c and Page 6d, the term "certified screener" is used. GACEC and SCPD assume this refers to a "credentialed mental health screener" as defined in Title 16 **Del.C.** §5122(a)(1). DMMA

includes definitions of some terms (e.g. "Licensed Behavioral Health Practitioner" in Attachment 3.1-A, Page 3 Addendum) but there is no definition of "certified screener". Moreover, neither the above statute nor the applicable regulation (16 DE Admin Code 6002) authorizes "certification" of screeners. Rather, they are "credentialed". DMMA may wish to conform the reference to the terminology used in the statute and regulation and provide a definition of the term.

Agency Response: The references to licensed behavioral health practitioner apply only to the Centers for Medicare & Medicaid Services (CMS) authority granted under Medicaid or other remedial care provided by licensed practitioners at 42 CFR 440.60. References to certified screeners under the Rehabilitation authority at 42 CFR 440.160(d) will be changed to credentialed and references to compliance with State requirements will be added to the State Plan.

Fourth, in Attachment 3.1-A, Page 6d, DMMA refers to "Advanced Practice Nurse and employment under a formal protocol with a Delaware licensed physician". This makes no sense grammatically and substantively. The Councils assume the Division intended to refer to an advanced practice nurse operating "in collaboration with" a physician. See Title 24 Del.C. §1902(b)(1). There is no requirement that an APN be employed by a physician.

Agency Response: This change has been made.

Fifth, in the same Attachment 3.1-A, Page 6d, the list of practitioners includes "Licensed Physician Assistant and employment under the delegated authority of a licensed physician." This makes no sense grammatically and substantively. There is no requirement that an LPA be "employed" by a physician. See Title 24 Del.C. §1770. The LPA must be "supervised" by a physician. Moreover, this is the only reference to licensed physician assistant in the entire regulation. There are many lists of practitioners authorized to provide Medicaid-reimbursable services. LPAs are omitted from the lists. See, e.g., Attachment 3.1-A, Pages 6b, 6c, 6e, 6h, 6i; and Attachment 4.19-B, Page 3a Addendum. The Division may wish to assess whether LPAs should be included in some of these sections. Finally, the Division may wish to correct the grammar in the final bullet on Page 6d.

Agency Response: The Division has made the wording change "supervised by a physician." The Division has considered provider qualifications under this State Plan Amendment and the language reflects the desired reimbursement and coverage policy of the State. The wording of the final bullet has been modified.

Sixth, there is an anomaly in the age standards within the regulation. A "certified peer" must be at least 21 years of age. See Attachment 3.1-A, Page 6e. Other unlicensed staff, including a "recovery coach", can be 18 years of age. See Attachment 3.1-A, Page 6h and Page 6i. Moreover, page 6h includes "certified peers" as "unlicensed staff" who can be age 18. The references are inconsistent and the rationale for the divergent standards is not intuitive.

Agency Response: A certified peer on a crisis intervention team must be 21 years of age. Licensed and unlicensed staff including recovery coaches and certified peers providing outpatient substance use disorder treatment may be 18 years of age or older. Because of the nature of crisis intervention, any certified peer on a crisis intervention team must be over age 21.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan regarding *Medicaid Rehabilitative Services* is adopted and shall be final effective December 10, 2013.

Rita M. Landgraf, Secretary, DHSS

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

Title XIX Medicaid State Plan Medicaid Rehabilitative Services

DIVISION OF SOCIAL SERVICESStatutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** 512)**ORDER****Delaware's Temporary Assistance for Needy Families (TANF) State Plan Amendment****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend the Delaware Temporary Assistance for Needy Families (TANF) State Plan regarding program implementation. 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 2013 *Delaware Register of Regulations* requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2013 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 Social Services (DSS) hereby affords the public notice of its intention to amend the Delaware Temporary Assistance for Needy Families (TANF) State Plan regarding program implementation.

Statutory Authority

- "Title IV-A of the Social Security Act, Section 402, *Eligible States; State Plan*
- "Section 402(a)(1)(A) of the Social Security Act, *General Provisions*
- "Section 402(b) of the Social Security Act, *Plan Amendments*
- "Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96), *Spending Policies for Assistance Under State TANF Programs*
- "147th Delaware General Assembly, House Bill #75, *Civil Marriage Equality and Religious Freedom Act of 2013*

Background

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

Delaware's TANF program is administered by Delaware Health and Social Services (DHSS)/ Division of Social Services (DSS) and is delivered through a collaborative partnership among Delaware's Department of Health and Social Services, Department of Labor (DOL), the Delaware Economic Development Office (DEDO) and, the Delaware Transit Corporation (DTC).

Delaware operates its TANF program in accordance with a State Plan which describes how DHSS/DSS will administer the State's TANF-funded cash assistance program. Section 402 of the Social Security Act requires that States periodically submit to the Secretary of the United States Department Health and Human Services a TANF state plan to maintain or renew their status as an "eligible State". In general, the State plan describes the eligibility rules, the populations served, the programs offered, and the State maintenance of effort spending.

TANF State Plan Amendments

In accordance with section 402(b) of the Social Security Act, Delaware will amend its TANF State Plan whenever the DHSS/DSS determines there is a significant change in program policy or rule.

Summary of Proposal

The following plan amendments modify Delaware's currently approved state plan that is effective from October

1, 2011 through September 30, 2014.

To maintain compliance with the Social Security Act, Division of Social Services (DSS) proposes to amend the following TANF State plan sections and policy to reflect two (2) policy changes and to meet one (1) federally mandated State plan inclusion, effective October 1, 2013.

The two (2) policy changes are:

1. In the section titled "*Needy Families*" on page 4: The Delaware TANF State plan is updated to specify that the TANF program affords partners in a same gender marriage the same program rights, benefits, responsibilities, obligations, and duties as afforded different gendered married partners. This revision reflects a change in Delaware law that resulted from the Civil Marriage Equality and Religious Freedom Act of 2013. This Act became effective on July 1, 2013.
2. In the section titled "*Efforts to Reduce Out-of-Wedlock Births*" on page 30: The Delaware TANF State plan is updated to include the Jobs for Delaware Graduates program as a means to reduce out of wedlock/teen pregnancies.

The plan also notes that Delaware may use Maintenance of Effort (MOE) spending to fund the programming. States are required to include in their State plan efforts to reduce out of wedlock pregnancies.

The one (1) federally mandated TANF State plan component is:

1. In the section titled "*TANF Benefits Issued Via Electronic Benefit Transfer (EBT)*" on page 37 and on page 38: Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) requires States to include in their TANF State plans, policies and procedures instituted to ensure TANF recipients do not access TANF benefits via Electronic Benefit Transfer (EBT) at gambling institutions, liquor stores, or adult oriented entertainment establishments.

Delaware does not issue TANF benefits via EBT, and therefore has not developed policies or procedures to limit access to EBT for TANF recipients.

DSS will receive public comment for these amendments to the State plan and will file the amendments with the federal Department of Health and Human Services, Administration for Children and Families (ACF). All comments received during the comment period will receive consideration for the proposed amendment of the Delaware TANF State plan.

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.

First, given enactment of Delaware's Civil Marriage Equality and Religious Freedom Act of 2013, the Plan is being updated to afford partners in a same gender marriage the same program rights, benefits, responsibilities and obligations as different gendered marriage partners. The proposed amendment in this context is straightforward and summarizes the effect of the new State law.

Second, federal legislation requires states which issue electronic benefits to have policies to deter TANF recipients from conducting a benefit transfer transaction in liquor stores, casinos, and adult oriented entertainment venues. In response to the federal requirement, DSS is adding a provision confirming that it does not issue TANF benefits electronically. Rather it issues checks via PNC bank. DSS confirms that, if it converts to an electronic benefit system in the future, it will amend the TANF Plan to include safeguards against transactions in liquor stores, casinos, and adult oriented entertainment venues.

Third, there is a federal requirement that the TANF Plan include methods to reduce out-of-wedlock births. DSS is adding one program to the section describing such efforts. Specifically, DSS notes that the Jobs for Delaware Graduates program provide services to needy children attending middle schools in Delaware which target multiple objectives, including reduction in out of wedlock/teen pregnancies.

Agency Response: DSS thanks both Councils for their affirmation.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Temporary Assistance for Needy Families (TANF) State Plan regarding program implementation is adopted and shall be final effective December 10, 2013.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the October 2013 issue of the Register at page 406 (17 DE Reg. 406). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Delaware's Temporary Assistance for Needy Families (TANF) State Plan Amendment

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 1140

Secretary's Order No.: 2013-A-0055

1140 Delaware National Low Emission Vehicle Program

Date of Issuance: November 15, 2013

Effective Date of the Amendment: December 11, 2013

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. These amendments to the Delaware Low Emission Vehicle Program will allow Delaware to efficiently reduce the impacts of toxic air pollution from our fleet of vehicles, while continuing to make progress toward the federal attainment of the national ambient air quality standards.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 **DE Admin. Code** 1140: Delaware Low Emission Vehicle Program. The primary purpose of this promulgation is to (1) remove the requirements that provide for prospective incorporation of revisions made by California; and (2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle III (LEV III) standard and the Greenhouse Gas (GHG) standard for model years 2015 to 2025.

The Clean Air Act ("CAA") establishes the framework for controlling mobile source emissions. Section 208 of the CAA allows California to regulate tailpipe emissions from mobile sources, and CAA Section 177 allows other states to adopt the California standards. Delaware is currently regulating mobile sources pursuant to its adoption of California Low Emission Vehicle II (LEV II) requirements. California has revised its LEV II requirements to LEV III requirements. Delaware currently has two options under the CAA, to wit: (1) adopt the LEV III requirements; or (2) revert to the federal program. This proposed action seeks to adopt the LEV III standards by incorporating by reference the applicable sections within Title 13 of the California Code of Regulations as they exist on December 31, 2012.

Contrary to concerns voiced by various members of the public during the course of this promulgation, the aforementioned adoption method does not "lock" Delaware to future changes adopted by California. If California makes any changes to its requirements, they will have no effect in Delaware because Delaware's proposal incorporates the California requirements as they exist on December 31, 2012. Each time that California makes a change to its requirements, Delaware will, in turn, evaluate that change, and propose to either adopt the new California requirement or revert to the federal program. Either way, a regulatory revision will be necessary, subject to all of the provisions of 7 **Del.C.** Chapter 60 and 29 **Del.C.** Chapter 101.

Additional concern was raised by the public with regard to the burden placed on taxpayers should this proposed action be promulgated by the Department. Specific comments opined that to blame Delaware's pollution

on auto emissions was not logical, and that the secondary cost to Delaware taxpayers would be obscene. In response to such comment, the Department seeks to adopt this regulation because Delaware has poor air quality, and auto emissions are a significant source of air pollutants in Delaware. The most recent emission inventory data for Delaware shows vehicle emissions have become the largest source of pollution in the state. Mobile sources in the on-road and off-road categories account for 91% carbon monoxide (CO) emissions, 64% in NOx emissions, and 56% in VOC emissions, respectively. Further, the transportation sector is one of the largest contributors of greenhouse gases in Delaware, producing close to 29% of all such emissions.

As noted above, Delaware adopted the LEV II requirements in December 2010. California has since adopted LEV III requirements, and Delaware now has the option of either adopting the LEV III requirements or reverting to the federal program. Because mobile sources are becoming the largest part of Delaware's overall emissions inventory, and because Delaware's air quality does not meet federal health based standards, and because LEV III requirements are reasonable and have greater emission benefit than the current federal program, the Department's Division of Air Quality recommends the adoption of LEV requirements. Thus, I believe the adoption of LEV III requirements is a reasonable and highly cost-effective means to reduce auto emissions.

With regard to other comments suggesting that the adoption of the LEV III will result in Delawareans traveling to other states (such as New Jersey) to purchase their cars because they will be less expensive (due to lesser pollution rules), it should be noted that the LEV III requirements have already been adopted in surrounding states, including New Jersey, Pennsylvania, and Maryland. In addition to California and these three states, 10 other states have adopted the standards: Oregon, Washington, New York, Vermont, Maine, Massachusetts, New Mexico, Rhode Island, Connecticut and Arizona. Vehicles purchased in any of these states must be certified to the LEV III emission standards.

Responding again to the numerous comments received by the Department regarding the projected increased costs for a new vehicle in 2025, the Department has set forth the economics associated with the proposed revision to adopt the LEV III requirements. The estimated cost of LEV III was presented at the public hearing as \$1,900.00 per vehicle price increase in 2025, due to technology upgrades. These increased costs will be further offset and result in a much greater savings from the improved fuel economy, resulting in a 3:1 savings over the projected increase. This estimated cost/savings was taken directly from work done by California when they adopted the LEV III requirements. LEV III is comprised of three main components: (1) a Greenhouse Gas ("GHG") component; (2) an exhaust/evaporative component; and (3) a Zero Emission Vehicle (ZEV) component. The Department proposal is to adopt the GHG and tailpipe/evaporative components, but not the ZEV component. Given the cost concerns raised in public comments, the Department has reviewed the California work again, and found that the aforementioned \$1,900.00 cost (actually, \$1,840.00 which the Department rounded up) included the ZEV component, which the Department is not proposing to adopt. Without the ZEV component, California estimated the cost of the LEV III program to be \$170.00 per light-duty passenger vehicle in 2017, up to a maximum of \$1,360.00 for light duty trucks in 2025; however, this calculation does not include the anticipated fuel savings which are projected to be significantly greater than any limited price impact.

It should also be noted that Delaware consumers will likely see this increase in cost in the near future in Delaware, regardless of whether LEV III requirements are adopted in Delaware. Because our neighboring states - Maryland, Pennsylvania and New Jersey - have all adopted LEV III, residents of these states can only purchase vehicles that meet LEV III standards. Should Delaware choose to not adopt LEV III, and the Delaware dealers inventoried non-LEV III vehicles, they could not sell them to residents of these border states. Because of this, Delaware dealers will more than likely inventory only LEV III cars, regardless of whether Delaware adopts LEV III. Furthermore, since all border states have adopted LEV III, only cars that meet LEV III standards may be sold in these states, so the Delaware adoption of LEV III will have no impact on cost to Delaware residents that purchase vehicles from surrounding states' dealerships. The Department notes that, from a practical standpoint, there will be no cost difference to Delaware citizens as a result of this action. Thus, because adjacent states have adopted this standard, Delawareans will be purchasing these vehicles regardless, whether in Delaware or in adjacent states, and adopting the LEV III standard ensures that residents also receive the extended warranty and other benefits.

If, however, the Department chooses not to adopt LEV III requirements, Delaware citizens would be placed at a disadvantage relative to surrounding states, due to the fact that any car sold to a resident of a state that has adopted LEV III receives an extended 15 year, 150,000 mile warranty. Any car sold to a resident of a state that has not adopted LEV III, however, gets the standard 10 year, 120,000 mile warranty. The car is the same car, however, the warranty period is based upon the status of the resident's home state only. Delaware's adoption of LEV III benefits Delaware citizens by providing them with a better warranty, at no additional cost.

With regard to comments received by the Department concerning how increased repair costs were factored into the economic analysis, and the correlating impact of the increased warranty period on the final price of a vehicle, the Department notes that this comment asserts that LEV III vehicles will be more complex, and that there is a relationship between vehicle complexity and repair/maintenance cost. The Department's Division of Air Quality maintains that the cost of any new technology needed to meet LEV III requirements is clearly factored into the California and EPA cost analysis, and the Department believes that the refinement of current vehicle technology is adequate to meet the new requirements. EPA explains in their Tier 3 Vehicle Emissions and Fuel Standards (March 2013) proposal that,

"...the federal fleet is already demonstrating actual emissions performance that is much cleaner than the level to which it is currently being certified. Although the vehicles that make up the federal light-duty fleet are capable of meeting lower standards there is no impetus for vehicle manufacturers to certify their respective fleets to anything lower than the current requirements. In addition, we anticipate that not every technology will be required on all vehicles to meet the proposed standards. While catalyst loading and engine calibration changes will most likely be applied on all vehicles, only the most difficult powertrain applications will require very expensive emissions control solutions such as active hydrocarbon absorbers. We expect that manufacturers will implement emission control solutions as a function of increasing cost and will avoid implementing very expensive designs whenever possible."

With respect to other concerns voiced at the time of the public hearing on September 23, 2013, one commenter stated that the adoption of these proposed amendments was viewed as a reversal of the Secretary's decision to adopt the LEV II standards. At that time, the Department did not include the dates by which California had adopted the standards. One of the purposes of this action is to correct this error by removing the provisions of existing 7 **DE Admin. Code** 1140 that provide for the prospective incorporation by reference of future revisions made by California and require that future changes be considered through a Delaware regulatory process.

Additional comments were received by the Department in this matter which argued whether global warming is occurring and questioned the need to reduce PM_{2.5} and GHG emissions, as well as the health impacts of PM_{2.5}. The Department agrees with the overwhelming global scientific consensus that the increased atmospheric concentration of GHG emissions has intensified the greenhouse effect and is contributing to climate impacts ranging from greater temperature and precipitation variability, more extreme weather events, and sea level rise. These climate impacts threaten Delaware's economy, public health, air and water resources, infrastructure, and coastal resources, and can increase energy demand. Reducing emissions globally can help mitigate these impacts in the decades ahead. Further, the science is overwhelming that PM_{2.5} concentrations are a significant contributor to numerous respiratory related illnesses and particularly impact at-risk populations.

It should be noted that, in addition to the concerns noted within the public comment received by the Department as detailed above, numerous comment was also received which support the adoption of cleaner vehicle standards. Such comment indicated support for Delaware's adopting of the Low Emission Vehicle Program, and encouraged the Department to move forward expeditiously to finalize the adoption of the proposed amendments to 7 **DE Admin. Code** 1140.

Lastly, with regard to a few clerical errors caught subsequent to the initial proposed amendments to 7 **DE Admin. Code** 1140 being published in the Delaware *Register of Regulations*, the Department seeks to correct the same with minor, non-substantive revisions, so that the final amendments to 7 **DE Admin. Code** 1140 will be correct upon promulgation.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2013-01. The Department published the initial proposed regulatory amendments in the September 1, 2013 Delaware *Register of Regulations* and held a public hearing on September 23, 2013. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 15, 2013 (Report). The Report recommends certain findings and the adoption of the proposed revised Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed revised Amendments are 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 revised Amendments. With regard to the public comment that was received by the Department, both at the time of the hearing and subsequent to the hearing held on September 23, 2013, I find that the Department's experts were responsive to the questions and concerns raised by the public, and provided thorough, rational responses and reasoned conclusions with respect to the same.

Furthermore, I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these revised Amendments. With the adoption of the revised regulatory amendments to 7 **DE Admin. Code** 1140: Delaware Low Emission Vehicle Program, Delaware will be able to (1) remove the requirements that provide for prospective incorporation of revisions made by California; and (2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle III (LEV III) standard and the Greenhouse Gas (GHG) standard for model years 2015 to 2025.

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 revised Amendments as final;

2. The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;

3. The Department held a public hearing on the proposed Amendments on September 25, 2013;

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

5. The recommended revised Amendments do not reflect any substantive change from the initial proposed regulation Amendments as published in the September 1, 2013, Delaware *Register of Regulations*;

6. The recommended revised Amendments should be adopted as final regulation Amendments because Delaware will then be enabled to (1) remove the requirements that provide for prospective incorporation of revisions made by California; and (2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle III (LEV III) standard and the Greenhouse Gas (GHG) standard for model years 2015 to 2025; and

7. Adopting these amendments will allow Delaware to receive omission reduction credits that it would otherwise not receive if it were not to adopt these measures, and Delaware residents purchase vehicles equipped with LEV III technology either in Delaware or from surrounding states;

8. The Department shall submit this Order approving the final regulation Amendments 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

1140 Delaware ~~National~~ Low Emission Vehicle Program

12/11/2013

1.0 Purpose

1.1 The provisions of this regulation establish in Delaware a ~~LEV~~ Low Emission Vehicle (LEV) program, which incorporates the requirements of the California LEV program.

1.2 The LEV program shall apply to all new model year 2014 and subsequent model year motor vehicles that are passenger cars, light-duty trucks, ~~[and]~~ medium-duty passenger vehicles, ~~and medium-duty vehicles~~ subject to the California LEV program and delivered for sale in Delaware.

(Break in Continuity of Sections)

12/11/2013

5.0 ~~NMOG fleet-wide average exhaust emission requirement~~ New Vehicle Emission Requirements

5.1 ~~A manufacturer of model year 2014 or later passenger cars, light duty trucks, or medium duty vehicles delivered for sale in Delaware, shall demonstrate compliance with the NMOG fleet wide average exhaust emission requirement of Title 13, CCR, Section 1961, which average shall be based on the number of the manufacturer's vehicles subject to 2.1 of this regulation. No person, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, acquire, receive, purchase or rent a new vehicle that is a 2014 or~~

subsequent model-year passenger car, light-duty truck[, and medium-duty vehicles,] or medium-duty vehicle in Delaware unless the vehicle is California-certified and complies with the following criteria:

*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2013 issue of the *Register* at page 295 (17 DE Reg. 295). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1140 Delaware Low Emission Vehicle Program

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1147

Secretary's Order No.: 2013-A-0054

1147 CO₂ Budget Trading Program

Date of Issuance: November 19, 2013

Effective Date of the Amendment: December 11, 2013

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 1147: Carbon Dioxide (CO₂) Budget Trading Program - Regional Greenhouse Gas Initiative ("the RGGI Program"), which addresses CO₂ emissions from Electric Generating Units ("EGUs"). The RGGI Program is the nation's first mandatory, market-based program to reduce emissions of carbon dioxide (CO₂), the principal human-caused greenhouse gas. The States participating in RGGI (CT, DE, MA, MD, ME, NH, NY, RI, VT) have established a regional cap on CO₂ emissions from the power sector, and are requiring power plants to possess a tradable CO₂ allowance for each ton of CO₂ they emit.

This competitive carbon dioxide emissions trading program reduces CO₂ emissions from large coal and other fossil fuel fired electric generating units (units producing more than 25 Megawatts of electricity) in Delaware and the eight other States noted above by establishing a regional cap on the amount of CO₂ that power plants can emit through the issuance of a limited number of tradable CO₂ allowances. These large polluting power plants are required by each Participating State's regulations to have and surrender one RGGI allowance for every ton of carbon dioxide they emit into the atmosphere. The Participating States make allowances available to generators through a transparent, robust, and heavily monitored auction process. The proceeds from those auctions are returned to ratepayers in each state through energy efficiency investments and other clean energy programs.

The State of Delaware adopted authorizing RGGI legislation in 2008 to establish the CO₂ Budget Trading Program. Delaware, along with the other Participating States, is now proposing to update the regulations that guide the Delaware RGGI program, based on changes in the market and the program that have occurred over the past several years, specifically, based upon amendments made to the RGGI Model Rule. In December of 2005, a Memorandum of Understanding ("MOU") was signed by Delaware and the other aforementioned participating states that called for the development of a multi-state program designed to reduce the emission of CO₂ from large EGUs. The MOU also called for the RGGI states to conduct a comprehensive program review of the CO₂ Budget Trading Program in 2012.

Proposed amendments to the RGGI Program arising from the 2012 program review have been incorporated in an Updated Model Rule. These proposed changes include a change in the size and structure of the CO₂ allowance cap, as well as other program modifications. The amendments to the Model Rule will be incorporated into the

Department's proposed amendments to 7 **DE Admin. Code** 1147, to ensure that Delaware's RGGI regulations are current with market conditions and continue to support reductions of CO₂ in the electricity generation sector.

Concerns were voiced in public comment during the promulgation process as to whether the Department has the statutory authority to amend the aforementioned CO₂ allowance cap, which is a market-based approach to reducing CO₂ emissions in the power sector, and is similar to the existing cap and trade programs for SO₂ and NO_x under the Clean Air Act. Although there are costs associated with compliance, the purpose of the program is to stabilize and reduce CO₂ emissions.

Delaware Code Title 7, Chapter 60, Sub-Chapter II-A establishes Delaware's participation in the RGGI program. Specifically, 7 **Del.C.** §6043(a)(9) sets the initial emissions cap, and also states that "The cap and Delaware's allocation may be adjusted in the future" Thus, the Department believes that the statute grants the DNREC Secretary the authority to further reduce the emissions cap to comply with the emissions reduction goal.

Additionally, 7 **Del.C.** §6044(a) authorizes the Secretary of the Department to implement and participate in the Regional Greenhouse Gas Initiative (RGGI). And §6044(c) authorizes the Secretary of the Department to promulgate regulations to implement the RGGI cap and trade program consistent with the RGGI Memorandum of Understanding, as amended. The Department believes that, based upon the aforementioned sections of the Delaware Code, the Secretary of the Department has the authority by regulation to implement the amendment to the CO₂ budget trading program and adjust the emissions cap.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2013-05. The Department published the initial proposed regulatory amendments in the September 1, 2013 *Delaware Register of Regulations* and held a public hearing on September 25, 2013. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 15, 2013 (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 Amendments. With regard to the public comment that was received by the Department, both at the time of the hearing and subsequent to the hearing held on September 25, 2013, I find that the Department's experts were responsive to the questions and concerns raised by the public, and provided thorough, rational responses and reasoned conclusions with respect to the same.

Furthermore, 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 regulatory amendments to 7 **DE Admin. Code** 1147: Carbon Dioxide (CO₂) Budget Trading Program - Regional Greenhouse Gas Initiative ("the RGGI Program"), which addresses CO₂ emissions from Electric Generating Units ("EGUs"), Delaware will be able to incorporate the amendments to the Model Rule into its own existing state-specific RGGI Regulations, to ensure that the same are current with market conditions and continue to support reductions of CO₂ in the electricity generation sector;

In conclusion, the following findings and conclusions are entered:

1. The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
2. The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;
3. The Department held a public hearing on the proposed Amendments on September 25, 2013;
4. The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
5. The recommended Amendments do not reflect any substantive change from the initial proposed regulation Amendments as published in the September 1, 2013, *Delaware Register of Regulations*;
6. The recommended Amendments should be adopted as final regulation Amendments because Delaware will then be enabled to incorporate the amendments to the Model Rule into its own existing state-specific RGGI Regulations, to ensure that the same are current with market conditions and continue to support reductions of CO₂ in the electricity generation sector. Moreover, the Amendments are well supported by documents in the record; and

7. The Department shall submit this Order approving the final regulation Amendments 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 September 2013 issue of the *Register* at page 303 (17 DE Reg. 303). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1147 CO₂ Budget Trading Program

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) & (d); 903(e)(2)a
(7 **Del.C.** §§901(c) & (d); 903(e)(2)a)
7 DE Admin. Code 3518

Secretary's Order No.: 2013-F-0049

3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit

Date of Issuance: November 13, 2013

Effective Date of the Amendment: December 11, 2013

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

Background and Procedural History

This Order considers proposed regulations to amend **7 DE Admin. Code 3518**: Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-22. The Department published its initial proposed regulation amendments in the September 1, 2013 *Delaware Register of Regulations*. The Department then held a public hearing on September 30, 2013. The public hearing record remained open at that time for public comment through October 15, 2013.

The Atlantic States Marine Fisheries Commission ("ASMFC") approved an Interstate Fishery Management Plan ("IFMP") for Black Drum in May 2013. The plan was initiated to address a significant increase in harvest in the commercial and recreational fisheries. The IFMP requires all states to maintain current regulations for black drum and ultimately adopt a coastwide minimum size limit of at least 14 inches by January 1, 2016. Delaware's current regulations include a 16-inch minimum size limit and a 3 fish recreational size limit. However, these measures, as well as Delaware's commercial fishery management measures, only apply to the Delaware River and Delaware Bay. Therefore, in support of the spirit of the IFMP, the present action seeks to expand the applicability of Delaware's current restrictions statewide (to include all tidal waters of state). Such action will ensure compliance with the new IFMP until modified through amendment or addendum.

It should be noted that, prior to the adoption of an Interstate Fishery Management Plan for Black Drum, Delaware and New Jersey developed a Bi-State Management Plan ("Plan"). Under this Plan, Delaware adopted commercial and recreational measures consistent with New Jersey's regulations at that time. Unfortunately, however, the regulatory provisions of that Plan were only applicable to the Delaware Bay and River, so they did not apply to the Inland Bays or State waters along the Atlantic Coast.

Through the present proposed regulation amendments, the Department seeks to extend Delaware's existing Black Drum regulations to make them effective statewide by striking references specific to the Delaware Estuary. This will result in a statewide minimum size limit of 16 inches in total length and a statewide recreational possession limit of three black drum per day. The commercial daily landing and dealer possession limits shall remain at 10,000 pounds, and the annual commercial quota shall remain at 65,000 pounds. It should be noted that

the size limit is more conservative than that specified in the ASMFC's IFMP, but it is consistent with those measures previously adopted by Delaware under the aforementioned Bi-State Plan, and will contribute to the conservation of Black Drum in Delaware by affording better protection to juvenile recruits. With the adoption of the proposed changes, Delaware will be in compliance with the ASMFC's plan at least through January of 2016, or until such time as the plan is modified through amendment or addendum.

The proposed amendments were thoroughly vetted by the Department at the public hearing on September 30, 2013. No negative comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated October 31, 2013 (Report). The Report recommends certain findings and the adoption of the proposed amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed amendments.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these amendments. The adoption of this Order will allow Delaware to (1) expand the applicability of Delaware's current Black Drum restrictions statewide (to include all tidal waters of state); and (2) ensure compliance with the ASMFC's IFMP at least through January of 2016, or until such time as the plan is modified through amendment or addendum.

In conclusion, the following findings and conclusions are entered:

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

2.) The Department provided adequate public notice of the proposed amendments, and provided the public with an adequate opportunity to comment on both the initial proposed amendments, as well as the proposed amendments, including at the public hearing held on September 30, 2013;

3.) The Department held a public hearing on September 30, 2013 in order to consider public comment before making any final decision;

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

5.) The adoption of this Order will allow Delaware to (1) expand the applicability of Delaware's current Black Drum restrictions statewide (to include all tidal waters of state); and (2) ensure compliance with the ASMFC's IFMP at least through January of 2016, or until such time as the plan is modified through amendment or addendum;

6.) The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) remain consistent with those measures previously adopted by Delaware under the Bi-State Plan with New Jersey while maintaining compliance with the new IFMP; (2) contribute to the conservation of Black Drum in Delaware by affording better protection to juvenile recruits; and lastly, because (3) the amendments are well supported by documents in the record;

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

3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit

(Penalty Section 7 Del.C. §936(b)(2))

4-0 Definition

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

~~"Delaware Estuary" means all those tidal waters located within an area to the north of a straight line drawn between Cape May Point, New Jersey and Cape Henlopen, Delaware, but not including the tributaries of the Delaware River and Delaware Bay.~~

~~21.0~~ Size limit

~~It shall be unlawful for a person to possess a black drum (*Pogonias cromis*) taken from the Delaware Estuary that measures less than sixteen (16) inches, total length.~~

~~32.0~~ Possession Limits

~~32.1~~ It shall be unlawful for a recreational fisherman to take and reduce to possession more than three (3) black drum per day (a day being 24 hours) ~~from the Delaware Estuary.~~

~~32.2~~ It shall be unlawful for a commercial fisherman or a vessel, regardless of the number of licensed commercial fishermen onboard that vessel, to possess or land more than 10,000 pounds of black drum ~~taken from the Delaware Estuary~~ in any one (1) day.

~~43.0~~ Landing Limit

~~It shall be unlawful for a commercial fisherman to sell, trade or barter or attempt to sell, trade or barter black drum or parts of black drum that are landed from the Delaware Estuary in this State after a date when the Department has determined or projected that 65,000 pounds of black drum have been or will be landed in this State from the Delaware Estuary by the commercial fishery in a calendar year.~~

~~54.0~~ Dealer limit

~~It shall be unlawful for a food fish dealer to accept from a commercial fisherman or a vessel more than 10,000 pounds of black drum harvested from the Delaware Estuary in any one (1) day.~~

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) & (d); 903(e)(2)a
(7 Del.C. §§901(c) & (d); 903(e)(2)a)

Secretary's Order No.: 2013-F-0048

3588 Atlantic Menhaden

Date of Issuance: November 13, 2013

Effective Date of the Amendment: December 11, 2013

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

Background and Procedural History

This Order considers proposed regulations to amend 7 **DE Admin. Code** 3500, Tidal Finfish Regulations, to include a new Section 3588: Atlantic Menhaden. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-23. The Department published its initial proposed regulation amendments in the September 1, 2013 *Delaware Register of Regulations*. The Department then held a public hearing on September 30, 2013. The public hearing record remained open at that time for public comment through October 15, 2013.

The purpose of the Department's proposed promulgation is to establish regulations consistent with Amendment 2 to the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan ("IFMP") for Atlantic Menhaden. Specifically, the proposed action seeks to (1) establish Delaware's annual Atlantic Menhaden quota consistent with Amendment 2; (2) establish timely reporting by the fishery; (3) provide for closure of the fishery upon reaching quota; and (4) establish a daily by-catch limit.

The recent population assessment of Atlantic Menhaden (*Brevoortia tyrannus*) showed a decline in population abundance and low recruitment rates. Estimates of fishing mortality show that overfishing is occurring and, in response, the ASMFC adopted Amendment 2 to the IFMP for Atlantic Menhaden. Amendment 2 is designed to minimize the chance of a population decline due to overfishing, reduce the risk of recruitment failure, reduce impacts to species which are ecologically dependent on Atlantic menhaden, and minimize adverse effects on participants in the fishery.

Implementation of Amendment 2 required that states submit implementation plans for approval by the ASMFC's Atlantic Menhaden Management Board. The Board approved Delaware's implementation plan at its May 22, 2013 meeting. The Department's proposed regulatory action will formally adopt the management measures contained in Delaware's Atlantic Menhaden implementation plan.

The proposed amendments were thoroughly vetted by the Department at the public hearing on September 30, 2013. No public comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated October 31, 2013 (Report). The Report recommends certain findings and the adoption of the proposed amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed amendments. As previously noted, no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these amendments. The adoption of this Order will allow Delaware to (1) establish Delaware's annual Atlantic Menhaden quota consistent with Amendment 2; (2) establish timely reporting by the fishery; (3) provide for closure of the fishery upon reaching quota; and (4) establish a daily by-catch limit.

In conclusion, the following findings and conclusions are entered:

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

2.) The Department provided adequate public notice of the proposed amendments, and provided the public with an adequate opportunity to comment on both the initial proposed amendments, as well as the proposed amendments, including at the public hearing held on September 30, 2013;

3.) The Department held a public hearing on September 30, 2013 in order to consider public comment before making any final decision;

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

5.) The adoption of this Order will allow Delaware to (1) establish Delaware's annual Atlantic Menhaden quota consistent with Amendment 2; (2) establish timely reporting by the fishery; (3) provide for closure of the fishery upon reaching quota; and (4) establish a daily by-catch limit;

6.) The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) formally adopt the management measures contained in Delaware's Atlantic Menhaden implementation plan; (2) minimize the chance of a population decline due to overfishing, reduce the risk of recruitment failure, reduce impacts to species which are ecologically dependent on Atlantic menhaden, and minimize adverse effects on participants in the fishery; and lastly, because (3) the amendments are well supported by documents in the record;

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

FINAL REGULATIONS

3588 Atlantic Menhaden

1.0 Atlantic Menhaden Quota

- 1.1 The annual quota for Atlantic menhaden shall be determined in accordance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Menhaden and its subsequent amendments and addenda.
- 1.2 Any person who has been issued a valid commercial food fishing license may take and reduce to possession Atlantic menhaden during the period beginning at 12:01 AM January 1 and ending when the Department has determined that the annual Atlantic menhaden quota has been landed. The Department shall establish, based on recent fishery performance and landings, a date and time to order the directed fishery closed.

2.0 Atlantic Menhaden Bycatch Allowance

- 2.1 It is unlawful for any person who has been issued a valid commercial food fishing license to take and reduce to possession more than 6,000 pounds of Atlantic menhaden during any one day once the Department has determined that the Atlantic menhaden fishery is closed.
- 2.2 It shall be unlawful for any person who has been issued a valid commercial food fishing license or any vessel, regardless of the number of licensed commercial fisherman onboard that vessel, to possess or land more than 6,000 pounds of Atlantic menhaden in any one (1) day once the Department has determined the annual Atlantic menhaden fishery is closed.

3.0 Atlantic Menhaden Reporting Requirements

- 3.1 It is unlawful for any person who has been issued a valid commercial food fishing license to not accurately and completely report their Atlantic menhaden landings to the Department, via the interactive voice phone reporting system, within 24 hours of landing.
- 3.2 In addition to the requirement to phone in daily landing reports, it is unlawful for any person who has been issued a valid commercial food fishing license to not accurately and completely compile and file monthly log sheets detailing their daily landings of Atlantic menhaden on forms supplied by the Department. These forms must be submitted by the 10th of the month next ensuing. Failure to submit these monthly reports on a timely basis may be cause for revocation or non-renewal of their commercial food fishing license.

4.0 Atlantic Menhaden Landing Restrictions

It is unlawful for any person who has been issued a valid commercial food fishing license to offload Atlantic menhaden to any other vessel or means of conveyance prior to landing.

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 1902(a) (7 **Del.C.**, §1902(a))
7 DE Admin. Code 7402

Secretary's Order No.: 2013-WS-0050

7402 Shellfish Sanitation Regulations

Appendix 1 Prohibited Shellfish Harvesting Areas

Appendix 3 Conditional Shellfish Harvesting Area

Date of Issuance: November 13, 2013

Effective Date of the Amendment: December 11, 2013

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

Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulations to amend 7 **DE Admin. Code** 7400, to wit: to amend Delaware's *Shellfish Sanitation Regulations, Appendix 1*, and to delete *Shellfish Sanitation Regulations, Appendix 3-2*. The Department's Division of Watershed Stewardship, Watershed Assessment and Management Section, commenced the regulatory development process with Start Action Notice 2013-07. The Department published its initial proposed regulation amendments in the July 1, 2013 *Delaware Register of Regulations*. The Department then held a public hearing on July 23, 2013.

The purpose of the Department's proposed promulgation is to ensure that public health and safety is not at risk from consumption of shellfish that may have been subject to pollution or other conditions that may render the shellfish dangerous to public health. To that end, the Department's Division of Watershed Stewardship, Watershed Assessment and Management Section, seeks to amend existing Delaware regulations to formally reclassify the northwestern portion of Love Creek, a tributary of Rehoboth Bay, from "Conditionally Approved" to "Prohibited" with regard to the harvest of shellfish.

This promulgation is in support of Secretary's Order No. 2013-WS-0017, which ordered the above referenced northwestern portion of Love Creek immediately reclassified as "Prohibited" effective May 15, 2013. This promulgation will amend existing Delaware regulations to come into alignment with the aforementioned Secretary's Order.

The proposed amendments were thoroughly vetted by the Department at the public hearing on July 23, 2013. No member of the public attended said hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated October 31, 2013 (Report). The Report recommends certain findings and the adoption of the proposed amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed amendments. As previously noted, no members of the public attended the hearing held on July 23, 2013, and no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Division of Watershed Stewardship, Watershed Assessment and Management Section, fully developed the record to support adoption of these amendments. The adoption of this Order will ensure that public health and safety is not at risk from consumption of shellfish that may have been subjected to pollution, or other conditions that may render the shellfish dangerous to public health.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed amendments as final;
- 2.) The Department provided adequate public notice of the proposed amendments, and provided the public with an adequate opportunity to comment on both the initial proposed amendments, as well as the proposed amendments, including at the public hearing held on July 23, 2013;
- 3.) The Department held a public hearing on July 23, 2013 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

- 5.) The adoption of this Order will allow Delaware to ensure that public health and safety is not at risk from consumption of shellfish that may have been subjected to pollution, or other conditions that may render the shellfish dangerous to public health;
- 6.) The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) ensure that the shellfish harvested for any purpose from Delaware waters, and the shellfish that are shipped to Delaware from beyond its borders, are fit for human consumption; (2) remain in compliance and adhere to ISSC principles and standards, as administered under the auspices of the U.S. Food and Drug Administration; and lastly, because (3) the amendments are well supported by documents in the record;
- 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 July 2013 issue of the *Register* at page 53 (17 DE Reg. 53). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

7402 Shellfish Sanitation Regulations

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

5500 Bail Enforcement Agents

Statutory Authority: 24 Delaware Code, Section 5504(a) (24 Del.C. §5504(a))

ORDER

5500 Bail Enforcement Agents

Pursuant to the Guidelines in 29 Del.C. Section 10118(a)(1)-(7), the Board of Examiners of Bail Enforcement Agents ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule 7.0 - Continuing Education and Training, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to assure that all licensed bail enforcement agents take the continuing education every year.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will assure that all licensed bail enforcement agents take the continuing education every year.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to assure that all licensed bail enforcement agents take the continuing education every year.

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** Section 5503 et seq. and, in particular, 24 **Del.C.** Section 5503(d)(2).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** Section 5503 et. seq.

9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** Section 5503(d)(2) and guidelines of 29 **Del.C.** Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be December 10, 2013.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 26th day of November, 2013.

BOARD OF BAIL ENFORCMENT AGENTS:

Director John Yeomans

Major Melissa A. Zebley, Chairperson

Rebecca L. Byrd, Esquire

Ms. Robin David

Mr. J. Russell Dean

Mrs. Jennifer A. Esposito

Mr. R. Dale Hamilton

Mr. Kevin C. Jones

Mrs. Brunilda Luna-Mercado

November 26, 2013

***Please note that no changes were made to the regulation as originally proposed and published in the October 2013 issue of the *Register* at page 409 (17 DE Reg. 409). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5500 Bail Enforcement Agents

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 2500 Board of Pharmacy

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

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 16, 2013 at a scheduled meeting of the Delaware Board of Pharmacy (“the Board”) to receive comments regarding the Board’s proposed revisions to its rules and regulations.

The Board has proposed several amendments to its rules and regulations. The definition of “compounding” is revised to specify that reconstitution of oral solutions is not considered compounding. Rules 6.4 and 11.2.8, pertaining to “Customized Patient Medication Packages” are amended. In particular, Rule 6.4 states that such packaging of controlled substances is prohibited. Rule 14.0, pertaining to the administration of injectable medications, is amended to encompass registered interns and pharmacy students, with the requirement that registered interns and pharmacy students must be directly supervised by a licensed pharmacist who is approved for injectable administration. Registered interns and pharmacy students shall also be required to complete

continuing education in this area of practice. Rule 14.0 is also revised for greater clarity.

The first public hearing was held on May 15, 2013, with deliberations conducted on June 19, 2013. As the result of deliberations, the Board decided to make substantive revisions to the proposed amendments originally published in the Delaware *Register of Regulations* on April 1, 2013, Volume 16, Issue 10. Specifically, the Board proposed to strike the language “only to patients that are self-medicating” in Rule 6.4.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 17, Issue 2, on August 1, 2013, and the rescheduled hearing was noticed in the *Register of Regulations*, Volume 17, Issue 3, on September 1, 2013. Notice of the October 16, 2013 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was October 31, 2013, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on November 20, 2013.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of Publication.

Board Exhibit 2: *Delaware State News* Affidavit of Publication.

The Board received no written or public comment.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board’s rules and regulations.

Pursuant to 24 **Del.C.** §2506(a)(1), the Board has the statutory authority to promulgate rules and regulations. The proposed revisions provide greater public protection by enhancing the rules pertaining to “Customized Patient Medication Packages.” The revisions will also ensure the provision of quality care to the public by permitting registered interns and pharmacy students to administer injectable medications under the direct supervision of a licensed pharmacist. The Board concludes that adoption of the rules and regulations as amended is in the best interest of the public.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations remains as published in the *Register of Regulations*, Volume 17, Issue 2 on August 1, 2013.

IT IS SO ORDERED this 20th day of November 2013 by the Delaware Board of Pharmacy.

Joli Martini, R.Ph., PharmD, Professional Member, President Tejal R. Patel, R.Ph., Professional Member

Kimberly Robbins, R.Ph., Professional Member, Vice President Kenneth Sellers, Public Member

Susan Esposito, R.Ph., Professional Member Bonnie Walner, R.Ph., Professional Member

Jay Galloway, Public Member Sandra Zaragoza, R.Ph., Professional Member

Matthew Maher, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 192 (17 DE Reg. 192). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2500 Board of Pharmacy

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 5206(1) (24 Del.C. §5206(1))
24 DE Admin. Code 5200

ORDER

5200 Board of Examiners of Nursing Home Administrators

On August 1, 2013, the Delaware Board of Nursing Home Administrators published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 17, Issue 2. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter.

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 10, 2013 at a regularly scheduled meeting of the Delaware Board of Nursing Home Administrators to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on September 10, 2013. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 Del.C. §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 Del.C. §5206(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed amendments at Rule 7.5 seeks to set forth the guidelines for inactive status of nursing home administration licenses. The addition at 7.5.1 allows licensees to request to have their licenses placed on inactive status for up to three years, and the addition at 7.5.2 sets forth the provisions a licensee must meet in order to reactivate his/her license after being placed on inactive status.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

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

SO ORDERED this 12th day of November 2013.

BY THE DELAWARE BOARD OF NURSING HOME ADMINISTRATORS

Teroku White, N.H.A., President

Victorine Parker, Public Member (Absent)

Michael Salitsky, N.H.A., Vice President (Absent)

E. Ray Quillen, N.H.A

Timothy Bane, Public Member

Hope Squier, Healthcare Public Member

Sandra Dole, Healthcare Public Member (Absent)

Frances Wimbush, Public Member Secretary

Elizabeth Hague, Healthcare Public Member

FINAL REGULATIONS

*Please note that no changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 196 (17 DE Reg. 196). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

5200 Board of Examiners of Nursing Home Administrators

OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b) and 977 (5 **Del.C.** §121(b) & 977)
5 DE Admin. Code 905

ORDER**905 Loan Limitations: Credit Exposure to Derivative Transactions**

IT IS HEREBY ORDERED, this 5th day of November, 2013 that the proposed amendment to Regulation 905 "Loan Limitations: Credit Exposure to Derivative Transactions" is adopted as a regulation of the State Bank Commissioner. A copy of amended Regulation 905 is attached hereto and incorporated herein by reference. The effective date of the amended Regulation is December 11, 2013. This amended 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 the proposed amendment to Regulation 905 and its text was published in the October 1, 2013 issue of the *Delaware Register of Regulations*. The notice was also mailed to all persons who had made a timely written request to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The notice included, among other things, a summary of the proposed amendment and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before October 31, 2013. The notice further stated that the proposed amendment to Regulation 905 was available for inspection during regular business hours at the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210; Dover, Delaware 19901 and that copies were also available upon request.

2. No written comments concerning the proposed amendment to Regulation 905 were received on or before October 31, 2013.

3. After review and consideration, the State Bank Commissioner hereby adopts the amendment to Regulation 905 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 2013 issue of the *Register* at page 418 (17 DE Reg. 418). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

905 Loan Limitations: Credit Exposure to Derivative Transactions

EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

Statewide Benefits Office

Statutory Authority: 29 Delaware Code, Section 9602 (29 **Del.C.** §9602)
19 DE Admin. Code 2001

ORDER**Employees Eligible to Participate in the State Group Health Insurance Program Eligibility and Enrollment Rules**

Effective on December 1, 2013, under the authority of Title 29, Section 9602(b)(4) of the **Delaware Code**, the

State Employee Benefits Committee (SEBC) voted to amend the Group Health Insurance Program (GHIP) Eligibility and Enrollment Rules shown below. The amended rules are effective upon publication in the *Register of Regulations* in accordance with 147th General Assembly's House Bill 75.

Changes and Reason for Change

Revisions to Section 3.0:

Suggested language to be added at the end of subsection 3.6.

Reason: Reference being made to other section of document in lieu of providing duplicate language for instances in changes in coverage.

Revisions to Section 4.0:

Suggested language to be added as sections 4.7.6 through 4.7.9 of subsection 4.7.

Reason: To provide for instances in changes in coverage that may arise as a result of the Affordable Care Act Marketplaces. In addition, the suggested language adds an allowable provision under section 1.125-4(f)(4) of the cafeteria plan rules that allows employees to make an election for a coverage period that is different from the coverage period of the other plan. Allows for employee or pensioner to enroll in State plan mid-year when coverage is lost under another health plan, e.g. a spouse's employer plan.

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

[2001 Group Health Care Insurance Eligibility and Coverage Rules](#)

CALENDAR OF EVENTS/HEARING NOTICES

DELAWARE RIVER BASIN COMMISSION

PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Tuesday, December 3, 2013 beginning at 1:30 p.m. A conference session and business meeting will be held on the following day, Wednesday, December 4, 2013 beginning at 12:15 p.m. The hearing, conference session and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, December 19, 2013 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Medicaid Expansion under the Affordable Care Act 2014 – Delaware Medicaid Program – Alternative Benefit Plan

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to file a state plan amendment with the Centers for Medicare and Medicaid Services (CMS) to establish an *Alternative Benefit Plan (ABP)* for the eligibility category created pursuant to section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, effective January 1, 2014.

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, 2013.

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

Pregnant Women and Infants Under Age 1 – 212% of the Federal Poverty Level

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 Delaware Medicaid State Plan and the Division of Social Services Manual (DSSM) *to update the earned income disregard percentage used for the treatment of income for poverty level pregnant women and infants under age one (1)*.

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, 2013.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF ENERGY AND CLIMATE REGISTER NOTICE SAN #2012-03

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

The purpose of this action is to propose rules to govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 **Del.C.** §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of Delaware's Renewable Energy Portfolio Standards as provided for in 26 **Del.C.** §354(a).

Start Action Notice 2012-03 initiating this rule making process was issued April 16, 2012.

The hearing record on 102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions (Proposed Rules to Implement 26 **Del.C.** §354(i) & (j)) will open December 1, 2013.

Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on January 8, 2014 beginning at 6:00 p.m. in the Public Service Commission Hearing Room, Cannon Building, 861 Silver Lake Blvd., Dover, DE, 19904.

DIVISION OF ENERGY AND CLIMATE REGISTER NOTICE SAN #2013-27

103 Regulations for State Energy Conservation Code

Delaware's Energy Conservation Code Act (16 **Del.C.** §7602) requires DNREC to adopt the most recent and/or highest available version of the International Energy Conservation Code, and the latest ASHRAE/IESNA energy standard. The regulations must also set out procedures for certification of compliance with these codes and standards to be utilized by the respective local governments.

DNREC will hold a public hearing for builders and other interested parties on the regulations for the State Energy Conservation Code on Thursday, January 2, 2014 at 6:00 pm in the DNREC Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover. The hearing will present information about the proposed draft regulations and collect input from the public and stakeholders regarding these changes.

Interested parties may obtain a copy of the proposed regulations by emailing Crystal.nagyiski@state.de.us.

Written comments on the proposed regulations will be accepted until January 2, 2014 and may be submitted to the DNREC Division of Energy and Climate, attention: Crystal Nagyiski, 1203 College Park Drive, Suite 101, Dover, DE 19904, or by emailing crystal.nagyiski@state.de.us

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 **Del.C.** Ch. 13, proposes to amend Rule 4.0 – Training Requirements requiring all individuals to take a mandatory test for the 16 hour training certification. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by December 31, 2013, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING****PUBLIC NOTICE****201 Child Placing Agencies****Summary**

The Office of Child Care Licensing proposes to amend the Delacare Requirements for Child Placing Agencies to provide clarity, reflect changes in laws and treaties, align with current best practices, and improve standards of care. A proposed draft was originally published in the July, 2013 *Register of Regulations*. During the period of public comment, comments were received from the *Governor's Advisory Council for Exceptional Citizens* and the *State Council for Persons with Disabilities*. A public hearing was held on July 24, 2013. A third set of comments was received after the close of the comment period from *A Better Chance for Our Children*. These last comments have also been considered.

Comments

A copy of the revised proposed regulations is being published in the December 1, 2013 edition of the *Delaware Register of Regulations*. Interested parties wishing to offer comments on the revised proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on January 17, 2014.

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE****3500 Board of Examiners of Psychologists**

The Delaware Board of Examiners of Psychologists, pursuant to 24 **Del.C.** §3506(a)(1), proposes to revise its regulations. The proposed additions to the regulations seek to add rules regarding inactive status of a psychology license and the requirements to reactive a license from inactive status. A prior proposed amendment was published in the October 1, 2013 volume of the *Register of Regulations* including the same amendments with one small exception. The previously published amendment stated at 5.4.1.4.2 that the number of ethics credits required to return from more than one year of inactive status was six credits, not three. The proposed amendment has been changed to comply with the Board's current continuing education ethics requirements of three credits.

The Board will hold a public hearing on the proposed rule change on January 6, 2014 at 9:00 a.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.