
Delaware Register of Regulations

Issue Date: December 1, 2015

Volume 19 - Issue 6, Pages 444 - 537



IN THIS ISSUE:

Regulations:
Proposed
Final

General Notices

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before November 16, 2015.



INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

445

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF RESEARCH STAFF

Lori Christiansen, Director; **Mark J. Cutrona**, Deputy Director; **Tara Donofrio**, Administrative Specialist II; **Bethany Fiske**, Assistant Registrar of Regulations; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Human Resources/Financials; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Printer; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Vaughn Wagner**, Research Analyst; **Verity Watson**, Joint Sunset Analyst; **Rochelle Yerkes**, Office Manager; **Sara Zimmerman**, Legislative Librarian.

TABLE OF CONTENTS

447

Cumulative Tables 449

PROPOSED

DEPARTMENT OF AGRICULTURE, Thoroughbred Racing Commission
1001 Thoroughbred Racing Rules and Regulations, Sections 10.0 and 14.0..... 454

DEPARTMENT OF EDUCATION, Office of the Secretary
503 Instructional Program Requirements..... 455
616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion
Hearings..... 458
932 Military-Connected Youth..... 459
1008 DIAA Junior High and Middle School Interscholastic Athletics..... 461
1009 DIAA High School Interscholastic Athletics..... 462

Professional Standards Board
1522 Elementary School Counselor..... 464
1545 Secondary School Counselor..... 466

DEPARTMENT OF INSURANCE, Office of the Commissioner
1409 Insurance Coverage for Telemedicine and Telehealth..... 469

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
Division of Parks and Recreation
9201 Regulations Governing State Parks..... 471
Division of Watershed Stewardship
5101 Sediment and Stormwater Regulations..... 472

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH, AND THEIR FAMILIES
Division of Prevention and Behavioral Health Services
Qualifications for Juvenile Mental Health Screeners..... 473

DEPARTMENT OF STATE, Division of Professional Regulation
5200 Board of Examiners of Nursing Home Administrators, Section 5.0, Programs for Continuing
Education Credits..... 479

DEPARTMENT OF TRANSPORTATION, Office of the Secretary
Pedestrian Accessibility Standards..... 480

FINAL

DEPARTMENT OF AGRICULTURE, Delaware Agricultural Lands Preservation Foundation
701 Farmland Preservation Program..... 482
Harness Racing Commission
502 Delaware Standardbred Breeders' Fund Regulations, Section 13.0 - Races..... 486

DEPARTMENT OF EDUCATION, Office of the Secretary
284 Licensure and Certification of Public Education Employees in the Department of Education,
in Adult Education and in Prison Education Programs Whose Work Responsibilities are
Directly Related to Curriculum and Instruction..... 487
811 School Health Record Keeping Requirements..... 490
1007 DIAA Sportsmanship..... 493

TABLE OF CONTENTS

Professional Standards Board	
1512 Issuance and Renewal of Advanced License.....	495
1513 Denial of Licenses.....	496
1514 Revocation, Limitation, or Suspension of Licenses.....	498
1560 Art Teacher.....	499
1563 Music Teacher.....	501
1564 Physical Education Teacher.....	503
1571 Exceptional Children Special Education Teacher.....	505
DEPARTMENT OF HEALTH AND SOCIAL SERVICES, Division of Medicaid and Medical Assistance	
Private Duty Nursing Services.....	507
Hippotherapy.....	513
Division of Public Health	
4462 Public Drinking Water Systems.....	517
DEPARTMENT OF INSURANCE, Office of the Commissioner	
504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants.....	525
1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities.....	526
DEPARTMENT OF TRANSPORTATION, Division of Motor Vehicles	
2261 Changing of License Plate Numbers and Establishing a Fee for Such Change.....	527
EXECUTIVE DEPARTMENT, Office of Management and Budget	
Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act....	528

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Watershed Stewardship	
5101 Sediment and Stormwater Regulations.....	533

CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Agriculture, Thoroughbred Racing Commission, Notice of Public Comment Period.....	534
Dept. of Education, Notice of Monthly Meeting.....	534
Dept. of Insurance, Office of the Commissioner, Notice of Public Comment Period.....	534
Dept. of Natural Resources and Environmental Control, Div. of Parks and Recreation; Div. of Watershed Stewardship; Notices of Public Comment Periods and Public Hearings.....	535
Dept. of Services for Children, Youth, and Their Families, Div. of Prevention and Behavioral Health Services, Notice of Public Comment Period.....	536
Dept. of State, Div. of Professional Regulation, Board of Nursing Home Administrators, Notices of Public Comment Period and Public Hearing.....	536
Dept. of Transportation, Office of the Secretary, Notice of Public Comment Period.....	536

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

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

ADMINISTRATIVE OFFICES OF THE COURTS

Child Placement Review Board

1401 Regulations Governing the Ivyane D.F. Davis Scholarship..... 19 **DE Reg.** 186 (Final)

DELAWARE SOLID WASTE AUTHORITY

501 Regulations of the Delaware Solid Waste Authority..... 19 **DE Reg.** 226 (Prop.)

502 Statewide Solid Waste Management Plan..... 19 **DE Reg.** 231 (Prop.)

DELAWARE STATE FIRE PREVENTION COMMISSION

701 Administration and Enforcement 19 **DE Reg.** 96 (Prop.)

702 Fire Protection in Building Construction..... 19 **DE Reg.** 97 (Prop.)

703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems,
Fire Protection Systems and Fire Extinguishers..... 19 **DE Reg.** 97 (Prop.)

704 Hazardous Processes and Operations..... 19 **DE Reg.** 98 (Prop.)

705 General Fire Safety..... 19 **DE Reg.** 99 (Prop.)

706 Specific Occupancy Requirements..... 19 **DE Reg.** 99 (Prop.)

DEPARTMENT OF AGRICULTURE

Delaware Agricultural Lands Preservation Foundation

701 Farmland Preservation Program..... 19 **DE Reg.** 160 (Prop.)

Harness Racing Commission

501 Harness Racing Rules and Regulations, Section 8.0..... 19 **DE Reg.** 10 (Prop.)

..... 19 **DE Reg.** 189 (Final)

Standardbred Breeders' Fund

502 Delaware Standardbred Breeders' Fund Regulations, Section 13.0 -
Races..... 19 **DE Reg.** 161 (Prop.)

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations, Section 15.0: Medication;
Testing Procedures..... 19 **DE Reg.** 137 (Final)

..... 19 **DE Reg.** 354 (Prop.)

Sections 18.0 and 19.0..... 19 **DE Reg.** 32 (Final)

1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations..... 19 **DE Reg.** 33 (Final)

DEPARTMENT OF EDUCATION

Office of the Secretary

103 Accountability for Schools, Districts and the State..... 19 **DE Reg.** 162 (Prop.)
..... 19 **DE Reg.** 234 (Prop.)

106A Teacher Appraisal Process Delaware Performance Appraisal System
Revised..... 19 **DE Reg.** 35 (Final)

107A Specialist Appraisal Process Delaware Performance Appraisal System
Revised..... 19 **DE Reg.** 38 (Final)

108A Administrator Appraisal Process Delaware Performance Appraisal
System Revised..... 19 **DE Reg.** 35 (Final)

252 Required Educational Records and Transfer and Maintenance of
Educational Records..... 19 **DE Reg.** 355 (Prop.)

284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction.....	19 DE Reg.	163 (Prop.)
286 Application Fee For Educator Licensure.....	19 DE Reg.	358 (Prop.)
505 High School Graduation Requirements and Diplomas.....	19 DE Reg.	100 (Prop.)
	19 DE Reg.	303 (Final)
545 K to 12 School Counseling Programs.....	19 DE Reg.	102 (Prop.)
	19 DE Reg.	305 (Final)
775 New Teacher Hiring Date Reporting.....	19 DE Reg.	360 (Prop.)
804 Immunizations.....	19 DE Reg.	43 (Final)
811 School Health Record Keeping Requirements.....	19 DE Reg.	234 (Prop.)
817 Medications and Treatments.....	19 DE Reg.	362 (Prop.)
902 Gifted or Talented Education Plan.....	19 DE Reg.	48 (Final)
1007 DIAA Sportsmanship.....	19 DE Reg.	105 (Prop.)
1008 DIAA Junior High and Middle School Interscholastic Athletics.....	19 DE Reg.	110 (Prop.)
1009 DIAA High School Interscholastic Athletics.....	19 DE Reg.	111 (Prop.)
1150 School Transportation.....	19 DE Reg.	51 (Final)
	19 DE Reg.	112 (Prop.)
	19 DE Reg.	307 (Final)
Professional Standards Board		
1502 Professional Growth Salary Increments.....	19 DE Reg.	364 (Prop.)
1506 Emergency Certificate.....	19 DE Reg.	367 (Prop.)
1559 Skilled and Technical Sciences Teacher.....	19 DE Reg.	237 (Prop.)
1560 Art Teacher.....	19 DE Reg.	12 (Prop.)
1563 Music Teacher.....	19 DE Reg.	14 (Prop.)
1564 Physical Education Teacher.....	19 DE Reg.	15 (Prop.)
1571 Exceptional Children Special Education Teacher.....	19 DE Reg.	17 (Prop.)
1583 School Psychologist.....	19 DE Reg.	241 (Prop.)
1595 Certification Programs for Leaders in Education.....	19 DE Reg.	243 (Prop.)
DEPARTMENT OF HEALTH AND SOCIAL SERVICES		
Division of Long Term Care Residents Protection		
3325 Financial Capability Reporting.....	19 DE Reg.	52 (Final)
Division of Medicaid and Medical Assistance		
Hippotherapy.....	19 DE Reg.	164 (Prop.)
Private Duty Nursing Services.....	19 DE Reg.	245 (Prop.)
Reimbursement Methodology for Home Health Services.....	19 DE Reg.	253 (Prop.)
Reimbursement Methodology for State Plan Personal Care Services.....	19 DE Reg.	258 (Prop.)
Title XIX Medicaid State Plan, Attachment 3.1-A, Introductory Page 1 (Telemedicine).....	19 DE Reg.	20 (Prop.)
	19 DE Reg.	191 (Final)
Title XIX Medicaid State Plan - Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services - Inpatient Psychiatric Hospital Services for Individuals Under Age 21.....	19 DE Reg.	380 (Prop.)
Title XIX Medicaid State Plan - Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services - Mental Health Services.....	19 DE Reg.	373 (Prop.)
Title XIX Medicaid State Plan - Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services - Substance Use Disorder Services.....	19 DE Reg.	377 (Prop.)
Title XIX Medicaid State Plan, Multi-State Purchasing Pool Supplemental Drug Rebate Agreement (SRA).....	19 DE Reg.	57 (Final)
Title XIX Medicaid State Plan - Pharmaceutical Services Reimbursement - 340B Drug Products.....	19 DE Reg.	369 (Prop.)
Title XIX Medicaid State Plan, State Plan Rehabilitative Services - Coverage and Reimbursement for Community Support Services.....	19 DE Reg.	60 (Final)

Division of Public Health

4304 Medical Orders for Life-Sustaining Treatment or Pre-Hospital Advance Care Directives.....	19 DE Reg. 388 (Prop.)
4406 Home Health Agencies--Aide Only (Licensure).....	19 DE Reg. 388 (Prop.)
4410 Skilled Home Health Agencies (Licensure).....	19 DE Reg. 391 (Prop.)
4452 Clean Indoor Air Act.....	19 DE Reg. 169 (Prop.)
4455 Delaware Regulations Governing a Detailed Plumbing Code.....	19 DE Reg. 407 (Final)
4462 Public Drinking Water Systems.....	19 DE Reg. 22 (Prop.)
4464 Public Swimming Pools.....	19 DE Reg. 114 (Prop.)
4465 Delaware Radiation Control Regulations, Part D: Standards for Protection Against Radiation; Part J: Notices, Instructions and Reports to Workers; Inspections.....	19 DE Reg. 172 (Prop.)
4469 Personal Assistance Services Agencies.....	19 DE Reg. 115 (Prop.)
4470 State of Delaware Medical Marijuana Code.....	19 DE Reg. 309 (Final)
4470 State of Delaware Medical Marijuana Code.....	19 DE Reg. 140 (Final)
4470 State of Delaware Medical Marijuana Code.....	19 DE Reg. 392 (Prop.)
4470 State of Delaware Medical Marijuana Code.....	19 DE Reg. 91 (Emer.)
4470 State of Delaware Medical Marijuana Code.....	19 DE Reg. 116 (Prop.)
4470 State of Delaware Medical Marijuana Code.....	19 DE Reg. 409 (Final)

DEPARTMENT OF INSURANCE

Office of the Commissioner

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants.....	19 DE Reg. 262 (Prop.)
606 Proof of Automobile Insurance.....	19 DE Reg. 173 (Prop.)
1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities.....	19 DE Reg. 414 (Final)
1801 Registration of Insurance Holding Companies.....	19 DE Reg. 263 (Prop.)
1801 Registration of Insurance Holding Companies.....	19 DE Reg. 396 (Prop.)

DEPARTMENT OF LABOR

Division of Industrial Affairs

1101 Apprenticeship and Training Regulations.....	19 DE Reg. 194 (Final)
1322 Prevailing Wage Regulations.....	19 DE Reg. 415 (Final)

Office of Workers' Compensation

1341 Workers' Compensation Regulations.....	19 DE Reg. 175 (Prop.)
1341 Workers' Compensation Regulations.....	19 DE Reg. 416 (Final)

Division of Unemployment Insurance

1202 Unemployment Insurance Regulations.....	19 DE Reg. 64 (Final)
--	-----------------------

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1124 Control of Volatile Organic Compound Emissions.....	19 DE Reg. 199 (Final)
1138 Emission Standards for Hazardous Air Pollutants for Source Categories.....	19 DE Reg. 23 (Prop.)
1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products.....	19 DE Reg. 311 (Final)
1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products.....	19 DE Reg. 25 (Prop.)

Division of Energy and Climate

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions.....	19 DE Reg. 270 (Prop.)
102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions.....	19 DE Reg. 397 (Prop.)

Division of Fish and Wildlife

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.....	19 DE Reg. 92 (Emer.)
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.....	19 DE Reg. 121 (Prop.)
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.....	19 DE Reg. 313 (Final)

3542 Tilefish.....	19 DE Reg. 401 (Prop.)
3711 Conch Minimum Size Limits.....	19 DE Reg. 315 (Final)
3712 Commercial Conch Dredge Licenses [Commercial Conch Season].....	19 DE Reg. 315 (Final)
3900 Wildlife: Section 4.0 Seasons; Section 23.0 Non-native/Invasive Wildlife	19 DE Reg. 176 (Prop.)
Division of Waste and Hazardous Substances	
1301 Regulations Governing Solid Waste (DRGSW).....	19 DE Reg. 422 (Final)
1301 Regulations Governing Solid Waste (DRGSW) - Scrap Tires.....	19 DE Reg. 418 (Final)
1302 Regulations Governing Hazardous Waste.....	19 DE Reg. 181 (Prop.)
1351 Underground Storage Tank Systems.....	19 DE Reg. 402 (Prop.)
1375 Regulations Governing Hazardous Substance Cleanup.....	19 DE Reg. 65 (Final)
Division of Watershed Stewardship	
5102 Regulation Governing Beach Protection and the Use of Beaches.....	19 DE Reg. 274 (Prop.)
DEPARTMENT OF SAFETY AND HOMELAND SECURITY	
Division of State Police	
1300 Board of Examiners of Private Investigators & Private Security Agencies	19 DE Reg. 202 (Final)
2400 Board of Examiners of Constables, Rules 3.0 and 5.0.....	19 DE Reg. 425 (Final)
Rules 4.0 & 9.0.....	19 DE Reg. 404 (Prop.)
Rule 7.0.....	19 DE Reg. 426 (Final)
5500 Bail Enforcement Agents, Rules 1.0, 4.0 and 6.0.....	19 DE Reg. 318 (Final)
Office of the Alcoholic Beverage Control Commissioner	
Alcoholic Beverage Control Regulations.....	19 DE Reg. 406 (Prop.)
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES	
Division of Family Services	
101 Rules for Early Care and Education and School-Age Centers.....	19 DE Reg. 6 (Emer.)
DEPARTMENT OF STATE	
Division of Professional Regulation	
100 Board of Accountancy.....	19 DE Reg. 68 (Final)
300 Board of Architects.....	19 DE Reg. 124 (Prop.)
500 Board of Podiatry.....	19 DE Reg. 275 (Prop.)
1100 Board of Dentistry and Dental Hygiene, Section 10.0, Practical (Clinical) Examination.....	19 DE Reg. 431 (Final)
1400 Board of Electrical Examiners.....	19 DE Reg. 141 (Final)
1725 Polysomnography Advisory Council.....	19 DE Reg. 69 (Final)
1900 Board of Nursing, Sections 2.0, 3.0, 4.0, 5.0 & 9.0.....	19 DE Reg. 184 (Prop.)
	19 DE Reg. 125 (Prop.)
	19 DE Reg. 432 (Final)
2000 Board of Occupational Therapy Practice.....	19 DE Reg. 276 (Prop.)
2100 Board of Examiners in Optometry.....	19 DE Reg. 26 (Prop.)
	19 DE Reg. 204 (Final)
2500 Board of Pharmacy.....	19 DE Reg. 26 (Prop.)
	19 DE Reg. 125 (Prop.)
2500 Board of Pharmacy, Section 5.0.....	19 DE Reg. 282 (Prop.)
2700 Board of Registration for Professional Land Surveyors.....	19 DE Reg. 142 (Final)
2930 Council on Real Estate Appraisers.....	19 DE Reg. 70 (Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	19 DE Reg. 283 (Prop.)
3500 Board of Examiners of Psychologists.....	19 DE Reg. 319 (Final)
3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.....	19 DE Reg. 284 (Prop.)
3800 Board of Dietetics/Nutrition.....	19 DE Reg. 27 (Prop.)
4100 Board of Home Inspectors, Sections 4.0, 9.0 and 10.0.....	19 DE Reg. 184 (Prop.)

Uniform Controlled Substances Act Regulations.....	19 DE Reg.	27 (Prop.)
Public Service Commission		
1202 Policies and Procedures Regarding FOIA Requests.....	19 DE Reg.	434 (Final)
3007 Electric Service Reliability and Quality Standards.....	19 DE Reg.	126 (Prop.)
4002 Regulations Governing Payphone Service Providers in Delaware (Docket No. 12), Repeal of.....	19 DE Reg.	71 (Final)
DEPARTMENT OF TRANSPORTATION		
Division of Planning and Policy		
2309 Development Coordination Manual.....	19 DE Reg.	73 (Final)
	19 DE Reg.	322 (Final)
Division of Transportation Solutions		
2402 Delaware Manual in Uniform Traffic Control Devices.....	19 DE Reg.	76 (Final)
2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	19 DE Reg.	134 (Prop.)
	19 DE Reg.	324 (Final)
EXECUTIVE DEPARTMENT		
Office of Management and Budget		
Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act.....	19 DE Reg.	289 (Prop.)
Division of Facilities Management		
4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	19 DE Reg.	207 (Final)
Statewide Benefits Office		
2007 Disability Insurance Program Rules and Regulations.....	19 DE Reg.	78 (Final)

Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 DE Admin. Code 1001

PUBLIC NOTICE**1001 Thoroughbred Racing Rules and Regulations****Summary**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to delete the whipping rule currently found at rule 10.9.4 and then to adopt a new whipping rule as rule 14.18.2 that adds the words “excessive, abusive” to the text of the former whipping rule 10.9.4. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the **Delaware Code**. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the **Delaware Code**.

Comments

A copy of the proposed regulations is being published in the December 1, 2015 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before January 1, 2016. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after January 1, 2016, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations to delete the whipping rule currently found at rule 10.9.4 and then to designate the text of current rule 14.18 as rule 14.18.1 and adopt a news whipping rule as rule 14.18.2 that adds the words "excessive, abusive" to the text of the former whipping rule 10.9.4. or make additional changes because of the public comments received.

1001 Thoroughbred Racing Rules and Regulations
*(Break in Continuity of Sections)***10.0 Horses***(Break in Continuity Within Section)*

10.9 Equipment:

(Break in Continuity Within Section)

~~10.9.4 Indiscriminate or brutal use of an ordinary whip on a horse, as determined by the Stewards in their sole discretion, is prohibited.~~

*(Break in Continuity of Sections)***14.0 Running of the Race***(Break in Continuity Within Section)*

14.18 Use of Whips, Other Means of Altering Performance:

14.18.1 Whips are to be used uniformly and the Stewards shall take cognizance of unusual use or non-use of a whip by a Jockey. No appliance, electrical or mechanical, other than the ordinary whip, shall be used to affect the speed of a horse in a race or workout. No sponge or other object may be used to interfere with the respiratory system of a horse. Use or non-use of ordinary racing equipment shall be consistent and any change thereof must be approved by the Stewards.

14.18.2 ~~Indiscriminate, excessive, abusive or brutal use of an ordinary whip on a horse, as determined by the Stewards in their sole discretion, is prohibited.~~

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

1001 Thoroughbred Racing Rules and Regulations

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 503

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)**503 Instructional Program Requirements****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 503 Instructional Program Requirements. This regulation is being amended to: (1) remove specific references to previous school years as to when implementation of physical fitness assessments would occur, (2) include

instructional requirements for World Languages, and (3) clarify instructional requirements for Career and Technical Education.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 7, 2016 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, 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 intended to help improve student achievement as measured against state achievement standards by ensuring this regulation correctly notes the grades in which physical fitness assessments occur and the instructional requirements for world languages and career and technical education.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment does not specifically address students' health and safety, but does help ensure that a physical fitness assessment will be done in specific grades, ultimately contributing to the health of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation helps to ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.

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

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

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

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

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

503 Instructional Program Requirements

1.0 English Language Arts

- 1.1 Local school districts and ~~each~~ charter schools shall provide instructional programs in English Language Arts for each grade K to 12.
- 1.2 All public school students in each grade K to 8 shall be enrolled in an English language arts program.
- 1.3 All public school students in grades 9 to 12 shall complete the credits in English language arts necessary to graduate from high school.

2.0 Mathematics

- 2.1 Local school districts and ~~each~~ charter schools shall provide instructional programs in mathematics for each grade K to 12.
- 2.2 All public school students in each grade K to 8 shall be enrolled in a mathematics program.
- 2.3 All public school students in grades 9 to 12 shall complete the credits in mathematics necessary to graduate from high school.

3.0 Science

- 3.1 Local school districts and ~~each~~ charter schools shall provide instructional programs in science for each grade K to 12.
- 3.2 All public school students in each grade K to 8 shall be enrolled in a science program.
- 3.3 All public school students in grades 9 to 12 shall complete the credits in science necessary to graduate from high school.

4.0 Social Studies

- 4.1 Local school districts and ~~each~~ charter schools shall provide instructional programs in social studies for each grade K to 12.
- 4.2 All public school students in each grade K to 8 shall be enrolled in a social studies program.
- 4.3 All public school students in grades 9 to 12 shall complete the credits in social studies necessary to graduate from high school.

5.0 Physical Education

- 5.1 Local school districts and ~~each~~ charter schools shall provide instructional programs in physical education for each grade K to 12 with the exception of the James H. Groves High School program.
- 5.2 All public school students in each grade 1 to 8 shall be enrolled in a physical education program.
- 5.3 All public school students in grades 9 to 12 shall complete the credit in physical education necessary to graduate from high school.
 - 5.3.1 In addition to the one credit required for high school graduation, only one additional elective credit in physical education may be used to fulfill the graduation requirements.
- 5.4 The physical education requirements may be waived only for students who have an excuse from a qualified ~~physician~~ licensed medical provider or objections based on religious beliefs. The local school district or charter school shall have the authority to grant such waivers. The local school district or charter school shall maintain records of the waivers granted and upon request, make them available for review consistent with Federal and state confidentiality laws.
- 5.5 Local school districts and charter schools shall annually assess the physical fitness of each student in grades 4 and 7, and in grade 9 or 10. ~~Beginning in the 2006-2007 school year and annually thereafter, all students in grade 4 will be assessed. Beginning in the 2007-2008 school year and annually thereafter all students in grade 7 and in grade 9 or 10 will be assessed.~~ The physical fitness assessment tool used by the districts and charter schools shall be one designated by the Delaware Department of Education.
 - 5.5.1 The local school districts and charter schools shall provide the results of the physical fitness assessment to the parent(s) guardian(s) or Relative Caregiver of each student. The districts and charter schools shall also report this information to the Delaware Department of Education in a format determined by the Department.
 - 5.5.1.1 The Delaware Department of Education shall annually report the statewide grade level results of the physical fitness assessment to the public.

6.0 Visual and Performing Arts

- 6.1 Local school districts and ~~each~~ charter schools shall provide instructional programs in the visual and performing arts for each grade K to 12 with the exception of the James H. Groves High School program.
- 6.2 All public school students in each grade 1 to 6 shall be enrolled in a visual and performing arts program.

7.0 Career and Technical Education

- 7.1 Local school districts and charter schools, when consistent with the charter school's approved program, shall provide instructional program(s) ~~in two or more vocational technical education areas~~ in

grades 7 and 8 that demonstrate alignment to career and technical education programs of study within the high school feeder pattern(s).

7.1.1 No later than the 2017-2018 school year, career and technical instructional program(s) in grades 7 and 8 shall be aligned to career and technical education programs of study at the high school level.

7.2 All public school students in grades 9 through 12 in local school districts, and charter schools when consistent with the charter school's approved program, shall be provided with the opportunity to enroll in and complete a career and technical education program of study.

8.0 World Language

8.1 Local school districts and charter schools with any of grades 9 through 12 shall provide instructional programs in world languages for grades 9 through 12.

8.2 All public school students in grades 9 through 12 shall complete the credits in world languages required to graduate from high school.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))

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

616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to create 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings. This regulation is being created pursuant to 14 **Del.C.** §122(b) (26) to provide uniform procedures for alternative placement meetings and expulsion hearings.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 7, 2016 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 on-line at the Register of Regulation's website, 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 regulation will help improve student achievement as measured against state achievement standards as it provides uniform procedures for alternative placement meetings and expulsion hearings.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation will help 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 regulation will help to protect a student's due process rights, but does not address a students' health and safety specifically.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation will help 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 regulation does not change the decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The 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 regulation.

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 regulation 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? State or local schools boards may need to contract with hearing officers to conduct expulsion hearings or revise current district policies and processes which may require legal review/costs.

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

616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))

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

932 Military-Connected Youth

A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education seeks the consent of the State Board of Education to create 14 **DE Admin. Code** 932 Military-Connected Youth. This regulation is being created to align with 14 **Del.C** §122(b)(28) which requires the development of a process for districts and charter schools to annually identify enrolled students who are "military-connected youth". This is necessary to ensure school officials are aware of their military connection should they require any special services or supports.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 7, 2016 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 on-line at the *Register of Regulations*'s website, 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 regulation help improve student achievement as measured against state achievement standards? The regulation is intended to improve student achievement as measured against state achievement standards by helping to ensure students can be identified as connected with the military should they require any special services or supports.

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

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The regulation does not specifically address students' health and safety.

4. Will the regulation help to ensure that all students' legal rights are respected? The regulation helps to ensure that all student's legal rights are respected.

5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation does not change the decision making at the local board and school level.

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The 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 regulation.

8. Will the 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 regulation is consistent with and not an impediment to the implementation of other state educational policies.

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

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

932 Military-Connected Youth

1.0 Purpose

This regulation outlines the process for districts and charter schools to annually identify enrolled students who are "military-connected youth." This regulation is established pursuant to 14 Del.C. Chapter 1, §122(b)(28).

2.0 Definitions

"**Military-Connected Youth**" means any student having an immediate family member, including a parent, step-parent, sibling or any other person residing in the same household, who is on active duty, serving in the reserve component, or recently retired from a branch of the United States armed forces. Such branches consist of United States Army, United States Air Force, United States Marine Corps, United States Navy, National Guard, United States Coast Guard, National Oceanic and Atmospheric Administration or the United States Public Health Service.

"**Recently Retired**" for the purposes of this regulation, means within 18 months prior to September 30 of the current school year.

3.0 Data Collection and Access

3.1 Each district and charter school shall include a military-connected identifier as part of its annual enrollment process and student information update.

3.2 Each district and charter school shall identify which school personnel have access to the military-connected identifier.

4.0 Use Exemptions

4.1 The identification of a military-connected youth shall not be used for purposes of determining school achievement, growth or performance.

4.2 The identification of a military-connected youth is not a public record under Delaware's Freedom of Information Act or any other law, and shall not be made public by any person, except as permitted under the provisions of the Family Educational Rights and Privacy Act of 1974.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 1008

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

1008 DIAA Junior High and Middle School Interscholastic Athletics

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1008 DIAA Junior High and Middle School Interscholastic Athletics. This regulation was originally published on July 25, 2015 and August 1, 2015 in the *News Journal* and *Delaware State News* with proposed amendments. Those amendments incorporated the ability for the DIAA Board to waive the age rule for students with physically or mentally limiting disabilities; update the middle school wrestling weight control program; bring practice regulations more in line with national best practice models; provide member schools with a policy to determine appropriate placement for transgendered students participating on interscholastic athletic teams; update coaches' regulation to mandate an approved concussion course; and make non-substantive changes to improve readability. Comments were received from the State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens, and a thorough review was done by the DIAA Board of Directors. Comments received which are incorporated herein are: (1) the definition of "Student with a Disability" has been changed to include students with 504 plans; (2) the Department clarified language regarding the conditions for students who play sports outside of their school noting that, "nothing in this regulation shall be construed as prohibiting schools from providing transportation or school supplied assistive technology and equipment to or for non-school activities for students with disabilities; (3) a definition of Superintendent was added; and (4) language was also added regarding the eligibility of a child in DSCYF custody. Other minor grammatical changes were made throughout the regulation. This is part of a series of comprehensive reviews and updates to be made to all DIAA regulations.

Additionally, the State Board of Education expressed concerns that the regulation permits members schools to determine a policy about transgendered students participating in interscholastic sports, in accordance with the minimum standards designated by DIAA, rather than the Department of Education setting the policy. In support of the decision remaining at the local level, the Department received a letter from the Delaware Chief School Officers Association noting that the consensus among all 19 school district superintendents is that the decision regarding the participation of transgendered students in interscholastic sports should remain at the local level.

There was also a comment regarding the age waiver protocol for students with disabilities being limited to an IEP and not expanded to cover 504 Plans, and the involvement of the IEP team. After considering public comment, the DIAA Board voted to remove this proposed change for further consideration and analysis at this time. Due to the fact that this is a substantive change, the regulation is being republished for comment at this time.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 7, 2016 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 on-line at the Register of Regulation's website, 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 the Delaware Interscholastic Athletic Association and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to students' ability to receive an equitable education.

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

The amendments in part are intended to address exertional heat illness as it relates to practice and a middle school wrestling weight control program intended to reduce severe weight reduction.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulations improve the ability of students with disabilities and transgendered students enjoy the same rights of participation as all students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulations do not change weaken the ability to make decisions at the local board and school level and in fact enhance the ability of local schools to make participation decisions with respect to disability and gender identity.

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

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

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

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

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

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

1008 DIAA Junior High and Middle School Interscholastic Athletics

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 1009

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

1009 DIAA High School Interscholastic Athletics

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1009 DIAA High School Interscholastic Athletics. This regulation was originally published on July 25, 2015 and August 1, 2015 in the *News Journal* and *Delaware State News*, with proposed amendments which incorporated the ability for the DIAA Board to waive the age rule for students with disabilities; updated the transfer rule in choice schools; addressed schools that close or discontinue a sport; amended eighth grade participation regulations in order to limit eighth grade transfers for athletics; expand participation for international students; amended pre-participation medical examination requirements to provide parents a better opportunity to use insurance for the required examination; updated wrestling weight control protocol; better aligned practice regulations with national best practice models; provided member schools with a policy for transgendered students participating on interscholastic athletic teams; mandated an approved concussion course for coaches; and made other non-substantive changes to improve readability. Comments were received from the State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens, and a thorough review was done

by the DIAA Board of Directors. Revisions made as a result of comments received are: (1) the definition of "Student with a Disability" has been changed to include students with 504 plans; (2) the Department clarified language regarding the conditions for students who play sports outside of their school noting that the regulation is not to be construed as prohibiting schools from providing transportation or school supplied assistive technology and equipment to or for non-school activities for students with disabilities; (3) a definition of Superintendent was added; and (4) language was also added regarding the eligibility of a child in DSCYF custody. Other minor grammatical changes were made throughout the regulation. This is part of a series of comprehensive reviews and updates to be made to all DIAA regulations.

Additionally, the State Board of Education expressed concerns that the regulation permits member schools to determine their policies about transgendered students participating in interscholastic sports, in accordance with the minimum standards designated by DIAA, rather than the Department of Education setting the policy. In support of the decision remaining at the local level, the Department received a letter from the Delaware Chief School Officers Association noting that the consensus among all 19 school district superintendents is that the decisions and determination of policies regarding the participation of transgendered students in interscholastic sports should remain at the local level.

There were also comments regarding the age waiver protocol for students with disabilities being limited to students with an IEP and not covering students with 504 Plans, and the involvement of the IEP team. After considering these public comments, the DIAA Board voted to remove this proposed change for further consideration and analysis at this time. Due to the fact that this is a substantive change, the regulation is being republished for comment.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 7, 2016 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 on-line at the Register of Regulation's website, 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 the Delaware Interscholastic Athletic Association and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to students' ability to receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments in part are intended to help address exertional heat illness as it relates to practice; update the wrestling weight control program to help reduce severe weight reduction; promote use of primary care physicians for physical examinations; and enhance coaches' knowledge of concussion prevention and identification.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation will help to improve the ability of students with disabilities and transgendered students to enjoy the same rights of participation as all students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change or weaken the ability to make decisions at the local board and school level and enhances the ability of local schools to make participation decisions with respect to disability and gender identity.

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

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

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

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

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

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

1009 DIAA High School Interscholastic Athletics

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1522

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

1522 Elementary School Counselor

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1522 Elementary School Counselor. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to adjust the current course count. This regulation sets forth the requirements for an Elementary School Counselor.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Thursday, December 31, 2015 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

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

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

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

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

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in

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

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

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

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

1522 Elementary School Counselor

Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 **Del.C.** §1220 and 14 **DE Admin. Code** 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Elementary School Counselor. This certification is required for grades K to five (5), and is valid in grades six (6) to eight (8) in a Middle Level school. A Middle Level School Counselor must hold either an Elementary School Counselor Standard Certificate or a Secondary School Counselor Standard Certificate.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

“**CAEP (Council for the Accreditation of Educator Preparation)**” – A nonprofit and nongovernmental agency that accredits educator preparation providers (EPPs), which was created when the National Council for Accreditation of Teacher Education (NCATE) and the Teacher Education Accreditation Council (TEAC) merged in 2013.

3.0 Standard Certificate

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

4.0 Additional Requirements

~~An educator must also have met the following.~~

PROPOSED REGULATIONS

- 4.1 Has satisfied at least one of the following additional education requirements:
- 4.1.1 Graduated from an NCATE ~~or specialty organization recognized~~ CAEP educator preparation program unit or from a state approved educator preparation program, where the state approval body employed the appropriate ~~NASDTEC or NCATE~~ national specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Elementary School Counseling; or
- 4.1.2 Graduated from a regionally accredited college or university with a Master's degree in any content area and satisfactorily completed ~~thirty-nine (3039)~~ thirty-nine (36) credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:
- 4.1.2.1 ~~Principles and Practices of the School Counseling Program~~ Introduction to School Counseling & Theories (3 credits);
- 4.1.2.2 ~~Individual Counseling Skills~~ Human Behavior and Child Development (3 credits);
- 4.1.2.3 ~~Group Counseling Skills~~ Ethical Issues in School Counseling (3 credits);
- 4.1.2.4 ~~Human Development~~ College & Career Readiness K-12 (3 credits);
- 4.1.2.5 ~~Developmental Group Guidance~~ Testing, Measurements, and Research in School Counseling (3 credits);
- 4.1.2.6 ~~Individual and Group Testing for Counselors~~ The Counselor as Consultant (3 credits);
- 4.1.2.7 ~~Supervised Practicum in Elementary Counseling~~ Special Education Law & the School Counselor's Role (3 credits);
- 4.1.2.8 ~~Counseling Theory~~ Group Counseling (3 credits); and
- 4.1.2.9 ~~Consultation; and~~ Individual Counseling Skills & Strategies (36 credits).
- 4.1.2.10 ~~Ethical Issues in School Counseling~~ Family Counseling (3 credits).
- 4.1.2.11 Principles and Practices of a School Counseling Program (6 Credits); and
- 4.2 Has met at least one of the following experience requirements:
- 4.2.1 ~~A minimum of three years professional experience in an elementary school setting; or,~~
- 4.2.2 ~~A minimum of three years of equivalent experience as approved by the Department of Education; or,~~
- 4.2.3 ~~A supervised school counseling internship~~ clinical experience under the direct supervision of a state certified school counselor of one (1) full year 600 hours in an elementary school setting which is part of a graduate degree program in Elementary School Counseling or arranged by the Department of Education. ~~The internship may be completed over a two (2) year period on a half-time basis.~~

5.0 Effective Date of Section 4.0

Section 4.0 of this regulation shall be effective on January 1, 2017.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1545

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

1545 Secondary School Counselor

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1545 Secondary

School Counselor. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to consider the current course count. This regulation sets forth the requirements for an Secondary School Counselor.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Thursday, December 31, 2015 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

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

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

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

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

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

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

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

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

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

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

1545 Secondary School Counselor

Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 **Del.C.** §1220 and 14 **DE Admin. Code** 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.

PROPOSED REGULATIONS

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Secondary School Counselor. This certification is required for grades nine (9) to twelve (12) and is valid in grades six (6) to eight (8) in a Middle Level school. A Middle Level School Counselor must hold either an Elementary School Counselor Standard Certificate or a Secondary School Counselor Standard Certificate.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505, Standard Certificate including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

“CAEP (Council for the Accreditation of Educator Preparation)” – A nonprofit and nongovernmental agency that accredits educator preparation providers (EPPs), which was created when the National Council for Accreditation of Teacher Education (NCATE) and the Teacher Education Accreditation Council (TEAC) merged in 2013.

3.0 Standard Certificate

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

4.0 Additional Requirements

- ~~4.1 An educator must also have met the following.~~
- 4.21 Has satisfied at least one of the following additional education requirements:
- 4.21.1 Graduated from an NCATE specialty organization recognized or CAEP educator preparation ~~program unit~~ or from a state approved educator preparation program, where the state approval body employed the appropriate ~~NASDTEC or NCATE~~ national specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Secondary School Counseling; or
- 4.21.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and satisfactorily completed ~~3039~~ credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:
- 4.21.2.1 ~~Principles and Practices of the School Counseling Program~~ Introduction to School Counseling & Theories (3 credits);
- 4.21.2.2 ~~Individual Counseling Skills~~ Human Behavior and Child Development (3 credits);
- 4.21.2.3 ~~Group Counseling Skills~~ Ethical Issues in School Counseling (3 credits);
- 4.21.2.4 ~~Human Development~~ College & Career Readiness K-12 (3 credits);
- 4.21.2.5 ~~Career Development~~ Testing, Measurements, and Research in School Counseling (3 credits);
- 4.21.2.6 ~~Individual and Group Testing for Counselors~~ The Counselor as Consultant (3 credits);
- 4.21.2.7 ~~Supervised Practicum in Secondary Counseling~~ Special Education Law & the School Counselor's Role (3 credits);
- 4.21.2.8 ~~Counseling Theory~~ Group Counseling (3 credits);

- 4.21.2.9 ~~Consultation~~ Individual Counseling Skills & Strategies (36 credits); and
- 4.21.2.10 ~~Ethical Issues in School Counseling~~ Family Counseling (3 credits).
- 4.1.2.11 Principles and Practices of a School Counseling Program (6 Credits); and
- 4.3 ~~Has met at least one of the following experience requirements:~~
- 4.3.1 ~~A minimum of three years professional experience in a secondary school setting; or,~~
- 4.3.2 ~~A minimum of three years of equivalent experience as approved by the Department of Education;~~
~~or,~~
- 4.2.3.3 ~~A supervised school counseling internship~~ clinical experience under the direct supervision of a state certified school counselor of one (1) full year 600 hours in a secondary school setting which is part of a graduate degree program in Secondary School Counseling or arranged by the Department of Education. ~~The internship may be completed over a two (2) year period on a half time basis.~~

5.0 Effective Date of Section 4.0

Section 4.0 of this regulation shall be effective on January 1, 2017.

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 3370 and 3571R
(18 **Del.C.** §§311, 3370 & 3571R)

PUBLIC NOTICE

1409 Insurance Coverage for Telemedicine and Telehealth

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1409** relating to **Insurance Coverage for Telemedicine and Telehealth**. The docket number for this proposed regulation is 2988.

House Bill 69 as amended by House Amendment No. 1 and Senate Amendment No. 1 of the 148th General Assembly provides for the use of telemedicine and telehealth in Delaware as of January 1, 2016. The proposed regulation sets standards for the coverage of health care services provided through the use of telemedicine and telehealth. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§311, 3370 and 3571R; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Thursday, December 31, 2015. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

1409 Insurance Coverage for Telemedicine and Telehealth**1.0 Authority**

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311, 3370 and 3751R and is promulgated in accordance with 29 **Del.C.** Chapter 101.

2.0 Definitions

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

"Distant site" means a site at which a health care provider legally allowed to practice in the state is located while providing health care services by means of telehealth.

"Originating site" means a site in Delaware at which a patient is located at the time health care services are provided to him or her by means of telehealth, unless the term is otherwise defined with respect to the provision in which it is used; provided, however, notwithstanding any other provision of law, insurers and providers may agree to alternative siting arrangements deemed appropriate by the parties.

"Store and forward transfer" means the transmission of a patient's medical information either to or from an originating site or to or from the provider at the distant site, but does not require the patient being present nor must it be in real time.

"Telehealth" means the use of information and communications technologies consisting of telephones, store and forward transfers, remote patient monitoring devices or other electronic means which support clinical health care, provider consultation, patient and professional health-related education, public health, and health administration services.

"Telemedicine" means a form of telehealth which is the delivery of clinical health-care services by means of real time 2-way audio, visual, or other telecommunications or electronic communications, including the application of secure video conferencing or store and forward transfer technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient's health care by a health-care provider practicing within his or her scope of practice as would be practiced in-person with a patient, and legally allowed to practice in the State, while such patient is at an originating site and the health-care provider is at a distant site.

3.0 Compliance with Statutes Regarding Telemedicine and Telehealth

Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each health service corporation providing individual or group accident and sickness subscription contracts; and each managed care organization and health maintenance organization providing a health care plan for health care services shall comply with the provisions of 18 **Del.C.** §§3370 and 3571R, and this regulation.

4.0 Telehealth

4.1 Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each health service corporation providing individual or group accident and sickness subscription contracts; and each managed care organization and health maintenance organization providing a health care plan for health care services shall provide coverage for the cost of such health care services provided through telehealth. Coverage for health care services provided through telehealth shall be provided so long as the underlying health care service is a covered service and the health care provider providing the service is licensed to furnish the service under State law and is practicing within the scope of State law.

4.2 No insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; health

service corporation providing individual or group accident and sickness subscription contracts; or managed care organization or health maintenance organization providing a health care plan for health care services shall impose any limitation on the ability of an insured to seek medical care through the use of telehealth service solely because the health care service is being provided through telehealth. Such prohibited limitations shall include, but not be limited to, preauthorization, medical necessity or homebound requirements.

5.0 Severability

If any provision of this regulation or the application of any such provision to any person or circumstance shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

6.0 Effective Date

This regulation shall become effective on February __, 2016.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code, Section 4702(c) (7 Del.C. §4702(c))
7 DE Admin. Code 9201

REGISTER NOTICE #2015 - 09

9201 Regulations Governing State Parks

1. TITLE OF THE REGULATION:

7 DE Admin. Code 9201 Regulations Governing State Parks

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

As a result of the General Assembly passing and Governor Markell signing SB 114, changes to the Rules and Regulations are needed. The penalties for twenty three of the twenty eight sections of the Park Rules and Regulations have been changed to Environmental D violations. The remaining sections' penalty is unchanged. Other changes have been made to reflect updated Division policies and concerns.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C 4702(c) and SB 114

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

None.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 9201 Regulations Governing State Parks will be open December 1, 2015. 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 December 22, 2015 beginning at 6:00 PM at the DNREC Auditorium, 89 Kings Highway, Dover, DE, 19901. Please note that all comment submitted to the Department in this matter should be limited to the scope of this proposed regulatory promulgation, to wit: only regarding the proposed amendments to the aforementioned regulations found at 7 DE

Admin. Code 9201.

7. PREPARED BY:

Wayne Kline Wayne.Kline@state.de.us (302) 739-9221

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

9201 Regulations Governing State Parks

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Chapter 40 (7 Del.C. Ch.40)
7 DE Admin. Code 5101

REGISTER NOTICE: SAN #2015-10

5101 Sediment and Stormwater Regulations

1. TITLE OF THE REGULATIONS:

5101 Sediment and Stormwater Regulations with reference to Technical Document

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

A Superior Court decision of October 7, 2015 invalidated the 2013 and 2014 version of the Delaware Sediment and Stormwater Regulations on procedural grounds because the accompanying Technical Document referenced by the regulations was not published in the State Register in accordance with Administrative Procedure Act requirements. This action is being taken to publish the Technical Document in the State Register as a separate document referenced in 5101 Sediment and Stormwater Regulations. Within the Technical Document, the Residential Construction Standard Plan section (3.01.1.1) has been updated.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for this regulation.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7, Delaware Code, Chapter 40, the Sediment and Stormwater Law

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

No other regulations are affected by this proposed regulation with reference to Technical Document.

6. NOTICE OF PUBLIC COMMENT:

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship will conduct a public hearing on **Regulation No. 5101 Sediment and Stormwater Regulations**, incorporating the Technical Document by reference.

The public hearing for **Regulation No. 5101 Sediment and Stormwater Regulations** will be held Tuesday, January 5, 2016, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation and referenced Technical Document may be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website: <http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Elaine Webb, DNREC Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, Elaine.Webb@state.de.us.

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, as designated by the hearing officer at this hearing, to Elaine Webb and/or statements and

testimony may be presented either orally or in writing at the January 5, 2016 public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Elaine Webb
DNREC – Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

7. PREPARED BY:

Elaine Z. Webb November 12, 2015
(302) 739-9921
Elaine.Webb@state.de.us

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

5101 Sediment and Stormwater Regulations

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF PREVENTION AND BEHAVIORAL HEALTH SERVICES

Statutory Authority: 16 Delaware Code, Section 5001(11); 29 Delaware Code, Section 9005(7)
(16 Del.C. §5001(11) & 29 Del.C. §9005(7))

PUBLIC NOTICE

Qualifications for Juvenile Mental Health Screeners

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), and under the authority of Title 29 of the Delaware Code, Chapter 90, §9005, (7), the Department of Services for Children, Youth and Their Families (DSCYF) / Division of Prevention and Behavioral Health Services (DPBHS) is proposing to create qualification for Juvenile Mental Health Screeners.

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 Stephen Perales, Office of the Director, Division of Prevention and Behavioral Health Services, 1825 Faulkland Road, Wilmington, DE 19805-1195 or by fax to 302-622-4475 by December 31, 2015. Please identify in the subject line: Qualifications for Juvenile Mental Health Screeners.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that the Delaware Department of Services for Children, Youth and Their Families/Division of Prevention and Behavioral Health Services (DSCYF/DPBHS) proposes to promulgate regulations for the Juvenile Mental Health Screeners.

Statutory Authority

- Delaware Code, Title 29, Chapter 90, §9005(7)
- Delaware Code, Title 16, Chapter 50, §5001(11)

Background

During the 147th Delaware General Assembly, HB 346, AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE COMMITMENT OF THE MENTALLY ILL, was signed into law. The new law created a definition for “Juvenile Mental Health Screener” and authorized DSCYF to establish regulations concerning the credentialing process and criteria for Juvenile Mental Health Screeners.

Qualifications for Juvenile Mental Health Screeners

1.0 Juvenile Mental Health Screener Credentialing

Title 16, Chapter 50 of the Delaware Code states that only Juvenile Mental Health Screeners, authorized by the Department of Services for Children, Youth and Their Families (DSCYF), have the authority to detain or abrogate a detainment of an individual under the age of 18 for emergency detention, pending a psychiatric evaluation. No person shall hold himself out to the public as a juvenile mental health screener unless the person is credentialed in accordance with this chapter, and acting in the capacity of their employment or contract relationship through which they have been granted juvenile mental health screener status. The Division of Prevention and Behavioral Health Services (DPBHS) is the DSCYF Division responsible for implementing and enforcing this law.

2.0 Definitions

As used in this regulation:

“Crisis services” means services provided by the staff or contractors of DPBHS Child Priority Response program or a psychiatric hospital contracted by the DSCYF, in the course of their employment.

“Department” and “DSCYF” means the Department of Services for Children Youth and Their Families.

“Division” and “DPBHS” means the Division of Behavioral Health Services.

“DSAMH” means the Division of Substance Abuse and Mental Health of the Department of Health and Social Services.

“Eligible entity” means a facility operated by the DSCYF, DSCYF crisis services provider, or a Delaware licensed mental health hospital under contract with the DSCYF.

“Emergency detention” and “emergently detained” means the process whereby a minor who appears to have a mental condition, and whose mental condition causes the person to be dangerous to self or dangerous to others, and whose parent or legal guardian is unwilling, or unavailable, to have the minor admitted to a facility voluntarily for assessment or care, is involuntarily detained for such evaluation and treatment for 24 hours unless the parent or legal guardian is unavailable to the Department during that 24 hour period; in such instances the time period may be extended to 72 hours.

“Juvenile Mental Health Screener” means an individual who has applied for and been approved to be credentialed as a Juvenile Mental Health Screener under Chapter 50, by the DPBHS.

“Psychiatric Facility” means a Delaware licensed mental health hospital under contract with the DSCYF.

“Secretary” means the Secretary of the Department of Services for Children Youth and Their Families.

3.0 Qualifications of Applicants for Credentialed Mental Health Screener

3.1 Psychiatrists, Board Certified Emergency Physicians, and Physicians.

3.1.1 Psychiatrists, board certified emergency physicians and physicians who meet the criteria of 16 DE Admin. Code §§6002.3.1 - 6002.3.3 may detain or abrogate a detainment for a psychiatric evaluation of any person, over or under age 18 as detailed in 16 DE Admin. Code §6002.

3.2 Licensed Non-Physician Mental Health Professionals

3.2.1 A credentialed Licensed Non-Physician Mental Health Professional, who meets the qualifications enumerated in this regulation, may detain or abrogate a detainment for a psychiatric evaluation of a person under the age of 18.

- 3.2.2 Licensed Non-Physician Mental Health Professionals must meet the following qualifications:
- 3.2.2.1 Registered Nurse. Each applicant shall document current licensure by the State of Delaware as a Registered Nurse with a BSN degree and in good standing, as set forth in 24 Del.C. Ch. 19;
 - 3.2.2.2 Advanced Practice Nurse. Each applicant shall document current licensure by the State of Delaware as an Advanced Practice Nurse in good standing, as set forth in 24 Del.C. Ch. 19;
 - 3.2.2.3 Licensed Clinical Social Worker. Each applicant shall document current licensure in the State of Delaware as a Licensed Clinical Social Worker in good standing, as set forth in 24 Del.C. Ch. 39 and have at least 2 years/4000 hours of post masters clinical experience;
 - 3.2.2.4 Licensed Professional Counselor of Mental Health. Each applicant shall document current licensure by the State of Delaware as a Licensed Professional Counselor of Mental Health in good standing, as set forth in 24 Del.C. Ch. 30 and have at least 2 years/4000 hours of post masters clinical experience;
 - 3.2.2.5 Licensed Psychologist. Each applicant shall document current licensure by in the State of Delaware as a Licensed Clinical Psychologist in good standing, as set forth in 24 Del.C. Ch. 35;
 - 3.2.2.6 Other Licensed Behavioral Health Professional. The Secretary of the Division of Services for Children Youth and Their Families may designate other behavioral or mental health professionals, who are licensed under Delaware Law, and the Secretary may set requirements for their qualifications to serve as juvenile mental health screeners.
- 3.2.3 Additional requirements; Licensed Non-Physician Mental Health Professionals
- 3.2.3.1 Licensed Non-Physician Mental Health Professionals must complete DPBHS's juvenile mental health screener training, or the Division of Substance Abuse and Mental Health mental health screener training, in order to be authorized to act as a juvenile mental health screener.
 - 3.2.3.2 Current employment or contract relationship required. A credentialed Licensed Non-Physician Mental Health Professional will no longer be considered a Juvenile Mental Health Screener, and his authority to detain or abrogate detentions will end, when the professional is no longer employed by the DSCYF operated facility, or employed by or under contract with the DSCYF to perform crisis services, or is no longer employed by or under contract with a Delaware licensed mental health hospital under contract with the DSCYF.
 - 3.2.3.3 For non-physician juvenile mental health screeners, consultation with another juvenile mental health screener is required. If both juvenile mental health screeners are non-physicians, they must concur with the detention. A physician with juvenile mental health screener status may override the detention determination of a non-physician juvenile mental health screener.
 - 3.2.3.4 Each applicant under this section must be approved or credentialed by the DPBHS.

4.0 Applications Process

- 4.1 Application for credentialing.
 - 4.1.1 Physicians, psychiatrists, and Board Certified Emergency Physicians.
 - 4.1.1.1 Physicians, including psychiatrists and Board Certified Emergency Physicians shall submit to the Division a resume, verification of current employment, and all contact information, Delaware license numbers and titles, and such other credentials or proof of certification as may be necessary to meet requirements set forth in Section 3.0 above.
 - 4.1.1.2 Physicians, psychiatrists, and Board Certified Emergency Physicians who hold current Mental Health Screener status, through the Division of Substance Abuse and Mental Health, are exempt from this requirement.

PROPOSED REGULATIONS

- 4.1.1.3 If required to complete training by 16 DE Admin Code §6002, that training must be completed prior to acting as a Juvenile Mental Health Screener.
- 4.1.2 Licensed Non-Physician Mental Health Professionals.
 - 4.1.2.1 A licensed non-physician mental health professional who wishes to be credentialed as a Juvenile Mental Health Screener under Chapter 51 must obtain a recommendation from the Chief Executive Officer or Director or the eligible entity the licensed non-physician mental health professional is employed by or contracted with.
 - 4.1.2.2 The applicant or the eligible entity the applicant is employed by or contracted with, must submit the juvenile mental health screener application to DPBHS.
 - 4.1.2.3 The application shall include the Chief Executive Officer or Director's recommendation, a resume, verification of current employment, and all contact information, Delaware license numbers and titles, such other credentials or proof of certification as may be necessary to meet requirements set forth in Section 3.0 above.
 - 4.1.2.4 After the application and supporting materials are received by the DPBHS, the Division will accept or decline the recommendation that the applicant enter the juvenile mental health screener class.
 - 4.1.2.5 The applicant must complete the training required in Section 5.0 prior to acting as a Juvenile Mental Health Screener.
- 4.2 Application for Re-credentialing
 - 4.2.1 All Delaware credentialed juvenile mental health screeners except as noted in subsection 4.2.1.2 below will be required to re-apply every two (2) years, 60 days prior to the second anniversary date of the issued credential, for renewal of the credential to DPBHS.
 - 4.2.1.1 The application for renewal shall require proof of continuing licensure, credentials or certification as may be necessary to meet the requirements set forth in Section 3.0 above to be re-credentialed.
 - 4.2.1.2 Psychiatrists and Board Certified Emergency Physicians are the only professionals not required to undergo this re-credentialing process. All other physicians as well as licensed non-physician mental health professionals, must comply with either this re-credentialing process, or the re-credentialing process of the Division of Substance Abuse and Mental Health.
 - 4.2.2 DPBHS will provide eligible entities any updated information or changes to the policies, procedures, regulations, or laws that would impact juvenile mental health screeners. Eligible entities shall be responsive for distributing this information to their affiliated juvenile mental health screeners.
 - 4.2.3 Eligible entities are responsible for monitoring their affiliated juvenile mental health screeners, to ensure that screeners are complying with the re-credentialing process and maintaining current licensure or other requirements to practice in their profession.

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

- 5.1 Training. The following standards will apply to the credentialing and re-credentialing of Juvenile Mental Health Screeners and sets forth the minimum qualifications and training requirements.
 - 5.1.1 For licensed physicians, other than psychiatrists and Board Certified Emergency Room Physicians, training guidelines for applicants will include content that may change over time and is up to DPBHS to direct.
 - 5.1.1.1 Compliance with qualifications specified in Section 3.0 above;
 - 5.1.1.2 Compliance with training guidelines, including completion of 4 hours of training by either the DPBHS or DSAMH; and
 - 5.1.1.3 Satisfactory score on the credentialing examination.
 - 5.1.2 Licensed Mental Health Professionals

- 5.1.2.1 Compliance with qualifications specified in Section 3.0 above:
- 5.1.2.2 Compliance with training guidelines as specified in subsection 5.1 above, including completion of either DSAMH mental health screener 40 hour training or 4 hours of juvenile mental health screener training by DPBHS; and
- 5.1.2.3 Satisfactory score on either the DPBHS or DSAMH credentialing examination.

5.3 Re-Credentialing

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

- 5.3.1.1 Compliance with qualifications specified in Section 3.0 above; and
- 5.3.1.2 Compliance with training guidelines as specified in subsection 5.1 above, including completion of 4 hours of training by DSAMH or DPBHS every two years.

5.3.2 Licensed Mental Health Professionals

- 5.3.2.1 Compliance with qualifications specified above; and
- 5.3.2.2 Compliance with training guidelines as specified in subsection 5.1 above, including completion of 4 hours of training by DPBHS or DSAMH every two years.

6.0 Credentialed Juvenile Mental Health Screener Performance

- 6.1 Conflict of interest statement: The intent of the law is to ensure that no person is detained for any reason other than experiencing symptoms associated with a mental condition that may result in danger to self or others, and that any potential or apparent conflicts of interest as set forth in 16 Del.C. §5004 are disclosed on the DPBHS Emergency Detainment Request Form within 24 hours of signature of the detention order. Potential or apparent conflicts of interest may include, but are not limited to, employment by a privately operated psychiatric facility, a personal relationship with the individual being detained or committed involuntarily, a relationship with family or significant others of the individual being detained or committed involuntarily, or being the victim of a crime by the person being detained or committed involuntarily. An Emergency Detainment Request Form must be completed for every youth under 18 detained under this regulation. This form must be maintained in the client's records as described in subsection 6.2.
- 6.2 Record Keeping, Forms and Documentation. The following standards will apply to the Forms and Documentation required monitoring and reporting on the performance of juvenile mental health screeners, including performance as it pertains to compliance with conflict of interest disclosure in actions to detain, or undo a detainment, of an individual under this statute.
 - 6.2.1 Credentialed juvenile mental health screeners will be required to complete a DPBHS Emergency Detainment Request Form for the purpose of ensuring a standardized approach to assessing the needs of clients in crisis and documenting the decision premised upon that assessment. These forms will become part of the client's records.
 - 6.2.2 For youths whose detainments are paid in whole or in part by DPBHS, or who are otherwise currently in DPBHS services: the DPBHS Emergency Detainment Request Form must be sent to DPBHS as soon as possible and within 24 hours by the admitting psychiatric facility. DPBHS will collect and monitor all DPBHS Emergency Detention Forms performed by juvenile mental health screeners, whether a conflict of interest is disclosed or not, for purposes of ensuring that the intent of this law is met and that detainments are appropriate.
 - 6.2.3 For all youths, including youths not presently involved with DPBHS, DPBHS will collect aggregate data from psychiatric facilities in the form of a monthly report. This report will include: number of detainments per Juvenile Mental Health Screener, number of incidents where a screener determined a detainment was not necessary, admitting facility, the client patient number, the date of detainment, demographic information (age, race, sex, and zip code) of the child's primary residence, and other factors deemed necessary by DPBHS), screener name and number, presenting problem, and the reason the detainment was necessary. Psychiatric facilities will be responsible for including such data for patients detained by the eligible entity's Juvenile Mental Health Screeners, as well as Juvenile Mental Health Screeners not employed by or contracted with the eligible entity.

PROPOSED REGULATIONS

- 6.2.4 If DPBHS deems it necessary to review specific or aggregate detentions in cases of youths who are not DPBHS involved, DPBHS shall, within 24 hours of request, be provided a redacted copy of the Emergency Detainment Request Form by the Juvenile Mental Health Screener and/or the eligible entity.
- 6.3 Data Review and Reporting. The Juvenile Mental Health Screeners and/or eligible entities are responsible for record keeping and making available to DPBHS as required by this regulation, DPBHS Emergency Detainment Request Forms and associated records. DPBHS will periodically monitor these records for compliance. The Juvenile Mental Health Screeners and/or their associated eligible entity will also be responsible for maintaining a database in a format that is approved by DPBHS and that will be reported to DPBHS as set forth in subsection 6.2.3 of this regulation, so that DPBHS may review aggregate data. This database will include administrative information, such as the admitting facility, the client patient number, the date of detention, demographic information (age, race, sex, zip code) of the child's primary residence, and other factors deemed necessary by DPBHS), screener name and number, presenting problem, and the reason the detention was necessary.
- 6.3.1 DPBHS will collect aggregate data of juvenile mental health screener detentions, which will be available to the public.
- 6.3.2 Detainment data will be reviewed to monitor for anomalies in detention rates to assure juvenile mental health screener performance improvement and compliance with this regulation, the authorizing statutes, and principals of least restrictive environment and community integration.

7.0 Suspension or Revocation of Juvenile Mental Health Screener

- 7.1 The following outlines circumstances under which a credential may be suspended or revoked. DPBHS will monitor individuals and general facilities performing juvenile mental health screenings and detaining individuals for 24 – 72 hours under this regulation as specified in Section 6.0. Nothing in Section 6.0 relieves juvenile mental health screeners of the requirement to keep their own records on their work to detain or not detain individuals that they assess. Copies of the Emergency Detainment Request Form are sufficient documentation if the individual juvenile mental health screener or organization that supports these screeners keeps this information protected and confidential under federal law. Compliance with federal laws on this documentation is the responsibility of the individual who has been credentialed as a Juvenile Mental Health Screener.
- 7.1.1 Failure of any credentialed Juvenile Mental Health Screeners to be aware of, and operate in compliance with, the federal and state laws pertaining to protection of health records. Failure to comply with this requirement will result in immediate suspension of the Juvenile Mental Health Screener credential.
- 7.1.2 Suspension or revocation of a professional license will result in the immediate revocation of the Juvenile Mental Health Screener credential.
- 7.1.3 For licensed non-physician mental health professionals, loss of a current contract or employment relationship with a DSCYF operated facility, DSCYF crisis services, or a Delaware licensed mental health hospital under contract with the DSCYF.
- 7.1.4 Failure to comply with the conflict of interest provisions of 14 **Del.C.** §5004.
- 7.1.5 Due to concerns with performance, which can include inappropriate overuse of emergency detentions or failure to identify minors in need of detention, as identified by the DSCYF reviewing psychiatrist or an Emergency Detention of Juveniles Review Board designated by the Secretary, which are uncorrected after written warning from the DSCYF.
- 7.1.6 Due to concerns with performance identified by a complaint or appeal submitted to DPBHS's Quality Assurance Department. The DPBHS Quality Assurance Department will refer any such complaints or appeals to DPBHS's reviewing psychiatrist for evaluation.
- 7.2 Compliance with notification of this revocation is the responsibility of the individual who has been credentialed as a Juvenile Mental Health Screener and, in the case of non-physicians, the eligible entity with whom the individual is affiliated.

- 7.3 Reinstatement of Juvenile Mental Health Screener status of an individual for whom a credential has been suspended or revoked will be at the discretion of DPBHS, in light of circumstances surrounding the original suspension or revocation.

8.0 Appeal Process

Any individual or eligible entity affiliated with an individual who has been denied status as a juvenile mental health screener or who has had a screening credential suspended or revoked can appeal this decision by writing to the DPBHS Director. Such an appeal, based on knowledge and facts of this event, must be made within twenty (20) days of the denial, suspension, or revocation. A response by the DPBHS Director will be forthcoming within thirty (30) days of DPBHS receiving the appeal.

9.0 Consent for Voluntary Admissions

In the case of voluntary admission to a designated psychiatric treatment facility or hospital, consent to treatment of a minor shall be given only by a parent or legal guardian. The request for admission to the designated psychiatric treatment facility or hospital shall be signed by either the applicant's parent or legal guardian.

10.0 Payment for Voluntary and Involuntary Admissions

Payment to hospitals for voluntary and involuntary admissions of clients in crisis will be in accordance with the provisions of 16 Del.C. §§5019, 5020, and 29 Del.C. §9019.

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

5200 BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

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

24 DE Admin. Code 5200

PUBLIC NOTICE

5200 Board of Examiners of Nursing Home Administrators

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 Del.C. §5206(1), proposes to revise its regulations. The Board will hold a public hearing on the proposed rule change on March 8, 2016 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Flora Peer, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 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).

5200 Board of Examiners of Nursing Home Administrators

(Break in Continuity of Sections)

5.0 Programs for Continuing Education Credits

- 5.1 Continuing education programs consisting of Board approved seminars, resident or extension courses, conferences and workshops totaling 48 ~~classroom~~ hours or more, on any of the subject areas enumerated in 5.2 below, are required for biennial licensure of a license as a Nursing Home Administrator. The following are requirements for license renewal:

(Break in Continuity Within Section)

- 5.3 Acceptable programs of continuing education are:

(Break in Continuity Within Section)

PROPOSED REGULATIONS

- 5.3.4 Those self-instruction or home study courses, videos, computer-assisted programs, online and webinars courses approved by the National Association of Boards (NAB) and/or pre-approved by the Board, ~~may be accumulated at no more than 24 hours per renewal period.~~

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

5200 Board of Examiners of Nursing Home Administrators

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 8404(8); 17 Delaware Code, Ch. 1 and 5 (29 Del.C. §8404(8); 17 Del.C. Ch. 1 & 5)

PUBLIC NOTICE

Pedestrian Accessibility Standards

In concert with the Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act or ADA of 1990 as amended, the Delaware Department of Transportation (DelDOT) is committed to providing compliant pedestrian accessibility for everyone. DelDOT does not discriminate in the provision of any of its programs, services or business activities and is committed to upholding the intent and spirit of the ADA, Section 504, and Title VI of the Civil Rights Act to the fullest extent possible. DelDOT recognizes that much work is required before pedestrian facilities are brought into full compliance with the DelDOT Pedestrian Standards. DelDOT also recognizes that there are many challenges and complexities involved in providing fully compliant pedestrian facilities in the public right of way.

The DelDOT Pedestrian Accessibility Standards for Facilities in the Public Right of Way or "DelDOT Pedestrian Standards" combines into one document the requirements, guidelines and best practices for accessible pedestrian facilities in the public transportation right of way as identified by the:

- Americans with Disabilities Act of 1990 or ADA; (<http://www.ada.gov/>)
- ADA Standards for Transportation Facilities 2006 or 2006 Standards adopted by the US Department of Transportation; (www.dot.gov/accessibility)
- Draft Public Right of Way Accessibility Guidelines or PROWAG 2011 developed by the US Access Board; (<http://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines>)
- Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way or PROWAG Supplement 2013; Shared Use Paths; <http://www.access-board.gov/guidelines-and-standards/streets-sidewalks/shared-use-paths>. The 2013 PROWAG Supplement includes unchanged PROWAG 2011 guidance as well as revised PROWAG 2011 guidance and new guidance on a variety of pedestrian system features.
- US Department of Justice or DOJ; (<http://www.justice.gov/>), and
- US Department of Transportation or USDOT; (<http://www.dot.gov/>).

The standards provided in this document, in concert with the Delaware Manual on Uniform Traffic Control Devices or DE MUTCD, (http://deldot.gov/information/pubs_forms/manuals/de_mutcd/) are intended to assist all public and private sector transportation planners and engineers in the effort to achieve a more consistent approach to planning, design, construction and maintenance of accessible pedestrian facilities in the public transportation right of way. The Pedestrian Accessibility Standards for Facilities in the Public Right of Way have been developed to meet the spirit and intent of the legislation as well as the regulatory requirements and guidance of ADA, DOJ and USDOT as of the date of this publication. The primary reference documents used are the 2006 US DOT Standards with citations noted as numbers (e.g., 101.1) and the US Access Board's 2011 and 2013 PROWAG with citations

noted as numbers preceded by R (e.g., R101.1).

Please send any comments no later than December 31, 2015 to the attention of:

Jim Pappas
Assistant Director
Office of Performance Management
Delaware Department of Transportation
800 Bay Road
Dover, DE 19903
james.pappas@state.de.us

Please Note: Due to the size of the proposed regulation, it is not being published here. The following link to a PDF of the proposed regulation is provided below:

[Pedestrian Accessibility Standards](http://regulations.delaware.gov/register/december2015/proposed/PedestrianAccessibilityStandards.pdf)
(<http://regulations.delaware.gov/register/december2015/proposed/PedestrianAccessibilityStandards.pdf>)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE

DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION

Statutory Authority: 3 Delaware Code, Sections 904(a)(13) (3 **Del.C.** §904(a)(13)
3 **DE Admin. Code** 701

ORDER

701 Farmland Preservation Program

AND NOW, this 18th day of November, 2015, the Trustees of the Delaware Agricultural Lands Preservation Foundation (collectively the "Foundation" or the "Board"), issues the following Order which shall be effective ten (10) days after the publication of this Order in the Delaware *Register of Regulations*:

1. Pursuant to its statutory authority, the Foundation has proposed for adoption a comprehensive set of regulations (the "Proposed Regulations") to be used in the administration of the Delaware Agricultural Lands Preservation Program established pursuant to 3 **Del.C.** §901 (the "Program"). William A. Denman, legal counsel (the "Hearing Officer") was designated as the Hearing Officer to conduct a public hearing to entertain comments from the public on the Proposed Regulations, and thereafter organize and summarize the comments submitted, and report to the Foundation on the comments.

2. The public comment session was held at the Foundation's office on Wednesday, September 23, 2015 at 10:00AM. A verbatim transcript of the public comment session, consisting of 74 pages, was prepared and available for review by the Foundation. Notice of the public comment session, together with information as to how a copy of the Proposed Regulations could be obtained, was published in the Delaware *Register* on September 1, 2015. Notice of the public comment session was also (a) published in both the *Delaware State News* and the *News Journal* on August 18, 2015 and (b) posted on the *Delaware.gov* web site on August 25, 2015. At least 60 days prior to the publication of the Proposed Regulations, a draft of the Proposed Regulations was distributed to the Farmland Preservation Advisory Boards of Kent and Sussex County, Delaware established pursuant to 3 **Del.C.** §906. A copy of the Proposed Regulations was sent to the Council President of New Castle County. New Castle County did not have an established Farmland Preservation Advisory Board. The deadline for submitting written

comments was October 12, 2015, nineteen (19) days after the conclusion of the public comment session.

3. On October 22, 2015, the Hearing Officer submitted his Report, a copy of which was provided to the Foundation.

4. The Foundation considered the Proposed Regulations and the Report of the Hearing Officer at its regularly scheduled Board meeting held on November 18, 2015, and has determined to issue this Order reciting the background, summary of information submitted, and its findings. At its November 18, 2015 Board meeting, the Foundation (after taking into consideration the comments made by the public at the public comment session, as set forth in the verbatim transcript, the written comments received, and the Report of the Hearing Officer, all of which were made available to each Trustee prior to the November 18, 2015 Board Meeting) issues this Order.

5. A summary of the verbal and written public comments submitted on the Proposed Regulations is set forth in the Report of the Hearing Officer.

6. The Foundation, by this Order, adopts as Final Regulations the Regulations attached to this Order as Exhibit A. The Final Regulations, as adopted herein, shall replace the existing regulations set forth in 3 Delaware Administrative Code, Part 701, §1.0 through §30.0, including Appendix A through G.

7. Several comments were received regarding the various matters relating to the Proposed Regulations. The Foundation has considered these comments and the Report of the Hearing Officer.

8. The Foundation finds that proper notice of the Proposed Regulations and opportunity to comment was provided by the Foundation as required by law.

9. The Foundation finds that the Proposed Regulations are consistent with the Foundation's enabling legislation, and in particular, 3 **Del.C.** §915, and provide for a fair and uniform procedure for acquiring agricultural lands preservation easements, incorporate bidding and negotiation into that process in the form of discounting or donations, and provide additional incentives to facilitate the acquisition of preservation easements on farms located near or adjacent to growth zones. The Foundation finds that the "discount" method used in the easement selection process has worked well in the past, and recognizing the voluntary nature of the program, provides an objective method for selecting qualified farms for easement purchase. The Foundation also finds that the 5% bonus provision set forth in Proposed Regulation Section 18.2 represents an additional incentive for owners of farmland located near and adjacent to growth zones to sell a preservation easement. The Foundation will monitor the effectiveness of the 5% bonus. The Foundation also finds that the Proposed Regulations simplify the procedure for acquiring preservation easements, and will not impose additional costs or burdens upon individuals, farmers, or small business owners. The Foundation also notes that many of the commentators who submitted comments supported the adoption of the Proposed Regulations. The Delaware Audubon Society, the Delaware Nature Society, Delaware Wild Lands, and the League of Women Voters submitted comments in support of the Proposed Regulations. Tony Domino and Tom Unruh, two active farmers in New Castle County, voiced their support for the Proposed Regulations. Neither the Kent County Farmland Preservation Advisory Board nor the Sussex County Farmland Preservation Advisory Board opposed the Proposed Regulations.

10. The Foundation also believes that the Proposed Regulations provide an objective basis for determining how the Foundation's limited resources will be used to acquire preservation easements. In order for a property to qualify for the sale of a preservation easement, the property must be part of a ten year District. Prior to becoming a part of a District, the property must satisfy the eligibility requirements set forth in the Foundation's enabling legislation. Accordingly, only those farms that satisfy the criteria for inclusion in a District are eligible to participate in the bidding process. The bidding process, which incorporates the use of voluntary "discounts" or "donations", as noted above, provides an objective and uniform process, free of political or other intervention, for selecting those farms that will be preserved.

11. The Foundation also notes that the Proposed Regulations include several sections that are essentially procedures for obtaining information and set forth rules of practice and procedure. See Sections 2.0, 3.1-3.10, 4.0, 8.0, 10.0, 11.0, 14.0, 15.0, 19.0 and 20.0 of the Proposed Regulations. Proposed Regulation 3.11 and 21 are necessary to make the Foundations' regulations consistent with changes in the law that took place in 2004. Proposed Regulation 6.0 and 7.0 merely set forth a restatement of the law.

12. In adopting the Proposed Regulations as Final Regulations, the Foundation notes the following:

Section 1 sets forth the statutory requirements for district eligibility and is consistent with the Foundations enabling legislation. Section 1.3, consistent with current practice, sets the minimum LESA score at 170.

Section 2 sets forth the application procedures that must be followed when a farmer requests that his/her property be included in a District. The Board notes that Section 2 does not include a specific application form.

While there was a suggestion that the Proposed Regulations include a specific application form, the Board believes that the Foundation's Staff is capable of developing appropriate forms, consistent with the law.

Section 3 sets forth procedures to be followed in reviewing Preservation District applications as well as a detailed process for handling disputes. Section 3.11 merely updates the regulations so as to conform to changes in the law relating to residential use and permitted activities, and provides a process whereby parties to district agreements and easements can elect to come in under the legislation enacted in 2004.

Section 4 sets forth the formal requirements that must be complied with in order to create a district. All of these requirements are consistent with Title 3.

Section 5 sets forth the restrictions applicable to district property, all of which are required by Title 3. Section 5 also incorporates the Foundation's current practice in calculating the allowable residential acreage. Section 5.9 requires notice to the Foundation of any proposed transfer of a farm subject to a district agreement or easement. This notice provision is reasonable in that it will provide the Foundation's Staff with adequate time to prepare the acknowledgment required by statute.

Section 6 incorporates the statutory provisions relating to the duration and renewal of a district agreement.

Section 7 sets forth the statutory provisions relating to expansion of a district.

Section 8 sets forth the statutory provisions relating to the Foundation's authority to inspect district property and enforce the terms of the district agreement.

Section 9 sets forth the procedural requirements for hardship exceptions. The Board concludes that these procedures are fair, reasonable, and consistent with the statutory requirements for the granting of a hardship.

Section 10 and Section 11 relate to the Delaware Farmland Preservation Fund and potential sources of funding. Consistent with Title 3, Section 11.3 requires the Fund to be audited each year by an independent certified public accountant and the findings of each audit be presented to the Board. These sections are consistent with the current regulations.

Section 12 provides that the eligibility criteria for the acquisition of a preservation easement shall be the same as the criteria for district eligibility, and makes it clear that only district property qualifies for easement purchase. Section 12, consistent with Title 3, makes it clear that the purchase of a preservation easement is subject to the discretion of the Foundation. To facilitate the purchase of an easement where funds are limited, Section 12 authorizes the Foundation to purchase an easement on part of a farm included within a district agreement. The Board finds this approach reasonable. At times, the purchase of a preservation easement on all of the property subject to a district agreement may be cost prohibitive.

Section 13 relates to matching contributions and is consistent with the Foundation's current practice. In this Order, the Foundation confirms that if any county or municipality is willing to contribute all of the funds to purchase a preservation easement on a farm subject to a district agreement, the Foundation will allow the county or municipality to designate the farm. The county's or municipality's decision can be based on any criteria that the county or municipality deems appropriate.

Section 14 is consistent with the Foundation's current procedures for the selection of properties for easement purchase. The Board finds these procedures to be fair and reasonable.

Section 15 requires the submission of an application for each farmland tract offered for preservation easement purchase, and consistent with the district agreement application process, delegates to the Foundation Staff the authority to develop application forms. The Board concludes that this process is reasonable.

Section 16 sets forth guidelines to be followed in appraising farms, including the qualifications of any appraiser. The Board concludes that the qualification requirements set forth in Section 16 are reasonable, and provide adequate guidance to the Foundation's Staff when selecting an appraiser. Appraisers must be "qualified" and "independent." The Board notes that Section 16 would continue the existing practice of determining the "agriculture-only value" of a farm unit based on an "income capitalization methodology." Some of the commentators objected to this approach, arguing that this method was not reliable. The Foundation understands that the valuation of property is subjective, but notes that under Section 16, the "income capitalization methodology" would be used on a consistent basis and applicable to all farms. Accordingly, no farmer seeking to sell a preservation easement will be at a disadvantage. The Foundation would also note that the use of this method will not have any adverse impact on the procurement of federal funding, as suggested by one commentator.

Section 17 sets forth the process for determination of the preservation easement value, and is consistent with the Foundation's current practice. Section 17 also provides a basis for determining value when a farmer disagrees with the Foundation's appraisal, and provides the farmer with the right to have an alternative

appraisal performed. Section 17.4 provides for a method of determining the "maximum adjusted Preservation Easement value" which the Foundation will accept under such circumstances. Some commentators objected to Section 17.4 and recommended that the Foundation make a determination on a case by case basis and select one of the appraisals. The Board finds that Section 17 is consistent with the current practice, and provides an objective method for arriving at value when there is a dispute. Rule 17.4 does not dictate what the value will be. The use of the phrase "up to" in Sections 17.4.1(ii) and 17.4.2(ii) confirms that. The Board would note that if a farmer is not happy with the result, the farmer does not have to sell a preservation easement. Section 17 provides a reasonable road map for the negotiation process when a farmer disagrees with the Foundation's appraisal.

Section 18 incorporates a bidding process into the easement procurement process, consistent with the current practice. The Board, by this Order, reaffirms its belief that selecting those offers providing the highest discount is fair and objective, and authorized by law. The record shows that this approach has been successful, and insures that all farmers are treated the same, free of political or subjective influences. The 5% bonus available to farms located near and adjacent to "growth zones" provides an additional incentive for easement purchases on farms located near growth zones. Some of the commentators do not consider this adequate. The Board disagrees at this time, but as noted herein, will require the Foundation's Staff to monitor the impact of the 5% bonus on future easement purchases. The Board also notes that some of the commentators objected to any confidential treatment afforded to any discount offered by a landowner. Section 18.4 addresses that issue, and would require the permission of the landowner prior to releasing the information.

Section 19 sets forth in general terms the procedural requirements relating to the documentation required when purchasing an easement. The Board considers these procedural requirements reasonable, and consistent with the law.

Section 20 sets forth the title requirements and addresses post-closing adjustments that will be required when and if the survey used for determination of the purchase price turns out to be inaccurate. Section 20 is consistent with current practice.

Section 21 relates to the designation of residential lots as contemplated by changes in the law that took place in 2004. Section 21 is consistent with those changes, as well as the current practice. In the Board's view, Section 21 provides a reasonable process for designating residential areas.

Section 22 refers to the Strategy Map attached as Appendix B to the Proposed Regulations. Some commentators criticized the value of this Map. The Board disagrees. The Strategy Map identifies those farms with a LESA Score of 170 or more, as well as those farms located in areas that are eligible for the 5% bonus.

NOW THEREFORE, after deliberation, for the reasons set forth above and herein, it is the Foundation adopts this Order, as follows:

1. That the "Delaware Agricultural Lands Preservation Program" regulations (the "Regulations") attached hereto as Exhibit A are adopted pursuant to 3 **Del.C.** §901, *et. seq.* The Regulations adopted herein which constitute rules for the administration of the Delaware Agricultural Lands Preservation Program shall become effective ten (10) days after their publication in the Delaware Register of Regulations. The Foundation Board finds and determines that the adoption of the Proposed Regulations is just and reasonable, and in the public interest, and will foster the preservation of farmland in Delaware.

2. That pursuant to 29 **Del.C.** §1134, the Foundation shall as soon as possible transmit a copy of this Order and the Regulations to the Delaware Registrar of Regulations for publication in the next issue of the *Delaware Register of Regulations*.

3. That a copy of this Order and the Regulations shall be mailed to each entity or persons that previously filed comments to the Proposed Regulations and to each person who has made a timely request for advance notice of the Foundation's regulation making proceedings.

4. That the Proposed Regulations shall supersede all prior versions of the Foundation's regulations relating to the administration of the Delaware Agricultural Lands Preservation Program. The Foundation reserves the right to hereafter alter, amend, or waive the Regulations adopted herein to the extent that the same may be allowed by law.

5. That the Foundation reserves the jurisdiction and power to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE FOUNDATION:

Robert F. Garey, Chairperson

William H. Narvel, Jr., Delaware State Grange
MemberEdwin Kee, Secretary, Department of Agriculture or
DesigneeRobert L. Emerson, New Castle County Farm
Member "I voted No"Kevin Coyle, Secretary, Department of Natural
Resources and Environmental Control, or Designee

Theodore P. Bobola, Jr., Kent County Farm Member

Kenneth Simpler, State Treasurer or Designee

William Vanderwende, Sussex County Farm
Member

L. Allen Messick, Jr., Delaware Farm Bureau Member

Peter Martin, Chair, Council on Forestry or Designee

Dated: November 18, 2015

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

701 Farmland Preservation Program

HARNESS RACING COMMISSION

DELAWARE STANDARDBRED BREEDERS' FUND

Statutory Authority: 29 Delaware Code, Section 4815(b)(4)b.2 (29 **Del.C.** §4815(b)(4)b.2)
3 **DE Admin. Code** 502

ORDER

502 Delaware Standardbred Breeders' Fund Regulations

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 29 **Del.C.** §4815(b)(4)b the State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") proposed to amend its regulations. Proposed amended regulation under 13.0 defines and allows consolidation of consolation races to afford more racing opportunity to participants and fuller wagering fields. The changed formats will commence with the racing year of 2016.

Notice of a public comment period of thirty (30) days on the Fund's proposed amended regulations was published in the Delaware *Register of Regulations* for September 1, 2015 in accordance with 29 **Del.C.** §4815(b)(4)b.2. This is the Fund's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

The Fund received no public comments in response to its notice of intention to adopt the proposed amended regulation.

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Fund's intention to adopt the proposed amended regulation and was given ample opportunity to provide the Fund with comments opposing the Fund's plan. Thus, the Fund concludes that its consideration of the proposed amended regulation was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt the proposed amended regulation.

IV. ORDER

AND NOW this 28th day of October, 2015, it is hereby ordered that:

1. The proposed amendment to the Fund's regulations is adopted;
2. The text of the final regulation shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations* in accordance with 29 Del.C. §10118(e); and
4. The Fund reserves to itself the authority to issue such other and further orders concerning its Regulations as it deems appropriate.

IT IS SO ORDERED.

Tom Cook

Mark Davis

Garrett Bell

Wayne Givens

Garnet O'Marrow

Andy Markano

Linda MacDonald

***Please note that no changes were made to the regulation as originally proposed and published in the September 2015 issue of the Register at page 161 (19 DE Reg. 161). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

502 Delaware Standardbred Breeders' Fund Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 284

REGULATORY IMPLEMENTING ORDER

284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 DE Admin. Code 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction. This regulation is being amended to reflect the revised Professional Standard Board licensure and certification regulations.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **September 1, 2015**, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. There concerns were: (1) the numbering of §10.0. This section was previously §7.0 and was renumbered to be §10.0. It appeared in the online published version that the "7" was not struck through and renumbered. The Department confirmed with the Registrar of Regulations that this was an electronic publishing issue which they will correct in the online version, as the submitted amended regulation did edit this numbering properly. (2) the inconsistent use of the terms "public school employee" and "public education employee" used in the definitions section of the regulation. The Department agrees with this comment and changed the references from "public school employee" to "public education employee" in the definitions of Instructional Paraeducator, Service Paraeducator and Title I Paraeducator; (3) §4.0 needs renumbering for consistency. The Department notes that a new §4.4 was in the submitted regulation but again it did not appear due to a publishing error. The Registrar of Regulations is aware and will make that change; (4) Additionally §4.6.1 - §4.7.1 are not consistent in subject matter as one deals with

license renewal and the other is related to license suspension standards. The Department agrees and has deleted this section entirely; (5) the reference to the term “disloyalty” in §12.2. The Department does not wish to change this term in this regulation, as that specific language is used in the Professional Standards Board licensure and certification regulations; (6) The Department removed the words “and Renewal” from 3.0, as an Initial License cannot be renewed.

Also, the Registrar of Regulation asked us to amend 8.1 (bold and bracket) to ensure the first part of the sentence is published in the final version, as it was partially omitted in the proposed regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction in order to reflect the revised Professional Standard Board licensure and certification regulations.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **November 19, 2015**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of November 2015.

Department of Education

Steven Godowsky, Secretary of Education

Approved this 19th day of November 2015

284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction

(Break in Continuity of Sections)

2.0 Definitions

Except as otherwise provided, the definitions set forth in 14 DE Admin. Code 1505, 1506 1510, 1511, 1512, and 1513, including any subsequent amendment or revision thereto, are incorporated herein by reference.

(Break in Continuity Within Section)

“Instructional Paraeducator (Paraeducator)” means a public [school education] employee or adult education employee who provides one-on-one or small group instruction; assists with classroom management or individual student behavior; provides assistance in a computer laboratory; provides support in a library or media center; assists in training and support with functional skill activities, such as personal care or assistive technology; or provides instructional services to students under the direct supervision of a teacher. Instructional Paraeducators are those working with regular education students and students with disabilities in schools other than Title I schoolwide schools or with students not receiving Title I services in Title I targeted assistance schools.

(Break in Continuity Within Section)

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

(Break in Continuity Within Section)

“Title I Paraeducator” means a public [school education] employee who provides one on one or small group instruction; assists with classroom management; provides assistance in a computer laboratory; provides support in a library or media center; or provides instructional services to students under the direct supervision of a teacher. Additionally, Title I Paraeducators are all Instructional Paraeducators who work with regular students and children with disabilities in Title I schoolwide schools and all Title I Paraeducators who work with children receiving Title I services in Title I targeted assistance schools, except those whose duties are limited to acting as a translator or as a home school liaison.

(Break in Continuity Within Section)

3.0 Issuance [~~and Renewal~~] of an Initial License

(Break in Continuity Within Section)

4.0 Issuance and Renewal of a Continuing License

(Break in Continuity Within Section)

4.6 The Department shall renew a Continuing License, valid for an additional five (5) years, to a qualified Public Education Employee who has fulfilled the clock hour requirement for professional development and other requirements of 14 DE Admin. Code 1511. At least one half of the required hours for Public Education Employees shall be in activities that relate to the Public Education Employee's work with students or staff. Satisfactory evidence of such completion, as set forth in 14 DE Admin. Code shall be submitted to the Department with the application for renewal. The clock hours of professional development shall have taken place during the term of the Continuing License.

~~4.6.1 Notice shall be sent to the person's last known address. Notice shall be sent by certified mail, with return receipt requested and may also be sent electronically.~~

~~4.6.2 The license holder shall have thirty (30) calendar days from the date the notice of the suspension was mailed to make a written request for a hearing.~~

~~4.6.3 If no written request for a hearing is received by the Secretary by thirty (30) calendar days from the date the notification was mailed, the license holder's license shall be deemed to be suspended and the holder shall be so notified.~~

~~4.6.4 All communications between a license holder and the Department provided for in this section shall be by certified mail, with a return receipt requested. Additional notice may also be sent electronically.~~

4.7 Hearings and Procedures

~~4.7.1 Unless otherwise provided for in this Section, the burden of proof in a license suspension action shall be on the agency taking official action to establish by preponderance of the evidence that the license holder has failed to comply with the applicable laws and regulations relating to the retention of the license.]~~

(Break in Continuity of Sections)

8.0 Issuance of a Paraeducator Permit

In addition to the requirements in 6.0, persons employed by the Department of Education shall be certified by the Department for the position they hold at the Department.

8.1 [Except as otherwise provided, the requirements and provisions of 14 DE Admin. Code 1517 *Issuance of*] *Paraeducator Permit*, including any subsequent amendment or revision thereto, is incorporated herein by reference.

*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2015 issue of the *Register* at page 163 (19 DE Reg. 163). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

284 Licensure and Certification of Public Education Employees

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 811

REGULATORY IMPLEMENTING ORDER

811 School Health Record Keeping Requirements

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 DE Admin. Code 811 School Health Record Keeping Requirements. This regulation is being amended to clarify procedures and purpose of school health record keeping documents.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2015, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) and a public school nurse. Comments included: (1) clarification needed for the meaning of "issued medications", and are they "prescribed" or "non-prescribed". The Department clarified this by adding the words "or prescribed"; (2) further clarification needed for "mandated testing and screenings". The Department deleted the word "mandated"; (3) further clarification needed to "Delaware School Health Record" to include "student athlete health records required by DIAA regulation". The Department agrees with this change and included that specific language for clarification; (4) request to add an email address in the definition of "Emergency/Nursing Treatment Card" as to identify classes of individuals. The Department did not make this change as the card contains the minimum information needed. A school district can add additional information if it wishes to do so; (5) expansion of definition of "parent" to include "parent, guardian or Relative Caregiver" to be consistent with other regulations. The Department added 'guardian or Relative Caregiver' where needed to include those relationships. Lastly, there was a general comment about how the amended regulation would impact school nurses. There will be no changes in practice due to this amended regulation, as the amendments are made to clarify procedures and further articulate expectations.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 811 School Health Record Keeping Requirements in order to clarify procedures and purpose of school health record keeping documents.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 811 School Health Record Keeping Requirements. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 811 School Health Record Keeping Requirements attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 811 School Health Record Keeping Requirements hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 811 School Health Record Keeping Requirements amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 811 School Health Record Keeping Requirements in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 19, 2015. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of November 2015.

Department of Education
Steven Godowsky, Secretary of Education

Approved this 19th day of November 2015

811 School Health Record Keeping Requirements

1.0 Definitions

"Delaware School Health Record Form" means ~~an form~~ electronic document containing ~~documentation of an information about a student's health information, which includes but is not limited to identifying information, health history, the student's name, gender, birthdate,~~ immunizations, results of **[mandated]** testing and screenings, medical diagnoses, ~~long-term issued [or prescribed]~~ medications and treatments, **[student athlete health records compiled in compliance with DIAA regulations]** and referrals.

"Department" means the Delaware Department of Education.

"Emergency/Nursing Treatment Card" means a ~~card~~ form containing contact information and general school emergency procedures for the care of a student who becomes sick or injured at school. The card contains the following information: the student's name, birth date, school district, school, grade, ~~home room or teacher or class assignment,~~ home address, ~~home and~~ telephone number; the name, place of employment and work telephone number of the parent, guardian or Relative Caregiver; two other names, addresses, and telephone numbers of individuals who can be contacted at times when the parent, guardian or Relative Caregiver ~~can not~~ cannot be reached; the name and telephone number of the ~~family physician~~ primary health care provider and family dentist; any medical conditions or allergies the student has; and the student's medical insurance.

“Student Accident Report Form” means a form developed by the Department that is used by the district or charter to review school accidents resulting in medical evaluation or referral.

“Student Health History Update” means a form developed by the Department that is used to obtain current student health information from the parent, guardian, or Relative Caregiver or the student if 18 years or older or an unaccompanied homeless youth.

“Summary of School Health Services” means an annual report created by the Department on school health services that have been provided and electronically documented by school nurses.

2.0 Emergency/Nursing Treatment Card

- 2.1 An Emergency/Nursing Treatment Card for each public school student shall be on file in the office of the school nurse.
 - 2.1.1 The information on the Emergency/Nursing Treatment Card shall be shared only on a need to know basis as related to the education and health needs of the student and consistent with state and federal laws.
 - 2.1.2 The parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 U.S.C. 11434(a)) shall sign the Emergency/Nursing Treatment Card to assure they understand the purpose of the form and acknowledge the accuracy of the information.
 - 2.1.3 The Emergency/Nursing Treatment Card is used to update the student’s medical information on the Delaware School Health Record and student’s contact information in the district or charter electronic pupil accountability system.
 - 2.1.4 The contact information on the Emergency/Nursing Treatment Card shall be used by the school nurse to contact the parent[, guardian or Relative Caregiver] regarding any health-related matter and to identify a person to pick up or provide consultation regarding the student’s acute illness or injury.

3.0 Delaware School Health Record Form

- 3.1 The Delaware School Health Record Form shall be current and shall be part of the student’s health record within the Cumulative Record File (14 DE Admin. Code 252) which accompanies the student when he or she moves to another school.
- 3.2 The Delaware School Health Record Form shall be maintained for the duration of the student’s schooling and the school nurse shall use the Student Health History Update Form to keep health records current. ~~The Delaware School Health Record Form shall remain in the nurse’s file during the student’s attendance in school.~~
 - 3.2.1 The Delaware School Health Record Form ~~may~~ shall be maintained in hard copy or within an electronic documentation program and transferred electronically with the student. If the Delaware School Health Record cannot be transferred electronically, a hard copy shall be created and transferred to the receiving school. ~~Beginning with the 2008-2009 school year, all Delaware School Health Records Forms shall be in an electronic format.~~
- 3.3 Documentation received on the student’s health, including parent medication permission slips and immunization records, shall be recorded in his or her electronic Delaware School Health Record. Hard copies of the documents shall be maintained in an individual school health folder.

NON REGULATORY NOTE: also see 14 DE Admin. Code 251 and 252 and the Delaware Public Archives Document Delaware School Districts General Records Retention Schedule.

4.0 Other Required Documentation

- 4.1 The school nurse shall document in the state, district, or charter electronic health record system for individual student health data any nursing care provided including the school name, a three point date, the person’s (student, staff or visitor) first and last name, the time of arrival and departure, the presenting complaint, the nurse’s assessment intervention and the outcome, including the disposition

of the situation, the parent or other contact, if appropriate, and the nurse's complete signature or initials.

- 4.1.1 The school nurse shall document the care given at the time of a school based accident by completing the Student Accident Report Form if the student missed more than one half day because of the accident or if the school nurse has referred the student for a medical evaluation regardless of whether the parent, guardian or Relative Caregiver or student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 U.S.C. 11434(a)) followed through on that request.

5.0 Submission of Records

- 5.1 ~~All local school districts and charter schools shall submit the Summary of School Health Services Form, to the Delaware Department of Education by August 31st of each year. The form shall include all of the school health services provided in all schools during the fiscal year including summer programs. The Department will annually create the Summary of School Health Services provided by districts and charters. Data from the previous school year shall be collected from the state's pupil accountability system after August 15th. Any district or charter using an alternative electronic health record shall submit an electronic version of the Summary of School Health Services report to the Department by August 31st of each year.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 1007

REGULATORY IMPLEMENTING ORDER

1007 DIAA Sportsmanship

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1007 DIAA Sportsmanship. This regulation is being amended to align to changes in the Code of Interscholastic Athletics as set by the National Federation of State High Schools. This is part of a comprehensive review and update to be made to all DIAA regulations.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on July 25, 2015 and August 1, 2015, in the form hereto attached as Exhibit "A". Comments were received from the State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) regarding (1) the language in §1.2.1.5.2.8 which, "forbids the use of tobacco, alcohol and non-prescribed drugs" specific to students aged 18 and 21 years old, and; (2) the across-the-board ban on non-prescribed drugs (e.g., Neosporin). The Department clarified this reference by changing the language to indicate that coaches should, "establish policies which discourage the unlawful use of drugs, medications and non-prescribed drugs." Also the SCPD noted a grammar correction in §1.2.1.5.4.1, where the word "shall" needed to be deleted, and the Department made that change.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1007 DIAA Sportsmanship in order to align to changes in the Code of Interscholastic Athletics as set by the National Federation of State High Schools. This is part of comprehensive reviews and updates to be made to all DIAA regulations.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1007 DIAA Sportsmanship. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1007 DIAA Sportsmanship attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1007 DIAA Sportsmanship hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1007 DIAA Sportsmanship amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1007 DIAA Sportsmanship in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 17, 2015. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of November 2015.

Department of Education

Steven Godowsky, Secretary of Education

Approved this 19th day of November 2015

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President (not present)

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D. (not present)

Nina Lou Bunting

1007 DIAA Sportsmanship

1.0 Definitions and Sportsmanship

(Break in Continuity Within Section)

1.2 Sportsmanship

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

(Break in Continuity Within Section)

- 1.2.1.5 Failure of an administrator, athletic director, coach, athlete, official, or spectator to comply with the directions stipulated in the following Code of Interscholastic Athletics:

(Break in Continuity Within Section)

- 1.2.1.5.2 The Coaches shall: The function of coaches is to educate students through participation in interscholastic athletics. An interscholastic program shall be designed to enhance academic achievement and shall never interfere with opportunities for academic success. Each student shall be treated with the utmost respect and his welfare should be considered in decisions by the coach at all times. Therefore, coaches shall:

(Break in Continuity Within Section)

1.2.1.5.2.8 Discourage gambling, profanity, abusive language, and similar violations of the true sportsman's or sportswoman's code. ~~Forbid the use of tobacco, alcohol, and non-prescribed drugs and~~ Establish policies which discourage the unlawful use of drugs, medications, and non-prescribed drugs. Coaches shall set an example to athletes by not using these products in their presence. Do not allow gambling, profanity, abusive language, and similar violations of the true sportsman's or sportswoman's code.

(Break in Continuity Within Section)

1.2.1.5.4 The Officials shall: Officials at an interscholastic athletic event are participants in the educational development of high school students. As such, they must exercise a high level of self-discipline, independence and responsibility. Therefore, officials shall:

1.2.1.5.4.1 Know the rules and interpretations and mechanics of their sport and be thoroughly trained to administer them. Be prepared and qualified both mentally and physically for the contest they are officiating, dress neatly and appropriately, and shall comport themselves in a manner consistent with the high standards of the profession.

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2015 issue of the *Register* at page 105 (19 DE Reg. 105). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1007 DIAA Sportsmanship

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1512

REGULATORY IMPLEMENTING ORDER

1512 Issuance and Renewal of Advanced License

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1512 Issuance and Renewal of Advanced License. This regulation shall apply to the issuance of an Advanced License for educators, pursuant to 14 **Del.C.** §1213 and §1214. Upon review, the Board has amended a few sections of the regulation for clarity and accuracy, and to meet current formatting.

Notice of the proposed amendment of the regulation was published in the *Register of Regulations* on November 1, 2014. The notice invited written comments. No comments were received.

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached, and said regulation shall be cited as 14 **DE Admin. Code** 1512 of the *Administrative Code of Regulations* of the Department of Education.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4th DAY OF DECEMBER, 2014

Bryon Murphy, Chair	Darren Guido (absent)
Diane Albanese	David Kohan
Linda Brown	Rosaria Macera
Jennifer Burton	Wendy Murray (absent)
Michael Casson (absent)	Darlene O'Neill
Stephanie DeWitt	Mary Pinkston
Nelia Dolan	Stephanie Smith
Cristy Greaves	

IT IS SO ORDERED this 4th day of December, 2014.

Department of Education

Mark Murphy, Secretary of Education

Approved this 4th day of December, 2014.

State Board of Education

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

***Please note that no changes were made to the regulation as originally proposed and published in the November 2014 issue of the *Register* at page 346 (18 DE Reg. 346). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1512 Issuance and Renewal of Advanced License

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1513

REGULATORY IMPLEMENTING ORDER

1513 Denial of Licenses

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1513 Denial of

Licenses. This regulation shall apply to the denial of an Initial License, Continuing License, or Advanced License for educators, pursuant to 14 **Del.C.** §§1210-14 and §1217. The Professional Standards Board has reviewed the regulation under a five year cycle and concluded that a few changes were necessary for clarification of the appeal process.

Notice of the proposed amendment of the regulation was published in the *Register of Regulations* on November 1, 2014. The notice invited written comments. No comments were received.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation.

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached, and said regulation shall be cited as 14 **DE Admin. Code** 1513 of the *Administrative Code of Regulations* of the Department of Education.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4th DAY OF DECEMBER, 2014

Bryon Murphy, Chair

Diane Albanese

Linda Brown

Jennifer Burton

Michael Casson (absent)

Stephanie DeWitt

Nelia Dolan

Cristy Greaves

Darren Guido (absent)

David Kohan

Rosaria Macera

Wendy Murray (absent)

Darlene O'Neill

Mary Pinkston

Stephanie Smith

IT IS SO ORDERED this 4th day of December, 2014.

Department of Education

Mark Murphy, Secretary of Education

Approved this 4th day of December, 2014.

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes

*Please note that no changes were made to the regulation as originally proposed and published in the November 2014 issue of the *Register* at page 347 (18 DE Reg. 347). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1513 Denial of Licenses

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1514

REGULATORY IMPLEMENTING ORDER

1514 Revocation, Limitation, or Suspension of Licenses

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize 14 **DE Admin. Code** 1514 Revocation, Limitation, or Suspension of Licenses. This regulation applies to the revocation, limitation, or suspension of an Initial License, Continuing License, or Advanced License issued pursuant to 14 **Del.C.** Ch. 12. The Professional Standards Board has reviewed the regulation under a five year cycle and concluded that the regulation should be readopted without any changes.

Notice of the proposed reauthorization of the regulation was published in the *Register of Regulations* on November 1, 2014. The notice invited written comments. No comments were received.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to reauthorize this regulation at this time with no changes.

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached, and said regulation shall be cited as 14 **DE Admin. Code** 1514 of the *Administrative Code of Regulations* of the Department of Education.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4th DAY OF DECEMBER, 2014

Bryon Murphy, Chair
Diane Albanese
Linda Brown

Darren Guido (absent)
David Kohan
Rosaria Macera

Jennifer Burton
Michael Casson (absent)
Stephanie DeWitt
Nelia Dolan
Cristy Greaves

Wendy Murray (absent)
Darlene O'Neill
Mary Pinkston
Stephanie Smith

IT IS SO ORDERED this 4th day of December, 2014.

Department of Education
Mark Murphy, Secretary of Education

Approved this 4th day of December, 2014.

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

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

***Please note that no changes were made to the regulation as originally proposed and published in the November 2014 issue of the *Register* at page 349 (18 DE Reg. 349). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1514 Revocation, Limitation, or Suspension of Licenses

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b)
14 **DE Admin. Code** 1560

REGULATORY IMPLEMENTING ORDER

1560 Art Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to reauthorize 14 **DE Admin. Code** 1560 Art Teacher. It is necessary to reauthorize this regulation due to the regulation being out of its five year review cycle. This regulation sets forth the requirements for an Art Teacher.

Notice of the proposed reauthorization of the regulation was published in the Delaware *Register of Regulations* on July 1, 2015. The notice invited written comments. Zero comments were received.

II. FINDINGS OF FACTS

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

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to reauthorize the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached

hereto as Exhibit "A" is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby reauthorized shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation reauthorized shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1560 Art Teacher of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3rd DAY OF SEPTEMBER, 2015

Bryon Murphy, Chair	Cristy Greaves
Diane Albanese	Darren Guido
Amber Augustus	David Kohan
Linda Brown	Rosaria Macera
Jennifer Burton	Darlene O'Neill
Stephanie DeWitt (absent)	Mary Pinkston
Nelia Dolan	Stephanie Smith
Laura Glass	Sue Smith

IT IS SO ORDERED this 17th day of September, 2015.

Department of Education

Mark Murphy, Secretary of Education

Approved this 17th day of September, 2015

State Board of Education

Teri Quinn Gray, Ph.D., President	G. Patrick Heffernan
Jorge L. Melendez, Vice President	Barbara B. Rutt (not present)
Nina Lou Bunting	Terry M. Whittaker, Ed.D.
Gregory B. Coverdale, Jr. (not present)	

1560 Art Teacher

Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 **Del.C.** §1220 and 14 **DE Admin. Code** 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.

1.0 Content

- 1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Art Teacher. This certification is required for grades K to 12.

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

2.0 Definitions

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

3.0 Standard Certificate

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b)
14 **DE Admin. Code** 1563

REGULATORY IMPLEMENTING ORDER

1563 Music Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to reauthorize 14 **DE Admin. Code** 1563 Music Teacher. It is necessary to reauthorize this regulation due to the regulation being out of its five year review cycle. This regulation sets forth the requirements for a Music Teacher.

Notice of the proposed reauthorization of the regulation was published in the Delaware *Register of Regulations* on July 1, 2015. The notice invited written comments. Zero comments were received.

II. FINDINGS OF FACTS

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

III. DECISION TO ADOPT THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation reauthorized shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1563 Music Teacher of the *Administrative Code of Regulations* of the

Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3rd DAY OF SEPTEMBER, 2015

Bryon Murphy, Chair	Cristy Greaves
Diane Albanese	Darren Guido
Amber Augustus	David Kohan
Linda Brown	Rosaria Macera
Jennifer Burton	Darlene O'Neill
Stephanie DeWitt (absent)	Mary Pinkston
Nelia Dolan	Stephanie Smith
Laura Glass	Sue Smith

IT IS SO ORDERED this 17th day of September, 2015.

Department of Education

Mark Murphy, Secretary of Education

Approved this 17th day of September, 2015

State Board of Education

Teri Quinn Gray, Ph.D., President	G. Patrick Heffernan
Jorge L. Melendez, Vice President	Barbara B. Rutt (not present)
Nina Lou Bunting	Terry M. Whittaker, Ed.D.
Gregory B. Coverdale, Jr. (not present)	

1563 Music Teacher

Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 Del.C. §1220 and 14 DE Admin. Code 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.

1.0 Content

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

2.0 Definitions

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

3.0 Standard Certificate

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1564

REGULATORY IMPLEMENTING ORDER

1564 Physical Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to reauthorize 14 **DE Admin. Code** 1564 Physical Education Teacher. It is necessary to reauthorize this regulation due to the regulation being out of its five year review cycle. This regulation sets forth the requirements for a Physical Education Teacher.

Notice of the proposed reauthorization of the regulation was published in the Delaware *Register of Regulations* on July 1, 2015. The notice invited written comments. Zero comments were received.

II. FINDINGS OF FACTS

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

III. DECISION TO ADOPT THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation reauthorized shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1564 Physical Education Teacher of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3rd DAY OF SEPTEMBER, 2015

Bryon Murphy, Chair

Cristy Greaves

Diane Albanese

Darren Guido

Amber Augustus
Linda Brown
Jennifer Burton
Stephanie DeWitt (absent)
Nelia Dolan
Laura Glass

David Kohan
Rosaria Macera
Darlene O'Neill
Mary Pinkston
Stephanie Smith
Sue Smith

IT IS SO ORDERED this 17th day of September, 2015.

Department of Education

Mark Murphy, Secretary of Education

Approved this 17th day of September, 2015

State Board of Education

Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
Nina Lou Bunting
Gregory B. Coverdale, Jr. (not present)

G. Patrick Heffernan
Barbara B. Rutt (not present)
Terry M. Whittaker, Ed.D.

1564 Physical Education Teacher

Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 **Del.C.** §1220 and 14 **DE Admin. Code** 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.

1.0 Content

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

2.0 Definitions

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

3.0 Standard Certificate

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b)
14 **DE Admin. Code** 1571

REGULATORY IMPLEMENTING ORDER

1571 Exceptional Children Special Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1571 Exceptional Children Special Education Teacher in order to update and clarify some of the definitions, requirements, and to align title as this certification is required for an educator within the Delaware public school system whose primary assignment is teaching children with disabilities. This regulation sets forth the requirements for an Exceptional Children Special Education Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on July 1, 2015. The notice invited written comments. One comment was received from Wilmington University. The suggested changes were taken into consideration, and some changes in grammar were corrected.

II. FINDINGS OF FACTS

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

III. DECISION TO ADOPT THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1571 Exceptional Children Special Education Teacher of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3rd DAY OF SEPTEMBER, 2015

Bryon Murphy, Chair

Cristy Greaves

Diane Albanese

Darren Guido

Amber Augustus

David Kohan

Linda Brown

Rosaria Macera

Jennifer Burton

Darlene O'Neill

Stephanie DeWitt (absent)

Mary Pinkston

Nelia Dolan

Stephanie Smith

Laura Glass

Sue Smith

IT IS SO ORDERED this 17th day of September, 2015.

Department of Education

Mark Murphy, Secretary of Education

Approved this 17th day of September, 2015

State Board of Education

Teri Quinn Gray, Ph.D., President

G. Patrick Heffernan

Jorge L. Melendez, Vice President

Barbara B. Rutt (not present)

Nina Lou Bunting

Terry M. Whittaker, Ed.D.

Gregory B. Coverdale, Jr. (not present)

**1571 ~~Exceptional Children~~ Special Education Teacher of Students with Disabilities
(Break in Continuity of Sections)**

4.0 Additional Requirements

4.1 An educator shall also have satisfied one of the following additional education requirements:

4.1.1 Holding a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent, in special education or students with disabilities, from a National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate standards; or

4.1.2 Completion of a minimum of fifteen (15) credits or their equivalent in professional development as approved by the Department, with a focus in special education or [in] students with disabilities in the following content areas:

4.1.2.1 Diagnosis and Instruction for Reading / Literacy (3 credits);

4.1.2.2 Education Evaluation and IEP Development (3 credits);

4.1.2.3 Curriculum and Instruction in Special Education (3 credits);

4.1.2.4 Applied Behavior Analysis (3 credits); and

4.1.2.5 One of the following areas:

4.1.2.5.1 Legislation, Policy & Procedures/ Special Issues in Special Education (3 credits);

4.1.2.5.2 Transitions from Secondary Special Education or Secondary Transition Planning (3 credits);

4.1.2.5.3 Collaborative Teaming in Special Education (3 credits); or

4.1.2.5.4 Assistive Technology (3 credits).

5.0 Past Certification Recognized

The Department shall recognize a Standard Certificate Exceptional Children Special Education Teacher or other valid equivalent Special Education Certification including Exceptional Children Special Education - Elementary and Exceptional Children Special Education - Secondary issued before July 1, 2016. A teacher holding such a Standard Certificate issued by the Department before July 1, 2016 shall be considered certified to instruct [all subjects and areas classes] to students with disabilities[.]

6.0 Effective Date

Section 4.0 of this regulation shall be effective on July 1, 2016.

*Please note that no additional changes were made to the regulation as originally proposed and published in the July 2015 issue of the *Register* at page 17 (19 DE Reg. 17). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1571 Exceptional Children Special Education Teacher

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

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

ORDER

Private Duty Nursing Services

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program Provider Specific Policy Manual to revise and clarify Private Duty Nursing (PDN) services, specifically, *service requirements, coverage criteria, provider qualifications, service limitations and reimbursement methodology*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C** §10114 and its authority as prescribed by 31 **Del.C** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del.C** §10115 in the October 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 30, 2015 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The 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 and the Delaware Medical Assistance Program (DMAP) Provider Specific Policy Manual to revise and clarify Private Duty Nursing (PDN) services, specifically, *service requirements, coverage criteria, provider qualifications, service limitations and reimbursement methodology*.

Statutory Authority

- Section 1905(a)(8) of the Social Security Act, *includes private duty nursing services in the definition of medical assistance*
- 42 CFR §440.80, *defines Private Duty Nursing Services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

Background

Private Duty Nursing (PDN) is an optional Title XIX Medicaid service authorized by Section 1905(a)(8) of the Social Security Act and 42 CFR §440.80. PDN services means nursing services for beneficiaries who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility. These services are provided—

- a) By a registered nurse or a licensed practical nurse;
- b) Under the direction of the beneficiary's physician; and
- c) To a beneficiary in one or more of the following locations at the option of the State—
 1. His or her own home;
 2. A hospital; or
 3. A skilled nursing facility.

Summary of Proposal*Purpose*

To clarify the requirements and reimbursement provisions that governs Private Duty Nursing (PDN) services.

Proposal

The Delaware Medical Assistance Program (DMAP) Provider Manual is written specifically to address the contractual and regulatory requirements of delivering health care services to Delaware Medicaid beneficiaries. From time to time the Division of Medicaid and Medical Assistance (DMMA) update and revise these manuals as our policies or regulatory requirements change. Private Duty Nursing (PDN) Services are those medically necessary services related to the coverage described in the Private Duty Nursing Policy Provider Specific Manual. The proposed rule revises language in the designated provider manual to clarify Medicaid policy on service coverage for Private Duty Nursing services. Amendments to this rule include:

- Language throughout the rule has been restructured, replaced, relettered or in the case of redundancies, eliminated for clarity purposes.
- Revise language to clarify who is eligible to receive private duty nursing services.
- Revisions were made for clarification and consistency purposes that the number of hours of service to be authorized is determined by "Medical Necessity".
- A definition of "technology dependent" was added.
- Language was added to clarify eligible private duty nursing providers and to reflect current practices.
- Deleted coverage and reimbursement language and the Healthcare Common Procedure Coding System (HCPCS) procedure code in Appendix B of Section 7, regarding self-employed nurses as PDN services cannot be provided by self-employed nurses.
- As PDN services can only be covered by DMAP if prior authorized, inserted language detailing how authorization for PDN services is obtained.
- Revised language to clarify how medically necessary hours are determined.

For conditions of coverage and payment, the Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 4.19-B of the Medicaid State Plan to reflect the above-referenced changes. Upon CMS approval, the proposed state plan amendment (SPA) is effective for dates of service on or after October 2, 2015.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the requirements and reimbursement provisions governing private duty nursing services. Comments must be received by 4:30 p.m. on October 30, 2015.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals Update

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. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact Statement

The following fiscal impact is projected:

	Federal Fiscal Year 2016	Federal Fiscal Year 2017
General (State) funds	\$77,930.05	\$80,267.95
Federal funds	\$64,200.26	\$66,126.27

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

Highmark Health Options

Health Options agrees and supports the proposed language changes regarding medical necessity for private duty nursing services that are included throughout the above referenced policy manual. However, Health Options believes the proposed changes may have significant fiscal impact on its operations. It is difficult to provide specific comments regarding the fiscal impact due to Health Options' being in operation for less than one year and lacking historical data. However, it is our hope that DMMA will consider any fiscal impact the proposed changes will have on Health Options when determining appropriate reimbursement rates.

1. The following proposed policy language for section 5.2.3 will be integral in maintaining member safety and ensuring care is provided in the most appropriate setting with consideration of efficient use of resources:

PDN services will only be authorized when there is at least one caregiver willing and able to accept responsibility for the individual's care when the nurse is not available. DMAP expects that caregivers be willing and capable to accept responsibility for their individual's care. If the caregiver cannot or will not accept responsibility for the individual's care when PDN services are not authorized or available, the individual is deemed not to be in a safe environment and PDN services will not be authorized.

It will be particularly important to remain committed and focused on the language in 5.2.3 as authorizations are determined to address the revised language for policy manual sections 5.2.2, 5.2.5, 5.2.6, and 5.2.8. The revisions in these sections do propose expanded coverage criteria for school based services and transportation and eliminate considerations of parental/caregiver availability and ability from the decision making process. Health Options fully agrees that all decisions on a recipient's need for private duty nursing services should be based on medical necessity and will continue to make decisions based upon that standard. However, Health Options also believes that a determination of whether a parent/caregiver is available and able to provide care is an essential piece of the medical necessity determination and of utmost importance when determining how best to allocate limited state resources.

Agency Response: DMMA respectfully disagrees with the suggestion that our proposed revisions to the PDN manual in sections 5.2.2, 5.2.5, 5.2.6, and 5.2.8 result in expanded coverage criteria. Please see our section by section response to this comment below.

2. Health Options suggests that DMMA's proposed changes to the PDN manual results in expanded coverage criteria in §5.2.2.

Agency Response:

The original language in §5.2.2 is as follows:

The on-going need for PDN care is routinely/periodically re-evaluated. DMMA may determine that because of parent/caregiver work schedule, stability of the patient, and other factors, that PDN hours may be reduced or increased.

The suggested revision to §5.2.2 is as follows:

The on-going need for PDN care is routinely/periodically re-evaluated. DMMA may determine that PDN hours may be increased based on medical necessity or reduced based on medical necessity accompanied by a change in circumstances or other good cause.

DMMA feels that the revision to this section of the manual does not expand coverage criteria for PDN. The proposed revision continues to rely upon the determination of medical necessity in authorizing PDN.

3. Health Options suggests that DMMA's proposed changes to the PDN manual results in expanded coverage criteria in §5.2.5.

Agency Response:

The original language in §5.2.5 is as follows:

DMMA reimburses for medically necessary transportation through a Medicaid transportation broker. DMMA expects the parent/caregiver to accompany the client in transport. If, because of employment or school, the parent/caregiver cannot accompany the client, the prior authorized PDN may accompany the client. If the client is transported to a medical appointment or the hospital with the PDN, as soon as the parent/caregiver arrives, the PDN service is no longer required. PDN will not be authorized for a nurse to accompany a client to a medical appointment or hospital stay when the parent/caregiver is available.

The suggested revision to §5.2.5 is as follows:

DMAP reimburses for medically necessary transportation through a Medicaid transportation broker. PDN services will be authorized for transportation when medically necessary, as determined on an individualized basis.

DMMA feels that the revision to this section of the manual does not expand coverage criteria for PDN. The proposed revision continues to rely upon the determination of medical necessity in authorizing PDN.

4. Health Options suggests that DMMA's proposed changes to the PDN manual results in expanded coverage criteria in §5.2.6.

Agency Response:

The original language in §5.2.6 is as follows:

PDN may be approved to accompany school-age children with a compromised airway or other DMAP approved high-risk condition in transport to school and to provide medically necessary care during school hours.

The suggested revision to §5.2.6 is as follows:

PDN services may be authorized during the school day with parental consent and when DMAP determines that it is medically necessary for school-age children. This may include accompanying the children during the transport to and from school and providing medically necessary care during school hours.

DMMA feels that the revision to this section of the manual does not expand coverage criteria for PDN. The proposed revision continues to rely upon the determination of medical necessity in authorizing PDN.

5. Health Options suggests that DMMA's proposed changes to the PDN manual results in expanded coverage criteria in §5.2.8.

Agency Response:

The original language in §5.2.8 is as follows:

DMMA may approve PDN to cover summer vacation as well as scheduled school year holiday vacations for school age children if the parent/caregiver requests coverage timely. Absence of parents/guardian from the home for employment or work-related education reasons must be documented.

The suggested revision to §5.2.8 is as follows:

PDN services may be approved to cover summer vacation as well as scheduled school year holiday vacations for school age children if it is determined that services are medically necessary.

DMMA feels that the revision to this section of the manual does not expand coverage criteria for PDN. The proposed revision continues to rely upon the determination of medical necessity in authorizing PDN.

6. Section 5.3.4 of the proposed policy manual amendments does state that private duty nursing services may be adjusted based on the availability of the parent/caregiver. Health Options believes this language continues to permit considerations of parental/caregiver availability as one part of the overall medical necessity determination.

Agency Response: DMMA thanks you for your comment.

GACEC and SCPD

As background, SCPD and Disabilities Law Program (DLP) representatives met with DHSS Administration in August, 2009 to review concerns with PDN standards. An agreement was reached to revise the standards. In 2010, DMMA shared draft revisions which resulted in submission of September 16, 2011 DLP-authored comments from the SCPD. In 2015, this initiative was revived. DMMA prepared a new set of proposed revisions resulting in DLP commentary and an agreement to incorporate additional changes. See attached August 26, 2015 DMMA letter. DMMA is now formally publishing revised PDN standards for comment. The proposed standards represent a major improvement in several contexts and generally merit endorsement subject to a few considerations. The proposed regulations represent a major improvement in several contexts and we appreciate consideration of past comments. We still have the following observations and concerns.

First, §1.1.4 contains the following recital: "Generally, the total cost of PDN services shall not exceed the cost of care provided in an institutional setting." Council is aware of concern by the Disabilities Law Program with this recital and concern with the DMMA response to concerns noted in Section 2 of the attached August 26, 2015 letter. Literally, it suggests that individual costs may "trump" other considerations, including the Americans with Disabilities Act (ADA) mandate to prioritize non-institutional services. The Centers for Medicare and Medicaid Services (CMS) have historically instructed that ADA principles should be reflected and embedded in state Medicaid program standards. See attached NASDDDS, "The ADA, Olmstead, and Medicaid: Implications for People with Intellectual and Developmental Disabilities (2013). The "not exceed the cost" recital provides a regulatory basis for Managed Care Organizations (MCOs) to justify institutional placement for individuals with higher Private Duty Nursing (PDN) needs. Moreover, the notion of "cost effectiveness" is contained in the attached regulatory definition of "medical necessity" so its deletion in the PDN standards does not result in ignoring cost considerations. The recital should be deleted.

Agency Response: DMMA respectfully disagrees with the suggestion to delete language in §1.1.4 regarding the consideration of the total cost of PDN services. DMMA considers a variety of factors, including cost, in the determination of appropriateness of services for our members with an emphasis on the importance of preventing or delaying institutionalization.

Second, §2.1.1 refers to a "certified registered nurse practitioner (CRNP) who has a professional license from the State to provide nursing services." The Delaware nurse licensing law refers to "advanced practice nurses" and "advanced practice registered nurses" [24 Del.C §1902(a)(b)]. There is no definition of a "certified registered nurse practitioner. DMMA may wish to review this reference.

Agency Response: DMMA received clarification on this issue from the Board of Nursing. They have indicated that the correct title for us to use would be an Advance Practice Registered Nurse (APRN) rather than a Certified Registered Nurse Practitioner (CRNP). Therefore, we have revised §2.1.1 to the following: Private duty nursing may be provided by any registered nurse (RN), licensed practical nurse (LPN) or advance practice registered nurse (APRN) who has a professional license from the State to provide nursing services.

Third, §3.1.1.2 refers to "attending practitioner". We recommend substituting either "prescribing practitioner" or, for consistency with §6.3.2, "primary care physician". See analysis in attached August 26, 2015 letter, Section 10. The term "attending physician" is based on institutional care environments while PDN is limited to non-institutional settings. See §1.1.4.

Agency Response: DMMA agrees with Councils' suggestion to change "attending practitioner" to "prescribing practitioner". Section 3.1.1.2 will be revised as follows:

A written plan of care that is established, signed and dated by the prescribing practitioner which includes orders for

medications, treatments, nutritional requirements, activities permitted, special equipment and other ordered therapies.

Fourth, §§5.1.1 and 5.2.1 merit review. These sections only refer to prior authorization by the Delaware Medical Assistance Program (DMAP) through a DMMA nurse. We assume it should also refer to an MCO nurse since the standards cover both DMMA-authorized PDN and MCO-authorized PDN. See §§5.1.2, 5.2.7 and §1.0.

Agency Response: DMMA respectfully disagrees with the Councils' suggestion to include references to an MCO nurse and MCO-authorized PDN in this section. Although the MCOs are required to provide, at a minimum, coverage of services described in this manual, it is still a DMAP manual and not an MCO manual.

Fifth, we assume that references to "DMAP" (e.g. §§5.2.4, 5.2.6) are generic and are intended to cover both DMMA and MCO decision-making. However, the reference to "DMMA" in §5.2.2 is "under inclusive" since it would not cover an MCO. The reference could be amended to refer to "DMAP" or "DMMA or an MCO".

Agency Response: DMMA agrees with the Councils' suggestion to change DMMA to DMAP in this instance. Section 5.2.2 will be revised as follows:

The on-going need for PDN care is routinely/periodically re-evaluated. DMAP may determine that PDN hours may be increased based on medical necessity or reduced based on medical necessity accompanied by a change in circumstances or other good causes.

Sixth, the requirement in §5.2.1 that an initial nursing assessment be "face to face" is being deleted. Perhaps this change is in recognition of the expanded authorization for telemedicine. Otherwise, we suspect a face to face assessment may be "best practice" and generally more valid than a "paper" review.

Agency Response: DMMA thanks the Councils for their comment.

Seventh, §5.2.3 merits reconsideration based on concerns reflected in the attached August 26, 2015 letter, Section 5. Consider the following:

A. The section categorically presumes that everyone qualifying for PDN will need a caregiver during non-authorized PDN hours. Some individuals may be capable of self-care during such periods and not require a caregiver.

B. The section omits the concept or expectation that an MCO or provider will include a backup component in the plan of care akin to the PAS Service Specifications.

C. The section is "at odds" with §5.3.5 which contemplates home health personnel covering non-PDN hours as juxtaposed to exclusive reliance on a caregiver.

Agency Response: DMMA thanks the Councils for these comments. We would like to offer the following update/clarification to this section of the proposed policy in response:

PDN services will only be authorized when there is at least one caregiver willing and able to accept responsibility for the individual's care when the nurse is not available. PDN is only authorized for the provision of skilled care (i.e. G-tube feeds, trach care, etc.) and is not primarily for home health aide (HHA) or certified nursing assistant (CNA) services, safety and supervision. Therefore, DMAP expects that caregivers be willing and capable to accept responsibility for their individual's care. If the caregiver cannot or will not accept responsibility for the individual's care when PDN services are not authorized or available, the individual is deemed not to be in a safe environment and PDN services will not be authorized.

Eighth, §5.2.6 indicates that a parent's consent to an IEP which includes PDN equates to parental consent to use of Medicaid to fund PDN. There are two problems with this approach.

A. Some students qualifying for Medicaid-funded PDN may not yet have an IEP. They may have an IFSP (Title 16 **Del.C.** §§214.215) or be awaiting IEP development. For example, a student incurring a sports injury or involved in an auto accident may qualify for PDN but be in the evaluation phase of the Individuals with Disabilities Education Act (IDEA) special education eligibility or, having been determined eligible, be awaiting development of an IEP.

B. Parental consent to an IEP does not equate to consent to utilize Medicaid or private insurance benefits for a child. Indeed, IEPs do not typically include sources of payment for services. Moreover, there is no requirement that a parent "consent" to an IEP.

Explicit parental consent to "tap" Medicaid should be required. See attached federal guidance referring to a

"consent form" and requirement that "parental consent" must be obtained "each time that access to public benefits or insurance is sought". Characterizing consent to an annual IEP as consent to accessing Medicaid for PDN does not conform to this federal guidance. Even on a practical level, PDN can change more frequently than an annual IEP (§5.2.2).

Agency Response: DMMA thanks the Councils for these comments and offers the following revision to this section of policy in response:

PDN services may be authorized during the school day with parental consent and when DMAP determines that it is medically necessary for school age children. This may include accompanying the children during the transport to and from school and providing medically necessary care during school hours.

Ninth, §5.2.6 contains an incorrect legal standard for eligibility to use Medicaid to fund school-based services. The standard refers to a determination that "a school is unable to meet the medical needs of school age children who are technology dependent or for whom DMAP has determined these services to be otherwise medically necessary". [emphasis supplied]. There are two problems with the underlined provision.

A. A child could qualify for PDN for reasons apart from technological dependency.

B. Medicaid is expected to routinely fund qualifying services in schools. A school is not required to demonstrate that it cannot meet a child's needs without resorting to Medicaid funding. See attached In re A.G., DCIS No. 5000703852 (DHSS June 22, 2000); U.S. DOE Memorandum OSEP 00-7 (January 13, 2000), at 5 ["The law clearly states that the State Medicaid agency, as well as other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or State agency)"].

Agency Response: DMMA has considered Councils' comments and believes that the proposed revision to §5.2.6 cited in item 8 above should satisfactorily address these concerns.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2015 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program Provider Specific Policy Manual to revise and clarify Private Duty Nursing (PDN) services, specifically, *service requirements, coverage criteria, provider qualifications, service limitations and reimbursement methodology*, is adopted and shall be final effective December 10, 2015.

Rita M. Landgraf, Secretary, DHSS

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

Private Duty Nursing Services

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders

Hippotherapy

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program Provider Specific Policy Manual to revise and update the Independent Therapist Provider Specific Policy Manual regarding Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language

Disorders, specifically, *to establish coverage criteria, provider qualifications, service limitations and reimbursement methodology for Hippotherapy*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del.C §10114 and its authority as prescribed by 31 Del.C §512.

The Department published its notice of proposed regulation changes pursuant to 29 Del.C §10115 in the September 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2015 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The 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 and the Delaware Medical Assistance Program (DMAP) Provider Specific Policy Manual to revise and update Independent Therapist Provider Specific Policy Manual regarding Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders, specifically, *to establish coverage criteria, provider qualifications, service limitations and reimbursement methodology for Hippotherapy*.

Statutory Authority

- Section 1905(a)(11) of the Social Security Act, *includes physical therapy and related services in the definition of medical assistance*
- 42 CFR §440.110 *defines physical therapy, occupational therapy, and services for individuals with speech, hearing and language disorders*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

Background

Physical therapy and related services under 42 Code of Federal Regulations (CFR) 440.110 is an optional service under State Medicaid Programs. Medicaid reimbursement for outpatient physical therapy, occupational therapy, and services for individuals with speech, hearing and language disorders is based on the provision of medically necessary therapy services for an illness or injury resulting in functional limitations which can respond or improve as a result of the prescribed therapy treatment plan in a reasonable, predictable period of time.

Physical Therapy Services

In accordance with 42 CFR 440.110(a), physical therapy means services prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under state law and provided to a beneficiary by or under the direction of a qualified Physical Therapist. It includes any necessary supplies and equipment. Physical Therapy Services involve evaluation and treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems for maximum reduction of physical or mental disability and restoration of a beneficiary to his/her best possible functional level.

A "qualified physical therapist" is an individual who meets personnel qualifications for a physical therapist at 42 CFR §484.4.

Occupational Therapy Services

In accordance with 42 CFR 440.110(b)(1), occupational therapy means services prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under state law and provided to a beneficiary by or under the direction of a qualified occupational therapist. It includes any necessary supplies and equipment. Occupational therapy services are channels to improve or restore functional abilities for maximum reduction of physical or mental disability and restoration of a beneficiary to his/her best possible functional level.

A "qualified occupational therapist" is an individual who meets personnel qualifications for an occupational therapist at 42 CFR §484.4.

Services for Individuals with Speech, Hearing and Language Disorders

In accordance with 42 CFR 440.110(c)(1), services for individuals with speech, hearing and language disorders means diagnostic, screening, preventive, or corrective services provided by or under the direction of a

speech pathologist or audiologist, for which a patient is referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law. It includes any necessary supplies and equipment. Reimbursable Speech-Language Pathology Services are evaluative tests and measures utilized in the process of providing Speech-Language Pathology Services and must represent standard practice procedures.

A "speech pathologist" means an individual who meets one of the conditions defined in 42 CFR 440.110(c)(2).

A "qualified audiologist" means an individual with a master's or doctoral degree in audiology that maintains documentation to demonstrate that he or she meets one of the conditions defined in 42 CFR 440.110(c)(3).

Hippotherapy

Hippotherapy is a form of physical, occupational and speech-language therapy in which a therapist uses the multidimensional movements of a horse to provide carefully graded motor and sensory input. A foundation is established to improve neurological function and sensory processing, which can be generalized to a wide range of daily activities. Hippotherapy involves therapeutic exercise, neuromuscular education, kinetic activities, therapeutic activities, sensory integration activities and individual speech therapy. This treatment strategy utilizes the movement of the horse as part of an integrated rehabilitation plan of care to achieve functional outcomes.

Hippotherapy is specialized and is always directed by a licensed healthcare professional. Functional riding and horsemanship skills are not taught during hippotherapy. Rather, the emphasis is on the achievement of specific therapeutic goals facilitated by the movement of the horse. Despite the unusual nature of hippotherapy, its rationale is based on current theories of motor development and control and established neurophysiologic treatment principles.

Summary of Proposal

Purpose

To establish the requirements and reimbursement provisions that governs hippotherapy services.

Proposal

The Delaware Medical Assistance Program (DMAP) Provider Manual is written specifically to address the contractual and regulatory requirements of delivering health care services to Delaware Medicaid beneficiaries. From time to time the Division of Medicaid and Medical Assistance (DMMA) updates and revises these manuals as our policies or regulatory requirements change. Physical therapy and related services are those medically necessary services related to the coverage described in the Independent Therapist Provider Specific Policy Manual. The proposed rule establishes language in the designated provider manual to allow coverage for hippotherapy services.

For conditions of coverage and payment, the Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 4.19-B Page 21 of the Medicaid State Plan to reflect the above-referenced changes. Upon CMS approval, the proposed state plan amendment (SPA) is effective for dates of service on or after September 2, 2015.

In addition, language throughout the rule has been updated, restructured and replaced for clarity purposes.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the requirements and reimbursement provisions governing private duty nursing services. Comments must be received by 4:30 p.m. on September 30, 2015.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals Update

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. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund as Physical Therapy, Occupational Therapy, and Services for Individuals with Speech, Hearing and Language Disorders is already a covered benefit under the Delaware Medical Assistance Program (DMAP) to eligible beneficiaries.

DMAP's proposal involves no change in the definition of those eligible to receive physical therapy and related services under Medicaid, and the physical therapy and related services benefit to eligible beneficiaries remains the same.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

GACEC and SCPD

Background on hippotherapy is contained in the attached Wikipedia article. More information is available through the website of the American Hippotherapy Association, Inc.: <http://www.americanhippotherapyassociation.org/>. GACEC and SCPD endorse this initiative subject to consideration of a few amendments.

First, §1.1.6 requires therapists to have a "HCPS" certification:

1.1.6. Therapists that provide Hippotherapy must be certified by the American Hippotherapy Certification Board as a Hippotherapy Professional Clinical Specialist (HCPS).

The Board's website indicates that there is only one therapist in Delaware with the certification, a single upstate OT. See <http://www.americanhippotherapyassociation.org/find-a-therapist-2/>. The Board also maintains a list of approval "member therapists" who have completed at least some coursework. There is one ST in Delaware who has "member therapist" status. Id. Given that there is only 1 therapist in the entire State with the required certification, the Division may wish to consider expanding the scope of therapists eligible to provide Hippotherapy under the Medicaid program on a provisional basis. For example, DMMA could adopt a transitional standard in which "member therapists" could also provide Hippotherapy under the Medicaid program with a defined expiration date. This would provide some time to achieve full HCPS certification. Consider the following amendment:

1.1.6. Therapists that provide Hippotherapy must be certified by the American Hippotherapy Certification Board as a Hippotherapy Professional Clinical Specialist (HCPS). **[Given the low number of Delaware therapists with HCPS certification, a therapist enrolled as an American Hippotherapy Association "member therapist" may bill the DMAP for Hippotherapy provided through December 31, 2016.]**

Agency Response: DMMA acknowledges your endorsement, thank you. The American Hippotherapy Certification Board (AHCBS) specifically recognizes AHCBS Certified Therapist as an entry level certification. This certification includes a minimum requirement of one year or 2,000 hours experience in the practice of physical, occupational or speech and language pathology. AHCBS also requires a minimum of 25 hours of one on one direct patient treatment using Hippotherapy, prior to the application. The therapist must be experienced and comfortable with horses, riding safely at the walk and trot.

Hippotherapy includes the use of Tandem therapy, Clinical Problem Solving including ongoing diagnostic indicators, modifications to therapy horse and movement, equipment, horse handling methods, intervention strategies, team, environment and ability to ride independently. These are not included in the AHCBS Certified Therapist certification.

The Hippotherapy Professional Clinical Specialist (HPCS) is required by the AHCBS to have at least three years of fulltime or 6,000 hours experience in the practice of physical, occupational or speech and language pathology. The HPCS has completed a minimum of 100 hours of one on one direct treatment in Hippotherapy practice, ability

to ride independently and certified to provide all components of Hippotherapy.

The AHCB Certified Therapist is an entry level certification and is not eligible to provide all components of Hippotherapy.

For these reasons, the State will retain the requirements for this therapy as described in the proposed regulation.

No change to the regulation was made as a result of these comments.

Second, the Medicaid Plan excerpt included in the proposed regulation contains the following provision which is not earmarked for revision:

3.3 Services Not Covered

3.3.1 Occupational therapy services that are not covered include but are not limited to OT services which are not intended to improve functions. is not covered by DMAP. At 169.

Apart from the obvious grammatical problems with this subsection, its substance is inconsistent with federal regulation and the DMMA medical necessity regulation. It literally limits OT to "medical improvement". In contrast, 42 C.F.R. 440.110(b) (reproduced on p. 165) authorizes OT for both "medical improvement" AND restoration of function. The DMMA "medical necessity" regulation does not require services to result in medical improvement, i.e. services can "restore" or "prevent worsening" of function. See attached regulatory definition [2 DE Reg. 1249 (1/1/99)]. See also attached correspondence from Delaware Medicaid Director disapproving an MCO denial notice based on a "chronic" condition which would "not significantly improve... with occupational therapy". Section 3.3.1 literally bars coverage of OT which would restore or prevent the worsening of effects of a condition. The entire subsection could be deleted since it is grammatically infirm, substantively incorrect, and superfluous (other sections define the scope of covered OT). The Division is authorized to informally correct this section pursuant to Title 29 **Del.C.** §10113(b)(4)(5).

Agency Response: DMMA agrees and will remove this policy statement. [~~Bracketed bold stricken through~~] indicates language deleted in the final order regulation.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2015 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program Provider Specific Policy Manual to revise and update the Independent Therapist Provider Specific Policy Manual regarding Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders, specifically, *to establish coverage criteria, provider qualifications, service limitations and reimbursement methodology for Hippotherapy*, is adopted and shall be final effective December 10, 2015.

Rita M. Landgraf, Secretary, DHSS

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

Hippotherapy

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(3)c (16 **Del.C.** §122(3)c)
16 **DE Admin. Code** 4462

ORDER

4462 Public Drinking Water Systems

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Public Drinking Water Systems (4462). The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Chapter 101 and authority as prescribed by 16 **Del.C.** §122(3)(c).

On September 1, 2015 (Volume 19, Issue 3), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 8, 2015, or be presented at a public hearing on September 30, 2015, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) State of Delaware Regulations Governing Public Drinking Water Systems were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Comments from EPA Region III, Drinking Water Branch – see below

Program Response:

All comments listed were addressed through minor technical corrections to the regulations published as proposed in the September 1, Delaware *Register*.

EPA Comments

General Comments

There are numerous locations where references to the Federal regulations at 40 CFR Part 141 do not contain the ‘40’. For consistency and correctness, a search of the document should be performed to catch these omissions.

Revised Total Coliform Rule (RTCR) portion of the regulations:

Corrections and Typos:

7.4.5.5.4 (Page 82)

The subsection referenced should be 7.4 (written as 7.1)

7.4.7.4 (Page 84)

The subsection referenced should be 7.4.4.5 through 7.4.4.7 (written as 7.4.4.5 through 7.4.4.8)

7.4.8.2.2 (Page 85)

The subsection referenced should be 7.2.1.1.3 (written as 7.2)

Public Notification (PN) and Consumer Confidence Report (CCR) Rules of the regulations:

4.2.2.1.10 contains a reference to subsection 4.2.2.4.3 for the standard language to encourage distribution of the notice. This reference should be to subsection 4.2.2.3.3.

Subsections 6.3.4.1.4 and 6.3.4.3.2 refer to provisions of 40 CFR Part 141 which no longer exist. These references to Sections **141.142** and **141.143** should be removed.

The Frequency, Tier Designation and Distribution of Public Notification table at 4.2.3 was found to have incorrect references for Part G DBPs. It is therefore recommended at all citations be checked for accuracy. The correct references for part G for DBP, precursors and disinfection residuals is shown below with other Stage 2 comments.

4.2.3.1 (Federal 141 Subpt Q Appendix A Section II Unregulated Contaminant Monitoring B. Nickel) lines are missing in table for Public Notification for nickel monitoring violations.

Surface Water Treatment Rules

Interim Enhanced: no comments

Long Term 1: no comments

Long Term 2: no comments

Disinfectant and Disinfection Byproducts Rule (Stage 1 and 2)

Due to concern for stringency issues, more detailed comments are still being developed. Discussions may need to occur with DHSS in order to resolve differences for Primacy purposes. Below is a list of the typographical errors, provisions with stringency concerns and other recommended revisions:

Less Stringent Provisions of Concern

In Del. 5.1.1 (Federal 141.33) the requirement for record retention does not require that the operator retain the records on the premises or convenient location.

In Del. 9.3.1.1 (Federal 141.64(b)(2)(ii)) the definition of best available technology does not include nanofiltration with molecular weight cutoff <10000 Daltons, or GAC20.

In Del. 12.5 (Federal 141.131(b)(2)(i)) performance evaluation samples should be required for chlorite and bromate.

In Del. 12.5.1 (Federal 141.131(b)(2)(iii)) retains the Stage 1 incorrect performance evaluation acceptance limits for TTHM/HAA5.

In Del 12.7.3.2.2 (Federal 141.132(b)(3)(ii)(B)) no timeline for return from reduced to routine monitoring included. The Delaware cross reference points to Stage 1 DBP return to routine which does not include timing.

Incorrect and incomplete Reference Citations

Delaware Monitoring/Recordkeeping PN table is incorrect for all of entry G for DBP, precursors and disinfection residuals. As an example, DBP M/R violation points to 9.2.3, which does not exist. The table should be revised as shown in the following table:

G. Disinfection Byproducts (DBPs), Byproduct Precursors, Disinfection Residuals.13				
1. Total trihalomethanes (TTHMs)	2	9.2.1.2, 9.2.2.2.1.11, 9.3.1.1, subsection 9.2.1.2	3	12.6.1 to 12.6.5, 12.7.1 to 12.7.3, 13.0 to 13.6, 14.0 to 14.9
2. Haloacetic Acids (HAA5)	2	9.2.1.2 & 9.2.2.2.1.11 & 9.3.1.1 & subsection 9.2.1.2	3	12.6.1 to 12.6.5, 12.7.1 to 12.7.3, 13.0 to 13.6, 14.0 to 14.9
3. Bromate	2	9.2.1.2, subsection 9.2.1.2, 9.2.2.2.1.11 Missing Fed Regs: 141.62 (a)(2)	3	12.6.1 to 12.6.5, 12.7.1 to 12.7.3
4. Chlorite	2	9.2.1.2, subsection 9.2.1.2, 9.2.2.2.1.11 Missing Fed Regs: 141.62 (a)(2)	3	12.6.1 to 12.6.5, 12.7.1 to 12.7.3

G. Disinfection Byproducts (DBPs), Byproduct Precursors, Disinfection Residuals.13				
5. Chlorine(MRDL)	2	1.19.3.1	3	12.6.1 to 12.6.5, 12.8.1 (also references 7.0 and subsection 17.3.3, both don't exist)
6. Chloramine (MRDL)	2	1.19.3.1	3	12.6.1 to 12.6.5, 12.8.1 (also references 7.0 and subsection 17.3.3, both don't exist)
7. Chlorine dioxide (MRDL), where any two consecutive daily samples at entrance to the distribution system only are above MRDL	2	1.19.3.1, 12.14.2	2,3	12.6.1 to 12.6.5, 12.8.2, 12.14.2
8. Chlorine dioxide (MRDL), where sample(s) in distribution system the next day are also above MRDL	1	1.19.3.1, 12.14.2	1	12.6.1 to 12.6.5, 12.8.2, 12.14.2
9. Control of DBP precursors – TOC (TT)	2	12.16	3	12.6.1 to 12.6.5, 12.9
10. Bench marking and disinfection profiling	N/A	N/A	3	17.5
11. Development of monitoring plan	N/A	N/A	3	12.11

- In Del 14.4.1 (Federal 14.623(a)) requirement for ≥ 4.0 TOC and language is incorrect. This should read as: You may reduce monitoring to the level specified in the table in this paragraph any time the LRAA is ≤ 0.040 mg/L for TTHM and ≤ 0.030 mg/L for HAA5 at all monitoring locations. You may only use data collected under the provisions of this section 14 or section 12 of this part to qualify for reduced monitoring. In addition, the source water annual average TOC level, before any treatment, must be ≤ 4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either 12.7.1.3 or 12.9.
- In Del 12.2.1 Change Stage 1 MCL compliance determination date reference from 13.1.3 to 14.1.3
- In Del. 13.6.2 (Federal 141.605(b)(2)) Footnote 2 is not consistent with updated federal language.
- In Del. 14.2.1.2 (Federal 141.621(a)(2)) Footnote 2 is not consistent with updated federal language.

Typographical Errors

- Section 2.0 Definitions: In the definition of SUVA, the units for UV should be changed from “cm? 1” to “m?1” [p. 194].
- In Del. 13.6.3.7 (Federal 141.605(c)(7)) need to change the reference from 13.4 to 12.7.1 and the reference from Section 13.0 to Section 14.0
- In Del. 12.1.2, change chlorine dioxide MRDL reference from 8.3 to 1.19.3
- In Del. 9.2.2.2 appears to be the original DBP rule. Remove if obsolete and remove cross reference located in 12.6.1 and 12.7.1.1.
- In Del. 12.8.1.1 cross reference to 17.3.3 does not exist and needs to change.
- In Del. 12.15.3, MRDLs not located at 12.5.3.1 and 12.5.3.2 and needs to change
- In Del 13.2.3.3 and 13.2.3.4, Cross reference to 15.0 should be changed to 14.0
- In Del. 13.6.3 reference to 13.0 should change to 14.0
- In Del 14.1.4.2, Cross reference to 13.6 is incorrect and needs to change.
- Section Del 4.4 does not exist. Update cross reference located in 14.10.2.
- There are numerous citations that reference subsection Del. 12.4. However, 12.4 does not exist; and therefore, these references must be corrected. Delaware citations that refer to 12.4 can be found at (with some suggested corrections noted below):

12.13.2 Update reference to 12.7.3

- 12.13.3 Update reference to 12.7.2
- 12.14.1.1 Update reference to 12.8.1.1 & 12.15
- 12.14.2.1 Update reference to 12.8.2
- 12.14.2.1 Update reference to 12.15
 - 12.15.2 (each row in table)
 - 12.15.3 (each row in table)
 - 12.15.4 (each row in table)
- 12.16.1.2
- 12.16.1.2.3
- 12.16.1.3
- 12.16.1.3.2 Update reference to 12.2.2
- 13.1.1
- 13.1.4.1
- 13.1.5
- 13.2.1.1
- 13.2.3.1
- 13.3.1.1.1.1
- 13.3.1.1.1.2
- 13.3.1.1.2.1
- 13.3.1.2.2.4
- 13.3.1.2.2.6
- 13.3.2.1
- 13.4.1
- 13.4.1 table
- 13.4.1 footnote
- 13.4.2.1 Update reference to 12.7.1 13.5.1
- 13.5.2 Update reference to 12.7.1
- 13.6.2 table 13.6.3
 - 13.6.3.3 Update reference to 12.7.1

Equivalency Questions

- In Del. 12.5 no minimum reporting level defined for DBP monitoring.
- (Not currently applicable) In Del 12.7.3.2.1 (Federal 141.132(b)(3)(ii)(A)) no timeline for return to routine monitoring included.
- Del 4.2.3.1 (Federal 141 Subpt Q Appendix B Endnote language 19/20) MCL determination language not listed, please confirm that this is listed in other Del. Regulation location.
- Del 4.2.3.1 (Federal 141 Subpt Q Appendix B Endnote language 21) MCL determination language not listed, please confirm that this is listed in other Del. Regulation location.
- Del 4.2.3.1 (Federal 141 Subpt Q Appendix B Endnote language 22/23) MRDL & MRDLG definition language not listed, please confirm that this is listed in other Del. Regulation location.
- Del 4.2.3.1 (Federal 141 Subpt Q Appendix B Endnote language 18) Federal schedule language not listed, please confirm that citations at 2.2, 12.2.1, 12.2.2 are equivalent.

Ground Water Rule

8.3.1.1.3 (Page 262), Typo. "I" should read "is".

"The system is notified that a sample collected under subsection 7.4.7 ~~is~~ total coliform-positive and the sample is not invalidated under subsection 7.4.3.3 beginning January 1, 2016."

8.3.1.2.4 (Page 263), Missing end of sentence.

"If the repeat sample collected from the ground water source is E. coli-positive..."

8.3.2 (Page 264), Should read "Division-determined" instead of "State-determined".

*"If directed by the Division, ground water systems must conduct assessment source water monitoring that meets ~~State~~ **Division-determined** requirements"*

8.3.2.4 (Page 264), Typo. "In the in subsection" should read "in subsection".

"Analysis of all ground water source samples using one of the analytical methods listed ~~in the in subsection~~ 8.3.3.2 for the presence of *E. coli*, enterococci..."

8.4.2.2.1 (Page 267), Capitalize "division".

"Notification to the Division must include engineering, operational, or other information that the ~~a~~**Division** requests to evaluate the submission."

(Page 268), the subsection referenced 8.2.1 corresponds with 40 CFR 141.401(a). This should correspond with 40 CFR 141.74(a)(2).

"...continuously monitor the residual disinfectant concentration using analytical methods specified in subsection **8.2.1**"

(Page 268), the subsection referenced 8.2.1 corresponds with 40 CFR 141.401(a). This should correspond with 40 CFR 141.74(a)(2).

"...continuously monitor the residual disinfectant concentration using analytical methods specified in subsection **8.2.1**"

Lead and Copper Rule

Section Number	Comment and Suggested Changes
10.1.4.2	Change reference "under subsections 10.1.4 and 10.1.5" to "under subsections 10.2 and 10.3" [p. 291].
10.2.1.2	Change "(serving <3,300 persons)" to "(serving =3,300 persons)" and "(serving >3,300 persons and <50,000 persons)" to "(serving >3,300 persons and =50,000 persons)" [p. 292].
10.2.2.3	Change reference "subsection 10.1.1.3" to "subsection 10.1.3.3" [p. 292].
10.2.2.3.4	Change phrase "paragraph, shall" to "paragraph, and shall" [p. 293].
10.2.4.1	In Step 2, enclose "subsection 10.3.3" in parenthesis [p. 293]. In Step 3, enclose "subsection 10.3.4" in parenthesis [p. 293]. In Step 4, enclose "subsection 10.3.5" in parenthesis [p. 293]. In Step 5, enclose "subsection 10.7.4.2 and subsection 10.8.3" in parenthesis [p. 293]. In Step 6, enclose "subsection 10.3.6" in parenthesis [p. 293]. In Step 7, enclose "subsection 10.3.7" and "subsection 10.7.4 and subsection 10.8.4" in parentheses [p. 293].
10.2.5.1.1	Add an end-of-parenthesis sign following "subsections 10.3, 10.7 and 10.8 [p. 293]. In Step 1, enclose "subsection 10.7.4.1 and subsection 10.8.2" in parenthesis in the first sentence. Enclose "subsection 10.3.1" in parenthesis in the second sentence [p. 293]. In Step 3, enclose "subsection 10.3.3" in parenthesis [p. 294]. In Step 4, enclose "subsection 10.3.4" in parenthesis [p. 294]. In Step 5, enclose "subsection 10.3.5" in parenthesis [p. 294]. In Step 6, enclose "subsection 10.7.4.2 and subsection 10.8.3" in parenthesis [p. 294]. In Step 7, enclose "subsection 10.3.6" in parenthesis [p. 294]. In Step 8, enclose "subsection 10.3.7" and "subsection 10.7.4.3 and subsection 10.8.4" in parentheses [p. 294].

Section Number	Comment and Suggested Changes
10.2.5.1.2	<p>In Step 3, enclose “subsection 10.3.3” in parenthesis [p. 294]. In Step 4, enclose “subsection 10.3.4” in parenthesis [p. 294]. In Step 5, enclose “subsection 10.3.5” in parenthesis [p. 294].</p> <p>In Step 6, enclose “subsection 10.7.4.2 and subsection 10.8.3” in parenthesis [p. 294].</p> <p>In Step 7, enclose “subsection 10.3.6” in parenthesis [p. 294].</p> <p>In Step 8, enclose “subsection 10.3.7” and “subsection 10.7.4.3 and subsection 10.8.4” in parentheses [p. 294].</p>
10.3.3.4	<p>There are two subsections numbered as 10.3.3.4. The first subsection is correctly numbered. The second subsection 10.3.3.4 is incorrectly numbered; it should be numbered as 10.3.3.5 [p. 294].</p>
10.3.3.5	<p>This subsection is incorrectly numbered. It should be numbered as 10.3.3.6 [p. 294].</p>
10.3.8	<p>This section needs a statement that indicates that the division’s approval of a change in corrosion control treatment be in writing to correspond to the federal requirement in 40 CFR §141.82(h) [p. 296].</p>
10.4.1	<p>In Step 2, enclose “subsection 10.4.2.2” in parenthesis [p. 296]. In Step 3, enclose “subsection 10.4.2.3” in parenthesis [p. 296]. In Step 4, enclose “subsection 10.7.4.2” and “subsection 10.9.3” in parentheses [p. 296].</p> <p>In Step 5, enclose “subsection 10.4.2.4” in parenthesis [p. 296]. In Step 6, enclose “subsection 10.4.2.4” and “subsection 10.9.4” in parentheses [p. 296].</p>
10.5.1.1	<p>This section is incorrectly numbered. Because there is no 40 CFR §141.84(b), there is no need for a corresponding State section 10.5.2. However, there is a 40 CFR §141.84(b)(1) which requires the corresponding State section to be numbered as 10.5.2.1 [p. 297].</p>
10.5.1.2	<p>This section is incorrectly numbered as described above. This section should be renumbered as 10.5.2.2 [p. 298].</p>
10.6.2.2.6	<p>Change the phrase “one of the categories’ to “one or more of the categories” [p. 301].</p>
10.6.2.5	<p>Change the reference “subsection 10.6.2.2.5” to “subsection 10.6.2.4” in the second sentence [p. 301].</p>
10.6.4.3	<p>Change the reference “section 4.3.3.3” to “section 6.3.3” [p. 302].</p>
10.7.1.2	<p>Change the references to “section 7.2.4” in the first and second sentences to “section 11.1.4” in both sentences [p. 302].</p>
10.7.2.6	<p>Change the reference to “section 10.1.1” to “subsection 10.1.3.3” [p. 304].</p>

Section Number	Comment and Suggested Changes
10.7.3	In the "Number of Samples" table, change "<100" to "=100" in the "System Size" column [p. 305].
10.7.4.1	In the "Initial Tap Sampling" table, change "<3,300" to "=3,300" in the "System Size" column [p. 305].
10.7.4.4.5	Change both references to "subsection 10.1.1.3" to "subsection 10.1.3.3" [p. 307].
10.7.4.4.6.1	Change the reference "subsection 10.7.4.4.3" to "subsection 10.7.4.3" in the first sentence. Change the reference "subsection 10.7.4.3" to "subsection 10.7.4.4.3" in the last sentence [p. 307].
10.8.1.2.1	In the "Number of Samples" table, change "<100" to "=100" in the "System Size" column [p. 310].
10.8.5.1	In the "Number of Samples" table, change "<100" to "=100" in the "System Size" column [p. 311].
10.8.6	In footnote 1, change "illustrated" to "illustrative". In footnote 8, change the reference to "section 10.8" to "section 10.3.6" [p. 313].
10.9.5.3	This section is missing from the reformatted regulations. It should be completed to correspond with the federal regulation in 40 CFR §141.88(e)(3) [p. 315].
10.10.1.1.2	Change the reference "subsection 10.7.2.6" to "subsection 10.7.6.2" [p. 315].
10.10.1.3	In the fourth sentence, change the phrase "switching coagulants (e.g., orthophosphate to blended phosphate)" to "switching coagulants (e.g., alum to ferric chloride), switching corrosion inhibitor products (e.g., alum to ferric chloride)" [p. 316].

FINDINGS OF FACT:

Minor technical changes were made to the proposed regulations based on the comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware State of Delaware Regulations Governing Public Drinking Water Systems (4462) is adopted and shall become effective December 11, 2015, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary
November 17, 2015

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

4462 Public Drinking Water Systems

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 1718 (18 **Del.C.** §§311 and 1718)
18 **DE Admin. Code** 504

ORDER

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants

Proposed Amended Regulation 504 relating to Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants was published in the Delaware *Register of Regulations* on October 1, 2015. The comment period remained open until October 30, 2015. There was no public hearing on proposed amended Regulation 504. Public notice of the proposed amended Regulation 504 was published in the *Register of Regulations* in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received on the proposed amended Regulation 504 from:

- American Insurance Association - Eric Goldberg, Vice President; and
- Insurance Agents & Brokers serving Pa., Md. and Del. - Lauren E. Brinjac, Government Affairs Director.

The collective comments were reviewed and considered. No changes were made to the proposed amended Regulation 504.

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 1718 require 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 504 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 1718, and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 504 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 Regulation 504 last appeared in the *Register of Regulations* Vol. 19, Issue 4, pages 262-263.

IT IS SO ORDERED this 16th day of November, 2015.

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 2015 issue of the *Register* at page 262 (19 DE Reg. 262). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants

FINAL REGULATIONS

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 1113 (18 **Del.C.** §§311 & 1113)
18 **DE Admin. Code** 1208

ORDER

1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities

Proposed Amended Regulation 1208 relating to New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities was published in the Delaware *Register of Regulations* on October 1, 2015. The comment period remained open until October 30, 2015. There was no public hearing on proposed amended Regulation 1208. Public notice of the proposed amended Regulation 1208 was published in the *Register of Regulations* in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received on the proposed amended Regulation 1208 from:

- Delaware Life - Keith Dall, Chief Actuary;
- Guggenheim Life and Annuity Company - Curt Steger, VP Product Management; and
- AIG - Kerrie Kline, Esquire, Associate State Government Affairs Officer.

The collective comments were reviewed and considered. No changes were made to the proposed amended Regulation 1208.

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 1113 require 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 1208 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 1113, and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 1208 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 1208 last appeared in the *Register of Regulations* Vol. 19, Issue 4, pages 263-269.

IT IS SO ORDERED this 16th day of November, 2015.

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 2015 issue of the *Register* at page 263 (19 DE Reg. 263). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 2121; 29 Delaware Code, Section 8404
(21 **Del.C.** §2121 & 29 **Del.C.** §8404)
2 **DE Admin. Code** 2261

ORDER

2261 Changing of License Plate Numbers and Establishing a Fee for Such Change

2 **DE Admin. Code** 2261 allows DMV to establish a service fee for changing a license plate number on a vehicle at the owner's request. Under Subchapter 2 of Chapter 21 of Title 21 of the **Delaware Code**, the DMV is authorized to issue license plates to vehicles. Since the switching of license plates is at the owner's request it creates additional work for DMV. 2 **DE Admin. Code** 2261 references other fees that in 21 **Delaware Code**. HB 140 recently updated these fees so this Administrative Code is being updated to reflect the new fees in HB 140.

Findings of Fact

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

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

Decision and Effective Date

Based on the provisions of 21 **Del.C.** §2121; 29 **Del.C.** §8404, I hereby adopt 2 **DE Admin. Code** 2261 as set forth in the version attached hereto, to be effective on December 1, 2015.

IT IS SO ORDERED THIS 5th day of November 2015.

Jennifer Cohan, Secretary of Transportation

2261 Changing of License Plate Numbers and Establishing a Fee for Such Change

1.0 License Plate Numbers

Whereas, the Division of Motor Vehicles has changed license plate numbers for many vehicle owners during the past few years just to give such owner a different number; and

Whereas, this service is not required since the vehicle is properly registered with a license plate, but is an effort by the Division of Motor Vehicles to satisfy the customer; and

Whereas, the number of requests are rapidly increasing and causing extra work on all employees;

2.0 Fees

2.1 Be it resolved that effective immediately the following fees are to be assessed for a change of license plate on a vehicle already registered with a Delaware license plate which is valid or has expired within the immediate past 12 months.

\$6.00 <u>\$10.00</u>	Duplicate Plate and Validation Sticker
\$25.00 <u>\$35.00</u>	Title Fee (\$35.00 <u>\$55.00</u> for Title with Lien)
\$15.00	Service Fee
\$46.00 <u>\$60.00</u>	TOTAL

* **Note:** Title Fee was increased from ~~\$15.00~~ **\$25.00** and from ~~\$25.00~~ **\$35.00** for Title with Lien by HB ~~253~~ **140** of the ~~1448~~**th** General Assembly.

2.2 This new fee does not alter existing fees for other types of title transactions, such as: tag retentions; new titles for vehicles for which the tag has expired over 1 year; or new registration.

**EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET**

Statutory Authority: 29 Delaware Code, Section 10409 (29 **Del.C.** §10409)

ORDER

Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act

NATURE OF THE PROCEEDINGS:

The Office of Management and Budget (OMB) initiated proceedings to adopt the Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act. The OMB proceedings to adopt guidelines were initiated pursuant to 29 **Del.C.** Chapter 101 and authority as prescribed by 29 **Del.C.** Ch. 104, §10409.

On October 1, 2015 (Volume 19, Issue 4), OMB published in the *Delaware Register of Regulations* its notice of proposed guidelines, pursuant to 29 **Del.C.** §10115. It was requested that written materials and suggestions from the public concerning the proposed guidelines be delivered to OMB by November 5, 2015 or be presented at a public hearing on October 20, 2015, after which time OMB would review information, factual evidence and public comment to the said proposed guidelines.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence." This is OMB's "conclusion" and "order" as required by 29 **Del.C.** §10118(b).

SUMMARY OF EVIDENCE

Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act

In accordance with Delaware Law, public notices regarding proposed Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act. were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Written and verbal comments were received on the proposed guidelines during the public comment period (October 1, 2015 through November 5, 2015). Individuals offering comments included:

- David Stevenson; Caesar Rodney Institute
- Bill Satterfield; Delmarva Poultry Institute
- Howard Fortunato; Delaware Home Builders Association
- James T. (Jay) Fuess; White Pine Energy Consulting LLC
- Combined comments from the following state agencies: DNREC, DeIDOT and DHSS.

Public comments and the OMB (Agency) responses are as follows:

David Stevenson; Caesar Rodney Institute

Comment: The definition of "small business" should be changed from "fewer than 50 persons", to "100 persons or less". This is consistent with definitions used elsewhere in business literature, and is consistent with the \$10,000,000 in annual revenue as the average revenue for small businesses is about \$100,000/year according to www.entrepreneur.com which equates to 100 employees.

Agency response: Thank you for your comment. The statute (29 **Del.C.** §10403 (4)) and authorizing legislation provide the definition of "Small Business" used in the guidelines. As such it is not within the scope of the proposed guidelines to expand the definition of "Small Business" beyond what is in the statute, and the guidelines

will not be amended.

Comment: Under the section Regulatory Impact Statements the proposed guidelines discuss "Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation". Since this will be identified it should be easy to notify industry groups associated with the identification of regulations that will be impacted. For example, a regulation impacting construction companies might be sent to the Association of Building Contractors, and the Home Builders Association of Delaware. Any new regulation impacting small business should be published in newspapers and on social media, not just the Delaware Register as proposed.

Agency response: Thank you for your comment. The General Assembly has defined in statute procedures for the proper notification of the public of a proposed regulation and it is beyond the scope of these proposed guidelines to mandate additional requirements over and above those in statute. However the following language has been added to encourage agencies to disseminate Regulatory Flexibility Analyses (RFA) and Regulatory Impact Statements (RIS) to stakeholders:

"State agencies are encouraged to widely disseminate proposed regulations and any accompanying RFAs and RIS's in an effort to reach impacted citizens and interest groups. Citizens and interest groups are encouraged to subscribe to receive proposed regulations from agencies by selecting "Subscription Services" on the Delaware Register of Regulations website and to visit the online Delaware Public Meeting calendar for notices of agency meetings and regulatory hearings. Proposed regulations are held open for public comment for a minimum of 30 days after a proposal is published in the *Register of Regulations*."

Comment: What is the appeals process to challenge a determination of cost or other aspect of a regulation? Such an appeals process has to be a low cost process or paid by the state as small businesses do not have the resources for an expensive appeal. We note legal challenges we have been involved in with state regulations have cost \$20,000 to \$40,000 with no reimbursement if we win.

Agency response: Thank you for your comment. The General Assembly has defined the appeals process in 29 Del. C. §10141. Additional appeals provisions over and above current statutory provisions are beyond the scope of the proposed guidelines.

Bill Satterfield; Delmarva Poultry Institute

Comment: Ensuring that small business owners and operators know what statements state agencies, boards, and commissions have prepared, we believe there are several outreach methods that should be required.

- They should be posted on the so-called social media such as Facebook and Twitter in a fashion that would be easy for people to see and make comments.
- They should be posted on the submitting agency's website since not all business owners use Facebook or Twitter.
- They should be shared with persons on the agency's e-mail communication lists. Some agency communication officers send periodic e-mails to persons on their lists. It would be helpful if the agency Public Information Officer sent to its list the information on the costs of new regulations.
- We agree with the Caesar Rodney Institute's comments that comments should be shared directly with industry trade groups or other organizations working for the affected individuals and small businesses. For example, a regulation impacting the chicken industry or farming in general could be sent to Delmarva Poultry Industry, Inc. and the Delaware Farm Bureau.

Agency response: Thank you for your comment. Please refer to the response to the second comment from David Stevenson.

Comment: This may be beyond the scope of the new law and the guidelines, but it could be helpful to have the agency list what groups it worked with to develop the regulations and cost estimates. This would put the agencies on notice to reach out to interested groups/individuals early during regulation development rather than springing surprises on persons and groups who have not been consulted beforehand. This could help guide the agencies in the development of the RFA and RIS.

Agency response: Thank you for your comment. It is beyond the scope of the proposed guidelines to mandate an agency report each entity consulted in developing the regulation and RFA/RIA. However, the following

guidance has been added as optional to the guidelines:

[(Optional) Agencies are encouraged to list trade or industry groups, small businesses or other stakeholders such as currently regulated parties that were consulted by the agency, board, or commission in preparing this RFA and RIS. The agency, board, or commission is further encouraged to send them a copy of the RFA and RIS to them upon completion

Comment: We agree with the Caesar Rodney Institute that the definition of "small business" should be changed from "fewer than 50 persons" to "100 persons or less". This is consistent with definitions used elsewhere in business literature.

Agency response: Thank you for your comment. Please refer to the first response to David Stevenson, Caesar Rodney Institute.

Comment: We also agree with the Caesar Rodney Institute's issues with seeking to know the appeals process to challenge a determination of cost or other aspect of a regulation. Such an appeals process has to be a low cost process or paid by the state as small businesses and individuals do not have the resources for an expensive appeal.

Agency response: Agency response: Thank you for your comment. Please refer to the third response to David Stevenson, Caesar Rodney Institute.

Howard Fortunato; Delaware Home Builders Association

Comment: The proposed definition of small business as those "enterprises engaged in manufacturing, agricultural production and personal service" is quite narrow. We believe that the process of developing land, constructing and selling new homes, remodeling activity and general construction should be explicitly recognized within this definition or at least considered as manufacturing. The process of construction, and developing and building homes is heavily regulated by State agencies and many homebuilders are small businesses.

Why not include "construction, construction services, engineering, professional (accounting, legal services, etc.), retail," etc.? What is meant by "personal service"?

Agency response: Thank you for your comment. While we have no reason to believe the General Assembly meant to exclude the businesses you mention, the definition of "Small Business" is established in the authorizing legislation and in Delaware statute. We have added guidance to the definition of "personal service", based on language found in 8 **Del.C. §603** as follows that we believe addresses your concern:

A "personal service" is generally construed to mean the rendering of a service to the public, whether by an individual or a legal entity, that requires a license or other legal authorization.

Comment: The definition of small business limits the firm's gross receipts to less than \$10 million dollars. Where did this figure come from? As an example, a homebuilding firm constructing homes averaging sales price of \$300,000 would yield 33 homes. Many small firms will sell more than that especially as the housing market improves. And not to mention the gross receipts by remodelers, construction services, engineering and professional services. We think a higher threshold, say \$40 million dollars, would be reasonable.

Agency response: Thank you for your comment. Please refer to the first response to David Stevenson, Caesar Rodney Institute.

Comment: Generally, the draft guidelines for the Regulatory Flexibility Analysis and the Regulatory Impact Statements are very good. However, since regulations can apparently be self-exempted by State Agencies from preparing these statements, there is no process noted to allow or disallow the claim of exemption. Is there any process that someone reviews and approves or disapproves of the exemption claim?

Agency response: Thank you for your comment. The assertion of an exemption claim as permitted under the statute is made by the agency proposing the regulation. The proposed regulations -- including any exemption claim specified on the standard form for an RFA/RIS -- would be open for public comment for a minimum of 30 days after a proposal is published. Any public comments on the exemption claim would be reviewed by the agency. Ultimately approval or disapproval rests with the agency head who issues any final findings and regulatory orders.

Comment: Following #4 above, we think there should be a public hearing process for agencies that claim their

regulations are exempt. Such public hearings should be noted in a more user friendly format than the one used for the October 20, 2015 public hearing (ie the October State Register of Regulations) which we understand had only one member of the public in attendance. Small businesses do not regularly scour this register; and instead to benefit small business as is the scope and intent of the legislation, the notice for hearing should be circulated to organizations of small businesses likely to be impacted including Chambers of Commerce, business groups and trade associations such as us, Realtors, Engineers, Architects, etc. It should also be published using social media outlets.

Agency response: Thank you for your comments. Please refer to the above response regarding the 30 day comment period and the response to the second comment from David Stevenson.

James T. (Jay) Fuess; White Pine Energy Consulting LLC

Comment: I support Gerald Hocker's Senate Bills 113 and 120. We need less regulation not more.

Agency response: Thank you for your comments. The proposed guidelines are intended only to guide the preparation of RFAs and RIAs and do not address the volume of regulations.

Joint comments from Kara Coates (DNREC), Nicole Majeski (DeIDOT), and Deborah Gottschalk (DHSS)

Comment: On p. 290 of the Register publication, under "Guidelines", under the section of "Introduction", we suggest the addition of the following sentences at the end of the first paragraph:

For agencies proposing amendments to existing regulation, the promulgating agency shall complete the RFA and RIS for the proposed amended portion of the existing regulation only and not for the entire existing regulation. All proposed regulations submitted on or before December 31, 2015 to the Registrar for initial publication do not need to comply with these regulations.

Agency response: Thank you for your comments. The Introductions on page 290 has been amended to read as follows:

Beginning January 1, 2016, agencies submitting proposed new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see 29 **Del.C.** Ch. 104). For agencies proposing amendments to existing regulations, the promulgating agency shall only be required to complete the RFA and RIS for the proposed amended portion of the existing regulation, and not for the entire existing regulation.

Comment: On p 297 of the Register publication, under "Regulatory Flexibility Analysis and Impact Statement Form for Proposed New and Amended Regulations Affecting Small Businesses or Individuals, under the section of "Introduction", we suggest the addition of the following sentence at the end of the first paragraph of that section:

All proposed regulations submitted on or before December 31, 2015 to the Registrar for initial publication do not need to comply with these regulations.

Agency response: Thank you for your comments. The Introductions on page 297 has been amended to read as follows:

Beginning January 1, 2016, agencies submitting proposed new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see 29 **Del.C.** Ch. 104).

Comment: On p 297 of the Register publication, under "Regulatory Flexibility Analysis and Impact Statement Form for Proposed New and Amended Regulations Affecting Small Businesses or Individuals, under the section of "Introduction", we suggest the addition of the following sentence at the end of the last paragraph of that section:

For agencies proposing amendments to existing regulation, the promulgating agency shall complete the RFA and RIS for the proposed amended portion of the existing regulation only, and not for the entire existing regulation.

Agency response: Thank you for your comment. The recommended sentence has been added to the

paragraph.

Comment: The entire body of the proposed regulations should be consistent with regards to the use of the terms "amendment" and "revision" throughout the document - and it is not. This should be corrected prior to finalization of this promulgation:

Agency response: Thank you for your comment. The final version will be corrected.

Comment: On p 292 of the Register publication, under the section of "Regulatory Flexibility Analysis (RFA)", we believe this section of the proposed regulation should specifically state who determines that a proposed regulation is "substantially likely to impose additional costs or burdens....". Thus we suggest the following additional language be inserted into the first sentence of the first paragraph of that section as follows: (added language in italics).

The RFA is required when the promulgating agency's Cabinet Secretary or applicable agency head, in consultation with the agency's Deputy Attorney General has determined that a proposed regulation is substantially likely to impose additional costs or burdens on small businesses and individual regulated parties.

Agency response: Thank you for your comment. Though we believe the recommendation may be best practice for agencies to follow we do not agree that it should be mandatory. The paragraph has been amended to include that point.

FINDINGS OF FACT:

The Department finds that the proposed guidelines as set forth in the October 2015 *Register of Regulations* with the insubstantial changes noted above should be adopted. While the Office of Management and Budget appreciates the other suggestions brought forth, it is felt the existing content of the guidelines as published in the October 2015 *Register of Regulations* with the noted changes fulfills the requirements of the authorizing legislation.

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Office of Management and Budget does hereby ORDER that the Guidelines be adopted. The guidelines are applicable for all new and amended regulations submitted to the Registrar for initial publication on or after January 1, 2016.

Ann Shepard Visalli, Director
Office of Management and Budget

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

[Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Chapter 40 (7 **Del.C.** Ch.40)
7 **DE Admin. Code** 5101

SECRETARY'S ORDER NO: 2015-WS-0043

WITHDRAWAL OF EMERGENCY REGULATIONS ADOPTED BY ORDER: 2015-WS-0040

Pursuant to 29 Del.C. §10111

5101 Sediment and Stormwater Regulations

AUTHORITY

Pursuant to 29 **Del.C.** §10111 et seq., the Department of Natural Resources and Environmental Control withdraws the emergency regulations adopted via Secretary's Order 2015-WS-0040 for the 2014 Delaware Sediment & Stormwater Regulations, and October 2015 Technical Document (7 **DE Admin. Code** 5101). It should be noted that the emergency regulations were intended as interim measures, necessary to avoid harm to the public health, safety, and welfare, pending the formal adoption of regulations pursuant to the APA. However, a recent ruling by the Delaware Superior Court on October 27, 2015 granted a stay of the application of the October 7, 2015 ruling by the Delaware Superior Court in *Baker, et al. v. DNREC, et al.* (C. A. No. S13C-08-026 THG) which invalidated the 2013 and 2014 version of the Delaware Sediment & Stormwater Regulations on procedural grounds. The Department appealed this October 7, 2015 ruling to the Delaware Supreme Court on Friday, October 9 and simultaneously submitted a Motion for Stay of the decision of the Superior Court pending appeal. Following issuance of a Stay the need for the emergency regulations is eliminated.

The emergency regulations were to be published in the November 1, 2015 *Register*, but publication has also been withdrawn.

EFFECTIVE DATE OF ORDER

This Order shall take effect at 12:01 AM on October 31, 2015.

ORDER

It is hereby ordered, the 30th day of October 2015, that the above referenced emergency regulations for 2014 Delaware Sediment & Stormwater Regulations with the October 2015 Technical Document, adopted pursuant to Secretary's Order 2015-WS-0040 are withdrawn.

David S. Small, Secretary

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION
1001 Thoroughbred Racing Rules and Regulations
PUBLIC NOTICE

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to delete the whipping rule currently found at rule 10.9.4 and then to adopt a new whipping rule as rule 14.18.2 that adds the words “excessive, abusive” to the text of the former whipping rule 10.9.4. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the December 1, 2015 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before January 1, 2016. Written materials submitted will be available for inspection at the above address.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, December 17, 2015 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER
1409 Insurance Coverage for Telemedicine and Telehealth
PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1409** relating to **Insurance Coverage for Telemedicine and Telehealth**. The docket number for this proposed regulation is 2988.

House Bill 69 as amended by House Amendment No. 1 and Senate Amendment No. 1 of the 148th General Assembly provides for the use of telemedicine and telehealth in Delaware as of January 1, 2016. The proposed regulation sets standards for the coverage of health care services provided through the use of telemedicine and telehealth. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§311, 3370 and 3571R; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner’s website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Thursday, December 31, 2015. Any such requests should be directed to:

Regulatory Specialist Rhonda West

Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF PARKS AND RECREATION
9201 Regulations Governing State Parks
PUBLIC NOTICE**

As a result of the General Assembly passing and Governor Markell signing SB 114, changes to the Rules and Regulations are needed. The penalties for twenty three of the twenty eight sections of the Park Rules and Regulations have been changed to Environmental D violations. The remaining sections' penalty is unchanged. Other changes have been made to reflect updated Division policies and concerns.

The hearing record on the proposed changes to 7 **DE Admin. Code** 9201 Regulations Governing State Parks will be open December 1, 2015. 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 December 22, 2015 beginning at 6:00 PM at the DNREC Auditorium, 89 Kings Highway, Dover, DE, 19901. Please note that all comment submitted to the Department in this matter should be limited to the scope of this proposed regulatory promulgation, to wit: only regarding the proposed amendments to the aforementioned regulations found at 7 **DE Admin. Code** 9201.

**DIVISION OF WATERSHED STEWARDSHIP
5101 Sediment and Stormwater Regulations
PUBLIC NOTICE**

A Superior Court decision of October 7, 2015 invalidated the 2013 and 2014 version of the Delaware Sediment and Stormwater Regulations on procedural grounds because the accompanying Technical Document referenced by the regulations was not published in the State Register in accordance with Administrative Procedure Act requirements. This action is being taken to publish the Technical Document in the State Register as a separate document referenced in 5101 Sediment and Stormwater Regulations. Within the Technical Document, the Residential Construction Standard Plan section (3.01.1.1) has been updated.

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship will conduct a public hearing on **Regulation No. 5101 Sediment and Stormwater Regulations**, incorporating the Technical Document by reference.

The public hearing for **Regulation No. 5101 Sediment and Stormwater Regulations** will be held Tuesday, January 5, 2016, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation and referenced Technical Document may be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website: <http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Elaine Webb, DNREC Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, Elaine.Webb@state.de.us.

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, as designated by the hearing officer at this hearing, to Elaine Webb and/or statements and

testimony may be presented either orally or in writing at the January 5, 2016 public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Elaine Webb
DNREC – Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF PREVENTION AND BEHAVIORAL HEALTH SERVICES

Qualifications for Juvenile Mental Health Screeners

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), and under the authority of Title 29 of the Delaware Code, Chapter 90, §9005, (7), the Department of Services for Children, Youth and Their Families (DSCYF) / Division of Prevention and Behavioral Health Services (DPBHS) is proposing to create qualification for Juvenile Mental Health Screeners.

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 Stephen Perales, Office of the Director, Division of Prevention and Behavioral Health Services, 1825 Faulkland Road, Wilmington, DE 19805-1195 or by fax to 302-622-4475 by December 31, 2015. Please identify in the subject line: Qualifications for Juvenile Mental Health Screeners.

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

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

5200 BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

PUBLIC NOTICE

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 **Del.C.** §5206(1), proposes to revise its regulations. The Board will hold a public hearing on the proposed rule change on March 8, 2016 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Flora Peer, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 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).

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Pedestrian Accessibility Standards

PUBLIC NOTICE

The DeIDOT Pedestrian Accessibility Standards for Facilities in the Public Right of Way or "DeIDOT Pedestrian Standards" combines into one document the requirements, guidelines and best practices for accessible pedestrian facilities in the public transportation right of way as identified by the:

- Americans with Disabilities Act of 1990 or ADA; (<http://www.ada.gov/>)
- ADA Standards for Transportation Facilities 2006 or 2006 Standards adopted by the US Department of Transportation; (www.dot.gov/accessibility)
- Draft Public Right of Way Accessibility Guidelines or PROWAG 2011 developed by the US Access Board; (<http://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines>)
- Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way or PROWAG Supplement 2013; Shared Use Paths; <http://www.access-board.gov/guidelines-and-standards/streets-sidewalks/shared-use-paths>. The 2013 PROWAG Supplement includes unchanged PROWAG 2011 guidance as well as revised PROWAG 2011 guidance and new guidance on a variety of pedestrian system features.
- US Department of Justice or DOJ; (<http://www.justice.gov/>), and
- US Department of Transportation or USDOT; (<http://www.dot.gov/>).

The standards provided in this document, in concert with the Delaware Manual on Uniform Traffic Control Devices or DE MUTCD, (http://deldot.gov/information/pubs_forms/manuals/de_mutcd/) are intended to assist all public and private sector transportation planners and engineers in the effort to achieve a more consistent approach to planning, design, construction and maintenance of accessible pedestrian facilities in the public transportation right of way. The Pedestrian Accessibility Standards for Facilities in the Public Right of Way have been developed to meet the spirit and intent of the legislation as well as the regulatory requirements and guidance of ADA, DOJ and USDOT as of the date of this publication. The primary reference documents used are the 2006 US DOT Standards with citations noted as numbers (e.g., 101.1) and the US Access Board's 2011 and 2013 PROWAG with citations noted as numbers preceded by R (e.g., R101.1).

Please send any comments no later than December 31, 2015 to the attention of:

Jim Pappas
Assistant Director
Office of Performance Management
Delaware Department of Transportation
800 Bay Road
Dover, DE 19903
james.pappas@state.de.us
