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# Delaware Register of Regulations

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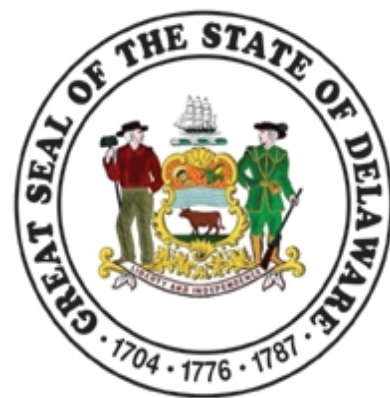
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## IN THIS ISSUE:

Regulations:  
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, 2014.

Cover photo by  
Dolores Michels

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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

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**Symbol Key**

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

**Proposed Regulations**

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

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**CASH MANAGEMENT POLICY BOARD**

Statutory Authority: 29 Delaware Code, Sections 2716, 8017A; 30 Delaware Code, Section 5423

(29 **Del.C.** §§2716 & 8017A; 30 **Del.C.** §5423)

**PUBLIC NOTICE****Objectives and Guidelines for the Investment of State of Delaware Funds Designated as the Delaware Land and Water Conservation Trust Fund****NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION**

In accordance with procedures set forth in 29 **Del.C.**, Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Cash Management Policy Board of the State of Delaware is proposing to adopt a regulation on objectives and guidelines for the investment of State funds designated as the Delaware Land and Water Conservation Trust Fund as described in 29 **Del.C.** §2716. The proposed regulation sets forth the rules governing practices for those investments.

**STATUTORY BASIS AND LEGAL AUTHORITY TO ACT**

29 **Delaware Code**, §2716, 29 **Delaware Code** §5423, and 30 **Delaware Code** §8017A.

**OTHER REGULATIONS AFFECTED**

None.

**HOW TO COMMENT ON THE PROPOSED REGULATION**

Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Ms. Angela Moffett-Batty, Secretary, Delaware Department of Finance, Carvel State Building, 820 North French Street, Wilmington, Delaware 19899-8763, phone (302) 577-8522, or facsimile at (302) 577-8565. Members of the public may present written comments on the proposed regulation by submitting such written

comments to Ms. Moffett-Batty at the address of the Delaware Department of Finance as set forth above. Written comments must be received on or before December 31, 2014.

## **SUMMARY OF PROPOSED REGULATION**

The Cash Management Policy Board (hereinafter the "Board") was created by 63 **Del. Laws**, c. 142, to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any State Pension Fund or the State Deferred Compensation Program, and (b) to determine the terms, conditions, and other matters relating to those investments including the designation of permissible investments. (29 **Del.C.** §2716(a)). This regulation was adopted by the Board on November 5, 2014.

## **Objectives and Guidelines for the Investment of State of Delaware Funds Designated as the Delaware Land and Water Conservation Trust Fund**

### **1.0 Statutory Authorization**

- 1.1 The Cash Management Policy Board (hereinafter the "Board") was created by 63 **Del. Laws**, c. 142, to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any State Pension Fund or the State Deferred Compensation Program, and (b) to determine the terms, conditions, and other matters relating to those investments including the designation of permissible investments. (29 **Del.C.** §2716(a)).
- 1.2 The Delaware Land and Water Conservation Trust Fund was created under the 30 **Del.C.** §5423, including an endowment account (the "Endowment") to be invested in a manner consistent with investment guidelines as approved by the Cash Management Policy Board (the "Board").

### **2.0 Investment Managers**

- 2.1 The Endowment will be invested by three Investment Managers selected by the Board, each of which Investment Managers will invest an equal share of the Endowment employing the same investment guidelines.
- 2.2 The spending policy and the Endowment shall be invested subject to guidelines as set forth in the Uniform Prudent Management of Institutional Funds Act ("UPMIFA").
- 2.3 The Investment Managers will be provided with general guidelines and will be given the latitude to invest prudently within the ranges established by the guidelines based upon their respective judgment.
- 2.4 Each of the Investment Managers will possess expertise in Asset Allocation, Equity Investments, Fixed Income Investments and Alternative Investments.

### **3.0 Investment Philosophy**

- 3.1 The investment perspective of this Endowment is long-term.
- 3.2 The Investment Managers selected will receive three-year contracts so the Board can review results over a reasonable period of time.
  - 3.2.1 Results will be reported quarterly to the Board and yearly review meetings will be expected at a minimum.
  - 3.2.2 A Consultant to the Board will also receive investment results monthly and will advise the Board should there be extreme volatility or investment results that the consultant deems worthy of notification to the Board.

### **4.0 Asset Allocation Guidelines**

- 4.1 The "target" amount of funds allocated to each Investment Manager to be invested in equities shall be sixty percent (60%) of total funds so allocated, within a range of forty-five to seventy-five percent (45-75%) of total funds. International equities are limited to thirty-five percent (35%) of the total funds invested in equities.

# PROPOSED REGULATIONS

- 4.2 The “target” amount of funds allocated to each Investment Manager to be invested in a combination of fixed income securities, alternative investments, and cash shall be forty percent (40%) of total funds so allocated, within a range of twenty-five to fifty-five percent (25-55%) of total funds. At least five percent (5%) of total funds shall be held in cash at all times.
- 4.3 The managers will be provided asset allocation guidelines with wide ranges so that they are able to express their specific market views. Individual securities, exchange-traded funds, mutual funds, separately-managed accounts, limited partnerships are all acceptable investment vehicles as “alternative investments.” This list is not intended to be exhaustive.

## DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)  
3 DE Admin. Code 501

### PUBLIC NOTICE

#### 501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission (DHRC) pursuant to 3 Del.C. §501, proposes to amend its rules and regulations. The proposed regulation changes address the practice of using an authorized agent, reference 5.3.3.25, 5.4, and 1.0 Definitions.

The DHRC Rules Committee originally voted to approve this rule amendment on September 30, 2014, and then the Delaware Harness Racing Commission (DHRC) subsequently voted to approve the proposed amendment at its October 16, 2014 monthly meeting. Both those meetings are noticed public meetings. Subsequent to this public notice in the *Register of Regulations*, the DHRC will leave the public comment period open until January 13, 2015 when the DHRC will hold its regularly scheduled monthly meeting. The DHRC January 2015 monthly meeting is public and is noticed on the state meeting notice website. Those meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB January 12, 2015. Those comments should be sent to the same address listed above for meeting location, attention Mark Davis.

#### 501 Harness Racing Rules and Regulations

##### 1.0 Definitions

*(Break in Continuity Within Section)*

“Authorized Agent” is a ~~person~~ trainer also licensed by the Commission as an authorized agent and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act.

*(Break in Continuity of Sections)*

##### 5.0 Licensees

*(Break in Continuity Within Section)*

##### 5.3 Trainers

*(Break in Continuity Within Section)*

5.3.3 Other Responsibilities. A trainer is responsible for:

*(Break in Continuity Within Section)*

5.3.3.25 in all overnight events, training all horses owned wholly or in part by him/her or by one other trainer.

*(Break in Continuity Within Section)*

**5.4 Owners' Authorized Agents****5.4.1 Licenses Required**

- 5.4.1.1 A licensed trainer acting as an authorized agent shall obtain a license from the Commission.
- 5.4.1.2 Application for license shall be filed for each owner represented.
- 5.4.1.3 A written instrument signed by the owner shall accompany the application and shall clearly set forth the delegated powers of the authorized agent. The delegated powers of the authorized agent shall extend only to horses trained by the authorized agent as trainer and not to horses trained by other trainers. The owner's signature on the written instrument shall be acknowledged before a notary public.

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

**501 Harness Racing Rules and Regulations**

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**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 817

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****817 Medications and Treatments****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 817 Medications and Treatments. This regulation is amended to be in compliance with Senate Bill 246 as amended by Senate Amendment #1 of the 147<sup>th</sup> General Assembly. It clarifies what constitutes an emergency medication, who can administer that medication and whether it can be administered to a diagnosed or undiagnosed individual, and in what school setting.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to medications and treatments and is not specifically related to improving 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 is intended to continue to ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments address students' health and safety in relation to the emergency medications for diagnosed medical conditions.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local

board and school level? The amended regulations does not change the decision making at the local board and school level.

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be costs for school districts and charter schools for additional emergency medications. The Department of Education will need to reallocate resources for training.

### 817 Medications and Treatments

#### 1.0 Purpose

The purpose of this regulation is to provide guidance regarding the medications and treatments to be provided to students pursuant to current Delaware Code.

#### 2.0 Definitions

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

**“Approved School Activity”** means a school-sponsored field trip or approved school activity outside of the traditional school day or off-campus.

**“Assist(ance) with Self-Administration of Medication”** means assisting a student in kindergarten through grade 12 in the self-administration of a medication taken orally, by inhalation, or applied topically, provided that the medication is in a properly labeled container. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Assistance does not include making nursing judgments. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail ~~in lifesaving circumstances~~ for life-threatening symptoms of a diagnosed condition, and includes the administration of the medication based on the healthcare provider’s order and parent permission.

**“Controlled Medication”** means those prescribed drugs regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

**“Current”** means a medication or prescription that is not outdated or expired according to the date on the label. A current prescription is written for a specific time period, not to exceed one year.

**“Dosage”** or **“Dose”** means a specific amount of medication prescribed or directed to be taken at any one time.

**“Educators”** means teachers, administrators, and paraeducators employed by a school-serving students in Pre-Kindergarten through Grade 12.

**“Emergency Medication”** means a medication necessary for response to a life-threatening allergic reaction.

**“Emergency Medication for a Diagnosed Medical Condition”** means a medication prescribed to treat a life-threatening symptom of a diagnosed medical condition.

“Emergency Medication Summary Sheet” means a document developed by the Department of Education and the Division of Public Health to report the use of Emergency Medication in the school setting.

"Field Trip" means any off campus, school sponsored activity.

“Licensed Health-Care Healthcare Provider” means anyone lawfully authorized to prescribe medications and treatments.

"Medication" means a legal drug, which has been authorized for a student to use and includes both prescription and non-prescription drugs.

“Non-prescription Medication” means any over-the-counter medication that can be sold legally without a prescription.

“Other School Employees” means coaches or persons hired or contracted by schools serving students in Kindergarten through Grade 12.

"Paraeducators" mean teaching assistants or aides in a school.

“Prescription Medication” means a legal drug that has a written order for an individual student by a licensed health care provider licensed to prescribe medication.

“School” means an educational facility serving students in kindergarten through grade 12 and any associated pre-kindergarten program in such facility.

“School Nurse” means a Registered Nurse licensed to practice in the State of Delaware, who is employed by a school district, charter school, or private school.

“Traditional School Day” means the hours within the days counted to meet the state minimum number of school days each year and summer school.

“Trained Assistant for Self-Administration” means an Educator or Other School Employee who has completed the training to assist a student with self-administration of medications. This person may render emergency care to any student, including injection, for life-threatening symptoms of a diagnosed condition based on the healthcare provider’s order and parent permission.

“Trained Person” means an Educator or Other School Employee who has completed the training to administer Emergency Medicine to diagnosed and undiagnosed students with symptoms of a life-threatening allergic reaction in the school setting.

### **43.0 Medications**

- 43.1 Medications may be administered to a public school student by the School Nurse when a written request to administer the medication or treatment is on file from the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a).
- 43.1.1 The School Nurse shall check the student health records and history for contraindications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms or conditions persist.
- 43.1.2 The School Nurse shall also document the student's name, the name of medication and treatment administered, the date and time it was administered and the dosage if medication was administered.
- 43.2 In addition to the requirements set forth in ~~2.1 below~~ 3.1 above, in the case of a Prescription Medications, the requirements set forth below in ~~2.2.1 through 2.2.4~~ 3.2.1 through 3.2.4 shall also apply.
- 43.2.1 Prescription medications shall be provided to the School in the original container and properly labeled with the student's name; the prescribing licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.



## PROPOSED REGULATIONS

- 43.2.2 Medications and dosages administered by the School Nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses or guidelines that are both safe and effective, or guidelines that are specified in regional or national guidelines.
- 43.2.3 The prescription and the medication shall be current and long term prescriptions shall be ~~re~~ authorized-reauthorized at least once a year.
- 43.2.4 All medications classified as controlled substances shall be counted and reconciled each month by the School Nurse and kept under double lock. Such medications should be transported to and from School by an adult.
- 43.3 Non-prescription Medication must be in an original container with full label and may be given by the School Nurse after the School Nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered.

### 34.0 Treatments

Treatments, including specialized health procedures, shall be prescribed by a licensed health care provider with directions relative to administration or supervision.

### 45.0 IEP Team

For a student who requires significant medical or nursing interventions, the Individual Education Program (IEP) team shall include the School Nurse.

### 56.0 Assistance With Self-Administration of Medications at Approved School Activities

- 56.1 Educators and Other School Employees who are Trained Assistants for Self-Administration are authorized by 24 **Del.C.** §1921(a)(17) to assist a student with self-administration of ~~medications on a field trip or approved school activity outside of the traditional school day or off-campus~~ at an Approved School Activity for students in kindergarten through Grade 12. The Trained Assistant for Self-Administration is subject to the following provisions:
- 56.1.1 Assistance with Self-Administration of ~~medication~~ shall not be provided without the prior written request or consent of a parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time(s) and date(s) of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip or approved School activity outside of the traditional School day or off-campus.
- 56.1.1.1 Medications shall be prescribed by a licensed health care provider and are ones that cannot be rescheduled for times when a person, who may legally administer medication, is available.
- 56.1.1.1.1 Doses may be provided for up to one week, unless covering a Field Trip lasting longer than this time period, and shall be maintained in a secure location.
- 56.1.1.2 Prescription medications shall be provided to the School Nurse and shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy; and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
- 56.1.1.2.1 Controlled medications must be stored on the person assisting or in a secure location under double lock. Maintaining doses for greater than one day is not permitted except in the case of an overnight activity.
- 56.1.1.3 Non-prescription medications shall be provided to the School Nurse by the parent in an original container along with a current, written directive from the student's licensed health

care provider and shall include the student's name; the licensed health care provider's name; the name of the medication; the dosage; and how and when it is to be administered.

- 56.1.2 In order to be qualified to ~~assist with~~ provide Assistance with Self-Administration of mMedications, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 **Del.C.** §1921(a)(17). Training shall be renewed minimally every five years. No person shall ~~assist a student with~~ provide Assistance with Self-Administration of mMedications without written acknowledgment that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein. A School Nurse ~~employed by the public or private district or charter in which the student is enrolled~~ shall:
- 56.1.2.1 Complete instructor training as designated by the Department of Education ~~and shall submit a list of educators and other school employees, who have completed the training, to the Department of Education.~~
  - 56.1.2.2 Provide Oversee the training for ~~e~~Educators and Other School Employees.
  - 56.1.2.3 Coordinate the collection and review of the written parental consent.
  - 56.1.2.4 Provide the appropriately labeled medication, copy of the consent, and directions on assistance to the ~~trained educator or other school employee~~ Trained Assistant for Self-Administration.
- 56.1.3 Each School ~~district~~ shall maintain a record of all students receiving ~~a~~Assistance with Self-Administration of mMedications pursuant to this regulation. Said record shall contain the student's name; the name of the medication; the dose; the time of administration; the method of administration; and the name of the person assisting.
- 56.1.4 ~~Except for a school nurse, no educator or other school employee shall be compelled to assist a student with medication. If a facility is otherwise required to have a school nurse, nothing contained here shall be interpreted to relieve the school of such obligation. The School Nurse may prepare a Trained Assistant for Self-Administration to render emergency care to a student, with a known, diagnosed condition, who is in pre-kindergarten through Grade 12 and shows life-threatening signs and symptoms of the condition at an Approved School Activity.~~
- 6.1.4.1 Response shall include immediate activation of emergency medical services.
  - 6.1.4.2 Preparation shall include instruction in the provision of the student's Emergency Medication for a Diagnosed Medical Condition, including injection, for symptoms related to the condition. Instruction will be based on the healthcare provider's order and the manufacturer's instructions for administration.
  - 6.1.4.3 The Trained Assistant for Self-Administration shall annually demonstrate his/her ability to provide Emergency Medication for a Diagnosed Medical Condition.
  - 6.1.4.4 An Emergency Medication for a Diagnosed Medical Condition shall be a current prescription provided by the student's licensed healthcare provider for a diagnosed medical condition that requires immediate medication to save or sustain life and is one which can be safely provided by a Trained Assistant for Self-Administration.
  - 6.1.4.5 In addition to 6.1.3, the Trained Assistant for Self-Administration shall provide documentation related to the rendering of emergency care, to include at a minimum, the student's symptoms, time of the incident, medication administered, other actions taken, and the response by emergency medical services.

## **7.0 Emergency Medication Administration for Life-threatening Allergic Reaction in School**

- 7.1 School Nurses and Trained Persons are authorized by 16 Del.C. Ch. 30E to administer Emergency Medication Without an Order at School to a student in pre-K through grade 12, who is symptomatic of a life-threatening allergic reaction in the school building.
- 7.1.1 Public School Nurses shall follow the Division of Public Health's medical emergency standing orders for allergic reactions and anaphylaxis in previously undiagnosed individuals.

# PROPOSED REGULATIONS

- 7.1.2 Trained Persons shall follow the guidance issued by the Division of Public Health, on the administration of Emergency Medications without an order in the school setting to undiagnosed individuals.
- 7.2 The School, in consultation from the School Nurse, shall annually identify and train a sufficient number of Educators and Other School Employees to become Trained Persons.
- 7.2.1 An identified person cannot be compelled to become a Trained Person, unless training is a requirement of their position, hire, or contract.
- 7.2.2 The training shall be a program approved by the Department of Education and the Division of Public Health.
- 7.3 The School shall maintain current, stock Emergency Medication.
- 7.3.1 Emergency Medication shall be stored in a minimum of two secure and accessible locations in the school setting as identified by the School Nurse: one for the School Nurse and the other or the Trained Person.
- 7.4 The School shall maintain documentation of the use of Emergency Medication.
- 7.4.1 The Trained Person shall complete the Emergency Medication Administration by Trained Person Sheet on the day of the any administration and shall submit to the School Nurse.
- 7.5 The School Nurse shall submit the Emergency Medication Summary Sheet to the Department of Education and the Division of Public Health within 48 hours of the use of an Emergency Medication.

## **8.0 Other School Employees Obligation**

Except for a School Nurse, no Educator or Other School Employee shall be compelled to assist a student with medication or to administer emergency medication. If a facility is otherwise required to have a School Nurse, nothing contained here shall be interpreted to relieve the school of such obligation.

Nonregulatory note: 14 **DE Admin. Code** 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses student self-administration of a prescribed asthmatic quick relief inhaler and student self-administration of prescribed autoinjectable epinephrine.

Nonregulatory note: 16 **Del.C.** §3007E provides liability protection for any Trained Person or School Nurse, who, in good faith and without expectation of compensation from the person aided or treated, administers Emergency Medication.

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## **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**

### **Title XIX Medicaid State Plan, Methods and Standards for Establishing Payment Rates - Primary Care Service Payment**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Methods and Standards for Establishing Payment Rates, specifically, *Primary Care Service Payment*.

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 and Quality 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, 2014.

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

### **SUMMARY OF PROPOSAL**

Delaware Health and Social Services/Division of Medicaid and Medical Assistance proposes to amend the Title XIX Medicaid State Plan regarding Methods and Standards for Establishing Payment Rates, specifically, *Primary Care Service Payment*. This amendment will extend the primary care physician services rate increase required by the Health Care and Education Reconciliation Act of 2010 (HCERA), Section 1202 (Pub. L. No. 111-152) (42 U.S.C. §1396a(a)(13), that sunsets on December 31, 2014.

#### **Statutory Authority**

- §1905 of the Social Security Act (a)(5(A), *Definitions, Physicians' Services*
- 42 CFR §440.50, *Physicians' Services and Medical and Surgical Services of a Dentist*
- 42 CFR §447.400, *Primary care services furnished by physicians with a specified specialty or subspecialty*
- 42 CFR §447.405, *Amount of required minimum payments*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

#### **Background**

Section 1202 of the Affordable Care Act required that Medicaid reimburse designated primary care providers who provide primary care services and vaccine administration services at rates that are not less than the Medicare fee schedule in effect for 2013 and 2014, or, if greater, at the payment rates that would result from applying the 2009 Medicare physician fee schedule conversion factor to the 2013 or 2014 Medicare payment rates. These reimbursement requirements apply to payments made on or after January 1, 2013 through December 31, 2014.

In accordance with 42 CFR §447.410, Delaware submitted a *State Plan Amendment (SPA)* to reflect the fee schedule rate increases for eligible primary care physicians under section 1902(a)(13)(A) of the Social Security Act. The purpose of this requirement is to assure that when States make the increased reimbursement to providers, they have State Plan authority to do so and they have notified providers of the change in reimbursement as required by Federal regulations.

The Centers for Medicare and Medicaid Services approved Delaware's Increased Primary Care Service Payment state plan amendment on June 24, 2013 with an effective date of January 1, 2013.

#### **Summary of Proposal**

##### *Purpose*

The purpose of this state plan amendment (SPA) is to extend an existing temporary reimbursement rate increase for specified Delaware Medical Assistance Program (DMAP) primary care providers beginning January 1, 2015. The 100% federal funding ends on December 31, 2014. With this SPA, DMAP will continue the increase at the regular federal matching rate.

##### *Statutory Authority and Payment Methodology for Changes to the Medicaid State Plan*

Beginning January 1, 2015, this State Plan Amendment continues the fees for services provided by certain primary care physicians to match 100% of Medicare rates. These rates will apply to the primary care procedure codes identified pursuant to 42 USC §1396a(jj) and 42 CFR §447.400(c). Primary care physicians identified pursuant to 42 USC §1396a(13)(C) and 42 CFR §447.400(a) will be eligible to continue to receive 100% of the Medicare rates for those primary care services.

##### *Primary Care Services Rendered On or After January 1, 2015*

Primary care services furnished on and after January 1, 2015, by a qualified primary care physician or under the supervision of a qualified primary care physician shall be paid at the Medicare Part B fee schedule rate up to 100% of the Medicare physician fee schedule.

If there is no applicable rate under Medicare Part B, the rate specified in a fee schedule established and as published annually by the federal Centers for Medicare and Medicaid Services, pursuant to 42 CFR 447.405(a)(1).

# PROPOSED REGULATIONS

## *Vaccines Administration Services Rendered On or After January 1, 2015*

Payment for the administration of vaccines provided under the Vaccines for Children Program and rendered on or after January 1, 2015, shall be the lesser of the state regional maximum administration fee set by the Vaccines for Children Program.

### *Public Notice*

This notice is published pursuant to 42 CFR §447.205, 42 U.S.C., §1902(a)(13)(A) of the Social Security Act, and Title 29, Chapter 101 of the Delaware Code, which requires Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DMMA) to give public notice of any significant proposed change in its method and standards for setting payment rates for Medicaid services.

The provisions of this state plan amendment relating to methodology and payment rates of Primary Care Services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

### **Fiscal Impact Statement**

The total computed cost of extending the increased reimbursement for specified primary care services rendered on or after January 1, 2015 is estimated, as follows:

	Federal Fiscal Year 2015 (Nine Months)	Federal Fiscal Year 2016 (Twelve Months)
General (State) Funds	\$147,691.00	\$196,922.00
Federal Funds	\$ 95,699.00	\$131,988.00

### **DMMA PROPOSED REGULATION #14-45 REVISION:**

ATTACHMENT 4.19-B  
Introduction Page 7  
OMB No. 0938-1148

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

Physician Services

Medicaid Payment for Primary Care Services 42 CFR §§447.400, 447.405, 447.410

### Payment for Primary Care Services

This state plan amendment extends the primary care physician rate increase related to the implementation of the Health Care and Education Reconciliation Act of 2010 (HCERA), Section 1202 (Public Law 111-152) (42 U.S.C. §1396a(a)(13)(C)), that is time-limited and will sunset on December 31, 2014.

For dates of service rendered on or after January 1, 2015, the Delaware Medical Assistance Program (DMAP) will apply an increased payment rate to qualified enrolled providers for primary care services delivered by a physician with specialty designation of family medicine, general internal medicine, or pediatric medicine. The increase will

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apply to a specific set of services that have been designated as primary care.

Primary care services eligible for enhanced payment include evaluation and management (E & M) services and vaccine administration services covered by DMAP and designated in the Healthcare Common Procedure Coding System (HCPCS).

1. Primary Care Physician Services Rendered On or After January 1, 2015

- a. Primary care services rendered on or after January 1, 2015, that are eligible for payment pursuant to the requirements of 42 CFR 447.400(a), shall be paid at the Medicare Part B fee schedule rate up to 100% of the Medicare physician fee schedule.
- b. The rates reflect all Medicare sites of service and locality adjustments.
- c. The rates do not reflect site of service adjustments, but reimburse at the Medicare rate applicable to the office setting.
- d. The rates reflect all Medicare geographic/locality adjustments.
- e. If there is no applicable rate under Medicare Part B, the rate specified in a fee schedule established and as published annually by the federal Centers for Medicare and Medicaid Services, pursuant to 42 CFR 447.405(a)(1).

ATTACHMENT 4.19-B  
Introduction Page 7.1  
OMB No. 0938-1148

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: **DELAWARE**  
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
OTHER TYPES OF CARE  
Physician Services

Medicaid Payment for Primary Care Services 42 CFR §§447.405, 447.410 CONTINUED

- f. The DMAP will make payment under this SPA for the following codes which have been added to the fee schedule since July 1, 2009 (codes and date added specified).
  - 99408 - Added October 10, 2010
  - 99409 - Added October 10, 2010
  - 99224 - Added January 1, 2011
  - 99225 - Added January 1, 2011
  - 99226 - Added January 1, 2011
  - 90673 - Added January 1, 2014
  - 99481 - Added January 1, 2014
  - 99482 - Added January 1, 2014
- g. DMAP did not make payment as of July 1, 2009 for the following codes and will not make payment for those codes under this SPA (codes specified).

99288	99324	99327	99335	99339	99359	99366	99374
99315	99325	99328	99336	99340	99363	99367	99375
99316	99326	99334	99337	99358	99364	99368	99376
99377	99380	99403	99407	99420	99442	99450	99261
99378	99401	99404	99411	99429	99443	99455	99262

# PROPOSED REGULATIONS

99379	99402	99406	99412	99441	99444	99456	99263
99271	99274	99290	99295	99298	99301	99311	99321
99272	99275	99293	99296	99299	99302	99312	99322
99273	99289	99294	99297	99300	99303	99313	99323
99331	99351	99361	99372	99432	99436		
99332	99352	99362	99373	99433	99438		
99333	99353	99371	99431	99435	99440		

ATTACHMENT 4.19-B  
Introduction Page 7.2  
 OMB No. 0938-1148

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
 STATE: **DELAWARE**  
 METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
 OTHER TYPES OF CARE  
 Physician Services  
 Medicaid Payment for Primary Care Services 42 CFR §§447.405, 447.410 CONTINUED

2. Physician Services – Vaccine Administration Rendered On or After January 1, 2015

On or after January 1, 2015, payment for the administration of vaccines rendered by physicians meeting the requirements of 42 CFR 447.400(a) and provided under the Vaccines for Children Program shall be paid at the lesser of the state regional maximum administration fee set by the Vaccines for Children (VFC) program.

ATTACHMENT 4.19-B  
Introduction Page 7.3  
 OMB No. 0938-1148

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
 STATE: **DELAWARE**  
 METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
 OTHER TYPES OF CARE  
 Physician Services  
 Medicaid Payment for Primary Care Services 42 CFR §§447.405, 447.410 CONTINUED

3. Fee Schedules

a. Evaluation & Management Services

This reimbursement methodology applies to services delivered on or after January 1, 2015. The fee schedule and any annual/periodic adjustments to the fee schedule are available on the Delaware Medical Assistance Program (DMAP) website at:

<http://www.dmap.state.de.us/downloads/feeschedules.html>

Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both government and private providers.

b. Vaccine Administration

This reimbursement methodology applies to services delivered on or after January 1, 2015.

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The fee schedule and any annual/periodic adjustments to the fee schedule are available on the Delaware Medical Assistance Program (DMAP) website at:

<http://www.dmap.state.de.us/downloads/feeschedules.html>

Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both government and private providers.

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### **Title XIX Medicaid State Plan, State Plan Rehabilitative Services - Coverage and Reimbursement for Community Support Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding State Plan Rehabilitative Services specifically, *Coverage and Reimbursement for Community Support Services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy Development and Quality 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, 2014.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan regarding State Plan Rehabilitative Services specifically, *Coverage and Reimbursement for Community Support Services*.

#### **Statutory Authority**

- §1905 of the Social Security Act (a)(13), *Other diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §440.130(d), *Diagnostic, screening, preventive, and 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.

#### *Community Support Services*

Community support services are medically related treatment, rehabilitative and support service provided through self-contained programs by teams of clinicians, associate clinicians and assistant clinicians under the supervision of a physician. Currently, the Delaware Medical Assistance Program (DMAP) covers behavioral health rehabilitative services for persons with disabilities caused by mental illness and substance use disorder. The three (3) categories of community support programs are:

1. Community Continuum of Care (CCC) program: CCC provides a comprehensive array of non-residential support services in community-based settings to improve the capacity for self-care and productive daily living of persons whose disabilities markedly impair their ability to live independently without support.
2. Psychosocial Rehabilitation Center (PRC) program: PRC provides non-residential facility-based group therapies to improve the capacity for self-care and productive daily living of persons whose disabilities markedly impair their ability to live independently without support.
3. Residential Rehabilitation Facility (RRF) program: RRF provides residential facility-based group and individual therapies to improve the capacity for self-care and productive daily living of persons whose disabilities preclude their ability to live independently.

#### **Summary of Proposal**

##### *Overview*

On September 18, 2014, the Centers for Medicare and Medicaid Services (CMS) approved Delaware Medicaid State Plan Amendment (SPA) #13-0018. This SPA targets service delivery, specifically, substance use disorder treatment services, crisis intervention services, and other licensed behavioral health practitioners. SPA #13-0018 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.

Effective July 1, 2014, the coverage and reimbursement methodology plan amendments of #DE SPA #13-0018 accomplish the following:

1. Removes 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 allows 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. Includes Crisis Intervention and Outpatient and Residential Substance Use Disorder Treatment in the Rehabilitation State Plan. This allows 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. Removes the Community Support Service Program from the State Plan effective January 1, 2015. On that date, a new 1915(i)-like service under the 1115 demonstration waiver begins 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.

##### *Proposal*

As referenced in item #3 above, reimbursement and coverage of Community Support Service Program shall cease in the Medicaid State Plan on January 1, 2015. As long as the State is continuing to provide this service, the reimbursement language remains in the reimbursement section of state plan.

With the approval of SPA #13-0018 and anticipated approval of Diamond State Health Plan 1115 Waiver Amendment Covering PROMISE, current community support services coverage and reimbursement language becomes obsolete. Delaware Medicaid is processing a technical amendment to the Medicaid State Plan as directed by the Centers for Medicare and Medicaid Services (CMS) to submit a new SPA prior to January 1, 2015 with an effective date of January 1, 2015, removing all State Plan coverage and reimbursement provisions related

to community support services at Attachment 4.19-B Page 4. The proposed rule is necessary for the department to administer and maintain compliance with federal funding requirements.

In accordance with public notice requirements established at 42 CFR 447.205, Section 1902(a)(13)(A) of the Social Security Act, and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is seeking public comment on the draft Community Support Service State Plan Amendment.

The provisions of this state plan amendment relating to methodology and payment rates of Community Support Services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

## Fiscal Impact Statement

There will be no fiscal impact as a result of this amendment because it is a technical amendment, and it does not represent a significant change in the payment methods or standards. The fiscal impact for this regulatory action was captured in Delaware Medicaid State Plan Amendment (SPA) #13-0018.

## DMMA PROPOSED REGULATION #14-44 REVISION:

ATTACHMENT 4.19-B  
Page 4

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

### ~~4) Community Support Service Programs~~

#### ~~Reimbursement Methodology for Community Support Services~~

~~Rates for Community Support Services as defined in Attachment 3.1 A will be established by a rate setting committee composed of representatives of various Divisions of Delaware Health and Social Services, including the Division of Social Services (DSS), the Division of Management Services (DMS), and the Division of Substance Abuse and Mental Health (DSAMH).~~

~~A universal per diem rate for all services with the exception of Psychosocial Rehabilitation Center Services and Residential Rehabilitation Services is to be set initially and for three subsequent fiscal years based upon a trend analysis of Medicaid expenditures for individualized home and community based Community Support Services during the base period of SFY 2000 through SFY 2002 and adjusted thereafter by the rate setting committee.~~

~~Rates for Psychosocial Rehabilitation Center Services and Residential Rehabilitation Services are provider specific and are calculated by determining the total costs for each provider of the respective services, including cost of services to all clients regardless of Medicaid eligibility. The rates will be per diem for Residential Rehabilitation Services and per half day unit for Psychosocial Rehabilitation Center Services.~~

### (RESERVED FOR FUTURE USE)

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**PROPOSED REGULATIONS**

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**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, 2014.

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 7, 2015 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**

For purposes of these regulations, the following words and phrases shall have the following meaning unless the context clearly indicates otherwise:

**"Alternative compliance payment"** means a payment of a certain dollar amount per megawatt hour, which a Commission-Regulated Electric Company may submit in lieu of supplying the minimum percentage of RECs from Eligible Energy Resources required as defined and set by 26 **Del.C.** §§352(1) and 358(d).

**"Average QFCP Project offset cost"** means the dollar amount to be attributed to the cost of a MWh of output from a QFCP project during a compliance year.

**"Avoided system costs"** means reductions in electric generation, transmission or distribution costs.

**"Commission-Regulated Electric Company"** means the same as an Electric Distribution Company in 26 **Del.C.** §1001(12).

**"Compliance year"** means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Commission-Regulated Electric Company must demonstrate that it has met the requirements of the subchapter known as the "Renewable Energy Portfolio Standards Act".

**"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 in Delaware that purchases electrical energy at retail prices from regulated electric utilities.

**"Exempt sales"** means the retail customer sales of a Commission-Regulated Electric Company that is not included in the total retail sales for RPS compliance.

**"Externality benefits"** means reductions in environmental, health and mortality costs.

**"Freeze"** means suspension of enforcement or implementation of the annual increase in 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.

**"Integrated Resource Plan"** or **"IRP"** means the plan filed by the Commission-Regulated Electric Company to meet the requirements of 26 **Del.C.** §1007(c) & (d).

**"Non-exempt sales"** means the retail customer sales of a Commission-Regulated Electric Company that is included in the total retail sales for RPS compliance.

**"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 provider project"** or **"QFCPP"** means a fuel cell power generation project located in Delaware owned and/or operated by a qualified fuel cell provider under a tariff approved by the Commission pursuant to 26 **Del.C.** § 364(d).

**"REC costs of compliance"** means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for RECs during a respective compliance year.

**"REC offset hours"** and **"SREC offset hours"** mean the MWh of output from a QFCPP that is utilized under 26 **Del.C.** §353(d) to offset the number of RECs and/or SRECs that might otherwise be required to be retired to meet REC and/or 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 a tradable 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 Cost of Compliance"** means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for all renewable energy during a respective compliance year.

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# PROPOSED REGULATIONS

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“RPS” means the renewable portfolio standard, the minimum percentage of total electricity sales delivered to Delaware end-use customers that is derived from eligible energy resources established under 26 Del.C., §354.

“Solar alternative compliance payment” means the payment of certain dollar amounts expended in lieu of supplying the minimum percentage from solar photovoltaics as defined and set by 26 Del.C. §§352(24) and 358(e).

“Solar Renewable Energy Credit” or “SREC” means the tradable 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 Cost of Compliance” means the total costs expended by a Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for solar photovoltaic renewable energy during a respective compliance year.

“Surcharge payments” means the dollar amounts (whether positive or negative) paid to, or received by, customers of a Commission-Regulated Electric Company from a QFCPP and a Commission-Regulated Electric Company 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 the Commission-Regulated Electric Company. It does not include the Commission-Regulated Electric Company, Rural Electric Cooperatives or Municipal Electric Companies.

“Total Retail Costs of Electricity” means the total costs paid by customers of the Commission-Regulated Electric Company for the supply, transmission, distribution and delivery of retail electricity to serve non-exempt customers, including those served by third party suppliers, during a respective compliance year.

## **3.0 Application**

- 3.1 These rules shall apply only to a Commission-Regulated Electric Company. 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 or a 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 QFCPP 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 Solar Alternative Compliance Payments for the solar photovoltaic requirement, plus

4.3.4 the cost of QFCPP offsets to the solar 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 increase in the Renewable Energy Cost of Compliance over the previous compliance year is equal to or greater than 3 percent of the Total Retail Cost of Electricity, the Director shall determine whether a freeze should be implemented.

5.3 If the Division calculations show that the increase in the Solar Renewable Energy Cost of Compliance over the previous compliance year is equal to or greater than 1 percent of the Total Retail Cost of Electricity, 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 that result in lower net electricity costs.

5.7 Externality benefits of changes in energy markets may include externality savings in health and mortality costs and environmental impacts due to policies promoting cleaner energy in Delaware and regional energy generation. To the extent possible, the externality savings should be consistent with the current IRP filed by the Commission-Regulated Electric Company, except where other published methods or studies are determined to be more appropriate.

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, in consultation with the PSC, will declare the freeze and notify, electronically and by mail, the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also:

6.1.1 provide prior notice of the freeze to the PSC; and

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

## **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 rules.

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 If the total cost of compliance falls below the 3 percent or 1 percent threshold, the Director shall lift a freeze in consultation with the PSC.

7.4 If a freeze is lifted, the Director will promptly notify, electronically and by mail, the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also:

7.4.1 provide prior notice of the lifting of the freeze to the PSC; and

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

## **8.0 Administration**

- 8.1 Within 150 days after the end of any compliance year, the Commission-Regulated Electric 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 compliance year;
  - 8.1.2 the Solar Renewable Energy Cost of Compliance costs for that compliance year;
  - 8.1.3 the Total Retail Costs of Electricity for that compliance year.
  - 8.1.4 the total MWh of output (either actual or deemed) produced by a QFCPP during the compliance year;
  - 8.1.5 the total amount of surcharge payments paid by the Commission-Regulated Electric Company customers during the compliance year;
  - 8.1.6 the calculation of the average QFCPP offset cost for the compliance year under section 7.0; and
  - 8.1.7 the number of QFCPP output hours that the Commission-Regulated Electric Company 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 the Commission-Regulated Electric 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.

## **9.0 Existing Contracts**

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.

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## **DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

### **DIVISION OF STATE POLICE**

**1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES**  
 Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304)  
 24 DE Admin. Code 1300

### **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 13.0 – Agency Licensing Fees/Structure – removing the requirement of the Delaware manager bond and all other bonds will be a minimum of one year. 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, 2014, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903.

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## 1300 Board of Examiners of Private Investigators & Private Security Agencies (Break in Continuity of Sections)

### 13.0 Licensing Fees

- 13.1 Class A License - Private Investigative Agency
  - 13.1.1 In-State License Holder
    - 13.1.1.1 Individual - No Employees - Not Corporation
      - 13.1.1.1.1 \$230
      - 13.1.1.1.2 \$5,000 Bond – minimum one year
      - 13.1.1.1.3 \$1,000,000 Liability Insurance per occurrence
    - 13.1.1.2 Corporation - Has Employees
      - 13.1.1.2.1 \$345
      - 13.1.1.2.2 \$10,000 Bond – minimum one year
      - 13.1.1.2.3 \$1,000,000 Liability Insurance per occurrence
  - 13.1.2 Out-of-State
    - 13.1.2.1 License Holder - Individual and Corporation
      - 13.1.2.1.1 \$345
      - 13.1.2.1.2 \$10,000 Bond – minimum one year
      - 13.1.2.1.3 \$1,000,000 Liability Insurance per occurrence
    - 13.1.2.2 Delaware Manager
      - 13.1.2.2.1 \$230
      - ~~13.1.2.2.2 \$5,000 Bond~~
- 13.2 Class B License - Private Security Agency
  - 13.2.1 In-State License Holder
    - 13.2.1.1 Individual - No Employees - Not Corporation
      - 13.2.1.1.1 \$230
      - 13.2.1.1.2 \$5,000 Bond – minimum one year
      - 13.2.1.1.3 \$1,000,000 Liability Insurance per occurrence
    - 13.2.1.2 Corporation - Has Employees
      - 13.2.1.2.1 \$345
      - 13.2.1.2.2 \$10,000 Bond – minimum one year
      - 13.2.1.2.3 \$1,000,000 Liability Insurance per occurrence
  - 13.2.2 Out-of-State
    - 13.2.2.1 License Holder - Individual and Corporation
      - 13.2.2.1.1 \$345
      - 13.2.2.1.2 \$10,000 Bond – minimum one year
      - 13.2.2.1.3 \$1,000,000 Liability Insurance per occurrence
    - 13.2.2.2 Delaware Manager
      - 13.2.2.2.1 \$230
      - ~~13.2.2.2.2 \$5,000 Bond~~
- 13.3 Class C License - Private Investigative & Private Security Agency
  - 13.3.1 In-State License Holder
    - 13.3.1.1 Individual - No Employees - Not Corporation
      - 13.3.1.1.1 \$345
      - 13.3.1.1.2 \$10,000 Bond – minimum one year
      - 13.3.1.1.3 \$1,000,000 Liability Insurance per occurrence



# PROPOSED REGULATIONS

- 13.3.1.2 Corporation - Has Employees
  - 13.3.1.2.1 \$520
  - 13.3.1.2.2 \$15,000 Bond – minimum one year
  - 13.3.1.2.3 \$1,000,000 Liability Insurance per occurrence
- 13.3.2 Out-of-State
  - 13.3.2.1 Individual and Corporation
    - 13.3.2.1.1 License Holder
      - 13.3.2.1.1.1 \$520
      - 13.3.2.1.1.2 \$15,000 Bond – minimum one year
      - 13.3.2.1.1.3 \$1,000,000 Liability Insurance per occurrence
    - 13.3.2.1.2 Delaware Manager
      - 13.3.2.1.2.1 \$345
      - ~~13.3.2.1.2.2 \$10,000 Bond~~
- 13.4 Class D License - Armored Car Agency License
  - 13.4.1 License Holder
    - 13.4.1.1 \$345
    - 13.4.1.2 Banking Commissioner License as required by 5 **Del.C.** §3203
    - 13.4.1.3 \$10,000 Bond – minimum one year
    - 13.4.1.4 \$1,000,000 Liability Insurance per occurrence.
  - 13.4.2 Delaware Manager
    - 13.4.2.1 \$230
    - ~~13.4.2.2 \$5000 Bond~~
- 13.5 All licenses will expire 2 years from the last day of the month they are approved for licensure.
- 13.6 All new agency licensures must be approved by the Board. Standard renewals, with no changes, may be approved by the Professional Licensing Section. Any agency having a change in License Holder and/or Delaware Manager must be approved by the Board.

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

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

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

### DIVISION OF FAMILY SERVICES

#### Office of Child Care Licensing

Statutory Authority: 29 Delaware Code, Chapter 3, Subchapter III (29 **Del.C.** Ch. 3, Subch. III)  
9 **DE Admin. Code** 101

#### PUBLIC NOTICE

#### 101 Rules for Early Care and Education and School-Age Centers

#### SUMMARY

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Regulations for Early Care and Education and School-Age Centers. A comprehensive review process was held in which all providers were asked to participate as part of the public hearing process for Executive Order 36 and a preliminary draft was

created. The preliminary draft was posted on the OCCL website and comments were invited and received. Additional public comments were received from the Provider Advisory Board, from providers and stakeholders during a series of Task Force meetings, as well as written comments from other providers and stakeholders.

The proposed changes provide clarity, reflect changes in laws, align with current best practices, improve standards of care, and remove duplicative regulations. The revisions represent a consensus of participants including licensed providers and subject experts, and are based on best practice, a review of regulations promulgated by other States, research on subjects related to early care and education and school-age center care, internal OCCL review and discussion, and identified issues and services within existing programs within Delaware.

A draft of the Regulations was posted in the June 2014 *Register of Regulations* and comments accepted until August 31, 2014. Many comments were received from providers and other interested parties and were reviewed by the Office of Child Care Licensing, resulting in a revised set of proposed regulations. The revised draft is offered for public comment as described below.

## COMMENTS

Interested parties wishing to offer comments on the proposed regulations must submit them to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by 4:30 p.m. EST on January 5, 2015.

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

**101 Rules for Early Care and Education and School-Age Centers**

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 1400 BOARD OF ELECTRICAL EXAMINERS

Statutory Authority: 24 Delaware Code, Section 1406(a)(1) (24 Del.C. §1406(a)(1))  
24 DE Admin. Code 1400

## PUBLIC NOTICE

### 1400 Board of Electrical Examiners

Pursuant to 24 Del.C. §1406(a)(1), the Delaware Board of Electrical Examiners has proposed revisions to its rules and regulations. The rules pertaining to electronic attestation, insurance, continuing education and crimes substantially related to the practice of electrical services are amended to provide current practices at the Division of Professional Regulation and the Board's desire to expand its crimes list.

A public hearing will be held on January 7, 2015 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be January 22, 2015 which is 15 days following the public hearing.

### 1400 Board of Electrical Examiners (Break in Continuity of Sections)

## 2.0 Applications

- 2.1 Applications may be obtained in person during regular business hours or by mail from the Division of Professional Regulation ("Division"). Applications must be made in the name of the individual, not a company. The Board shall approve the application form to insure that it contains all of the information necessary to satisfy the statutory requirements for licensure.
- 2.2 Applications which are incomplete shall be retained for one year to allow an applicant the opportunity to supplement the application. After one year, incomplete applications are destroyed. Thereafter, an applicant must resubmit a new application with the appropriate fee.
- 2.3 Applications approved for testing will be valid for two years from the date approved for examination. If the test is not taken, the application is destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

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

## 6.0 License and Insurance

- 6.1 Licensees with the exception of Journeypersons and Apprentice Electricians shall maintain general liability insurance of at least \$300,000.00. ~~Master Special Elevator Electricians do not need general liability insurance if the contractor has general liability insurance.~~ Proof of insurance must be submitted with licensure applications and maintenance of the required insurance shall be attested to in the course of each licensure renewal.
- 6.2 The insurance requirement is satisfied for a licensee who is performing work as an employee as long as the employer is insured for the risk on the work performed as required under these regulations. A licensee who also works independently from his employer must maintain separate insurance for that risk as provided under these regulations.
- 6.3 Master and Limited Special Elevator Electricians do not need general liability insurance if the licensee's employer has general liability insurance. Elevator applicants and licensees agree to work only for an elevator company who maintains a general liability insurance policy for all of its employees, in the minimum amount of \$300,000.00.

## 7.0 Expiration and Renewal

- 7.1 The licenses granted by the Board must be renewed by June 30th of each even numbered year, otherwise, they expire as of July 1<sup>st</sup>.
- 7.2 Renewal. It is the responsibility of the licensee to file a renewal application with the Board. The Board is not required to notify licensees of expiration dates. Renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov).
  - 7.2.1 Renewal applications will be randomly audited by the Board to ensure their accuracy. Licensees selected for random audit will be notified of that selection within 60 days after the renewal deadline. Licensees must then ~~submit verification of their receipt of the notification of audit within 40 days~~ submit the documentation requested by the date indicated on the audit notice.
  - 7.2.2 As a condition of renewal, applicants must attest to completion of continuing education (CE) as required by Regulation 8.0 ~~and list all CE course names and approval numbers.~~ Applicants and must also attest to maintenance of the liability insurance required by Regulation 6.0 ~~and indicate the name of their insurer and their policy number.~~ Attestation ~~may~~ shall be completed electronically ~~if renewal is accomplished online. Alternatively, paper renewal documents containing the CE and insurance attestations may be submitted.~~ Licensees selected for random audit will be required to supplement their attestations with documentation of CE attendance and maintenance of insurance coverage.
- 7.3 A licensee may renew an expired license within one year after the renewal deadline by meeting all requirements and paying a late fee set by the Division. All late renewals will be audited for compliance with the CE and insurance renewal requirements.
- 7.4 A licensee with a valid license may request in writing to be placed on inactive status. Inactive status can be renewed ~~biennially electronically on a biennial basis by application to the Division upon proof of 40 hours of CE~~ attestation of completing the required CE for licensure. Inactive licenses may be

reactivated by the Board upon written request with proof of insurance and payment of a ~~prorated~~ the appropriate fee set by the Division.

- 7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of inactive status.
- 7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience can be used to satisfy the requirements under 24 **Del.C.** §1408(a). However, the applicant must take the examination required by §1408(5) and achieve a passing score unless he or she previously passed an approved licensure test that covered the National Electric Code that is the standard in Delaware at the time of the new application.

## 8.0 Continuing Education

- 8.1 Continuing education (CE) is required of all licensees and shall be completed by June 30 of any year in which a license is to be renewed. Extra continuing education hours do not carry over to the next licensing period. Licensees will only get CE credit for their first attendance of CE courses during each licensing period. Licensees may retake a CE course in the same licensing period but will not receive additional CE credit.
- 8.2 Courses must be approved by the Board in order to qualify as CE. Approved courses appear on the website of the Division of Professional Regulation at [www.dpr.delaware.gov](http://www.dpr.delaware.gov). Licensees may also contact the Administrative ~~Assistant~~ Specialist of the Board at the Division of Professional Regulation to determine whether particular courses have been approved.
- 8.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing electrical services.
- 8.2.2 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours ~~and showing breakdown of time allotted for each part of course content~~, the curriculum vitae or resume of the instructor and the appropriate fee set by the Division. The completed application will be presented for review at the next regularly scheduled Board meeting.
- 8.2.3 Sponsors or licensees seeking pre-approval should submit the request as provided in 8.1.2 at least 60 days before the CE course is being offered.
- 8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for approval as provided in 8.2.2.
- 8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, 5 of the 10 CE hours required for renewal must be related to the National Electrical Code.
- 8.4 Journeypersons and Apprentice Electricians shall complete 5 hours of approved CE during each renewal period with the following exceptions – a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 2 CE hours at the first renewal. Apprentice training (proof of enrollment in a Board approved apprenticeship program) will count towards CE hours during that licensure period.
- 8.5 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

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

## 11.0 Reciprocity

- 11.1 An applicant for licensure by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure under this provision must submit to the Board a copy of reciprocal state's current licensure requirements.

- 11.2 If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least five years after licensure. Proof of practice requires an employer's affidavit describing the nature of the applicant's experience. If an applicant cannot obtain an affidavit from the employer, ~~tax W-2 forms or other tax documents~~ showing 5 years full-time employment may be substituted at the discretion of the Board. ~~A self-employed applicant may submit tax form Schedule C as proof of practice.~~

*(Break in Continuity of Sections)*

**17.0 Crimes substantially related to work of an Electrician.**

- 17.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the work of an electrician in the State of Delaware without regard to the place of conviction:
- 17.1.1 Offensive touching. 11 **Del.C.** §601
- 17.1.2 Menacing (felony). 11 **Del.C.** §602
- 17.1.43 Reckless endangering in the first degree. 11 **Del.C.** §604
- 17.1.24 Assault in the second degree. 11 **Del.C.** §612
- 17.1.35 Assault in the first degree. 11 **Del.C.** §613
- 17.1.46 Manslaughter. 11 **Del.C.** §632
- 17.1.57 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
- 17.1.68 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634
- 17.1.79 Murder in the second degree. 11 **Del.C.** §635
- 17.1.810 Murder in the first degree. 11 **Del.C.** §636
- 17.1.911 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
- 17.1.4012 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
- 17.1.4413 Rape in the fourth degree. 11 **Del.C.** §770
- 17.1.4214 Rape in the third degree. 11 **Del.C.** §771
- 17.1.4315 Rape in the second degree. 11 **Del.C.** §772
- 17.1.4416 Rape in the first degree. 11 **Del.C.** §773
- 17.1.4517 Sexual extortion. 11 **Del.C.** §776
- 17.1.18 Sex offender unlawful conduct against a child. 11 **Del.C.** §777A
- 17.1.19 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree. 11 **Del.C.** §778
- 17.1.20 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree. 11 **Del.C.** §778A
- 17.1.4621 Continuous sexual abuse of a child. 11 **Del.C.** §778
- 17.1.4722 Dangerous crimes against a child. 11 **Del.C.** §779
- 17.1.23 Unlawful imprisonment in the second degree. 11 **Del.C.** §781
- 17.1.24 Unlawful imprisonment in the first degree. 11 **Del.C.** §782
- 17.1.4825 Kidnapping in the second degree. 11 **Del.C.** §783
- 17.1.4926 Kidnapping in the first degree. 11 **Del.C.** §783A
- 17.1.2027 Arson in the second degree. 11 **Del.C.** §802
- 17.1.2428 Arson in the first degree. 11 **Del.C.** §803
- 17.1.2229 Criminal mischief. 11 **Del.C.** §811
- 17.1.30 Trespassing with intent to peer or peep into a window or door of another. 11 **Del.C.** §820
- 17.1.2331 Burglary in the third degree. 11 **Del.C.** §824
- 17.1.2432 Burglary in the second degree. 11 **Del.C.** §825
- 17.1.2533 Burglary in the first degree. 11 **Del.C.** §826
- 17.1.34 Home invasion. 11 **Del.C.** §826A

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- 17.1.~~26~~35 Robbery in the second degree. 11 **Del.C.** §831
  - 17.1.~~27~~36 Robbery in the first degree. 11 **Del.C.** §832
  - 17.1.~~37~~ Carjacking in the second degree. 11 **Del.C.** §835
  - 17.1.~~38~~ Carjacking in the first degree. 11 **Del.C.** §836
  - 17.1.~~39~~ Theft; lost or mislaid property; mistaken delivery (felony). 11 **Del.C.** §842
  - 17.1.~~40~~ Theft; false pretense (felony). 11 **Del.C.** §843
  - 17.1.~~28~~41 Theft of services. 11 **Del.C.** §845
  - 17.1.~~29~~42 Extortion. 11 **Del.C.** §846
  - 17.1.~~43~~ Theft of rented property (felony). 11 **Del.C.** §849
  - 17.1.~~44~~ Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices (felony). 11 **Del.C.** §850
  - 17.1.~~45~~ Receiving stolen property. 11 **Del.C.** §851
  - 17.1.~~30~~46 Identity theft. 11 **Del.C.** §854
  - 17.1.~~31~~47 Forgery. 11 **Del.C.** §861
  - 17.1.~~48~~ Falsifying business records. 11 **Del.C.** §872
  - 17.1.~~49~~ Tampering with public records in the second degree. 11 **Del.C.** §873
  - 17.1.~~50~~ Offering a false instrument for filing. 11 **Del.C.** §877
  - 17.1.~~51~~ Issuing a false certificate. 11 **Del.C.** §878
  - 17.1.~~32~~52 Unlawful use of credit card. 11 **Del.C.** §903
  - 17.1.~~53~~ Deceptive business practices. 11 **Del.C.** §906
  - 17.1.~~33~~54 Criminal impersonation of a police officer. 11 **Del.C.** §907B
  - 17.1.~~55~~ Securing execution of documents by deception. 11 **Del.C.** §909
  - 17.1.~~34~~56 Insurance fraud. 11 **Del.C.** §913
  - 17.1.~~34~~57 Home improvement fraud. 11 **Del.C.** §916
  - 17.1.~~36~~58 New home construction fraud. 11 **Del.C.** §917
  - 17.1.~~37~~59 Dealing in children. 11 **Del.C.** §1100
  - 17.1.~~60~~ Abandonment of child. 11 **Del.C.** §1101
  - 17.1.~~61~~ Endangering the welfare of a child. 11 **Del.C.** §1102
  - 17.1.~~62~~ Crime against a vulnerable adult. 11 **Del.C.** §1105
  - 17.1.~~63~~ Unlawfully dealing with a child. 11 **Del.C.** §1106
  - 17.1.~~64~~ Endangering children. 11 **Del.C.** §1107
  - 17.1.~~65~~ Possession of child pornography. 11 **Del.C.** §1111
  - 17.1.~~66~~ Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
  - 17.1.~~67~~ Sexual solicitation of a child. 11 **Del.C.** §1112A
  - 17.1.~~38~~68 Sexual exploitation of a child. 11 **Del.C.** §1108
  - 17.1.~~39~~69 Unlawful dealing in child pornography. 11 **Del.C.** §1109
  - 17.1.~~40~~70 Sexual solicitation of a child. 11 **Del.C.** §1112A
  - 17.1.~~41~~71 Perjury in the second degree. 11 **Del.C.** §1222
  - 17.1.~~42~~72 Perjury in the first degree. 11 **Del.C.** §1223
  - 17.1.~~73~~' Falsely reporting an incident. 11 **Del.C.** §1245
  - 17.1.~~74~~ Hate crimes. 11 **Del.C.** §1304
  - 17.1.~~43~~ Aggravated harassment. 11 **Del.C.** §1312
  - 17.1.~~75~~ Stalking. 11 **Del.C.** §1312
  - 17.1.~~76~~ Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338
  - 17.1.~~44~~77 Adulteration. 11 **Del.C.** §1339
  - 17.1.~~45~~78 Possession of a firearm during a felony. 11 **Del.C.** §1447

- 17.1.~~4679~~ Theft of a firearm. 11 **Del.C.** §1451  
 17.1.~~4780~~ Organized crime and racketeering. 11 **Del.C.** §1503  
 17.1.~~4881~~ Breaking and entering, etc. to place or remove equipment. 11 **Del.C.** §2410  
 17.1.~~4982~~ Unlicensed practice as an Electrician 24 **Del.C.** §§1407; 1422  
 17.2 Crimes substantially related to the work of an electrician shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

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

**1400 Board of Electrical Examiners**

## DIVISION OF PROFESSIONAL REGULATION

### 1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL

Statutory Authority: 24 Delaware Code, Section 1775(c) (24 **Del.C.** §1775(c))  
 24 **DE Admin. Code** 1770

#### PUBLIC NOTICE

### 1770 Respiratory Care Practice Advisory Council

Pursuant to 24 **Del.C.** §1775(c), the Respiratory Care Practice Advisory Council ("the Council") of the Board of Medical Licensure and Discipline has proposed revisions to Rule 10.0, pertaining to renewal of licenses. In particular, Rule 10.3 is amended to state that a license that has expired may be renewed within one year after the expiration date. Currently, Rule 10.0 provides for a three year period for late renewal. Further, the revisions to Rule 10.3.1 add the requirement that a license in expired status as of December 1, 2014 must be renewed no later than November 30, 2015.

A public hearing will be held on January 14, 2015 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Respiratory Care Practice Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be January 29, 2015, which is 15 days following the public hearing.

### 1770 Respiratory Care Practice Advisory Council *(Break in Continuity of Sections)*

#### 10.0 Renewal of Licenses

- 10.1 Each license shall be renewed biennially. The failure of the Council/Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Council's regulations and 24 **Del.C.** Ch. 17.
- 10.2 Renewal may be effected by:
- 10.2.1 filing a renewal application online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov);
  - 10.2.2 attesting on the renewal application to the completing of continuing education as required by Rule 8.0;
  - 10.2.3 payment of fees as determined by the Division of Professional Regulation.
- 10.3 Failure of a licensee to renew his/her license shall cause his/her license to expire.

- 10.3.1 ~~A license which has expired may, within a period of three years thereafter, be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware and by the applicant providing documentation establishing that he/she has completed 20 hours of continuing education during the two-year period preceding the application for reinstatement. A licensee whose license has expired may renew his/her license within one (1) year after the expiration date upon fulfilling the requirements in Rules 10.2.1 - 10.2.3 above, certifying that he/she has not practiced respiratory care in Delaware while his/her license has expired, and paying the renewal fee and a late fee as determined by the Division of Professional Regulation. All late renewals shall be audited for compliance with CE renewal requirements. Any licensee whose license is in an expired status as of December 1, 2014 must either renew his/her license no later than November 30, 2015 or fulfill the requirements in Rule 10.3.2 or 10.3.3, as applicable.~~
- 10.3.2 An applicant whose license has been expired for a period of three (3) or more years more than one (1) year and who has been actively engaged in the practice of respiratory care during the period of expiration in another jurisdiction shall be required to submit to the Council an application for reinstatement demonstrating proof of active practice, ~~satisfactory to the Council~~ consisting of a minimum of 500 hours over the one year preceding the date of application for reinstatement, on a Council approved form, and shall demonstrate proof of completion of 20 hours of continuing education during the two-year period preceding the application.
- 10.3.3 An applicant whose license has been expired for ~~three (3) or more years~~ more than one (1) year and who has not been actively engaged in the practice of respiratory care during the period of expiration shall be required to submit an application for reinstatement and shall be required to give evidence of satisfactory completion of an approved respiratory care examination within two (2) years prior to the application for reinstatement before licensure will be granted. In addition the applicant shall demonstrate completion of 20 hours of continuing education during the two-year period preceding the application.

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

**1770 Respiratory Care Practice Advisory Council**

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## DIVISION OF PROFESSIONAL REGULATION

### 1900 BOARD OF NURSING

Statutory Authority: 24 Delaware Code, Section 1904(c) (24 Del.C. §1904(c))  
24 DE Admin. Code 1900

#### PUBLIC NOTICE

#### 1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 Del.C. §1904(c), proposes to revise subsections 8.10.2.1, 9.2.1.1.1.4, and 10.4.2.17. The proposed change at 8.10.2.1 simply corrects a cross-reference error. The proposed change at 9.2.1.1.1.4 brings Delaware into line with other states in regard to CME contact hours such that a contact hour will equal a clock hour; and the proposed change at 10.4.2.17 allows the Board to discipline a nurse who possesses, obtains, supplies or administers an illegal drug.

The Board will hold a public hearing on the proposed regulation change on January 14, 2015 at 9:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 29, 2015 pursuant to 29 Del.C. §10118(a).



# PROPOSED REGULATIONS

## 1900 Board of Nursing (Break in Continuity of Sections)

### 8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Nurse in the State of Delaware

#### (Break in Continuity Within Section)

#### 8.10 Temporary Permit for Advanced Practice Nurse Licensure

#### (Break in Continuity Within Section)

8.10.2 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.54 and;

#### (Break in Continuity Within Section)

### 9.0 Rules and Regulations Pertaining to Mandatory Continuing Education

#### (Break in Continuity Within Section)

#### 9.2 Continuing Education Licensure Renewal Requirements

#### 9.2.1 Board Authority

9.2.1.1 The Board derives its authority under 24 Del.C. §1906(19), to create continuing education requirements as a prerequisite to obtaining a current license and to establish an audit system to assure compliance. This requirement is in addition to the practice requirement as stated in 6.6.

9.2.1.1.1 During each biennium, each Registered Nurse must earn 30 contact hours and each Licensed Practical Nurse must earn 24 hours, to be credited to that biennium. At least 3 of these contact hours must be in the area of substance abuse.

9.2.1.1.1.1 Units of measurement for continuing education shall be in increments of no less than 0.5 contact hours and be as follows:

9.2.1.1.1.1.1 60 Minutes = 1 Contact Hour

9.2.1.1.1.1.2 30 Minutes = .5 Contact Hour

9.2.1.1.1.1.3 1 Academic Semester Hour (Credit) = 5 Contact Hours

9.2.1.1.1.1.4 4 One C.M.E. = ~~4-2~~ 1.0 Contact Hours = 60 minutes

#### (Break in Continuity Within Section)

### 10.0 Disciplinary Proceedings

#### (Break in Continuity Within Section)

#### 10.4 Unprofessional Conduct Defined

#### (Break in Continuity Within Section)

10.4.2 Unprofessional conduct shall include but is not limited to the following:

#### (Break in Continuity Within Section)

10.4.2.17 Diverting, possessing, obtaining, supplying or administering illegal drugs or prescription drugs to any person, including self, except, in the case of prescription drugs, as directed by a person authorized by law to prescribe drugs.

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

**1900 Board of Nursing**

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## DIVISION OF PROFESSIONAL REGULATION

### 2600 EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 **Del.C.** §2604(a)(1))  
24 **DE Admin. Code** 2600

#### PUBLIC NOTICE

#### 2600 Examining Board of Physical Therapists and Athletic Trainers

Pursuant to 24 **Del.C.** §2604(a)(1), the Examining Board of Physical Therapists and Athletic Trainers ("the Board") has proposed revisions to its rules and regulations.

A public hearing will be held on January 27, 2015 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Sandra Wagner, the Board's administrative specialist at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be February 11, 2015, which is 15 days following the public hearing.

The Board's proposed amendments add a new Rule 14.0 pertaining to the practice of telehealth. This regulation sets forth standards and requirements in order to both permit this practice and protect the public.

Pursuant to review of the Board by the Joint Sunset Committee, the Board has proposed a new Rule 15.4 pertaining to the practice of dry needling. As the result of legislative changes to the Board's licensing law, dry needling is now part of the scope of practice for Physical Therapists. The new Rule 15.4 sets forth prerequisites which must be met before a Physical Therapist can perform dry needling on patients.

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

**2600 Examining Board of Physical Therapists and Athletic Trainers**

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## DIVISION OF PROFESSIONAL REGULATION

### 2600 REAL ESTATE COMMISSION

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))  
24 **DE Admin. Code** 2900

#### PUBLIC NOTICE

#### 2900 Real Estate Commission

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations. Section 2906(a)(1) gives the Commission the authority to "Formulate rules and regulations, with appropriate notice to those affected; Each rule or regulation shall implement or clarify a specific section of this chapter."

A public hearing will be held on January 15, 2015 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Sandra Wagner, administration specialist for the Commission, at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be January 30, 2015, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on February 12, 2015, at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed a new Rule 1.4.1 and revisions to Rule 8.0 which are designed to implement and clarify the auctioneer exemption set forth in 24 **Del.C.** §2901(e)(4). A new Rule 8.5.5.6 is added to provide advertising requirements for on-site unlicensed salespeople. Finally, Rule 13.0 is amended to clarify the continuing education pro-rata requirements.

## 2900 Real Estate Commission

### 1.0 Introduction

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

#### 1.4 Exemptions [24 **Del.C.** §2901(e)(4)]

1.4.1 Pursuant to 24 **Del.C.** §2901(e)(4), Auctioneers are exempt from the Commission's licensing law, as the term "Auctioneer" is defined in 30 **Del.C.** §2301(a)(3): "every person engaged in the business of crying sales of real or personal property on behalf of others for profit."

1.4.1.1 For the purpose of the Auctioneer exemption set forth in 24 **Del.C.** §2901(e)(4), the "business of crying sales of real or personal property" shall mean the public event or sale occurring on an advertised date, when an auctioneer engages in the act of crying or calling for, the recognition of, and the acceptance of bids where the sale price of the property offered is determined by the increasing of competitive bids until the highest accepted bidder becomes the purchaser. The exemption shall only apply to the day of the auction.

1.4.1.1.1 Rule 1.4.1.1 does not prohibit an Auctioneer from advertising the auction prior to the date of the event.

1.4.1.2 Notwithstanding the Auctioneer exemption set forth in 24 **Del.C.** §2901(e)(4), a Licensee acting or providing service under this exemption, may be subject to discipline for violation of 24 **Del.C.** §2912.

1.4.1.3 An Auctioneer actively engaged by written agreement with an owner of real property to sell real property at auction may enter into a written cooperation agreement with a licensed Broker to cooperate in selling the property pursuant to the terms of a written Listing Agreement between the Broker and the property owner. In the event the property is sold by the broker, either before or after the auction date, the Auctioneer may be paid compensation from the sale of the property according to the terms of the written cooperation agreement.

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

### 8.0 Business Relationships and Practices [24 **Del.C.** Chapter 29, Subchapter II]

#### 8.1 Written Listing Agreements [24 **Del.C.** §2930(a)]

8.1.1 Listing Agreements for the sale, lease or exchange of real property, whether exclusive or open, shall be in writing and shall be signed by the seller, owner, Broker or Broker's designee.

#### 8.2 Buyer Agency Agreements [24 **Del.C.** §2930(a)]

8.2.1 Exclusive buyer agency agreements, or buyer agency agreements that obligate the buyer to pay the Broker, shall be in writing and signed by the buyer.

#### 8.3 Cooperation agreements between Brokers and Auctioneers shall be in writing and signed by both parties.

#### 8.34 Copy of agreements

8.34.1 Every party to a listing agreement, agreement of sale, written buyer agency agreement, cooperation agreement between a Broker and Auctioneer or lease shall be furnished with an executed copy of such agreement or agreements. It shall be the responsibility of the Licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution.

#### 8.45 Advertising [24 **Del.C.** §§2906(a)(1), 2912(a)]

- 8.45.1 The purpose of the advertising rules is to protect the general public and to prohibit misrepresentation and false, misleading, untrue or deceptive advertising practices by Licensees.
- 8.45.2 "Advertise" or "advertising" shall mean a Licensee's use of Internet electronic communication, print, or other media, business cards, signs and billboards to publish information to promote a Real Estate Services provider or the sale or lease of real estate. Internet electronic communication shall include, but is not limited to, websites, social networks, e-mail, e-mail discussion groups and bulletin boards.
- 8.45.3 A Licensee who violates the advertising rules may be in violation of one or more of the provisions set forth in 24 **Del.C.** §2912(a) and subject to the disciplinary sanctions set forth in 24 **Del.C.** §2914.
- 8.45.4 A Licensee shall not knowingly use, publish or disseminate misrepresentations or any false, misleading, untrue or deceptive advertising in any manner.
- 8.45.5 Disclosure
- 8.45.5.1 Any Licensee who advertises real property personally owned or real property in which the Licensee has any ownership interest shall include in the advertisement that he or she is the owner of said property, and that he or she is a real estate licensee. This Rule does not apply to signs.
- 8.45.5.2 Any Licensee who advertises an offer to purchase real property shall include in the advertisement that he or she is a real estate Licensee.
- 8.45.5.3 Any Licensee who advertises any real property for sale, lease, exchange, or transfer that is listed with a Broker shall include in legible print in the advertisement the complete Brokerage Organization name that has been registered with the Commission, and Brokerage Organization phone number registered by the Broker with the Commission for that office location. Nothing contained herein shall preclude the listing of additional licensee names and/or team names or phone numbers. All such advertising shall also contain language or abbreviations that clearly identify each phone number listed; examples include, but are not limited to: "Office"; "Home"; "Res."; and "Cell".
- 8.45.5.4 All advertisements for personal promotion of Licensees shall include the complete Brokerage Organization name that has been registered with the Commission, and office phone number registered by the Broker with the Commission for that office location.
- 8.45.5.5 In the case of Internet electronic communication, the disclosures required in Rule 8.45.5.3 shall be included in every viewable page or message and may be made by link to a full disclosure. In addition, the disclosures shall include the city and state in which the Broker's main office is located and the Broker's jurisdiction of licensure.
- 8.5.5.6 A Licensee advertising for sale for an exempted party under 24 **Del.C.** §2901, where an unlicensed salesperson conducts on-site sales, shall disclose in any advertising that: "On-site unlicensed salespeople represent the seller only."
- 8.45.6 The publisher of advertising provided by a Licensee pursuant to agreement between the publisher and the licensee is not subject to discipline under these Rules.
- 8.56 Office Permits [24 **Del.C.** §2919]
- 8.56.1 For each office location, the Broker shall submit an application and applicable fee. The application shall include a telephone number, and, as applicable, a fax number, e-mail address and web address.
- 8.56.2 At each office location, the Broker shall place, in a conspicuous location, a permanent sign indicating the name under which the office is registered with the Commission.
- 8.56.3 Prior to commencing business, an office located in a private home shall be approved by the Commission and have a separate entrance.
- 8.56.4 Licensees may interact by electronic means with other licensees or members of the public from places other than an approved office location.
- 8.56.5 Brokerage Organizations may share facilities approved by the Commission with other businesses, such as insurance, banking, Auctioneers or others that the Commission shall deem compatible.

**8.67 Compensation and Inducements [24 Del.C. §2930]**

- 8.67.1 Licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to non-licensed persons, partnerships or corporations as inducements to do or secure business, or as a finder's fee, unless those fees are paid pursuant to a written cooperation or affiliation agreement signed by all parties as permitted under this Chapter.
- 8.67.2 This Rule does not prohibit a Licensee from giving a rebate or discount or any other thing of value directly to the purchaser or seller of real estate.
- 8.67.3 A Licensee has an affirmative obligation to make timely disclosure, in writing, to his or her principal of any rebate or discount that may be made to the other party.
- 8.67.4 Licensees shall not accept compensation from more than one party to a transaction, even if permitted by law, without timely disclosure to all parties to the transaction.
- 8.67.5 When acting as agent, a Licensee shall not accept any commission, rebate, or profit on expenditures made for his or her principal without the principal's knowledge and informed consent.
- 8.67.6 A Licensee may pay a referral fee to a person licensed as a real estate broker in another jurisdiction.
- 8.67.7 A licensed salesperson or broker from another jurisdiction may represent a client in a transaction involving a Delaware property if the licensee affiliates with a Delaware Licensee, provided that one of the following requirements is met:
- 8.67.7.1 For 1-4 family residential property, all of the showings and negotiations are performed by the Delaware Licensee, with the licensee from another jurisdiction participating in discussions with the client as the client requests, in writing, with terms of compensation, if any, in writing; or
- 8.67.7.2 For property that is not predominantly 1-4 family residential, the licensee from another jurisdiction affiliates with a Delaware Licensee and agrees, in writing, as to the responsibilities of each broker and agrees, in writing, as to the terms of compensation, if any.

***(Break in Continuity of Sections)*****13.0 Continuing Education [24 Del.C. §§2909(a)(7), 2910(d)]**

- 13.1 Effective as of the license renewal period beginning May 1, 2012, Licensees shall meet the following CE requirements:

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

- 13.1.2 New Salesperson Licensees, other than new Salesperson Licensees previously licensed in another state, shall complete the following twelve (12) hours of CE during the first twelve months of licensure. These twelve (12) hours of CE will be applied to the total amount of required CE hours pursuant to the pro-ration schedule in Rule 13.2:

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

- 13.2 CE hours shall be prorated in accordance with the following schedule:

- 13.2.1 For new Salesperson Licensees, other than new Salesperson Licensees previously licensed in another state:
- 13.2.1.1 No continuing education is required for fewer than six months of licensure.
- 13.2.1.2 Six (6) hours of continuing education are required after at least six months but less than twelve months of licensure. The required six hours shall consist of two different modules, as set forth in Rule 13.1.1.
- 13.2.1.3 The twelve (12) hours of continuing education set forth in Rule 13.1.2 are required after at least twelve months but less than eighteen months of licensure.
- 13.2.1.4 Eighteen (18) hours of continuing education are required after at least eighteen months but less than twenty-four months of licensure. The required eighteen hours shall include the twelve (12) hours of continuing education set forth in Rule 13.1.2 and two of the following modules: Modules 1, 5, or 6.

- 13.2.1.5 Twenty-one (21) hours of continuing education are required after twenty-four months of licensure, consisting of: the twelve (12) hours of CE set forth in Rule 13.1.2, three (3) hours in agency and fair housing (Module 1), three (3) hours in legislative issues (Module 5) and three (3) hours in practices of real estate (Module 6).
- 13.2.2 For all new Salesperson, Associate Broker and Broker Licensees, who were licensed through reciprocity:
- 13.2.2.1 No continuing education is required for fewer than six months of licensure.
- 13.2.2.2 Six (6) hours of continuing education are required after at least six months but less than twelve months of licensure. The required six hours shall consist of two different modules, as set forth in Rule 13.1.1.
- 13.2.2.3 Twelve (12) hours of continuing education are required after at least twelve months but less than eighteen months of licensure. The required twelve hours shall consist of four different modules, as set forth in Rule 13.1.1.
- 13.2.2.4 Eighteen (18) hours of continuing education are required after at least eighteen months but less than twenty-four months of licensure. The required eighteen hours shall consist of six different modules, as set forth in Rule 13.1.1.
- 13.2.2.5 Twenty-one (21) hours of continuing education are required after twenty-four months of licensure, as set forth in Rule 13.1.1.
- 13.2.23 For persons who have successfully completed the either the broker or salesperson pre-licensing course but who have not yet made application:
- 13.2.23.1 Twelve (12) hours of continuing education are required more than twelve months but less than eighteen months after course completion. The required twelve hours shall consist of four different modules, as set forth in Rule 13.1.1.
- 13.2.23.2 Twenty-one (21) hours of continuing education are required more than eighteen months but less than twenty-four months after course completion, in compliance with the requirements of Rule 13.1.1.
- 13.2.23.3 For more than ~~eighteen~~ twenty-four months after course completion, twenty-one (21) hours of CE are required for each biennial renewal period, in compliance with the requirements of Rule 13.1.1.

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

**2900 Real Estate Commission**

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## DIVISION OF PROFESSIONAL REGULATION

### 3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))  
24 **DE Admin. Code** 3000

#### PUBLIC NOTICE

### 3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to eliminate the need for inactive licensees to renew a license while inactive; set forth the specific requirements of direct supervision between LCDP supervisors and supervisees in order to be consistent with the other professions regulated by the Board; allow for direct supervision to take place by videoconferencing for LCDPs and LMFTs; and

provide more detailed information regarding the curriculum requirements of LMFT candidates.

The Board will hold a public hearing on the proposed rule change on January 28, 2015 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until February 12, 2015.

### **3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals** *(Break in Continuity of Sections)*

#### **2.0 Licensure for Professional Counselors of Mental Health (LPCMH)** *(Break in Continuity Within Section)*

##### 2.4 Inactive Status

2.4.1 A request must be submitted to have a license placed on inactive status. Inactive status is effective immediately upon Board approval. The inactive status may continue for five years from the date of Board approval. An inactive license shall terminate at the end of the five-year period unless the license is returned to active status before the end of the five-year period.

~~2.4.2 Extension—The Board shall extend the inactive status for an additional two-year licensure period upon timely written request. Inactive licenses expire at the end of the licensure period, so written requests for extension must be received well in advance of the end of the licensure period to avoid expiration.~~

2.4.3~~2~~ Return to Active Status – Before the end of the then current two-year licensure period, a license shall be returned to active status upon fulfillment of the following requirements by the licensee:

2.4.3~~2~~.1 Written Request – Submit a written request to have the license returned to active status.

2.4.3~~2~~.2 Certification – Provide proof of certification in good standing by NBCC, ACMHC, or another certifying organization acceptable to the Board pursuant to regulation 2.1.1.1.

2.4.3~~2~~.3 Continuing Education – Provide proof of completion of 40 hours of acceptable CE, obtained within the two (2) year period immediately preceding the request for return to active status.

2.4.3~~2~~.4 Fee – Pay the licensure renewal fee. No late fee shall be assessed for return to active status.

2.5 Ethics - The practice of all persons licensed as an LPCMH shall conform to the principles of the National Board for Certified Counselors' Code of Ethics (Code). Violation of the Code shall constitute grounds for discipline.

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

#### **4.0 Licensure for Chemical Dependency Professionals (LCDP)**

##### 4.1 Licensure by Certification Requirements

4.1.1 Education. The applicant's master's degree shall be documented by an official transcript submitted directly to the Board by the degree-granting institution.

4.1.2 Experience. Counseling experience shall be defined as the accumulation of 3,200 hours in no less than two years, providing chemical dependency services in a professional clinical setting, including face-to-face interaction with clients and other matters directly related to the treatment of clients. Supervision shall be verified by the "Supervision Reference Form," which shall be submitted directly to the Board by the approved clinical supervisor.

4.1.2.1 At least 1500 of the 1600 hours required to be supervised must be in the actual provision of face to face direct chemical dependency counseling services.

4.1.2.1.1 At least 750 of these 1500 hours must be individual face to face client sessions and must include the actual provision of direct chemical dependency counseling services.

4.1.2.1.2 The remaining 750 hours may be individual, group, couple, family counseling services, or some combination thereof.

4.1.2.1.3 At least 100 of these 1600 hours must be face to face professional direct supervision with the applicant's supervisor. Face to face supervision includes both in person and live video conferencing so long as supervision by live video conferencing does not exceed fifty percent (50%) of the total 100 hours of supervision.

4.1.2.1.3.1 Individual Direct Supervision. Individual supervision shall consist of one to one, face to face meetings between supervisor and supervisee. The entire 100 hour requirement may be fulfilled by individual supervision.

4.1.2.1.3.2 Group Supervision. Group supervision shall consist of face to face meetings between supervisor and no more than eight supervisees. No more than 40 hours of group supervision shall be acceptable towards fulfillment of the 100 hour direct supervision requirement.

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

## **5.0 License for Marriage and Family Therapists (LMFT)**

### **5.1 Licensure by Examination Requirements**

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

5.1.2 Experience. Applicants must provide documentation of completion of 3,200 hours of marriage and family therapy services, as defined in 24 **Del.C.** §3051(d), over a period of no less than two (2) but no more than four (4) consecutive years.

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

5.1.2.1.4 100 hours of face-to-face clinical supervision with the applicant's supervisor. Face to face supervision includes both in person and live video conferencing so long as supervision by live video conferencing does not exceed fifty percent (50%) of the total 100 hours of supervision.

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

## **6.0 Licensure for Associate Marriage and Family Therapists (LAMFT)**

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

6.2 Education. An applicant's education must be documented by an official transcript submitted directly to the Board by the degree-granting institution.

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

6.2.2 To be acceptable to the Board, a graduate degree under regulations 6.2.1.2 or 6.2.1.3 above must be based on at least 45 credit hours which must include the following:

6.2.2.1 ~~Three (3) credit hours in each of the 10 core content areas for a total of 30 credit hours. The 10 core content areas are:~~ Applicants who do not graduate from a COAMFTE Accredited MFT program should have coursework that matches the following coursework, content, and credit hours.

6.2.2.1.1 ~~Marriage and Family Therapy Models and Theories~~ Foundations of Relational/Systemic Practice, Theories & Models (Minimum of 6 semester credits/8 quarter credits/90 clock hours) These courses facilitate students developing competencies in the foundations and critical epistemological issues of MFTs. It includes the historical development of the relational/systemic perspective and contemporary conceptual foundations of MFTs, and early and contemporary models of MFT, including evidence-based practice and the biopsychosocial perspective.

6.2.2.1.2 ~~Diagnosis and Treatment of Mental and Emotional Disorder~~ Systemic/Relational Assessment & Mental Health Diagnosis and Treatment (Minimum of 3 Credits/4 quarter credits/45 clock hours) This course facilitates students developing competencies in traditional psycho-diagnostic categories, psychopharmacology, the



## PROPOSED REGULATIONS

- assessment, diagnosis, and treatment of major mental health issues as well as a wide variety of common presenting problems including addiction, suicide, trauma, abuse, intra-familial violence, and therapy for individuals, couples, and families managing acute chronic medical conditions, utilizing a relational/systemic philosophy.
- 6.2.2.1.3 Psychopathology Biopsychosocial Health & Development Across the Life Span (Minimum of 3 Credits/4 quarter credits/45 clock hours) This course addresses individual and family development, human sexuality, and biopsychosocial health across the lifespan.
- 6.2.2.1.4 Gender, Culture, and Ethnic Diversity in marriage and family therapy Diverse, Multicultural and/or Underserved Communities (Minimum of 3 Credits/4 quarter credits/45 clock hours) This course facilitates students developing competencies in understanding and applying knowledge of diversity, power, privilege and oppression as these relate to race, age, gender, ethnicity, sexual orientation, gender identity, socioeconomic status, disability, health status, religious, spiritual and/or beliefs, nation of origin or other relevant social categories throughout the curriculum. It includes practice with diverse, international, multicultural, marginalized, and/or underserved communities, including developing competencies in working with sexual and gender minorities and their families as well as anti-racist practices.
- 6.2.2.1.5 Sexual Issues In Marriage and Family Therapy Clinical Treatment with Individuals, Couples and Families (Minimum of 6 Credits/8 quarter credits/90 clock hours) These courses facilitates students developing competencies in treatment approaches specifically designed for use with a wide range of diverse individuals, couples, and families, including sex therapy, same-sex couples, working with young children, adolescents and elderly, interfaith couples, and includes a focus on evidence-based practice. Programs must include content on crisis intervention.
- 6.2.2.1.6 Family Therapy Theory & Techniques Professional Identity, Law, Ethics & Social Responsibility (Minimum of 3 Credits/4 quarter credits/45 clock hours) This course addresses the development of a MFT Identity and socialization, and facilitates students developing competencies in ethics in MFT practice, including understanding and applying the AAMFT Code of Ethics and understanding legal responsibilities.
- 6.2.2.1.7 Couple Therapy Theory and Techniques Research & Evaluation (Minimum of 3 Credits/4 quarter credits/45 clock hours) This course facilitates students developing competencies in MFT research and evaluation methods, and in evidence-based practice, including becoming an informed consumer of couple, marriage, and family therapy research. If the program's mission, goals, and outcomes include preparing students for doctoral degree programs, the program must include an increased emphasis on research.
- 6.2.2.1.8 Ethical, Legal and Professional Issues in marriage and family therapy Contemporary Issues (Must be covered in curriculum, but there is no minimum credit requirement). These courses facilitate students developing competencies in practice within defined contexts (e.g., healthcare settings, schools, military settings, private practice) and/or nontraditional MFT professional practice using therapeutic competencies congruent with the program's mission, goals, and outcomes (e.g., community advocacy, psycho-educational groups). It also addresses developing competency in multidisciplinary collaboration.
- 6.2.2.1.9 Research Methods and Evaluation Community Intersections & Collaboration (Must be covered in curriculum, but there is no minimum credit requirement). These courses area facilitate students developing competencies in emerging and evolving contemporary challenges, problems, and/or recent developments at the interface of Couple or Marriage and Family Therapy knowledge and practice, and the broader local, regional, and global context. This includes such issues as immigration, technology, same-sex marriage, violence in schools, etc.

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6.2.2.1.10 Clinical Supervised Experience in marriage and family therapy (minimum of 9 credit hours/12 quarter hours/105 clock hours)

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

**3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals**

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## DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 131, 146 and 508 (17 Del.C. §§131, 146 & 508)  
2 DE Admin. Code 2309

### PUBLIC NOTICE

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

#### Background

The Delaware Department of Transportation (DelDOT), through its Division of Planning, seeks to adopt significant general revisions to its existing regulations regarding subdivisions streets and state highway access, to broaden the title of the regulations to "Development Coordination Manual," among several other changes.

The current regulations were generally enacted in 2007, and were revised in partial form in 2010 and are being repealed in their entirety. The proposed regulations are a comprehensive re-write of the entire Section 2309 of Title 2 of the Delaware Administrative Code. The changes take into account the issues and concerns identified and addressed as needing amendment by not only DelDOT staff, but also the end users of the current regulations.

The draft regulations were published at 17 DE Reg. 1055 (05/01/14), and written comments were sought. In addition, DelDOT held three public hearings regarding the proposed regulations, the notice for which appeared in 17 DE Reg. 1204 (06/01/14). These hearings were conducted on June 9, June 16, and June 23, 2014, in Kent, Sussex, and New Castle Counties respectively.

Based on the comments received, as well as additional review and input within the Department, DelDOT is now seeking additional comments regarding substantive changes made in the draft regulations issued May 1, 2014. Therefore, the regulations are being re-proposed.

The Department is also publishing another version of the draft regulations at its own website, which will show the changes between the version first proposed in 17 DE Reg. 1055 and the current proposed revisions to that draft. This version can be seen at Suggested Changes to the Proposed Development Coordination Manual with full link text:

<http://www.deldot.gov/information/business/subdivisions/changes/index.shtml>

The Department will take comments on the Regulations through December 31, 2014. The public may submit their comments to Marc Côté, P.E., Assistant Director for Development Coordination, via email (Marc.Cote@state.de.us) or in writing to his attention, Division of Planning, DelDOT, P.O. Box 778, Dover, DE 19903.

**Please Note: Due to the size of the proposed regulation it is not being published here. The following links to the several parts of the proposed regulation are provided below:**

**2309 Standards and Regulations for Subdivision Streets and State Highway Access - Preface**

**2309 Standards and Regulations for Subdivision Streets and State Highway Access - Chapter 1 Access Standards**

**2309 Standards and Regulations for Subdivision Streets and State Highway Access - Chapter 2 Traffic Analysis and Improvements**

**2309 Standards and Regulations for Subdivision Streets and State Highway Access - Chapter 3 Record Plan Design**

**2309 Standards and Regulations for Subdivision Streets and State Highway Access - Chapter 4 Construction Plans**

**2309 Standards and Regulations for Subdivision Streets and State Highway Access - Chapter 5 Design Elements**

**2309 Standards and Regulations for Subdivision Streets and State Highway Access - Chapter 6 Construction Administration**

**2309 Standards and Regulations for Subdivision Streets and State Highway Access - Chapter 7 Residential Access**

**2309 Standards and Regulations for Subdivision Streets and State Highway Access - Chapter 8 Miscellaneous Access Guidelines**

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## DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 2 Delaware Code, Section 1309; 17 Delaware Code, Sections 132, 137 and 149; 29 Delaware Code, Section 8404  
(2 **Del.C.** §1309, 17 **Del.C.** §§132, 137 & 149; 29 **Del.C.** §8404)

### PUBLIC NOTICE

#### **2406 Policies and Procedures for Acquisition of Certain Real Property Interests**

##### **Background**

In 2011, the Delaware Department of Transportation sought to adopt regulations to ensure that its policies and procedures for the acquisition of real property are transparent, consistent, cost effective, and fair.

The Department has broad statutory authority to acquire property in connection with state highway projects. However, an “Advanced Acquisition Committee” must review certain acquisitions of real property. The Department adopted past policies governing such acquisitions; nonetheless, these existing policies only applied to purchases of “fee simple” interests, and did not expressly apply to reservation agreements. In addition, while the Committee has the statutory authority to determine whether certain acquisitions are consistent with state planning goals, it does not have the power to determine the merits of such transactions.

The 2011 regulations were intended to implement specific recommendations for advanced acquisitions set forth in the Report of the Governor’s Chief of Staff to Governor Markell dated January 7, 2011 (the “Report”). Specifically, the regulations would (1) require that the Committee review not only advanced acquisitions, but reservation agreements as well; (2) provide a process for the Committee to review the merits of reservation agreements; (3) require the Department to obtain independent appraisal for advanced acquisitions and reservations; (4) require that advanced acquisitions and reservations be reviewed by legal counsel; (5) require that the terms of advanced acquisitions and reservations be reflected in an agreement signed by the Department and the property owner; and (6) set out the process for the Committee to conduct its consistency review of certain real property acquisitions proposed by the Department, as contemplated by 17 **Del.C.** §137(a)(2).

These draft regulations appeared in the Delaware *Register of Regulations* on February 1, 2011, at 14 **DE Reg.** 800, and the written comment period ended March 5, 2011.

No comments were received.

Nonetheless, these regulations were not adopted. Instead, additional proposed regulatory changes were discussed with the Advanced Acquisition Committee during 2011, as well as among Department staff. No further

action toward adoption took place thereafter, however.

The Department has now determined to go forward with draft regulations regarding the Committee and its oversight of this aspect of the Department's responsibilities. The new draft regulations incorporate and amend the prior draft regulations published in 14 **DE Reg.** 800, taking into account changes in the Department's management structure since that time, and add new provisions to reflect past discussions among the Administration, the Department, and the Committee. Among other alterations, these revised proposed regulations deal with certain special property acquisitions that are not necessarily tied to a particular project location, as is usually the case for properties it acquires for most highway-related projects. This draft incorporates these additional provisions.

In addition, the Delaware Transportation Authority, established under 2 **Del.C.** Ch. 13 and 14, occasionally acquires certain other real property interests for certain transportation facilities, pursuant to 2 **Del.C.** §1309(5). The Department's Right-of-way Section conducts this acquisition work on behalf of the Authority. The Authority otherwise carries out its operational authorities through the use of certain corporate entities, such as the Delaware Transit Corporation, which acquires, owns, and operates transit maintenance facilities and other properties. Under §1309(5), the Authority may acquire these properties without approval from any other public body. However, with this draft the Department is considering the adoption of a review and comment procedure to be conducted by the Committee, for certain real property transactions conducted pursuant to the Authority's separate legal powers.

### **Public Comment Period**

The Department will take written comments on the proposed Regulations Establishing Policies and Procedures for Acquisition of Certain Real Property Interests from December 1, 2014 through December 31, 2014. The proposed Regulations appear below.

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

Robert Cunningham  
Chief of Right of Way  
Division of Transportation Solutions  
Delaware Department of Transportation  
P.O. Box 778  
Dover, DE 19903  
(302) 760-2303 (telephone)  
(302) 739-2895 (fax)  
[robert.cunningham3@state.de.us](mailto:robert.cunningham3@state.de.us)

## **2406 Policies and Procedures for Acquisition of Certain Real Property**

### **1.0 Purpose**

- 1.1 The Department of Transportation has broad statutory authority to acquire public or private property and property rights in connection with the Department's jurisdiction. Traditionally, the Department has acquired the necessary property rights upon final right-of-way plan approval for a project. In certain instances, the best interests of the state and individual property owners may be better served if such interests are either acquired or reserved by the Department prior to final right-of-way plan approval. The purpose of this regulation is to enumerate the specific policies and procedures governing the acquisition and reservation of certain real property by the Department, as contemplated by 17 **Del.C.** §137(a)(2).
- 1.2 In addition, the Department desires to have certain special property transactions reviewed and approved by the Committee established under §137(a)(2), that are not necessarily tied to a highway project location. Furthermore, certain other transportation facility acquisitions are carried out pursuant to 2 **Del.C.** §1309(5), which are not subject to approval by any other public body. Nonetheless, for these transactions, the Department believes it would be in the public interest to obtain a review and comment about the proposed acquisition from the Committee.

**2.0 Definitions**

**“Advanced acquisition”** means the acquisition by the Department of any interest in real property prior to final design approval of the project for which such interest real property is being acquired. For purposes of this regulation and the Department’s Real Estate Manual, “advanced acquisitions” shall include, without limitation, reservation agreements.

**“Advanced Acquisition Committee”** or **“Committee”** means the committee created pursuant to 17 **Del.C.** §137(a)(2) and comprised of the Secretary of the Department of Natural Resources and Environmental Control; the Secretary of the Department of Transportation, the Secretary of the Department of Agriculture; the Director of the Delaware Economic Development Office; the Governor’s Chief of Staff; a member of the Senate designated by the President Pro Tempore of the Senate; a member of the House of Representatives designated by the Speaker of the House of Representatives; a member of the public designated by the President Pro Tempore of the Senate; and a member of the public designated by the Speaker of the House of Representatives.

**“Consistency review”** shall mean the review by the Committee pursuant to 17 **Del.C.** §137(a)(2) of acquisitions for new corridors, expansion of existing corridors, the Department’s Corridor Capacity Preservation Program, or certain Special Property Acquisitions.

**“Corridor”** means a particular route of one or more highways of this State, serving predominantly statewide and/or regional travel needs. By way of example and not limitation, State Routes 1, 2, and 141, and U.S. Routes 13, 113, and 202 are corridors under this definition.

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

**“Expansion of existing corridors”** means the proposed construction of additional through lanes for a minimum of three miles, such as to significantly increase the traffic-carrying capacity of a corridor already in existence at the time of the proposed capital improvement. By way of example and not limitation, the dualization of U.S. Route 113 between Milford and Georgetown, and the State Route 1 Third Lane Project between Rehoboth Avenue Extended and the Five Points Intersection with U.S. Route 9, would have been considered expansions of existing corridors under this definition at the time of their planning and construction.

**“Hardship acquisition”** shall mean an advanced acquisition to resolve a specific hardship imposed upon the owner as a result of a project, including, without limitation, long term leases and reservations between an owner and the Department. Hardship acquisitions shall include situations in which an owner must relocate for personal reasons (e.g., job transfer, death in the family, retirement plans, or medical reasons) and is unable to sell his or her property as a result of a project.

**“New corridor”** means a proposed capital improvement for a corridor-level highway, all or substantially all of which is to be built on previously unused alignment. By way of example and not limitation, the tolled portion of State Route 1 through Kent and New Castle Counties would have been considered a new corridor under this definition, at the time of its planning and eventual construction.

**“Owner”** shall mean the owner of the real property interest which the Department seeks to acquire or reserve.

**“Preferred Alternative”** means the alternative that the Department believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors.

**“Project”** means an undertaking for a capital improvement by the Department for a new corridor, expansion of an existing corridor, acquisition of real property as part of the Corridor Capacity Preservation Program, or certain Special Property Acquisitions, and which uses state and/or federal funds.

**“Protective acquisition”** shall mean an advanced acquisition to allow the Department to protect from development real property within a project area, in instances where development would increase the eventual cost of property acquisition to taxpayers, or would limit location alternatives for the project. Protective acquisitions shall include, without limitation, long-term leases and reservations to allow the Department to protect from development real property within a project area.

“Real Property” means a fee simple interest in real estate for any such acquisition, and shall also include any lesser property interest proposed for acquisition under the Corridor Capacity Preservation Program (17 Del.C. §145).

“Reservation” means a commitment by the Department to compensate an owner of any interest in real property, in exchange for an agreement by the owner to refrain from further developing his or her property or designated portions thereof.

“Special Property Acquisitions” shall mean the acquisition of real property in fee simple or lesser interest for Department transportation projects that are not necessarily related to the highways and streets under its jurisdiction and control. By way of example and not limitation, these include a transit maintenance facility for the Delaware Transit Corporation, a park-and-ride lot for the convenience of commuters, or the acquisition of land to provide clear space for runway approaches for publicly-owned or public use airports. These acquisitions may be made pursuant to either 2 Del.C. §1309(5) or other legal authority, including but not limited to 17 Del.C. §137.

### **3.0 Hardship Acquisition**

- 3.1 Depending upon the availability of funding, the Department may consider requests by owners for hardship acquisitions.
- 3.2 Written Request - The owner of the real property must submit to the Department a written request for a hardship acquisition. A request for hardship acquisition of property shall be submitted to the:  
Delaware Department of Transportation  
Right-of-Way Section  
Chief of Right-of-Way  
P.O. Box 778  
Dover, DE 19903
- 3.3 Criteria. Upon receipt of a written request for a hardship acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria set forth herein. At minimum, the request must demonstrate to the Department’s satisfaction that:
- 3.3.1 The property has been marketed for at least six (6) months; and
- 3.3.2 The realtor, or owner in absence of a realtor, must certify and provide evidence that he or she is unable to sell the property at a reasonable price as a result of the proposed project; and
- 3.3.3 The owner must be able to document a compelling reason for his or her move from the property, e.g., job transfer, death in the family, retirement plans or for medical reasons.
- 3.4 If an owner demonstrates to the Department’s satisfaction that a hardship acquisition is appropriate, then such proposed acquisition shall be considered in accordance with the procedures set forth in Section 5.0.

### **4.0 Protective Acquisition**

- 4.1 Depending upon the availability of funding, the Department may consider requests for protective acquisitions.
- 4.2 Written Request - All requests for a protective acquisition must be in writing. A request for protective acquisition of property shall be submitted to the:  
Delaware Department of Transportation  
Right-of-Way Section  
Chief of Right-of-Way  
P.O. Box 778  
Dover, DE 19903
- 4.3 Criteria. Upon receipt of a written request for a protective acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria

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# PROPOSED REGULATIONS

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for a protective acquisition. At minimum, the request must demonstrate to the Department's satisfaction that:

- 4.3.1 Development would increase the ultimate cost of the acquisition to taxpayers; or
- 4.3.2 Development would limit location alternatives for a project.

## **5.0 Procedures for Review and Approval of Advanced Acquisitions**

- 5.1 For advanced acquisitions satisfying the criteria set forth in §§3.2 or 4.2, or for Special Property Acquisitions, as the case may be, the Department shall have an appraisal performed by its independent appraisers in accordance with the Department's Real Estate Manual.
- 5.2 Following receipt of the appraisal, the Department and its legal counsel shall discuss the potential terms of an agreement and the justifications therefor, including the nature of the interest to be acquired (i.e., acquisition, reservation, leasehold); the necessity of acquiring such interest and the existence of any alternative transactions; the fair market value of such interest; the amount of land required; the duration of the agreement; and such other factors as may be relevant. Following such discussion, counsel shall prepare a detailed term sheet reflecting the material terms of the proposed transaction.
- 5.3 The Department will present the term sheet to the Advanced Acquisition Committee at a scheduled meeting as soon as reasonably practicable. The Committee shall consider the terms of and rationale for the proposed transaction and may either approve, approve with conditions, or reject such transaction. If the Committee approves the proposed transaction or approves with conditions, the Department shall negotiate the final terms with the owner.
  - 5.3.1 For Special Property Acquisitions made under the authority of 2 Del.C. §1309(5), the Committee's review shall be considered an advisory opinion.
- 5.4 The material terms of all advanced acquisitions shall be reflected in an agreement prepared or reviewed by the Department's legal counsel and signed by the owner and an authorized representative of the Department.

## **6.0 Consistency Review of Certain DeIDOT Real Property Acquisitions**

- 6.1 The Committee shall conduct a consistency review for certain proposed real property acquisitions by the Department. These acquisitions consist of those real properties determined by the Department as necessary for its projects for new corridors, expansion of existing corridors, real property affected by the Corridor Capacity Preservation Program, and Special Property Acquisitions. This review shall be conducted under the following time frames:
  - 6.1.1 For the preferred alternative for existing corridors or the expansion of existing corridors: After the projects are approved by the Council on Transportation.
  - 6.1.2 For the Department's Corridor Capacity Preservation Program, and Special Property Acquisitions: Prior to any real property acquisitions.
- 6.2 The consistency review shall confirm that the Department's proposed real property acquisitions further the State's overall goals for land use planning, as expressed by project authorizations and appropriations adopted by the General Assembly.
- 6.3 At the scheduled meeting for the consistency review, the Department shall present to the Committee such evidence as it deems necessary to demonstrate that the proposed acquisitions are consistent with state planning goals. This evidence shall include:
  - 6.3.1 a detailed visual depiction of the proposed acquisitions;
  - 6.3.2 the relevant project pages from the Capital Improvement Program adopted by the Council on Transportation, pursuant to 29 Del.C. §§8409 and 8419;
  - 6.3.3 the relevant project authorizations as described in the relevant Bond and Capital Improvements Acts adopted by the General Assembly;
  - 6.3.4 where applicable, the Department's adopted Corridor Capacity Preservation plan for the corridor for which the proposed acquisition would be made, along with other evidence showing how the acquisition furthers the Department's goals under that Program;

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- 6.3.5 where applicable, the relevant project approvals obtained from the Federal Highway Administration;
  - 6.3.6 for Special Property Acquisitions, evidence showing how the proposed acquisition furthers the Department's goals for the particular project purpose, including a cost/benefit analysis and other relevant data;
  - 6.3.7 a description of the State's Strategies for Policies and Spending, and how the project fits with those strategies; and
  - 6.3.8 documentation of the State Planning Office's approval of the project.
  - 6.4 If the Committee determines that the proposed acquisition is consistent with state planning goals, it shall then notify the Department in writing.
    - 6.4.1 For Special Property Acquisitions made under the authority of 2 Del.C. §1309(5), the Committee's determination shall be considered an advisory opinion.
  - 6.5 If the Committee determines that the proposed acquisition is not consistent with state planning goals, it shall then notify the Department in writing, with an explanation of the basis for the Committee's determination.
    - 6.5.1 For Special Property Acquisitions made under the authority of 2 Del.C. §1309(5), the Committee's determination shall be considered an advisory opinion.



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**Symbol Key**

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

**Final Regulations**

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

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

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**CASH MANAGEMENT POLICY BOARD**

Statutory Authority: 29 Delaware Code, Section 2716 (29 **Del.C.** §2716)

**ORDER****Objectives and Guidelines for the Investment of State of Delaware Funds****Summary of the Evidence and Information Submitted**

The Cash Management Policy Board (the "Board") published Proposed Regulations on Objectives and Guidelines for the Investment of State of Delaware Funds in the October 1, 2014 edition of the Delaware *Register of Regulations*. Publication in the Delaware *Register of Regulations* also signified the start of a 30-day public comment period that began on the same date and ended on October 30, 2014.

**Comments**

After the public outreach the Board did not receive any comments relating to the Regulations.

**Findings of Fact**

1. The public was given notice and an opportunity to provide written comments and testimony on the proposed regulations.
2. The Board finds that the proposed regulations are necessary and in the public interest.
3. Pursuant to 29 **Del.C.** §2716, the Board has statutory authority to promulgate regulations governing the investment of certain funds belonging to, or in the custody of, the State.
4. The Board intends to propose separate regulations for funds previously referred to as "endowment accounts," so all references to those accounts have been stricken from this regulation and certain provisions have been renumbered accordingly.

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## Order and Effective Date

**NOW THEREFORE**, it is ordered that the proposed regulations, as set forth in the attached copy, are adopted and shall be final effective ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

**IT IS SO ORDERED** the 15<sup>th</sup> day of November, 2014.

### CASH MANAGEMENT POLICY BOARD

John V. Flynn, Jr.  
Chairman

Approved this 15<sup>th</sup> day of November, 2014.

### Objectives and Guidelines for the Investment of State of Delaware Funds

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

#### **4.0 Investment Objectives and Maturity Restrictions**

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

**4.2** The objectives and maturity restrictions for each of the investable account types are outlined below.

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

#### **4.2.4** Reserve Cash (Intermediate) Account

**4.2.4.1** Investment Objectives: The Reserve Cash Account has been established to provide funding over an intermediate horizon. The primary investment objectives, therefore, are to maximize yield and maintain safety of principal during the investment period.

**4.2.4.2** Maturity Restrictions: The maximum maturity for any investment at the time of purchase shall be ten years. The maximum average maturity of the portfolio shall be seven years.

#### **[4.2.5 Endowment Accounts**

**4.2.5.1** ~~Investment Objectives: Endowment accounts are established to provide a long-term funding source. The primary investment objectives are to maximize yield and maintain safety of principal.~~

**4.2.5.2** ~~Maturity Restrictions: The maximum maturity for any investment at the time of purchase shall be ten years. The maximum average maturity of the portfolio shall be seven years. The Board shall consider tailoring maturity restrictions to meet specific purposes for endowment accounts to be established in the future.~~

#### **4.2.[65]** Authority Operating, Bond and Debt Service Reserve Fund Accounts

**4.2.[65].1** Investment Objectives: State Authorities maintain various operating, bond and debt reserve funds, the investment of which is governed by statutes, bond trust agreements or Federal guidelines. The investment objectives of the operating, bond and debt service reserve funds include maximizing yield and maintaining the safety of principal. (Current tax law requires that aggregate earnings in excess of the bond yield on bond and debt service reserve funds, however, must be rebated to the Federal government).

**4.2.[65].2** Maturity Restrictions: The maximum maturity for any investment at the time of purchase shall be ten years, except when prudent to match a specific investment instrument with a known specific future liability, in which case the maturity limitation shall match the maturity of the corresponding liability.

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

#### **6.0** Permissible Investments

The following investments are permissible for all funds under the review of the Cash Management Policy

Board, subject to the percentage limitations summarized in Section 8.0 hereof.

**(Break in Continuity Within Section)**

- 6.10 Mortgage-Backed Securities. The Cash Reserve (Intermediate) Account~~[Endowment Account]~~ and Liquidity Account may invest in AAA-rated Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Association (FHLMC) mortgage-backed securities in the form of pass-throughs. The average life of these securities in the Liquidity Account is not to exceed two years.
- 6.11 Asset Backed Securities. These investments include auto loan receivables, credit card receivables, home equity loans, and manufactured housing loans. These can be fixed or floating rate and purchased tranches must be rated AAA by a major rating agency. The average life of these securities must not to exceed two years.
- 6.12 Municipal Obligations. Taxable and tax-exempt securities issued by state and local governments and public authorities in the U.S. These investments are permissible only for the Cash Reserve (Intermediate) Account ~~[and the Endowment Account]~~.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 257 (18 DE Reg. 257). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**Objectives and Guidelines for the Investment of State of Delaware Funds**

## DELAWARE ECONOMIC DEVELOPMENT OFFICE

### OFFICE OF THE DIRECTOR

Statutory Authority: 29 Delaware Code, Section 5005(11) (29 Del.C. §5005(11))

#### ORDER

#### **Guidelines Governing the Administration of the Neighborhood Building Blocks Fund**

Pursuant to 29 Del.C. §10113(b)(5) and the authority granted to the Director of the Delaware Economic Development Office ("DEDO") by 29 Del.C. §5005(11), and in accordance with the Allocation Plan and §39 of the FY2015 Budget Act (79 Del. Laws, c. 290), the Neighborhood Building Blocks Fund Board ("Board") adopts the attached Guidelines published in the October edition of the Delaware *Register of Regulations*.

#### SUMMARY OF THE EVIDENCE

1. On November 19, 2013, the Delaware Department of Justice ("DOJ"), together with the United States and five other attorneys general, entered into a Settlement Agreement with JP Morgan Chase & Co. resolving certain claims related to the securitization of residential mortgage loans (the "Settlement"). Under the Settlement Agreement, the settlement funds received by the State of Delaware in connection therewith must be used to remediate harms to the State resulting from the conduct giving rise to the Settlement.

2. The Delaware General Assembly has approved the use of the Settlement Funds in accordance with § 39 of the FY2015 Budget Act (79 Del. Laws, c. 290) and that certain Allocation Plan approved by the Joint Finance Committee. The Allocation Plan provides that \$1,000,000 of the Settlement Funds (the "Initial Allocation") shall be used to create the Neighborhood Building Blocks Fund ("Fund") within DEDO to "support neighborhood revitalization programs, neighborhood associations and other community groups, law enforcement, [and] local governments, including grants to or other stakeholders for community development, public protection, urban beautification, or any other purposes that have the effect of reducing crime or otherwise strengthen neighborhoods."

3. To the extent that additional monies are added to the Fund from any source, these Guidelines shall govern the process of applying for grants of such funds, except as otherwise set forth herein or unless otherwise determined by the Board.

4. The Board held a public meeting on September 15, 2014, duly noticed in accordance with 29 **Del.C.** ch. 100, and enacted the Guidelines.
5. The purpose of these Guidelines is to establish (a) procedures governing the administration of the Fund by the Board; (b) the process for applying to the Board for Grants or other assistance; (c) pre-approval and post-approval procedures in connection with the issuance of Grants or other assistance; and (d) criteria for the Board's approval or disapproval of an application for Grants or other assistance under the Fund.
6. The Guidelines were published in the *Register of Regulations* on October 1, 2014. Following publication a period of thirty (30) days was held open for written comment from the public.
7. No written comments were received by the Board during the public comment period.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The public was given notice and an opportunity to provide the Board with comments in writing on the proposed Guidelines.
2. There were no public comments provided to the Board during the public comment period.
3. The purpose of the Neighborhood Building Blocks Fund is to support neighborhood revitalization programs, neighborhood associations and other community groups, law enforcement and local governments, including grants to or other stakeholders for community development, public protection, urban beautification, or any other purposes. The programs supported by the Board will have the effect of reducing crime or otherwise strengthening neighborhoods.
4. The proposed Guidelines establish a procedure to efficiently administer applications while providing for diversity of community input and effective use of resources to enhance neighborhoods and reduce crime.
5. These Guidelines are promulgated under the authority granted to the Director of DEDO by 29 **Del.C.** §5005(11), and in accordance with the Allocation Plan and § 39 of the FY2015 Budget Act (79 **Del. Laws**, c. 290) and the Delaware Administrative Procedures Act, 29 **Del.C.** §10113(b)(5).

## DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations as appeared in the Delaware *Register of Regulations* is attached to this order. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* on December 1, 2014.

**IT IS SO ORDERED** this 3<sup>rd</sup> day of November, 2014 by the Neighborhood Building Blocks Fund Board.

Anas Ben Addi  
Constance C. Holland  
Kathleen Jennings  
Alan Levine

Matthew Lintner  
Timothy Mullaney  
Fred C. Sears

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 273 (18 DE Reg. 273). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Guidelines Governing the Administration of the Neighborhood Building Blocks Fund**

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# FINAL REGULATIONS

## DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)  
3 DE Admin. Code 501

### ORDER

#### 501 Harness Racing Rules and Regulations

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on March 11, 2014, and again on September 9, 2014, the Commission makes the following findings and conclusions:

#### SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 6.1.2.2, Section 7 including Rules 7.3.5, 7.6.13.14.1.1, 7.6.13.14.1.1.1, 7.6.13.14.1.3, 7.6.13.14.1.4 and 7.6.13.14.2.6 in the February 1, 2014 *Register of Regulations* (Volume 17, Issue 8) and for two consecutive weeks in February in *The News Journal* and *Delaware State News 2/9/14 & 2/23/14*. The Commission proposed to update DHRC Rule 6.1.2.2, Section 7 including Rules 7.3.5, 7.6.13.14.1.1, 7.6.13.14.1.1.1, 7.6.13.14.1.3, 7.6.13.14.1.4 and 7.6.13.14.2.6 after Rules Committee review.

2. The Commission posted public notice of the proposed amendments to DHRC Rule 7.1.3.4 in the July 1, 2014 *Register of Regulations* (Volume 18, Issue 1) and for two consecutive weeks in June & July in *The News Journal* and *Delaware State News 6/29/14 & 7/6/14*. The Commission proposed to update Rule 7.1.3.4 after Rules Committee review.

3. The Commission received no written comments. The Commission held public hearings on March 11, 2014 and September 9, 2014 in which no public comments were made.

#### FINDINGS OF FACT AND CONCLUSIONS

4. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

5. After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

6. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on December 1, 2014.

**IT IS SO ORDERED** this 9<sup>th</sup> day of September 2014.

Beverly H. (Beth) Steele, Chairwoman

Jack Berberian, Commissioner

Stephanie Liguori, Commissioner

George P. Staats, Commissioner

Patt Wagner, Vice Chairman

#### 7.0 Rules of the Race

*(Break in Continuity Within Section)*

7.6 Racing Rules

*(Break in Continuity Within Section)*

7.6.13 Conduct of the Race

*(Break in Continuity Within Section)*

7.6.13.14 Impelling of a Horse

*(Break in Continuity Within Section)*

7.6.13.14.1.3 From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes, ~~Once the lead horse is at the 7/8th pole, these restrictions do not apply.~~ **[but must pause after each strike (NO REPETITIVE WHIPPING).]**

7.6.13.14.1.4 Once the lead horse has reached the 7/8 mile pole, the driver may, in a one handed motion, strike the shaft of the sulky or the saddlepad in a reasonable and responsible manner, [(approximately 6 strikes) but must pause after 2 strikes (NO REPETITIVE WHIPPING FOR MORE THAN 2 STRIKES)].

\*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2014 issue of the *Register* at page 810 (17 DE Reg. 810) and the July 2014 issue of the *Register* at page 6 (18 DE Reg. 6). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**501 Harness Racing Rules and Regulations**

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 1303(a) (18 **Del.C.** §§311 and 1303(a))  
18 **DE Admin. Code** 403

ORDER: Docket No. 2413

### **403 Sale and Purchase of Options [Formerly Regulation 28]**

Proposed amended Regulation 403 relating to Sale and Purchase Options [Formerly Regulation 28] was published in the Delaware *Register of Regulations* on October 1, 2014. The comment period remained open until October 31, 2014. There was no public hearing on proposed amended Regulation 403. Public notice of the proposed amended Regulation 403 in the *Register of Regulations* was in conformity with Delaware law.

### **SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Comments were not received on the proposed amended Regulation 403.

With no comments received and no additional amendments being suggested, no changes were made to the proposed amended Regulation 403.

### **FINDINGS OF FACT**

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 **Del.C.** §§311 and 1303(a) of the Insurance Code requires a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.

2. The requirements of proposed amended Regulation 403 best serve the interests of the public and of insurers and comply with Delaware law.

### **DECISION AND EFFECTIVE DATE**

Based on the provisions of 18 **Del.C.** §§311 and 1303(a), and of 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 403 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

## TEXT AND CITATION

The text of proposed amended Regulation 403 last appeared in the *Register of Regulations* Vol. 18, Issue 4, pages 283-285.

**IT IS SO ORDERED** this 14th day of November, 2014.

Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 283 (18 DE Reg. 283). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**403 Sale and Purchase of Options [Formerly Regulation 28]**

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DIVISION OF STATE POLICE**

**1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES**  
Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304)  
**24 DE Admin. Code 1300**

**ORDER**

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

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

- 4.0 – Training Requirements
- 6.0 – Criminal Offenses
- 10.0 – Uniforms, Patches, Badges, Seals, Vehicular Markings

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 these amendments to:
  - make the instructor training sessions and subsequent test mandatory for all 16 hour instructors;
  - allow the Professional Licensing Section the ability to deny an applicant, and
  - clean up the verbiage (of Section 10.0)

**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:
  - make the instructor training sessions and subsequent test mandatory for all 16 hour instructors;
  - allow the Professional Licensing Section the ability to deny an applicant, and
  - clean up the verbiage (of Section 10.0)
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that these amendments are well written and describe its intent to adopt the rule to make



the instructor training sessions and subsequent test mandatory for all 16 hour instructors, allow the Professional Licensing Section the ability to deny an applicant, and clean up the verbiage (of Section 10.0).

## Conclusion

7. The proposed rule adoptions were published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §1304 et seq. and, in particular, 24 **Del.C.** §1304(b)(3).

8. The Board deems these adoptions necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §1304 et. seq.

9. The Board concludes that the adoption of these rules will be in the best interest of the citizens of the State of Delaware.

10. The Board therefore adopts these amendments pursuant to 24 **Del.C.** §1304(b)(3) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. These adopted rules replace in their entirety any former rules or regulations heretofore promulgated by the Board.

12. The effective date of this Order shall be December 11, 2014.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 30<sup>th</sup> day of October, 2014.

**IT IS SO ORDERED** by the **Board of Examiners of Private Investigators and Private Security Agencies**

Lt. Colonel Monroe B. Hudson, Jr., Chairman

Timothy P. Mullaney, Sr., Esquire

William G. Bush, IV, Esquire

Mrs. Heather M. Shupe

Mr. Michael D. Connelly

Mrs. Sandra C. Taylor

Ms. Kelly R. Jansen

Mr. Harvey A. Woods, III

Mr. Wayne A. Keller

October 30, 2014

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the Register at page 211 (18 DE Reg. 211). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

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## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

#### EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 **Del.C.** §2604(a)(1))

24 **DE Admin. Code** 2600

## ORDER

### 2600 Examining Board of Physical Therapists and Athletic Trainers

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 28, 2014 at a scheduled meeting of the Delaware Examining Board of Physical Therapists and Athletic Trainers ("the Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

The Board's proposed amendments serve to clarify rules pertaining to home health aides, supervision, and the practice of athletic training. Proof of current CPR certification is added to licensure requirements. Rules relating to licensure reactivation and reinstatement are revised for consistency. Rule 12.24 is added to specifically prohibit licensee involvement in kickbacks. Finally, a new Rule 15.0 is added to set forth advanced training requirements for the emergency administration of asthma and anaphylaxes medications and for physical therapy and athletic training care provided outside the clinical setting to athletic injuries.

A public hearing was held on October 28, 2014, with deliberations conducted on November 18, 2014. The



proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 18, Issue 4, on October 1, 2014. Notice of the October 28, 2014 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 November 12, 2014, 15 days following the public hearing. The Board deliberated on the proposed revisions at a scheduled meeting on November 18, 2014.

### **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.

Board Exhibit 3: Written comment from Marybeth Glasheen-Wray concerning proposed Rule 6.4.

Board Exhibit 4: Written comment from Board Chairperson Julie Knowles concerning proposed Rule 6.4.

### **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. Further, the Administrative Procedure Act, 29 **Del.C.** §10118(c), provides that the Board can make non-substantive changes to the proposed rules and regulations, without further rule-making, if such changes are not substantive.

The Board finds that the rules and regulations, as published, include a number of drafting errors in that certain language was inadvertently included and other language was excluded. The Board finds these changes to be non-substantive. Specifically, the Board strikes the last sentence of proposed Rule 5.3.2 and the term "athletic training," pertaining to ethics education, is added to Rules 8.3 and 9.3. Rule 13.2.5.5 is revised in terms of organization of the language. These minor revisions are non-substantive but are needed in the interests of clarity and consistency.

With respect to Exhibits 3 and 4, written comment from Marybeth Glasheen-Wray and Julie Knowles concerning proposed Rule 6.4, the Board finds that the proposed Rule 6.4 accurately captures the permissible scope of practice for physical therapists and should be accepted as proposed.

In short, the Board finds that the adoption of the proposed rules and regulations, as amended, serves to provide greater public protection and advance professional practice standards and are in the best interest of the public.

### **Decision and Effective Date**

The Board hereby adopts the proposed amendments to the rules and regulations, with the non-substantive revisions noted in bold print, 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 is set forth in Exhibit A, attached hereto.

**IT IS SO ORDERED** this 18<sup>th</sup> day of November, 2014 by the Delaware Examining Board of Physical Therapists and Athletic Trainers.

Julie Knowles, Professional Member, Chairperson  
Samuel Sullivan, Professional Member, Secretary  
Amy Blansfield, Professional Member  
Angela Smith, Professional Member  
Tyler Luff, Public Member

Jeffrey Schneider, Professional Member, Vice-Chairperson  
Wayne Woodzell, Professional Member  
Damien McGovern, Professional Member  
Waheedah Shabazz, Public Member

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## 2600 Examining Board of Physical Therapists and Athletic Trainers (Break in Continuity of Sections)

### 5.0 Athletic Trainers (24 Del.C. §§2602(2) and (3))

*(Break in Continuity Within Section)*

#### 5.3 Exceptions:

*(Break in Continuity Within Section)*

5.3.2 Nothing in this regulation shall limit an Athletic Trainer's ability to provide care that the general population is permitted to perform as long as the Athletic Trainer does not represent himself or herself as an Athletic Trainer during the performance of such care, and if working in a physician's office or as a physician extender, only provides assistance to the physician during regular physician office visits where the patient is provided direct on-site care by the physician and the visit is not for rehabilitation purposes. ~~[For the purpose of this regulation, a physician extender is a health care provider who is not a physician but who performs medical activities typically performed by a physician.]~~

*(Break in Continuity of Sections)*

### 8.0 Admission to Practice, Licensure by Reciprocity (24 Del.C. §2610)

*(Break in Continuity Within Section)*

8.3 All reciprocity applicants shall show proof of completion of a minimum two hours ethics class related to the practice of physical therapy [and/or athletic training] and proof of current CPR certification by the American Red Cross, American Heart Association, National Safety Council or other agency approved by the Board and posted on the Division of Professional Regulation's website.

8.4 All reciprocity applicants shall show proof of completion of a criminal background check, pursuant to application instructions.

### 9.0 Foreign Trained Applicant for Licensure (24 Del.C. §2606(b))

*(Break in Continuity Within Section)*

9.3 The applicant shall show proof of completion of a minimum two hours ethics class related to the practice of physical therapy [and/or athletic training] and proof of current CPR certification by the American Red Cross, American Heart Association, National Safety Council or other agency approved by the Board and posted on the Division of Professional Regulation's website.

*(Break in Continuity of Sections)*

### 13.0 Mandatory Continuing Education Units (CEU's) (24 Del.C. §2607(a))

*(Break in Continuity Within Section)*

13.2 Each course must include topics relevant to the field of health care as it pertains to Physical Therapy or Athletic Training. Approval of CEU's shall be within the discretion of the Board.

*(Break in Continuity Within Section)*

13.2.5 The following are examples of acceptable continuing education which the Board may approve. The Board will determine the appropriate number of contact hours for these categories of continuing education, subject to any limitation shown below.

*(Break in Continuity Within Section)*

13.2.5.5 approved self studies including: online courses that demonstrate time requirements and are related to physical therapy or athletic training [if there is a sponsoring agency and the sponsoring agency provides a certificate of completion.]

~~videotapes, if:~~

~~there is a sponsoring agency~~

~~there is a facilitator or program official present~~

~~the program official is not the only attendee  
correspondence course, if a sponsoring agency provides a certificate of completion~~

\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 290 (18 DE Reg. 290). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**2600 Examining Board of Physical Therapists and Athletic Trainers**

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**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Sections 121(b), 2112, 2210(e), and 2906(e);  
(5 Del.C. §§121(b), 2112, 2210(e), and 2906(e))  
5 DE Admin. Code 2101, 2102, 2104, 2201, 2202, 2701, 2901 and 2902

**ORDER**

**2101 Operating Regulation**  
**2102 Minimum Records**  
**2104 Minimum Disclosure and Agreement Requirements**  
**2201 Operating Regulation**  
**2202 Minimum Records**  
**2701 Operating Regulation**  
**2901 Operating Regulation**  
**2902 Minimum Records**

IT IS HEREBY ORDERED, this 12<sup>th</sup> day of November, 2014, that amended Regulations 2101, 2102, 2104, 2201, 2202, 2701, 2901, and 2902 are adopted as Regulations of the State Bank Commissioner. These amended Regulations were published in the October 1, 2014 edition of the Delaware *Register of Regulations* and are incorporated herein by reference. The effective date of each of these Regulations is December 11, 2014. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amended Regulations and their text was published in the October 1, 2014 issue of the Delaware *Register of Regulations*. The Notice also was mailed to all persons who had made a timely written request to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended Regulations and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before November 3, 2014. The Notice further stated that the proposed amended Regulations were available for inspection during regular business hours at the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and that copies were available upon request.

2. The Consumer Credit Industry Association sent a letter supporting the proposed amendment to Regulation 2201. No other written comments concerning the proposed amended Regulations were received on or before November 3, 2014.

3. After review and consideration, the State Bank Commissioner hereby adopts amended Regulations 2101, 2102, 2104, 2201, 2202, 2701, 2901, and 2902 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 2014 issue of the *Register* at page 295 (18 DE Reg. 295). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Regulations 2101, 2102, 2104, 2201, 2202, 2701, 2901 and 2902**

**CASH MANAGEMENT POLICY BOARD****PUBLIC NOTICE****Objectives and Guidelines for the Investment of State of Delaware Funds Designated as the Delaware Land and Water Conservation Trust Fund**

In accordance with procedures set forth in 29 **Del.C.**, Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Cash Management Policy Board of the State of Delaware is proposing to adopt a regulation on objectives and guidelines for the investment of State funds designated as the Delaware Land and Water Conservation Trust Fund as described in 29 **Del.C.** §2716. The proposed regulation sets forth the rules governing practices for those investments.

Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Ms. Angela Moffett-Batty, Secretary, Delaware Department of Finance, Carvel State Building, 820 North French Street, Wilmington, Delaware 19899-8763, phone (302) 577-8522, or facsimile at (302) 577-8565. Members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Moffett-Batty at the address of the Delaware Department of Finance as set forth above. Written comments must be received on or before December 31, 2014.

**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing on Tuesday, December 9, 2014 beginning at 1:30 p.m. A business meeting will be held on the following day, Wednesday, December 10, 2014 beginning at 12:15 p.m. The hearing 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](http://www.drbc.net) or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

**DEPARTMENT OF AGRICULTURE****HARNESS RACING COMMISSION****PUBLIC NOTICE****501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §501, proposes to amend its rules and regulations. The proposed regulation changes address the practice of using an authorized agent, reference 5.3.3.25, 5.4, and 1.0 Definitions.

The DHRC Rules Committee originally voted to approve this rule amendment on September 30, 2014, and then the Delaware Harness Racing Commission (DHRC) subsequently voted to approve the proposed amendment at its October 16, 2014 monthly meeting. Both those meetings are noticed public meetings. Subsequent to this public notice in the *Register of Regulations*, the DHRC will leave the public comment period open until January 13, 2015 when the DHRC will hold its regularly scheduled monthly meeting. The DHRC January 2015 monthly meeting is public and is noticed on the state meeting notice website. Those meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB January 12, 2015. Those comments should be sent to the same address listed above for meeting location, attention Mark Davis.

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

The State Board of Education will hold its monthly meeting on Thursday, December 18, 2014 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**CALENDAR OF EVENTS/HEARING NOTICES**

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Title XIX Medicaid State Plan, Methods and Standards for Establishing Payment Rates - Primary Care Service Payment**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Methods and Standards for Establishing Payment Rates, specifically, *Primary Care Service Payment*.

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 and Quality 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, 2014.

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Title XIX Medicaid State Plan, State Plan Rehabilitative Services - Coverage and Reimbursement for Community Support Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding State Plan Rehabilitative Services specifically, *Coverage and Reimbursement for Community Support Services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy Development and Quality 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, 2014.

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

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF ENERGY AND CLIMATE****PUBLIC NOTICE****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, 2014.

Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto: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 7, 2015 beginning at 6:00 p.m. in the Public Service Commission Hearing Room, Cannon Building, 861 Silver Lake Blvd., Dover, DE, 19904.

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DIVISION OF STATE POLICE**

**1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES**  
**PUBLIC NOTICE**

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 13.0 – Agency Licensing Fees/Structure – removing the requirement of the Delaware manager bond and all other bonds will be a minimum of one year. 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, 2014, 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**  
**101 Rules for Early Care and Education and School-Age Centers**

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Regulations for Early Care and Education and School-Age Centers. A comprehensive review process was held in which all providers were asked to participate as part of the public hearing process for Executive Order 36 and a preliminary draft was created. The preliminary draft was posted on the OCCL website and comments were invited and received. Additional public comments were received from the Provider Advisory Board, from providers and stakeholders during a series of Task Force meetings, as well as written comments from other providers and stakeholders.

The proposed changes provide clarity, reflect changes in laws, align with current best practices, improve standards of care, and remove duplicative regulations. The revisions represent a consensus of participants including licensed providers and subject experts, and are based on best practice, a review of regulations promulgated by other States, research on subjects related to early care and education and school-age center care, internal OCCL review and discussion, and identified issues and services within existing programs within Delaware.

A draft of the Regulations was posted in the June 2014 *Register of Regulations* and comments accepted until August 31, 2014. Many comments were received from providers and other interested parties and were reviewed by the Office of Child Care Licensing, resulting in a revised set of proposed regulations.

Interested parties wishing to offer comments on the proposed regulations must submit them to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by 4:30 p.m. EST on January 5, 2015.

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**200 BOARD OF LANDSCAPE ARCHITECTURE**  
**PUBLIC NOTICE**

The Delaware Board of Landscape Architects, pursuant to 24 **Del.C.** §205(a)(1), proposes to amend its rules and regulations. The proposed regulation changes address continuing education requirements and set forth a procedure by which licensees and continuing education sponsoring organizations may seek pre-approval of

continuing education units. The proposed changes also bring the regulations into compliance with the Division of Professional Regulation's operating procedures and create continuity throughout the regulations.

The Board has rescheduled a public hearing on the proposed regulation change to February 12, 2015 at 9:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Lisa Smith, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 27, 2015 pursuant to 29 **Del.C.** §10118(a).

**DIVISION OF PROFESSIONAL REGULATION**  
**1400 BOARD OF ELECTRICAL EXAMINERS**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §1406(a)(1), the Delaware Board of Electrical Examiners has proposed revisions to its rules and regulations. The rules pertaining to electronic attestation, insurance, continuing education and crimes substantially related to the practice of electrical services are amended to provide current practices at the Division of Professional Regulation and the Board's desire to expand its crimes list.

A public hearing will be held on January 7, 2015 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be January 22, 2015 which is 15 days following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION**  
**1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §1775(c), the Respiratory Care Practice Advisory Council ("the Council") of the Board of Medical Licensure and Discipline has proposed revisions to Rule 10.0, pertaining to renewal of licenses. In particular, Rule 10.3 is amended to state that a license that has expired may be renewed within one year after the expiration date. Currently, Rule 10.0 provides for a three year period for late renewal. Further, the revisions to Rule 10.3.1 add the requirement that a license in expired status as of December 1, 2014 must be renewed no later than November 30, 2015.

A public hearing will be held on January 14, 2015 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Respiratory Care Practice Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be January 29, 2015, which is 15 days following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION**  
**1900 BOARD OF NURSING**  
**PUBLIC NOTICE**

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulations 8.10.2.1, 9.2.1.1.1.4, and 10.4.2.17. The proposed change at 8.10.2.1 simply corrects a cross-reference error. The proposed change at 9.2.1.1.1.4 brings Delaware into line with other states in regard to CME contact hours such



that a contact hour will equal a clock hour; and the proposed change at 10.4.2.17 allows the Board to discipline a nurse who possesses, obtains, supplies or administers an illegal drug.

The Board will hold a public hearing on the proposed regulation change on January 14, 2015 at 9:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 29, 2015 pursuant to 29 **Del.C.** §10118(a).

### **DIVISION OF PROFESSIONAL REGULATION**

#### **2600 EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS**

##### **PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2604(a)(1), the Examining Board of Physical Therapists and Athletic Trainers ("the Board") has proposed revisions to its rules and regulations.

A public hearing will be held on January 27, 2015 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Sandra Wagner, the Board's administrative specialist at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be February 11, 2015, which is 15 days following the public hearing.

The Board's proposed amendments add a new Rule 14.0 pertaining to the practice of telehealth. This regulation sets forth standards and requirements in order to both permit this practice and protect the public.

Pursuant to review of the Board by the Joint Sunset Committee, the Board has proposed a new Rule 15.4 pertaining to the practice of dry needling. As the result of legislative changes to the Board's licensing law, dry needling is now part of the scope of practice for Physical Therapists. The new Rule 15.4 sets for prerequisites which must be met before a Physical Therapist can perform dry needling on patients.

### **DIVISION OF PROFESSIONAL REGULATION**

#### **2900 REAL ESTATE COMMISSION**

##### **PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations. Section 2906(a)(1) gives the Commission the authority to "Formulate rules and regulations, with appropriate notice to those affected; Each rule or regulation shall implement or clarify a specific section of this chapter."

A public hearing will be held on January 15, 2015 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Sandra Wagner, administration specialist for the Commission, at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be January 30, 2015, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on February 12, 2015, at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed a new Rule 1.4.1 and revisions to Rule 8.0 which are designed to implement and clarify the auctioneer exemption set forth in 24 **Del.C.** §2901(e)(4). A new Rule 8.5.5.6 is added to provide advertising requirements for on-site unlicensed salespeople. Finally, Rule 13.0 is amended to clarify the continuing education pro-ration requirements.



**DIVISION OF PROFESSIONAL REGULATION****3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY  
PROFESSIONALS  
PUBLIC NOTICE**

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to eliminate the need for inactive licensees to renew a license while inactive; set forth the specific requirements of direct supervision between LCDP supervisors and supervisees in order to be consistent with the other professions regulated by the Board; allow for direct supervision to take place by videoconferencing for LCDPs and LMFTs; and provide more detailed information regarding the curriculum requirements of LMFT candidates.

The Board will hold a public hearing on the proposed rule change on January 28, 2015 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until February 12, 2015.

**DEPARTMENT OF TRANSPORTATION****DIVISION OF PLANNING AND POLICY****PUBLIC NOTICE****2309 Standards and Regulations for Subdivision Streets and State Highway Access**

The Delaware Department of Transportation (DelDOT), through its Division of Planning, seeks to adopt significant general revisions to its existing regulations regarding subdivisions streets and state highway access, to broaden the title of the regulations to "Development Coordination Manual," among several other changes.

The current regulations were generally enacted in 2007, and were revised in partial form in 2010 and are being repealed in their entirety. The proposed regulations are a comprehensive re-write of the entire Section 2309 of Title 2 of the Delaware Administrative Code. The changes take into account the issues and concerns identified and addressed as needing amendment by not only DelDOT staff, but also the end users of the current regulations.

The draft regulations were published at 17 DE Reg. 1055 (05/01/14), and written comments were sought. In addition, DelDOT held three public hearings regarding the proposed regulations, the notice for which appeared in 17 DE Reg. 1204 (06/01/14). These hearings were conducted on June 9, June 16, and June 23, 2014, in Kent, Sussex, and New Castle Counties respectively.

Based on the comments received, as well as additional review and input within the Department, DelDOT is now seeking additional comments regarding substantive changes made in the draft regulations issued May 1, 2014. Therefore, the regulations are being repropose.

The Department is also publishing another version of the draft regulations at its own website, which will show the changes between the version first proposed in 17 DE Reg. 1055 and the current proposed revisions to that draft. This version can be seen at:

<http://www.deldot.gov/information/business/subdivisions/changes/index.shtml>

The Department will take comments on the Regulations through December 31, 2014. The public may submit their comments to Marc Coté, P.E., Assistant Director for Development Coordination, via email (Marc.Cote@state.de.us) or in writing to his attention, Division of Planning, DelDOT, P.O. Box 778, Dover, DE 19903.

**DIVISION OF TRANSPORTATION SOLUTIONS****PUBLIC NOTICE****2406 Policies and Procedures for Acquisition of Certain Real Property Interests**

The Department has broad statutory authority to acquire property in connection with state highway projects.

However, an “Advanced Acquisition Committee” must review certain acquisitions of real property. The Department adopted past policies governing such acquisitions; nonetheless, these existing policies only applied to purchases of “fee simple” interests, and did not expressly apply to reservation agreements. In addition, while the Committee has the statutory authority to determine whether certain acquisitions are consistent with state planning goals, it does not have the power to determine the merits of such transactions.

The 2011 regulations were intended to implement specific recommendations for advanced acquisitions set forth in the Report of the Governor’s Chief of Staff to Governor Markell dated January 7, 2011 (the “Report”). Specifically, the regulations would (1) require that the Committee review not only advanced acquisitions, but reservation agreements as well; (2) provide a process for the Committee to review the merits of reservation agreements; (3) require the Department to obtain independent appraisal for advanced acquisitions and reservations; (4) require that advanced acquisitions and reservations be reviewed by legal counsel; (5) require that the terms of advanced acquisitions and reservations be reflected in an agreement signed by the Department and the property owner; and (6) set out the process for the Committee to conduct its consistency review of certain real property acquisitions proposed by the Department, as contemplated by 17 **Del.C.** §137(a)(2).

These draft regulations appeared in the Delaware *Register of Regulations* on February 1, 2011, at 14 **DE Reg.** 800, and the written comment period ended March 5, 2011.

No comments were received.

Nonetheless, these regulations were not adopted. Instead, additional proposed regulatory changes were discussed with the Advanced Acquisition Committee during 2011, as well as among Department staff. No further action toward adoption took place thereafter, however.

The Department has now determined to go forward with draft regulations regarding the Committee and its oversight of this aspect of the Department’s responsibilities. The new draft regulations incorporate and amend the prior draft regulations published in 14 **DE Reg.** 800, taking into account changes in the Department’s management structure since that time, and add new provisions to reflect past discussions among the Administration, the Department, and the Committee. Among other alterations, these revised proposed regulations deal with certain special property acquisitions that are not necessarily tied to a particular project location, as is usually the case for properties it acquires for most highway-related projects. This draft incorporates these additional provisions.

The Department will take written comments on the proposed Regulations Establishing Policies and Procedures for Acquisition of Certain Real Property Interests from December 1, 2014 through December 31, 2014.

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

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