
Delaware Register of Regulations

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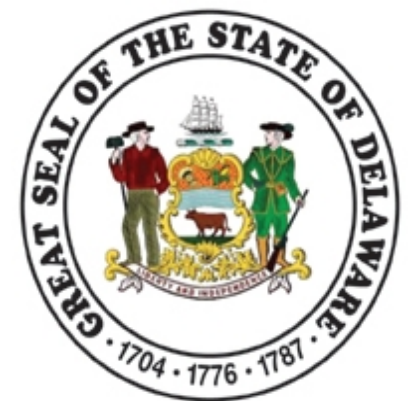
Volume 21 - Issue 6, Pages 453 - 509



IN THIS ISSUE:

Regulations:
Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before November 15, 2017.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

19 **DE Reg.** 1100 (06/01/16)

Refers to Volume 19, page 1100 of the *Delaware Register* issued on June 1, 2016.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

455

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 16	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 16	4:30 p.m.

DIVISION OF RESEARCH STAFF

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TABLE OF CONTENTS

Cumulative Tables.....	458
------------------------	-----

PROPOSED

DELAWARE HEALTH INFORMATION NETWORK	
104 Delaware Health Care Claims Database Data Access Regulation.....	463
DEPARTMENT OF EDUCATION	
Office of the Secretary	
501 State Content Standards.....	468
Professional Standards Board	
1515 Hearing Procedures and Rules.....	470
DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Medicaid and Medical Assistance	
DSSM 20620.2.3.1 Limitation on the Submission of Requests for Protection of Prior Medical Costs	475
Division of Social Services	
DSSM 2027 Disqualification of Individuals Convicted of Drug Related Offenses.....	477
DEPARTMENT OF INSURANCE	
Office of the Commissioner	
1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions.....	478
DEPARTMENT OF SAFETY AND HOMELAND SECURITY	
Division of State Police	
1300 Board of Examiners of Private Investigators & Private Security Agencies.....	480
DEPARTMENT OF STATE	
Division of Professional Regulation	
1100 Board of Dentistry and Dental Hygiene.....	484
1900 Board of Nursing.....	485
2500 Board of Pharmacy.....	485
3500 Board of Examiners of Psychologists.....	486
5300 Board of Massage and Bodywork.....	487

FINAL

DEPARTMENT OF LABOR	
Division of Unemployment Insurance	
1201 Unemployment Insurance Appeal Board Regulations.....	496
DEPARTMENT OF SAFETY AND HOMELAND SECURITY	
Division of Gaming Enforcement	
301 Interactive Fantasy Sports Contests Regulations.....	499
Division of State Police	
2400 Board of Examiners of Constables.....	500
DEPARTMENT OF STATE	
Division of Professional Regulation	
101 Regulations Governing Bingo.....	501

TABLE OF CONTENTS

457

2700 Board of Registration for Professional Land Surveyors.....	502
---	-----

OFFICE OF MANAGEMENT AND BUDGET

Division of Facilities Management

4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	503
---	-----

CALENDAR OF EVENTS/HEARING NOTICES

Delaware Health Information Network, Notice of Public Comment Period.....	505
Dept. of Education, Notice of Monthly Meeting.....	505
Dept. of Health and Social Services, Div. of Medicaid and Medical Assistance; Division of Social Services, Notices of Public Comment Periods.....	505 - 506
Dept. of Insurance, Office of the Commissioner, Notice of Public Comment Period.....	506
Dept. of Safety and Homeland Security, Div. of State Police, Notice of Public Comment Period.....	507
Dept. of State, Div. of Professional Regulation, Board of Dentistry and Dental Hygiene; Board of Nursing; Board of Pharmacy; Board of Examiners of Psychologists, and Board of Massage and Bodywork, Notices of Public Hearings and Comment Periods.....	507 - 509

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

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

DELAWARE HEALTH INFORMATION NETWORK

103 Delaware Health Care Claims Database Data Collection Regulation.....	21 DE Reg. 9 (Prop.)
	21 DE Reg. 293 (Final)

DEPARTMENT OF AGRICULTURE**Harness Racing Commission**

501 Harness Racing Rules and Regulations.....	21 DE Reg. 261 (Prop.)
502 Delaware Standardbred Breeders' Fund Regulations.....	21 DE Reg. 146 (Final)
	21 DE Reg. 173 (Prop.)

Office of the Secretary

1201 Nutrient Management Certification Regulations.....	21 DE Reg. 10 (Prop.)
	21 DE Reg. 175 (Prop.)

DEPARTMENT OF EDUCATION**Office of the Secretary**

103 Accountability for Schools, Districts and the State.....	21 DE Reg. 363 (Prop.)
106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	21 DE Reg. 37 (Final)
107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	21 DE Reg. 38 (Final)
108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	21 DE Reg. 40 (Final)
225 Prohibition of Discrimination.....	21 DE Reg. 364 (Prop.)
290 Approval of Educator Preparation Programs.....	21 DE Reg. 262 (Prop.)
292 Post Secondary Institutions and Degree Granting Institutions of Higher Education.....	21 DE Reg. 11 (Prop.)
	21 DE Reg. 208 (Final)
613 Uniform Procedures for Processing Attorney General's Reports.....	21 DE Reg. 41 (Final)
728 Graduate Level Salary Increments.....	21 DE Reg. 76 (Prop.)
	21 DE Reg. 300 (Final)
729 School Custodians.....	21 DE Reg. 2 (Prop.)
	21 DE Reg. 209 (Final)
734 District School Board and Charter School Board Member Financial Responsibility Training.....	21 DE Reg. 210 (Final)
736 Local School District and Charter School Citizen Budget Oversight Committees.....	21 DE Reg. 213 (Final)
903 Best Interest Determination Process for School Placement - Students in Foster Care.....	21 DE Reg. 176 (Prop.)
	21 DE Reg. 420 (Final)
925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	21 DE Reg. 372 (Prop.)
1009 DIAA High School Interscholastic Athletics.....	21 DE Reg. 147 (Final)
	21 DE Reg. 218 (Final)
1202 Delaware Teacher Corps Program.....	21 DE Reg. 15 (Prop.)
	21 DE Reg. 219 (Final)

Professional Standards Board

1502 Graduate Level Salary Increments.....	21 DE Reg. 81 (Prop.)
--	-----------------------

1502 Graduate Level Salary Increments.....	21 DE Reg. 302 (Final)
1505 Standard Certificate.....	21 DE Reg. 86 (Prop.)
1511 Issuance and Renewal of Continuing License.....	21 DE Reg. 179 (Prop.)
1515 Hearing Procedures and Rules.....	21 DE Reg. 264 (Prop.)
1520 Early Childhood Teacher.....	21 DE Reg. 91 (Prop.)
	21 DE Reg. 303 (Final)
1531 Middle Level English Language Arts Teacher.....	21 DE Reg. 93 (Prop.)
	21 DE Reg. 304 (Final)
1532 Middle Level Mathematics Teacher.....	21 DE Reg. 95 (Prop.)
	21 DE Reg. 306 (Final)
1533 Middle Level Science Teacher.....	21 DE Reg. 97 (Prop.)
	21 DE Reg. 308 (Final)
1534 Middle Level Social Studies Teacher.....	21 DE Reg. 99 (Prop.)
	21 DE Reg. 310 (Final)
1539 Health Education Teacher.....	21 DE Reg. 101 (Prop.)
	21 DE Reg. 312 (Final)
1540 Secondary English Language Arts Teacher.....	21 DE Reg. 103 (Prop.)
	21 DE Reg. 314 (Final)
1542 Secondary Mathematics Teacher.....	21 DE Reg. 105 (Prop.)
	21 DE Reg. 316 (Final)
1544 Secondary Social Studies Teacher.....	21 DE Reg. 107 (Prop.)
	21 DE Reg. 318 (Final)
1550 AgriScience Teacher.....	21 DE Reg. 109 (Prop.)
	21 DE Reg. 320 (Final)
1551 Business Education Teacher.....	21 DE Reg. 111 (Prop.)
	21 DE Reg. 322 (Final)
1553 Driver Education and Traffic Safety Education Teacher.....	21 DE Reg. 113 (Prop.)
	21 DE Reg. 324 (Final)
1554 Family and Consumer Sciences Teacher.....	21 DE Reg. 115 (Prop.)
	21 DE Reg. 326 (Final)
1555 Marketing Education Teacher.....	21 DE Reg. 117 (Prop.)
	21 DE Reg. 328 (Final)
1557 Technology Education Teacher.....	21 DE Reg. 119 (Prop.)
	21 DE Reg. 330 (Final)
1562 Teacher of English Learners.....	21 DE Reg. 121 (Prop.)
	21 DE Reg. 332 (Final)

DEPARTMENT OF FINANCE

Office of Unclaimed Property, State Escheator

100 Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager (Repeal).....	21 DE Reg. 335 (Final)
101 Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property (Repeal).....	21 DE Reg. 335 (Final)
102 Regulation on Practices and Procedures for Records Examinations by the State Escheator (Repeal).....	21 DE Reg. 335 (Final)
103 Abandoned or Unclaimed Property Examination Guidelines (Repeal).....	21 DE Reg. 335 (Final)
104 Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual.....	21 DE Reg. 123 (Prop.)
	21 DE Reg. 336(Final)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Commission for Statewide Contracts to Support Employment for Individuals with Disabilities

9102 Regulations for Set Aside Contracts.....	21 DE Reg. 424 (Final)
---	-------------------------------

Delaware Health Care Commission

Delaware Health Resources Management Plan.....	21 DE Reg. 222 (Final)
--	-------------------------------

Division of Long Term Care Residents Protection	
3310 Neighborhood Homes for Persons with Developmental Disabilities.....	21 DE Reg. 229 (Final)
Division of Medicaid and Medical Assistance	
Dental Fee Schedule.....	21 DE Reg. 124 (Prop.)
	21 DE Reg. 430 (Final)
Division of Developmental Disabilities Services (DDDS) Lifespan Waiver.....	21 DE Reg. 269 (Prop.)
DSSM 5000 - Definitions.....	21 DE Reg. 389(Prop.)
DSSM 11004.13 - Child Care Redetermination.....	21 DE Reg. 374 (Prop.)
DSSM 11006.7 - Relative Child Care.....	21 DE Reg. 376 (Prop.)
DSSM 16500.2 - Excluded Income.....	21 DE Reg. 392 (Prop.)
DSSM 20400.9.1 - Special Needs Trust.....	21 DE Reg. 374 (Prop.)
DSSM 30000 Delaware Prescription Assistance Program.....	21 DE Reg. 127 (Prop.)
	21 DE Reg. 433 (Final)
DSSM 70000 - Certification and Regulation of Medicaid Managed Care Organizations.....	21 DE Reg. 389 (Prop.)
Inpatient Psychiatric Hospital Services For Individuals Under Age 21.....	21 DE Reg. 187 (Prop.)
	21 DE Reg. 438 (Final)
Reasonable Limits on Care Expenses.....	21 DE Reg. 185 (Prop.)
	21 DE Reg. 435 (Final)
Targeted Case Management for Children and Youth with Serious Emotional Disturbance.....	21 DE Reg. 379 (Prop.)
Division of Public Health	
4304 Delaware Medical Orders for Scope of Treatment (DMOST).....	21 DE Reg. 233 (Final)
4453 Cosmetology and Barbering.....	21 DE Reg. 190 (Prop.)
4465 Delaware Radiation Control Regulations.....	21 DE Reg. 18 (Prop.)
DEPARTMENT OF HUMAN RESOURCES	
Division of Statewide Benefits	
2007 Disability Insurance Program Rules and Regulations.....	21 DE Reg. 234 (Final)
DEPARTMENT OF INSURANCE	
Office of Legal and Special Projects	
301 Audited Financial Reports.....	21 DE Reg. 191 (Prop.)
	21 DE Reg. 441 (Final)
307 Corporate Governance Annual Disclosure Regulation.....	21 DE Reg. 394 (Prop.)
603 Delaware Motorists Protection Act.....	21 DE Reg. 150 (Final)
	21 DE Reg. 237 (Final)
901 Arbitration of Automobile and Homeowners' Insurance Claims.....	21 DE Reg. 398 (Prop.)
1003 Credit for Reinsurance.....	21 DE Reg. 443 (Final)
1301 Internal Review and Independent Utilization Review of Health Insurance Claims	21 DE Reg. 192 (Prop.)
	21 DE Reg. 400 (Prop.)
1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers.....	21 DE Reg. 196 (Prop.)
	21 DE Reg. 406 (Prop.)
Office of the Commissioner	
1318 Compensation for Chiropractic Services.....	21 DE Reg. 19 (Prop.)
1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions.....	21 DE Reg. 271 (Prop.)
DEPARTMENT OF LABOR	
Division of Industrial Affairs	
1322 Prevailing Wage Regulations.....	21 DE Reg. 22 (Prop.)
1326 Workplace Fraud Act Regulations.....	21 DE Reg. 23 (Prop.)
	21 DE Reg. 237 (Final)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

- 1120 New Source Performance Standards..... 21 **DE Reg.** 46 (Final)
- 1123 Standards of Performance for Steel Plants: Electric Arc Furnaces..... 21 **DE Reg.** 273 (Prop.)
- 1136 Acid Rain Program..... 21 **DE Reg.** 277 (Prop.)
- 1140 Delaware Low Emission Vehicle Program..... 21 **DE Reg.** 278 (Prop.)

Division of Energy and Climate

- 2102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions..... 21 **DE Reg.** 152 (Final)

Division of Fish and Wildlife

- 3511 Summer Flounder Size Limits; Possession Limits; Season..... 21 **DE Reg.** 6 (Emer.)
- 21 **DE Reg.** 239 (Final)

Division of Waste and Hazardous Substances

- 1301 Regulations Governing Solid Waste..... 21 **DE Reg.** 129 (Prop.)

Division of Water

- 7102 Regulations Governing Underground Injection Control..... 21 **DE Reg.** 199 (Prop.)
- 21 **DE Reg.** 410 (Prop.)
- 21 **DE Reg.** 283 (Prop.)
- 7204 Regulations for Licensing Operators Of Wastewater Facilities 21 **DE Reg.** 31 (Prop.)

Division of Watershed Stewardship

- 7401 Surface Water Quality Standards..... 21 **DE Reg.** 241 (Final)

Office of the Secretary

- 109 Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection..... 21 **DE Reg.** 130 (Prop.)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of Gaming Enforcement

- Interactive Fantasy Sports Contests Regulations..... 21 **DE Reg.** 284 (Prop.)

Division of State Police

- 2400 Board of Examiners of Constables..... 21 **DE Reg.** 32 (Prop.)
- 5500 Bail Enforcement Agents..... 21 **DE Reg.** 49 (Final)

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

Division of Family Services

- 101 DELACARE: Regulations for Early Care and Education and School-Age Centers..... 21 **DE Reg.** 133 (Prop.)
- 103 Regulations for Family and Large Family Child Care Homes..... 21 **DE Reg.** 134 (Prop.)

DEPARTMENT OF STATE

Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program

- 301 Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Regulations Relating to Estimation..... 21 **DE Reg.** 50 (Final)

Division of Professional Regulation

- 100 Board of Accountancy..... 21 **DE Reg.** 53 (Final)
- 101 Regulations Governing Bingo..... 21 **DE Reg.** 200 (Prop.)
- 300 Board of Architects..... 21 **DE Reg.** 54 (Final)
- 1000 Board of Pilot Commissioners..... 21 **DE Reg.** 34 (Prop.)
- 1100 Board of Dentistry and Dental Hygiene..... 21 **DE Reg.** 337 (Final)
- 21 **DE Reg.** 362 (Errata)
- 1725 Polysomnography Advisory Council..... 21 **DE Reg.** 411 (Prop.)
- 2700 Board of Registration for Professional Land Surveyors..... 21 **DE Reg.** 35 (Prop.)
- 2930 Council on Real Estate Appraisers..... 21 **DE Reg.** 244 (Final)
- 3100 Board of Funeral Services..... 21 **DE Reg.** 338 (Final)
- 3800 Board of Dietetics/Nutrition..... 21 **DE Reg.** 135 (Prop.)

CUMULATIVE TABLES

4400 Delaware Manufactured Home Installation Board.....	21 DE Reg. 154 (Final)
5200 Board of Examiners of Nursing Home Administrators.....	21 DE Reg. 138 (Prop.)
Public Service Commission	
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005).....	21 DE Reg. 205 (Prop.)

DEPARTMENT OF TRANSPORTATION

Division of Transportation Solutions

2402 Delaware Manual on Uniform Traffic Control Devices.....	21 DE Reg. 412 (Prop.)
2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	21 DE Reg. 418 (Prop.)

OFFICE OF MANAGEMENT AND BUDGET

Division of Facilities Management

4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	21 DE Reg. 284 (Prop.)
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Symbol Key

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

Proposed Regulations

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

DELAWARE HEALTH INFORMATION NETWORK

Statutory Authority: 16 Delaware Code, Sections 10306 & 10311-10315 (16 **Del.C.** §§10306 & 10311-10315)

PUBLIC NOTICE**104 Delaware Health Care Claims Database Data Access Regulation**

Agency: Delaware Health Information Network

Contact: Dr. Jan Lee
Chief Executive Officer
(302) 678-0220

Submit Comments by email to info@dhin.org by January 16, 2018.

Title of Proposed Regulation: Delaware Health Care Claims Database Data Access Regulation

Summary of the Regulation:

This regulation supports implementation of 16 **Del.C.** Ch. 103, Subchapter II, The Delaware Health Care Claims Database. It summarizes the allowable purposes for access to claims data, the process by which a request for access to claims data will be reviewed and evaluated, and factors that will be considered in granting or denying such requests. It delineates the structure and duties of the Health Care Claims Database Committee.

Sub-regulatory information may be found on the DHIN web site at www.DHIN.org to include the form to be used for requesting access to claims data and the general business rules to be followed by the Health Care Claims Database Committee.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/december2017/proposed/21 DE Reg 463RFA 12-01-17.pdf](http://regulations.delaware.gov/register/december2017/proposed/21%20DE%20Reg%20463RFA%2012-01-17.pdf)

PROPOSED REGULATIONS

104 Delaware Health Care Claims Database Data Access Regulation

1.0 Authority and Purpose

- 1.1 Statutory Authority. 16 Del.C. §10306 authorizes the Delaware Health Information Network (DHIN) to promulgate rules and regulations to carry out its objectives under 16 Del.C. Ch. 103, Subchapter II.
- 1.2 The Health Care Claims Database ("HCCD") was created by statute, pursuant to Chapter 103, Subchapter II of Title 16, under the purview of DHIN, to achieve the "Triple Aim" of the State's ongoing health care innovation efforts: (1) improved health; (2) health care quality and experience; and (3) affordability for all Delawareans. The HCCD is created and maintained by the DHIN, to facilitate data driven, evidence-based improvements in access, quality, and cost of healthcare and to promote and improve the public health through increased transparency of accurate Claims Data and information. To accomplish those objectives, a centralized Health Care Claims Database was established to enable the State to more effectively understand utilization across the continuum of health care in Delaware and achieve the Triple Aim.

2.0 Definitions

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

"Approved User" means any person or organization that DHIN has authorized to view or access data from the Health Care Claims Database, including Delaware state agencies and DHIN itself.

"Claims Data" includes Required Claims Data and any additional health care information that a voluntary reporting entity elects, through entry into an appropriate Data Submission and Use Agreement, to submit to the Delaware Health Care Claims Database.

"Clinical Proxy Data Elements" means any health care information contained within Claims Data which describes a rendered clinical service, including but not limited to: procedure codes, diagnosis codes, dates and locations of clinical services, healthcare providers, and pharmacy data, and excludes Pricing Information.

"Collaborating State Agencies" shall refer to the Delaware Office of Management and Budget, State Employee Benefits Committee, Division of Public Health, and Division of Medicaid and Medical Assistance and their successors, if applicable.

"Data Submission and Use Agreement" or "DSUA" shall mean the agreement between the HCCD Administrator and the Reporting Entity describing the specific terms and conditions for data submission and use.

"De-Identified Data" refers to health information as defined in the HIPAA Privacy Rule, which is not considered PHI because it excludes the following direct and indirect patient identifiers:

- Direct Patient Identifiers
 - Names;
 - Telephone numbers;
 - Fax numbers;
 - Email addresses;
 - Social security numbers;
 - Medical record numbers;
 - Health plan beneficiary numbers;
 - Account numbers;
 - Certificate/license numbers;
 - Vehicle identifiers and serial numbers;
 - Device identifiers and serial numbers;
 - URL's;
 - IP addresses;
 - Biometric identifiers, including fingerprints;
 - Full-face photographs;
 - Any other unique identifying numbers.

- Indirect Patient Identifiers
 - All geographic subdivisions smaller than a state, except for the initial three digits of a zip code;
 - All elements of dates (except year) for dates that are directly related to an individual, including birth date, admission date, discharge date, death date, and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older.

"HCCD Administrator" shall mean the Delaware Health Information Network and its staff and contractor(s) that are responsible for collecting data submissions, providing secure production services and providing data access for approved users.

"Health Care Claims Database" or **"HCCD"** shall mean the database and associated technology components maintained by DHIN and authorized under 16 **Del.C.** Ch. 103, Subchapter II.

"Health Care Claims Database Committee" (the **"Committee"**) shall mean the subcommittee established by the Delaware Health Information Network Board of Directors and governed by its by-laws that has the authority to determine when applications for Claims Data should be provided to a data requestor to facilitate the purposes of the enabling legislation, and such other duties as designated by the DHIN Board of Directors consistent with the enabling legislation.

"Health care services" means as defined in 18 **Del.C.** §6403.

"Identified Data" refers to data that contains direct patient identifiers.

"Limited Data Set" refers to a limited set of PHI as defined in the HIPAA Privacy Rule, which excludes direct patient identifiers. A Limited Data Set excludes all of the same data elements as De-Identified Data, with the following exceptions:

- Elements of dates are allowed
- Geographic subdivisions are allowed, except street address

"Mandatory Reporting Entity" means the following entities, except as prohibited under federal law:

- The State Employee Benefits Committee and the Office of Management and Budget, under each entity's respective statutory authority to administer the State Group Health Insurance Program in 19 **Del.C.** Ch. 96, and any Health Insurer, Third Party Administrator, or other entity that receives or collects charges, contributions, or premiums for, or adjusts or settles health claims for, any State employee, or their spouses or dependents, participating in the State Group Health Insurance Program, except for any carrier, as defined in 29 **Del.C.** §5290, selected by the State Group Health Insurance Plan to offer supplemental insurance program coverage under 29 **Del.C.** Ch. 52C.
- The Division of Medicaid and Medical Assistance, with respect to services provided under programs administered under Titles XIX and XXI of the Social Security Act.
- Any Health Insurer or other entity that is certified as a qualified health plan on the Delaware Health Insurance Marketplace for plan year 2017 or any subsequent plan year.
- Any federal health insurance plan providing Health Care Services to a resident of this State, including Medicare fee for service, Medicare Part C/Medicare Advantage and Medicare Part D Prescription Drug plans and the Federal Employees Health Benefits Plan.

"Member" means individuals, employees, and dependents for which the Reporting Entity has an obligation to adjudicate, pay or disburse claims payments. The term includes covered lives. For employer-sponsored coverage, Members include certificate holders and their dependents. This definition includes all members of the State Group Health Insurance Program regardless of state of residence.

"Pricing Information" includes the pre-adjudicated price charged by a Provider to a Reporting Entity for Health Care Services, the amount paid by a Member or insured party, including co-pays and deductibles, and the post-adjudicated price paid by a Reporting Entity to a Provider for Health Care Services.

"Protected Health Information" or **"PHI"** refers to individually identifiable health information as defined in the HIPAA Privacy Rule.

PROPOSED REGULATIONS

"Provider" means a hospital, facility, or any health care practitioner licensed, certified, or authorized under State law to provide Health Care Services and includes hospitals and health care practitioners participating in group arrangements, including accountable care organizations, in which the hospital or health care practitioners agree to assume responsibility for the quality and cost of health care for a designed group of beneficiaries.

"Reporting Entity" means either a Mandatory Reporting Entity or a Voluntary Reporting Entity.

"Required Claims Data" as authorized under 16 Del.C. §10312(8) shall mean the required data containing records of member eligibility, medical services claims and pharmacy claims as specified in the Submission Guide.

"Submission Guide" shall mean the document providing the specific formats, timelines, data quality standards and other requirements for claims data submission, incorporated as Addendum One to the DSUA. It shall be established and maintained as technical guidance document and substantively updated on an annual basis.

"Voluntary Reporting Entity" includes any of the following entities that has chosen to submit or has been instructed to submit data at the request of an employer or client and enters into a Data Submission and Use Agreement, unless such entity is a Mandatory Reporting Entity:

- Any Health Insurer.
- Any Third Party Administrator not otherwise required to report.
- Any entity, which is not a Health Insurer or Third Party Administrator, when such entity receives or collects charges, contributions, or premiums for, or adjusts or settles health care claims for, residents of this State.

3.0 General Data Access Provisions

3.1 HCCD data may be released to a person or organization for purposes of:

3.1.1 Promoting and improving public health;

3.1.2 Advancing the "Triple Aim" of improving health, improving health care quality and experience, and improving affordability;

3.1.3 Providing information to effectively manage risk for the health needs of a population.

3.2 The DHIN may provide HCCD data or data access at the following levels of detail, per the procedures established in this Regulation:

3.2.1 De-Identified Data

3.2.2 Limited Data Sets

3.2.3 Identified Data

3.3 Except as otherwise specified in this Regulation, all requests for HCCD data or data access shall require a written application that describes the intended purpose and use of the data and the security and privacy measures that will be used to safeguard the data and prevent unauthorized access to or use of the data. Exceptions to this rule include:

3.3.1 DHIN may incorporate HCCD Clinical Proxy Data Elements into the Community Health Record for purposes of treatment and care coordination, without a written application or Committee review.

3.3.2 DHIN may make HCCD Clinical Proxy Data Elements available to the Members to whom they apply without a written application or Committee review.

3.3.3 Requests from Reporting Entities for their own data will not require Committee review.

3.3.4 Collaborating State Agencies may access HCCD data without Committee review by entering into an interagency agreement with the DHIN. The interagency agreement shall include but not be limited to the following:

3.3.4.1 Confirmation that the Collaborating State Agency will conform to DHIN's confidentiality and data security protocols and all applicable state and federal laws relating to the privacy and security of PHI;

3.3.4.2 Confirmation that the Collaborating State Agency will abide by re-disclosure requirements as specified in Section 6 of this Regulation.

- 3.4 Applications for De-Identified Data may be eligible for expedited review.
- 3.5 The Committee shall review, without exception, the following types of applications to confirm the intended use is consistent with the statutory purpose of the HCCD:
 - 3.5.1 Applications for Limited Data Sets;
 - 3.5.2 Applications for Identified Data;
 - 3.5.3 Applications from out-of-state commercial requestors who are not Reporting Entities and whose intended use will not directly benefit Delawareans;
 - 3.5.4 Applications for Pricing Information and other sensitive financial data elements.

4.0 Structure and Duties of the Committee

- 4.1 The Committee shall have a chairperson and members appointed by the DHIN Board of Directors.
- 4.2 The Committee shall be comprised of five (5) to eleven (11) members and shall be representative of various stakeholder groups.
- 4.3 The Committee shall finalize a data request application, establish business operating rules for the review and consideration of applications, and determine a schedule for reviewing applications. These business rules shall be subject to periodic updates by the Committee and shall be maintained on the DHIN website.
- 4.4 The Committee shall determine by majority vote whether an application should be approved. As part of their review, the Committee shall consider:
 - 4.4.1 Whether the intended use is consistent with the statutory purpose of the HCCD;
 - 4.4.2 Whether access to the requested data is necessary to achieve the intended goals, including but not limited to the need for identifiable data, if requested;
 - 4.4.3 Whether access to the requested data may provide an unfair competitive advantage to the requestor;
 - 4.4.4 Whether any comments were received from Reporting Entities whose Claims Data is being requested, if applicable;
 - 4.4.5 Whether the request complies with all applicable state and federal laws relating to the privacy and security of PHI;
 - 4.4.6 Whether the request complies, to the fullest extent practicable, with guidance found in Statement 6 of the Department of Justice and Federal Trade Commission Enforcement Policy regarding the exchange of price and cost information;
 - 4.4.7 Whether the applicant is qualified to serve as a responsible steward of the requested data.
- 4.5 The Committee reserves the right to ask an applicant to acquire Institutional Review Board review, or its equivalent, prior to approving an application.
- 4.6 The final determination of the Committee shall not be subject to appeal.

5.0 Applications for HCCD Data

- 5.1 The DHIN shall notify a Reporting Entity when an application is received for Claims Data which was submitted to the HCCD by that Reporting Entity. The notification shall include but not be limited to: a summary of the request; the specific Claims Data element(s) being requested; and the name of the requestor. Reporting Entities will have ten business days to provide written comment to DHIN regarding the request.
- 5.2 Upon the Committee's approval of an application for HCCD data, the applicant shall sign a legally binding data use agreement. The data use agreement will include but not be limited to:
 - 5.2.1 Confirmation of compliance with the DHIN's confidentiality and data security protocols;
 - 5.2.2 Confirmation of compliance with the HCCD re-disclosure requirements;
 - 5.2.3 Commitment to use HCCD data for the sole purpose of executing the approved research project;
 - 5.2.4 Commitment to document data destruction processes at the end of the project.

PROPOSED REGULATIONS

6.0 Public Reports and Re-Disclosure

- 6.1 The DHIN and Collaborating State Agencies may issue public reports with aggregated HCCD data that adhere to the re-disclosure requirements without Committee review and approval.
- 6.2 Any re-disclosure of HCCD data made by anyone other than DHIN or a Collaborating State Agency, shall require Committee review and approval. All HCCD data shared publicly or re-disclosed to anyone other than an Approved User shall adhere to the following re-disclosure requirements:
- 6.2.1 Adhere to CMS cell size suppression requirements for CMS Research Identifiable Files;
- 6.2.2 Exclude any Reporting Entity-specific Pricing Information that includes post-adjudicated claims data.

7.0 Fees

- 7.1 DHIN may charge a reasonable cost-based fee for preparing and transmitting HCCD data. This fee may include: costs of aggregating, storing, extracting, de-identifying, and transmitting the information; associated infrastructure and staff labor costs; costs for programming and data generation; allocated indirect operating costs; and other costs associated with the production and transmission of data sets.
- 7.2 HCCD data and data access will always be provided free of charge to the following entities:
- 7.2.1 The Office of Management and Budget;
- 7.2.2 State Employee Benefits Committee;
- 7.2.3 Division of Public Health;
- 7.2.4 Division of Medicaid and Medical Assistance.
- 7.3 At DHIN's discretion, fees may be reduced or waived for certain entities, including but not limited to:
- 7.3.1 CMS;
- 7.3.2 Reporting Entities;
- 7.3.3 Entities that submit other data to the DHIN.
- 7.4 The DHIN shall have a record of payment in full prior to providing data or access to Approved Users.
- 7.5 Fees shall be deposited into a DHIN account to support costs of operating the HCCD.

8.0 Penalties

- 8.1 If an Approved User violates the terms of the data use agreement, the DHIN may take one or more of the following actions:
- 8.1.1 Revoke permission to use the data;
- 8.1.2 Pursue civil or administrative enforcement action under applicable Delaware state law.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 104(b) and 122(b) (14 **Del.C.** §§104(b) & 122(b))
14 **DE Admin. Code** 501

PUBLIC NOTICE

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

501 State Content Standards

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. Sections 122(b) and 104(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 501 State Content Standards. This regulation is being amended to include Financial Literacy standards and Computer Science standards. The amendment provides that the Financial Literacy standards are adopted for the 2018-19 school year. Any financial literacy curriculum used by the districts and charter schools would need to be aligned to these new standards on a timeline established by the Department. Further, the amendment provides that the Computer Science standards are adopted for the 2018-19 school year. Any computer science curriculum used by the districts and charter schools would need to be aligned to these new standards on a timeline established by the Department. The Department is working with our districts and charter schools to establish this timeline which allows for the appropriate time for curriculum to be aligned and professional learning to occur.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 9, 2018 to Delaware Department of Education, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, or obtained at the Department of Education, Office of the Secretary 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 outlining current state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue 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 amendments do not address students' health and safety.

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

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/december2017/proposed/21 DE Reg 468RFA 12-01-17.pdf](http://regulations.delaware.gov/register/december2017/proposed/21%20DE%20Reg%20468RFA%2012-01-17.pdf)

501 State Content Standards

1.0 Instructional Programs

PROPOSED REGULATIONS

- 1.1 Instructional programs offered in the public schools of Delaware shall be in alignment with the appropriate content standards documents. These documents are: English Language Arts Curriculum Framework Content Standards, Mathematics Curriculum Framework Content Standards, Science Curriculum Framework Content Standards, Social Studies Curriculum Framework Content Standards, Health Education Curriculum Framework and Assessment Content Standards, Physical Education Content Standards, Visual and Performing Arts Content Standards, Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, World Language Curriculum Framework Content Standards, Technology Education Curriculum Framework Content Standards, Skilled and Technical Sciences Content Standards, and the Family and Consumer Sciences Content Standards, Computer Science Content Standards and Financial Literacy Content Standards.
- 1.1.1 The content standards documents may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.
- 1.1.1.1 Effective with the 2010-2011 school year, Delaware Content Standards in English language arts and mathematics shall be comprised of the Common Core Standards developed in partnership with the National Governors Association and the Council of Chief State School Officers.
- 1.1.1.2 Effective with the 2013-2014 school year, the Next Generation Science Standards (NGSS) developed in partnership with twenty-six (26) states, including Delaware, shall be adopted as the Delaware Content Standards in science. For purposes of this subsection, "adopted" shall mean to accept a set of standards as the basis for curriculum and assessment alignment across the state according to a timeline established and disseminated by the Department of Education.
- 1.1.1.3 Effective with the 2018-19 school year, the Financial Literacy Content Standards shall be adopted. For purposes of this subsection, "adopted" means to accept a set of standards as the basis for curriculum across the state according to a timeline established and disseminated by the Department of Education.
- 1.1.1.4 Effective with the 2018-19 school year, the Computer Science Content Standards shall be adopted. For purposes of this subsection, "adopted" means to accept a set of standards as the basis for curriculum across the state according to a timeline established and disseminated by the Department of Education.
- 1.1.2 Integration of the content standards shall be provided for within and across the curricula.
- 1.1.3 Instructional materials and curricula content shall be kept current and consistent with provisions of 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards and 14 **DE Admin. Code** 503 Instructional Program Requirements.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))

PUBLIC NOTICE

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

1515 Hearing Procedures and Rules

A. TYPE OF REGULATORY ACTION REQUESTED

Adopt New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in cooperation and consultation with the Department of

Education ("Department"), developed a new regulation, 14 **DE Admin. Code** 1515 Hearing Procedures and Rules. The regulation concerns the hearing procedures and rules for license denial actions under 14 **Del.C.** §1217 and license disciplinary actions under 14 **Del.C.** §1218. The proposed regulation was initially published on October 1, 2017. The Board received one written comment that subsection 3.1.2 does not seem to align with modern technology or to be the most efficient, non-burdensome form of communicating a hearing request. The Board believes that the forms of hearing request are those permitted by statute, so no changes were made in response to the comment. On November 2, 2017, the Board voted to republish the regulation with two substantive changes. The Board added a deadline for submitting a written request for additional time for a hearing to subsection 4.1.1.1 and added "stenographic" to subsection 4.5.2.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 2, 2018 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation does not address student achievement as measured against state achievement standards.

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

3. Will the new regulation help to ensure all student's health and safety are adequately protected? The new regulation addresses the Board's rules and procedures for hearings, not students' health and safety.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses the Board's rules and procedures for hearings, not students' legal rights.

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

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does 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 will be placed in the same entity.

8. Will the new 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 new regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and 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 new regulation? There is not a less burdensome method for addressing the purpose of the new regulation.

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

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/december2017/proposed/21 DE Reg 470RFA 12-01-17.pdf](http://regulations.delaware.gov/register/december2017/proposed/21%20DE%20Reg%20470RFA%2012-01-17.pdf)

1515 Hearing Procedures and Rules

1.0 Applicability, Construction, and Waiver

PROPOSED REGULATIONS

- 1.1 This regulation shall apply to license denial actions under 14 Del.C. §1217 and license disciplinary actions under 14 Del.C. §1218.
- 1.2 This regulation shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the Standards Board's authority under 14 Del.C. Ch. 12 and with the Administrative Procedures Act under 29 Del.C. Ch. 101.
- 1.3 The Standards Board may waive any of the procedures and rules in this regulation upon application or upon its own initiative for good cause and to the extent consistent with the law.

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"Executive Director" means the Executive Director of the Delaware Professional Standards Board.

"Secretary" means the Secretary of the Delaware Department of Education.

"Standards Board" means the Delaware Professional Standards Board established pursuant to 14 Del.C. §1201 or its designee.

3.0 Requests for a Hearing

- 3.1 A person may request a hearing by mailing or hand-delivering a written request for a hearing to the Executive Director.
 - 3.1.1 Requests shall not be sent by electronic mail, facsimile, or other electronic means.
- 3.2 The request shall:
 - 3.2.1 Be in writing;
 - 3.2.2 Be signed by the person making the request or the person's counsel;
 - 3.2.3 Set forth the grounds for action in reasonable detail;
 - 3.2.4 Identify the source of the Standards Board's authority to decide the matter; and
 - 3.2.5 Provide the person's preferred mailing address, phone number, and e-mail address.
- 3.3 Requests must be submitted to the Executive Director as follows:
 - 3.3.1 For license denial actions, requests must be postmarked or mailed within 20 calendar days from the date that the Department's notice under 14 Del.C. §1217(b) was mailed.
 - 3.3.2 For license disciplinary actions, requests must be submitted within 30 calendar days from the date that the Secretary's notice under 14 Del.C. §1218(k) was mailed.
- 3.4 A copy of the request shall be provided to the Department, in license denial actions, or to the Secretary, in license disciplinary actions.
- 3.5 The Executive Director shall provide the request for a hearing to the Standards Board at its next regularly scheduled meeting.
- 3.6 Upon receipt of a request that meets all of the requirements set forth in subsection 3.2, the Standards Board may decide to conduct the hearing itself or designate a hearing officer from a list of hearing officers approved by the Standards Board to conduct the hearing.
 - 3.6.1 The hearing officer designated shall have the same authority, powers, and duties as the Standards Board for the purpose of conducting the hearing.
- 3.7 The Standards Board may direct the person or agency taking official action to file a written response to the request for a hearing.

4.0 Prehearing Procedures and Rules

- 4.1 Scheduling a Hearing
 - 4.1.1 Generally, hearings are scheduled for 1 full day from 8:30 a.m. to 4:30 p.m.

- 4.1.1.1 If a party believes that the presentation of the party's case cannot reasonably be accomplished in one half of the allotted time or less, then the party may mail or hand-deliver a written request for additional time to the Executive Director within 10 days of receipt of the notice of hearing. The request shall specify the reasons for the request. The party shall provide a copy of the request to the other party at the same time.
 - 4.1.1.2 The Standards Board may grant the request upon a showing of good cause.
 - 4.2 Notice of the Hearing
 - 4.2.1 Notice of the date, time, and place of the hearing shall be mailed to the parties.
 - 4.3 Requests for a Public Hearing
 - 4.3.1 A party shall be deemed to have consented to a closed hearing unless the party notifies the Executive Director in writing that a public hearing is requested.
 - 4.3.1.1 The request must be mailed or hand-delivered to the Executive Director within 5 business days of the receipt of the notice in subsection 4.2. A copy of the request shall be provided to the other party at the same time.
- 4.4 Subpoena Requests
 - 4.4.1 Requests for subpoenas for witnesses and other sources of evidence shall be mailed or hand-delivered to the Executive Director at least 15 business days before the date of the hearing. A copy of the request shall be provided to the other party at the same time.
 - 4.4.1.1 Requests for subpoenas for witnesses shall specify the witness' name and address.
 - 4.4.1.2 Requests for subpoenas for other sources of evidence shall specify the person or entity to whom the subpoena is directed, the person or entity's address, and the date by which the person or entity is to respond to the request.
 - 4.4.2 The Standards Board shall issue subpoenas in accordance with the law.
 - 4.4.3 The party requesting a subpoena is responsible for delivering the subpoena to the person or entity to whom the subpoena is directed.
 - 4.4.3.1 Proof of service of a subpoena shall be mailed or hand-delivered to the Standards Board.
- 4.5 Requests for a Stenographic Reporter
 - 4.5.1 Any party may request the presence of a stenographic reporter at the hearing.
 - 4.5.1.1 The request shall be mailed or hand-delivered to the Executive Director at least 10 business days prior to the date of the hearing. A copy of the request shall be provided to the other party at the same time.
 - 4.5.2 The requesting party shall be liable for the expense of the stenographic reporter and any transcript the party requests.
- 4.6 Witness List
 - 4.6.1 A written list of witnesses a party intends to call during a hearing shall be mailed or hand-delivered to the Executive Director at least 5 business days prior to a hearing. A copy of the list shall be mailed to the other party at the same time.
 - 4.6.2 The Standards Board may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.
- 4.7 Exchange of Documents
 - 4.7.1 The parties shall exchange documents they intend to introduce at the hearing at least 5 business days prior to the hearing.
 - 4.7.2 The documents shall be labeled "Petitioner" or "Department" and numbered in sequential order (1, 2, 3).
- 4.8 Prehearing Conferences
 - 4.8.1 The Standards Board may hold prehearing conferences and teleconferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes, and to regulate and expedite the course of the hearing.
- 4.9 Continuances, Adjournments, and Postponements

PROPOSED REGULATIONS

- 4.9.1 The Standards Board may continue, adjourn, or postpone proceedings for good cause at the request of a party or on its or his or her own initiative.
- 4.9.2 Any request to continue, adjourn, or postpone a proceeding shall be submitted to the Executive Director in writing at least 3 business days before the date scheduled for the hearing. A copy of the request shall also be provided to the other party at the same time.

5.0 Hearing Procedures and Rules

- 5.1 A verbatim record of the proceedings before the Standards Board will be made either electronically or stenographically, if a party submits a request under subsection 4.5.
- 5.2 The hearing will proceed with the party with the burden of proof first presenting its evidence and case. The other party may then present its case. The party with the burden of proof will then have an opportunity to present rebuttal evidence.
- 5.2.1 In license denial actions, the applicant is the party with the burden of proof.
- 5.2.2 In license disciplinary actions, the Department is the party with the burden of proof.
- 5.3 The Standards Board may permit the parties to present opening and closing statements.
- 5.4 The Standards Board may take testimony, hear proof, and receive exhibits into evidence at a hearing.
- 5.4.1 Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.
- 5.4.2 The Standards Board may exclude plainly irrelevant, immaterial, insubstantial, cumulative, and privileged evidence and limit unduly repetitive proof, rebuttal, and cross-examination in accordance with 29 **Del.C.** §10125(b).
- 5.4.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection.
- 5.5 Testimony shall be under oath or affirmation.
- 5.5.1 The Standards Board may administer oaths to witnesses.
- 5.6 Any person who testifies as a witness shall also be subject to cross examination by the other party and by the Standards Board.
- 5.7 Witnesses may be sequestered upon a party's request.
- 5.8 Any document introduced into evidence at the hearing shall be marked by the Standards Board and shall be made a part of the record of the hearing.
- 5.8.1 The party offering the document into evidence shall provide a copy of the document to the other party, the Standards Board, and counsel for the Standards Board.

6.0 Post-hearing Rules and Procedures

- 6.1 The Standards Board may direct the parties to submit post-hearing briefs.
- 6.1.1 Post-hearing briefs shall be filed as directed by the Standards Board.
- 6.2 If the Standards Board has designated a hearing officer, the hearing officer shall prepare a proposed order in accordance with 29 **Del.C.** §10126.
- 6.3 The parties shall have 20 calendar days from the date the proposed order is delivered to them to submit in writing to the Standards Board and the other party any exceptions, comments, and arguments respecting the proposed order.
- 6.3.1 The parties may agree to shorten or waive the comment period.
- 6.3.2 The parties may agree to consent to the hearing officer's proposed order.
- 6.3.2.1 When the parties consent to the hearing officer's recommendation, they shall send written notice to the Executive Director.
- 6.4 The Standards Board shall consider the entire record of the case, the hearing officer's proposed order, and any written exceptions, comments, and arguments thereto in reaching its final decision. The Standards Board's decision shall be incorporated in a final order which is signed and mailed to the parties.

7.0 Other Hearing Rules and Procedures

7.1 Communications

7.1.1 Pursuant to 29 Del.C. §10129, no member or employee of the Standards Board assigned to participate in any way in the rendering of a case decision shall discuss or communicate, directly or indirectly, respecting any issue of fact or law with any person or party, except upon notice to and opportunity for all parties to participate.

7.1.1.1 Subsection 7.1.1 does not apply to communications required for the disposition of ex parte matters authorized by law or to communications by and among members of the Standards Board, the Standards Board's staff, and the Standards Board's counsel.

7.1.2 A copy of any document filed with or submitted to the Standards Board or the hearing officer shall be provided to the other party or the other party's counsel.

7.1.3 Address of the Standards Board and Parties' Contact Information

7.1.3.1 Hand-delivered submissions shall be delivered to the Standards Board at the Townsend Building, 401 Federal Street, 2nd Floor, Dover, Delaware 19901.

7.1.3.2 Mailed submissions shall be delivered to the Standards Board at 401 Federal Street, Suite 2, Dover, Delaware 19901.

7.1.3.3 Parties shall keep the Standards Board informed of their current mailing addresses, phone numbers, and email addresses.

7.2 Counsel

7.2.1 Any party to a proceeding before the Standards Board may be represented by counsel.

7.2.2 The attorney representing a party in a proceeding before the Standards Board shall notify the Executive Director of the representation in writing as soon as practical. A copy of the notice shall be provided to the other party at the same time.

7.2.3 Attorneys who are not members of the Delaware Bar may be admitted pro hac vice before the Standards Board pursuant to Rule 72 of the Rules of the Supreme Court of the State of Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512) 16 DE Admin. Code 20620

PUBLIC NOTICE

20620.2.3.1 Limitation on the Submission of Requests for Protection of Prior Medical Costs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding Prior Medical Costs, specifically, *to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on January 2, 2018. Please identify in the subject line: Prior Medical Costs Submission Limitation.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding Prior Medical Costs, specifically, *to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs.*

Statutory Authority

- 42 CFR §435.725 - Post-eligibility treatment of income of institutionalized individuals in SSI States: Application of patient income to the cost of care
- Social Security Act §1902(r)(1)(A)(ii)

Background

Federal regulations permit States to establish and apply reasonable limits to the post-eligibility treatment of the income of individuals who are institutionalized. Delaware currently allows for the protection of medical costs incurred in the three (3) months immediately preceding the beginning date of Medicaid eligibility for institutionalized individuals. There are no current regulations addressing reasonable limits on the timely submission of requests for the protection of prior medical costs.

Summary of Proposal

The purpose of this proposed regulation is to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs.

Summary of Proposed Changes

Effective for services provided on and after February 11, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Delaware Social Services Manual (DSSM) section 20620.2.3.1 to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 2, 2018.

Provider Manuals Update

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 Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>.

Fiscal Impact

There is no anticipated fiscal impact to the agency as a result of this proposed clarification of program eligibility policy.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/december2017/proposed/21 DE Reg 475RFA 12-01-17.pdf](http://regulations.delaware.gov/register/december2017/proposed/21%20DE%20Reg%20475RFA%2012-01-17.pdf)

20620.2.3 Prior Medical Costs

Medical costs incurred in a prior period of ineligibility (if approved by Medicaid) may be protected from his/her income. Costs incurred in a period of ineligibility must be approved by the Medicaid State Office prior to being protected and will only be considered if incurred within three (3) months of the beginning date of Medicaid eligibility.

The recipient's reimbursement level and patient pay amount must be identified. Medicaid will protect at the Medicaid reimbursement rate, not the private pay rate.

The period of ineligibility may be caused by excess resources or excess income.

Protections for which the individual is seeking coverage will not be granted if the ineligible period occurred during a transfer of assets penalty phase.

20620.2.3.1 Limitation on the Submission of Requests for Protection of Prior Medical Costs

Requests for income protections to cover medical costs incurred in a prior period of ineligibility must be submitted to DMMA within one (1) year of the date(s) of coverage. DMMA will deny income protection requests received more than one (1) year after the period of coverage being requested.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 2027

PUBLIC NOTICE

2027 Disqualification of Individuals Convicted of Drug Related Offenses

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Disqualification of Individuals Convicted of Drug Related Offenses specifically, *to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on January 2, 2018. Please identify in the subject line: Disqualification of Individuals Convicted of Drug Related Offenses.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Disqualification of Individuals Convicted of Drug Related Offenses specifically, to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony.

Statutory Authority

- 31 **Del.C.** §524 - Eligibility for Temporary Assistance for Needy Families

Background

Delaware Code, Title 31, Chapter 5, §524 became effective July 28, 2017. This law removes the prohibition against receipt of Temporary Assistance for Needy Families (TANF) funds by persons convicted of a drug felony, so long as that person is otherwise eligible for TANF assistance.

Summary of Proposal

Purpose

PROPOSED REGULATIONS

The purpose of this proposed regulation is to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony.

Summary of Proposed Changes

Effective for services provided on and after July 28, 2017 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Services Manual section 2027 regarding Disqualification of Individuals Convicted of Drug Related Offenses specifically, *to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony.*

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) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 2, 2018.

Fiscal Impact

The following fiscal impact is projected:

	Federal Fiscal Year 2018	Federal Fiscal Year 2019
General (State) funds	\$312,012 (12 months)	\$312,012 (12 months)
Federal funds	\$40,572 (12 months)	\$40,572 (12 months)

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/december2017/proposed/21 DE Reg 477RFA 12-01-17.pdf>

~~2027 – Disqualification of Individuals Convicted of Drug Related Offenses~~

~~For Cash Assistance:~~

~~Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of possession, use or distribution of controlled substances shall not be eligible for cash assistance.~~

~~This provision does not apply to individuals convicted of such offenses which occurred prior to August 22, 1996, the date of enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.~~

~~Determine income, resources, and deductions according to DSSM 4003.2 if the individual is a parent payee. Exclude the income and resources of the individual if the person is a non-parent payee.~~

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 50 (18 Del.C. §311 & Ch. 50)
18 DE Admin. Code 1801

PUBLIC NOTICE

1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions

A. Type of Regulatory Action Required

Proposed Amendment

B. Synopsis of Subject Matter of the Regulation

The Department of Insurance gave notice in the Delaware *Register of Regulations* at 21 DE Reg. 271 (10/01/

2017) of its proposal to amend Department of Insurance Regulation 1801 relating to reporting forms and instructions for Insurance Holding Company System Regulation. The Department's internal docket number for this regulatory project is 3607-2017.

The purpose of the proposed amendment was to add new subsection 4.5. This new subsection put filers of reporting forms on notice that any statement submitted to the Department pursuant to the National Association of Insurance Commissioners (NAIC) Insurance Holding Company System Regulatory Act, 18 **Del.C.** Ch. 50, should not be considered "filed" until the Commissioner of the Department of Insurance determines that the statement is complete. The Department is also making edits to Section 8.0, Definitions, to comport that section with the Delaware Administrative Code Drafting and Style Manual.

The Department did not hold a public hearing on the proposed regulation. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment until the 1st day of November, 2017, which was thirty days from the date of publication.

The Department received comments from the National Association of Mutual Insurance Companies (NAMIC). A copy of NAMIC's comments may be obtained by contacting the Department at the below address.

The Department is re-proposing proposed new subsection 4.5, but revised to put filers on notice that any Form A statement submitted to the Department pursuant to the National Association of Insurance Commissioners (NAIC) Insurance Holding Company System Regulatory Act, 18 **Del.C.** Ch. 50, should not be considered "filed" until the Commissioner of the Department of Insurance determines that the statement is complete. The Department is also proposing to make the same edits to Section 8.0, Definitions, as were proposed in its October 1 proposal, for the same reason. The Department is also revising Section 23.0 of the regulation to update the effective dates of the existing regulation and of proposed new subsection 4.5.

The text of the proposed amendment appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://insurance.delaware.gov/information/proposedregs/>. The Department of Insurance does not plan to hold a public hearing on the proposed regulation.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. 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, 2nd day, January, 2018. Any such response should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Attn: Regulatory Docket No. 3607-2017
Delaware Department of Insurance
841 Silver Lake Drive
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

http://regulations.delaware.gov/register/december2017/proposed/21_DE_Reg_478RFA_12-01-17.pdf

1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions
(Break in Continuity of Sections)

4.0 Forms - General Requirements

(Break in Continuity Within Section)

4.5 No Form A statement shall be considered "filed" pursuant to the Act or this regulation until the Department determines that the statement is complete.

(Break in Continuity of Sections)

8.0 Definitions

PROPOSED REGULATIONS

- ~~8.3~~ Unless the context otherwise requires, ~~other with the exception of the terms listed below~~, terms found in these regulations and in Section 5003 of the Act are used as defined in the Act. Other nomenclature or terminology is according to the Insurance Code, or industry usage if not defined by the Code.
- 8.4 "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.
- 8.2 "Ultimate controlling person" means that person ~~which~~ who is not controlled by any other person.
- (Break in Continuity of Sections)*

23.0 Effective Date

This Regulation ~~became effective on January 11, 2016. New subsection 4.5 shall become effective 40 days after being published as a final regulation~~ became effective on January 11, 2016. New subsection 4.5 shall become effective 10 days after being published as a final regulation.

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

1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1305 (24 Del.C. §1305)
24 DE Admin. Code 1300

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 Del.C. Ch. 13 proposes to amend the following adopted rules in 24 DE Admin. Code 1300 Board of Examiners of Private Investigators and Private Security Agencies: Rule 7.0 - Employment Notification; Rule 8.0 - Private Investigators; rule 9.0 - Delaware Manager/License Holder; 11.0 - Personnel Rosters and Job Assignments; Rule 12.0 - Record Book; Right of Inspection; and Rule 13.0 - Licensing Fees. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by January 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, January 25, 2018, 9:30am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/december2017/proposed/21 DE Reg 480RFA 12-01-17.pdf>

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

7.0 Employment Notification

- 7.1 Anyone applying for licensure/registration under this chapter may be rejected without refund, or have their license revoked, for knowingly omitting any criminal history, other material information or to make a false statement on their application.

(Break in Continuity Within Section)

8.0 Private Investigators

- 8-1 ~~A Private Investigator shall not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other state of federal jurisdiction.~~
- 8-2 8.1 The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be ~~re-licensed~~ re-registered with the new employer and a new identification card will be issued as in the previous procedure.
- 8-3 8.2 ~~A licensed~~ An approved Private Investigator may only be employed by one licensed private investigative agency at a time.

9.0 Delaware Manager/License Holder

- 9-1 ~~A Delaware manager may not be employed by more than one private security agency, private investigative agency, or armored car agency at the same time. For example; a person cannot serve as a Delaware manager for two separate private security agencies, two separate private investigative agencies, or two separate armored car agencies. They may, however, serve as a Delaware manager where there will be no conflict of interest. For example, a person can serve as the Delaware manager for a private security agency and an armored car agency, or can serve as the Delaware manager for a private security agency and a private investigative agency, or can serve as the Delaware manager for a private investigative agency and an armored car agency.~~
- 9-2 9.1 A qualified license holder must be an owner/partner/corporate officer of the agency requesting licensure.
- 9-3 9.2 Law enforcement qualification shall be at a minimum of three years' experience not to include the training academy attendance.

(Break in Continuity of Sections)

11.0 Personnel Rosters and Job Assignments

- 11.1 Anyone licensed as a private security agency (Class B or C) under 24 **Del.C.** Ch. 13 shall submit an alphabetical personnel roster and a job site list to the Professional Licensing Section by the tenth of every month. Anyone licensed as a private investigative agency (Class A) under 24 **Del.C.** Ch. 13 shall submit an alphabetical personnel roster to the Professional Licensing Section by the tenth of January, April, July and October. Alphabetical, by last name, personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual in your employ. For example:

Henry, John F.	05/23/43	B	M	05/23/00	PI
Montgomery, Frank G.	07/24/55	B	M	06/30/99	LH
Murray, Anne L.	10/20/40	W	F	06/30/99	CO
Smith, Mark A.	01/25/60	W	M	01/25/99	SG
White, Helen E.	03/17/71	B	F	03/17/00	FA
Williams, James D.	12/03/40	W	M	06/30/99	MG

SG Security Guard
FA Firearms Guard
PI Private Investigator
~~MG Delaware Manager~~
LH License Holder
CO Corporate Officer

- 11.2 Job site lists shall include the name, address, location, and hours of coverage. Employees shall not be listed on the job sites. For example:

The DuPont Industry
 Barley Mill Road
 2200 - 0600 Hours, Monday, Wednesday, and Friday

- 11.3 Rosters shall be submitted as required in 11.1 regardless of the number of employees working in the State of Delaware, ~~to include the licensed Delaware Manager.~~

12.0 Record Book; Right of Inspection

- 12.1 All ~~persons~~ agencies licensed under 24 Del.C. Ch.13 shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include a copy of the current ~~ID~~ identification card, ~~the if applicable the following:~~ list of weapons/items each employee is qualified to carry, the certification/expiration dates, scores ~~and the serial number of the weapon/item, if applicable,~~ and a current copy of the mandatory ~~16 hours~~ security guard training and test certification.

(Break in Continuity Within Section)

13.0 Licensing Fees

- 13.1 Class A License - Private Investigative Agency
- 13.1.1 In-State License Holder
- 13.1.1.1 ~~Individual - No Employees - Not Corporation~~
- 13.1.1.1.1 \$230
- 13.1.1.1.2 \$5,000 Bond - minimum one year
- 13.1.1.1.3 \$1,000,000 Liability Insurance per occurrence
- 13.1.1.2 ~~Corporation - Has Employees~~
- 13.1.1.2.1 \$345
- 13.1.1.2.2 \$10,000 Bond - minimum one year
- 13.1.1.2.3 \$1,000,000 Liability Insurance per occurrence
- 13.1.2 Out-of-State
- 13.1.2.1 ~~License Holder - Individual and Corporation~~
- 13.1.2.1.1 \$345
- 13.1.2.1.2 \$10,000 Bond - minimum one year
- 13.1.2.1.3 \$1,000,000 Liability Insurance per occurrence
- 13.1.2.2 ~~Delaware Manager~~
- 13.1.2.2.1 \$230
- 13.1.1 In-State - \$300
- 13.1.2 Out-of-State - \$500
- 13.1.3 \$10,000 Surety Bond - Minimum one year
- 13.1.4 Sole Proprietorship - \$250
- 13.1.4.1 \$5,000 Surety Bond - Minimum one year
- 13.1.5 \$1,000,000 Liability Insurance per occurrence
- 13.2 Class B License - Private Security Agency
- 13.2.1 In-State License Holder
- 13.2.1.1 ~~Individual - No Employees - Not Corporation~~
- 13.2.1.1.1 \$230
- 13.2.1.1.2 \$5,000 Bond - minimum one year
- 13.2.1.1.3 \$1,000,000 Liability Insurance per occurrence
- 13.2.1.2 ~~Corporation - Has Employees~~

- 13.2.1.2.1 \$345
- 13.2.1.2.2 \$10,000 Bond—minimum one year
- 13.2.1.2.3 \$1,000,000 Liability Insurance per occurrence
- 13.2.2 Out-of-State
 - 13.2.2.1 License Holder—Individual and Corporation
 - 13.2.2.1.1 \$345
 - 13.2.2.1.2 \$10,000 Bond—minimum one year
 - 13.2.2.1.3 \$1,000,000 Liability Insurance per occurrence
 - 13.2.2.2 Delaware Manager
 - 13.2.2.2.1 \$230
- 13.2.1 In-State - \$300
- 13.2.2 Out-of-State - \$500
- 13.2.3 \$10,000 Surety Bond - Minimum one year
- 13.2.4 \$1,000,000 Liability Insurance per occurrence
- 13.3 Class C License - Private Investigative & Private Security Agency
 - 13.3.1 In-State License Holder
 - 13.3.1.1 Individual—No Employees—Not Corporation
 - 13.3.1.1.1 \$345
 - 13.3.1.1.2 \$10,000 Bond—minimum one year
 - 13.3.1.1.3 \$1,000,000 Liability Insurance per occurrence
 - 13.3.1.2 Corporation—Has Employees
 - 13.3.1.2.1 \$520
 - 13.3.1.2.2 \$15,000 Bond—minimum one year
 - 13.3.1.2.3 \$1,000,000 Liability Insurance per occurrence
 - 13.3.2 Out-of-State
 - 13.3.2.1 Individual and Corporation
 - 13.3.2.1.1 License Holder
 - 13.3.2.1.1.1 \$520
 - 13.3.2.1.1.2 \$15,000 Bond—minimum one year
 - 13.3.2.1.1.3 \$1,000,000 Liability Insurance per occurrence
 - 13.3.2.1.2 Delaware Manager
 - 13.3.2.1.2.1 \$345
 - 13.3.1 In-State - \$500
 - 13.3.2 Out-of-State - \$800
 - 13.3.3 \$15,000 Surety Bond - Minimum one year
 - 13.3.4 \$1,000,000 Liability Insurance per occurrence
 - 13.4 Class D License - Armored Car Agency License
 - 13.4.1 License Holder
 - 13.4.1.1 \$345
 - 13.4.1.2 Banking Commissioner License as required by 5 ~~Del.C.~~ §3203
 - 13.4.1.3 \$10,000 Bond—minimum one year
 - 13.4.1.4 \$1,000,000 Liability Insurance per occurrence.
 - 13.4.2 Delaware Manager
 - 13.4.2.1 \$230
 - 13.4.1 In-State - \$300
 - 13.4.2 Out-of-State - \$500

PROPOSED REGULATIONS

13.4.3 \$10,000 Surety Bond - Minimum one year

13.4.4 \$1,000,000 Liability Insurance per occurrence

- 13.5 All licenses will expire 2 years from the last day of the month they are approved for licensure.
- 13.6 All new agency licensures must be approved by the Board. Standard renewals, with no changes, may be approved by the Professional Licensing Section, with notification to the Board. Any agency having a change in License Holder ~~and/or Delaware Manager~~ must be approved by the Board.

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

1300 Board of Examiners of Private Investigators & Private Security Agencies

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 Del.C. §1106(a)(1))
24 DE Admin. Code 1100

PUBLIC NOTICE

1100 Board of Dentistry and Dental Hygiene

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to revise its regulations. The proposed amendments to Regulation six clarify that live webinars will be accepted as face to face CEs. The proposed amendments to Regulation eight add regulatory provisions for inactive status pursuant to 24 **Del.C.** §1126(e). The proposed amendment to Regulation 10 seeks to incorporate by reference the Board's clinical examination guidelines into its regulations. The proposed changes to Regulation 11 amend technical errors in the substantially related crimes list and adds the crime of misuse of the Prescription Monitoring Program. The proposed change at Regulation 12 adds a requirement that licensees update the Division of Professional Regulation within 10 days of a change in their contact information.

The Board will hold a public hearing on the proposed rule change on December 21, 2017 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meredith Hurley, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 5, 2018.

***Please Note:**

(1) **The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/december2017/proposed/21 DE Reg 484RFA 12-01-17.pdf](http://regulations.delaware.gov/register/december2017/proposed/21%20DE%20Reg%20484RFA%2012-01-17.pdf)

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

1100 Board of Dentistry and Dental Hygiene

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

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

PUBLIC NOTICE

1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise its regulations seeks to bring the regulations into conformity with current law and remove outdated and inconsistent provisions. For example, the proposed changes clarify the timeframe for a new school of nursing to obtain national accreditation; clarify the timeframe an applicant may take the NCLEX; eliminate the requirement that nurses retain their maiden name on their licenses; clarify that an APRN is not required to maintain a collaborative agreement after obtaining two years and 4,000 hours of collaboration, even if the APRN plans to apply for independent practice; clarifies the definitions of licensed healthcare delivery system and established healthcare organization; eliminates the provision precluding APRNs from prescribing medications to individuals who are not established patients; and eliminates crimes from the exhaustive list of crimes substantially related to the practice of nursing.

The Board will hold a public hearing on the proposed regulation change on January 10, 2018 at 9:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Runkle, Administrative Specialist of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 25, 2018 pursuant to 29 **Del.C.** §10118(a).

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 **Del.C.** Ch. 104, is available at:

[http://regulations.delaware.gov/register/december2017/proposed/21 DE Reg 485RFA 12-01-17.pdf](http://regulations.delaware.gov/register/december2017/proposed/21%20DE%20Reg%20485RFA%2012-01-17.pdf)

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

1900 Board of Nursing

**DIVISION OF PROFESSIONAL REGULATION
2500 BOARD OF PHARMACY**

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))
24 **DE Admin. Code** 2500

PUBLIC NOTICE

2500 Board of Pharmacy

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations.

A public hearing will be held on January 17, 2018 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Christine Mast, Administrative Specialist for the Delaware Board of Pharmacy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 1, 2018, pursuant to 29 **Del.C.** §10118(a). The Board will deliberate on all of the public comments at its next regularly scheduled meeting.

The proposed changes include provisions for the use of telehealth for patient counseling and updates for the requirements for continuing education audits. Section 8.0 is revised to clarify that its requirements apply to wholesalers, manufacturers, outsourcing facilities and third-party logistic providers. Section 10.0, pertaining to compounders, is stricken and replaced with the requirement that compounders must be in compliance with current USP standards, except that, effective December 1, 2019, compliance with USP 800 will be required. Finally, the requirements for training of pharmacy technicians are updated.

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

[http://regulations.delaware.gov/register/december2017/proposed/21 DE Reg 485aRFA 12-01-17.pdf](http://regulations.delaware.gov/register/december2017/proposed/21%20DE%20Reg%20485aRFA%2012-01-17.pdf)

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

2500 Board of Pharmacy

**DIVISION OF PROFESSIONAL REGULATION
3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.C.** §3506(a)(1))
24 **DE Admin. Code** 3500

PUBLIC NOTICE

3500 Board of Examiners of Psychologists

The Delaware Board of Examiners of Psychologists, pursuant to 24 **Del.C.** §3506(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to require licensees to update their contact information within 10 days of any such change; clarify that psychological assistant registrants must complete a Board approved internship, not just a 450 hour practicum; enhance continuing education requirements by clarifying the maximum number of credits which may be earned for preparing and presenting scientific papers and posters; and eliminates some of the crimes on the list of those substantially related to the practice of psychology.

The Board will hold a public hearing on the proposed rule change on January 8, 2018 at 9:00 a.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Karen Carn, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904. Written comments will be accepted until January 23, 2018 pursuant to 29 **Del.C.** §10118(a).

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

[http://regulations.delaware.gov/register/december2017/proposed/21 DE Reg 486RFA 12-01-17.pdf](http://regulations.delaware.gov/register/december2017/proposed/21%20DE%20Reg%20486RFA%2012-01-17.pdf)

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

3500 Board of Examiners of Psychologists

DIVISION OF PROFESSIONAL REGULATION 5300 BOARD OF MASSAGE AND BODYWORK

Statutory Authority: 24 Delaware Code, Section 5306(a)(1) (24 Del.C. §5306(a)(1))
24 DE Admin. Code 5300

PUBLIC NOTICE

5300 Board of Massage and Bodywork

Pursuant to 24 Del.C. §5306(a)(1), the Board of Massage and Bodywork ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on January 18, 2018 at 1:30 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Massage and Bodywork, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Gina Bloom, Administrative Specialist for the Delaware Board of Massage and Bodywork, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 2, 2018, pursuant to 29 Del.C. §10118(a). The Board will deliberate on all of the public comments at its next regularly scheduled meeting.

The proposed changes serve to implement recent amendments to the Board's Practice Act, Chapter 53 of Title 24 of the Delaware Code, pertaining to the licensure of massage establishments. Section 12.0 sets forth licensure standards, application procedures, and advertising requirements. The Section provides for inspection of any location representing itself as a place where massage and bodywork services will be offered. The Section also sets forth specific prohibitions against illegal activity at such locations in the interests of protection of the public and the individuals working at the locations.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/december2017/proposed/21 DE Reg 487RFA 12-01-17.pdf](http://regulations.delaware.gov/register/december2017/proposed/21%20DE%20Reg%20487RFA%2012-01-17.pdf)

5300 Board of Massage and Bodywork (Break in Continuity of Sections)

3.0 Change of Address

~~A licensee shall notify the Board of any change of address from that registered with the Board. Such notice shall be sent to the Board by certified mail not later than 30 days following the change of address. A licensee's failure to notify the Board of a change in address will not excuse the licensee from audit requirements, including possible sanctions for non-compliance.~~

3.0 Duty to Update Address

Licensees, including massage establishment licensees, must provide the Division of Professional Regulation with a current mailing address. Any change in mailing address must be reported to the Division within ten days of such change. All notifications and correspondence pertaining to a license that are sent through the mail will be sent only to the most recent address provided by the licensee. The failure to provide the Division with a current mailing address will not operate to excuse any duty or responsibility of the licensee and confirmed delivery to the most recent address provided by the licensee will be considered proper notice.

(Break in Continuity of Sections)

12.0 Massage Establishments

12.1 Definitions.

"Advertise" or "advertising" means the public promotion of a service, by use of printed media, the internet, or any other advertising method or medium, to attract and encourage individuals to engage, purchase, or use the service referenced in the content of the advertisement.

PROPOSED REGULATIONS

"Dormitory" means a location in a massage establishment, other than a residence, where there are signs that individuals are living there or engaged in communal sleeping, including but not limited to, beds, mattresses or cots.

"Massage establishment" means any place of business that offers the practice of massage and bodywork and where the practice of massage and bodywork is conducted on the premises of the business, or that represents itself to the public by any title or description of services incorporating the words "bodywork," "massage," "massage therapy," "massage practitioner," "massagist," "masseur," "masseur," or other terms or modalities included in the definition of "massage and bodywork" in Section 2.0 of the Board's rules and regulations or any images or photographs depicting massage or bodywork. A "place of business" includes any office, clinic, facility, salon, spa, or other location where a person or persons engage in the practice of massage and bodywork. The residence of a therapist, or an out call location which is not owned, rented, or leased by a massage therapist or massage establishment, shall not be considered a massage establishment, unless the location is advertised as the therapist's or establishment's place of business. The term "massage establishment" shall not include any "facility" as defined in §1131(4) of Title 16, any "hospital" as defined in §1001(3) of Title 16, physician offices, physical therapy facilities, chiropractic offices, or athletic training facilities, whether or not they employ, contract with, or rent to massage therapists, or institutions of secondary or higher education when massage therapy is practiced in connection with employment related to athletic teams or any other business establishment licensed pursuant to another chapter of this Title 24 of the Delaware Code.

"Professional-in-charge" means a licensee who is responsible for the operation of a massage establishment, including ensuring that all employees and contractors are licensed, where required by law.

"Sexual activity" means any direct or indirect physical contact by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and includes sexual intercourse, fellatio, cunnilingus, masturbation or anal intercourse. Sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm or ejaculation has occurred.

"Sexually oriented business" means a sex parlor, massage parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult motel, or other commercial enterprise which has as its primary business the offering of a service or the sale, rent or exhibit of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

12.2 License required.

12.2.1 All massage establishments shall be licensed pursuant to Chapter 53 of Title 24 of the Delaware Code and Section 12.0.

12.2.2 No massage establishment shall operate until the Board has approved and licensed the establishment.

12.2.3 A massage establishment license shall issue for a single, identified location and is not assignable or transferable.

12.2.4 When a massage establishment closes, is sold, has a change of name or change of ownership, the establishment shall notify the Board of such change within 10 days, and the license of the establishment shall be voided and a new license must be obtained.

12.2.4.1 The application for a new license shall be on the same form, containing the same information required for an original license, and shall be accompanied by the fee as determined by the Division.

12.2.4.2 The Board may issue a temporary operating permit to continue operation of the establishment for a period of up to ninety days pending the final disposition of the application.

12.2.5 All massage establishments shall have a professional-in-charge, who is a Delaware licensed massage therapist or certified massage technician, and who is responsible for supervision and operation of the establishment.

- 12.2.6 A massage establishment shall employ or contract for only Delaware licensed massage therapists or certified massage technicians to practice massage and bodywork.
- 12.2.7 A person licensed by the Board as a massage therapist or certified massage technician shall not work in a massage establishment unless such establishment has been licensed by the Board.
- 12.2.8 A sexually oriented business may not obtain a massage establishment license from the Board or operate as a massage establishment.
- 12.3 Application for massage establishment license.
- 12.3.1 An applicant for a massage establishment license shall file an application, on a Board approved form, with the fee set by the Division.
- 12.3.2 The application shall include:
- 12.3.2.1 The name and address of the massage establishment.
- 12.3.2.2 If a corporation:
- 12.3.2.2.1 The name and address of any person who directly or indirectly owns or controls the outstanding shares of stock in the massage establishment;
- 12.3.2.2.2 The names and addresses of the directors; and
- 12.3.2.2.3 A copy of the corporate charter and a statement identifying the corporation's registered agent for service.
- 12.3.2.3 The name and address of the sole proprietor or partners.
- 12.3.2.4 If any other type of organization, the name and address of the owners.
- 12.3.2.5 The name, address and license number of the professional-in-charge and a notarized acknowledgment by the person so designated.
- 12.3.2.6 A current list of all establishment employees and/or contractors, which includes:
- 12.3.2.6.1 Full name;
- 12.3.2.6.2 Address; and
- 12.3.2.6.3 License number and expiration date (if a licensed massage therapist or certified massage technician).
- 12.3.2.7 A detailed floor plan of the proposed massage establishment that includes entrances and exits, length and width of establishment (in feet), total square feet and location of restrooms.
- 12.3.2.8 An attestation that the proposed location of the massage establishment is in compliance with all applicable laws and ordinances.
- 12.3.3 The Board shall not consider an application for licensure as a massage establishment until all items specified in subsection 12.3 are submitted to the Board's office. If an application is complete in terms of required documents, but the applicant has not responded to a Board request for further information, explanation or clarification within 60 days of the Board's request, the Board shall vote on the application as is.
- 12.3.4 Where an establishment license application has been denied, the Board shall not consider an establishment license for the same location until 6 months after denial of the initial application.
- 12.4 Professional-in-charge.
- 12.4.1 Each massage establishment shall be under the direction of a professional-in-charge, who shall provide complete and adequate supervision of that establishment.
- 12.4.2 At all times, the massage establishment's professional-in-charge shall be a Delaware licensed massage therapist or certified massage technician with a license in good standing.
- 12.4.3 A licensee may serve as professional-in-charge for only 1 establishment at any given time.
- 12.4.4 The professional-in-charge is responsible for ensuring that all licensees providing massage services at the massage establishment comply with the Board's Practice Act, Chapter 53 of Title 24 of the Delaware Code, and regulations.

PROPOSED REGULATIONS

- 12.4.5 The professional-in-charge is responsible for ensuring that all of the individuals providing massage services at the massage establishment are currently licensed, make timely application for license renewal, and meet the Board's continuing education requirements.
- 12.4.6 The professional-in-charge shall not allow, authorize or tolerate any activity or behavior prohibited by the laws of this State, including such laws proscribing acts of or promotion of prostitution, indecent exposure, lewdness or obscenity or any of the criminal code violations set forth in Section 14.0.
- 12.4.7 The massage establishment shall notify the Board of any change in the professional-in-charge within 10 business days of such change.
- 12.5 Hours of operation.
- 12.5.1 Massage services may be provided at a massage establishment only between the hours of 7:00 a.m. and 9:00 p.m., except that a massage commenced prior to 9:00 p.m. may be completed, and, subject to this qualification, no massage establishment shall be open and no massage services shall be provided between 9:00 p.m. and 7:00 a.m.
- 12.6 Operation requirements.
- 12.6.1 Sign. A massage establishment shall post a sign containing the establishment's name in a conspicuous location at the entrance.
- 12.6.2 Display of license. The original or copy of the massage establishment license, and the originals or copies of individual licenses of licensees providing massage services, shall be displayed in a conspicuous location in the establishment. A licensee who is working outside of a massage establishment shall have his/her license identification card in his/her possession and shall present it upon request of a client or Division agent.
- 12.6.3 Presence of licensee. A licensee who is either an employee or contractor of the massage establishment shall be on the premises of the establishment if a client is in a treatment room for the purpose of receiving a massage.
- 12.6.4 Dormitory prohibited. A massage establishment shall not be used as a dormitory nor shall any licensee permit any massage establishment to be so used.
- 12.6.5 Records. For each client receiving services, the massage establishment shall keep a client intake form which shall contain at least the following information: client's name and licensee's name; dated signatures; and client's medical history, including medications, health status, allergies and past surgeries. Pursuant to subsection 11.1.15, such forms and any other client records shall be retained on the premises of the massage establishment for a period of at least three years from the last date that services were provided.
- 12.6.6 Attire. All establishment employees and/or contractors, including licensees, shall wear clean, non-transparent outer garments, such as uniforms, scrubs or business casual wear. Such garments shall not expose their genitals, pubic areas, buttocks or breasts.
- 12.6.7 Doors: All internal and external doors shall be kept unlocked during operating hours except as follows:
- 12.6.7.1 Restroom doors may be locked.
- 12.6.7.2 External doors may be locked if the massage establishment is a business entity owned by 1 individual and has no more than 1 employee or contractor.
- 12.6.7.3 Internal doors may be locked to protect confidential patient or business information.
- 12.6.7.4 Where a massage establishment is located in a residence, the door between the establishment and the residence may be locked.
- 12.6.8 Windows: No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints or any other material that obstructs, blurs or unreasonably darkens the view into the premises.
- 12.7 Prohibition of sexual activity.
- 12.7.1 Sexual activity in a massage establishment is absolutely prohibited.

12.7.2 No massage establishment owner, professional-in-charge or licensee shall engage in, or permit any person or persons, to engage in, sexual activity in a massage establishment or to use that establishment to make arrangements to engage in sexual activity in any other place.

12.7.3 No licensed massage therapist or certified massage technician shall use the practitioner-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.

12.8 Advertising.

12.8.1 The contents of any advertising shall include the name of the massage establishment, its address, its business phone number and establishment license number.

12.8.2 An advertisement shall not contain any representations that a massage establishment employee or contractor is willing to provide services which are illegal under the laws or regulations of the State of Delaware or the United States.

12.8.3 Photographs, drawings, written or verbal statements used in any advertising shall not explicitly communicate that services offered are for the purpose of sexual stimulation or gratification.

12.9 Inspections.

12.9.1 Licensed massage establishments are subject to inspection by an agent of the Division, presenting appropriate identification, during business hours, with or without notice.

12.9.2 During the inspection, the agent of the Division shall not interrupt an in-progress treatment session.

12.9.3 The purpose of massage establishment inspections is to verify compliance with the standards of Section 12.0 and Chapter 53 of Title 24 of the Delaware Code and to verify that the establishment and all individuals providing massage services have valid licenses issued by the Board and that such licenses are conspicuously displayed on the premises.

12.9.4 An agent of the Division may inspect and copy records of the massage establishment; may inspect within reasonable limits and in a reasonable manner the premises, subject to subsection 12.9.2, and all pertinent equipment; and may inspect other things therein, including records, files, papers and facilities.

12.9.5 If a massage establishment is located within a licensee's residence, an out call location or is located within an office space shared with other businesses, an agent of the Division must have independent and sufficient legal justification before inspecting areas not to be used as a place of business for massage and bodywork.

12.9.6 The massage establishment shall allow, appear for and cooperate with an inspection.

12.10 License renewal. All massage establishment licenses shall be renewed biennially. Licenses shall expire on August 31 of each even numbered year. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date. A massage establishment shall not provide massage services after a license has expired.

12.11 Request for waiver or variance.

12.11.1 The Board may grant a waiver of any of the requirements of Section 12.0 where there is a showing that complying with the requirement would result in extreme and undue hardship, as long as granting the waiver will not jeopardize the public health, safety or welfare.

12.11.2 The Board may vary the application of any requirement of Section 12.0 as long as the requestor demonstrates that the intent of the requirement is being met in an alternative manner to that described in the Section.

12.11.3 A waiver or variance is not transferable to another licensee or another location.

12.11.4 The Board may modify, suspend or revoke a waiver or variance.

42-013.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

42-113.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the

PROPOSED REGULATIONS

Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

- ~~42.2~~13.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- ~~42.3~~13.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- ~~42.4~~13.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- ~~42.5~~13.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 9.8 of this section.
- ~~42.6~~13.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- ~~42.6-4~~13.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- ~~42.6-2~~13.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
- ~~42.6-3~~13.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- ~~42.6-4~~13.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

- ~~42-6-5~~13.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- ~~42-6-6~~13.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- ~~42-7~~13.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- ~~42-8~~13.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- ~~42-9~~13.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- ~~42-10~~13.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- ~~42-11~~13.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- ~~42-12~~13.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

~~43-0~~14.0 Crimes Substantially Related to the Practice of Massage and Bodywork:

- ~~43-1~~14.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of massage and bodywork in the State of Delaware without regard to the place of conviction:
- ~~43-1.1~~14.1.1 Reckless endangering in the first degree. 11 **Del.C.** §604
- ~~43-1.2~~14.1.2 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.
- ~~43-1.3~~14.1.3 Assault in the second degree. 11 **Del.C.** §612
- ~~43-1.4~~14.1.4 Assault in the first degree. 11 **Del.C.** §613.
- ~~43-1.5~~14.1.5 Unlawfully administering drugs. 11 **Del.C.** §625.
- ~~43-1.6~~14.1.6 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626.
- ~~43-1.7~~14.1.7 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.
- ~~43-1.8~~14.1.8 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
- ~~43-1.9~~14.1.9 Murder in the second degree. 11 **Del.C.** §635.
- ~~43-1.10~~14.1.10 Murder in the first degree. 11 **Del.C.** §636.
- ~~43-1.11~~14.1.11 Incest. 11 **Del.C.** §766.
- ~~43-1.12~~14.1.12 Unlawful sexual contact in the third degree. 11 **Del.C.** §767.
- ~~43-1.13~~14.1.13 Unlawful sexual contact in the second degree. 11 **Del.C.** §768.

- 13.1.1414.1.14 Unlawful sexual contact in the first degree. 11 **Del.C.** §769.
- 13.1.1514.1.15 Rape in the fourth degree. 11 **Del.C.** §770.
- 13.1.1614.1.16 Rape in the third degree. 11 **Del.C.** §771.
- 13.1.1714.1.17 Rape in the second degree. 11 **Del.C.** §772.
- 13.1.1814.1.18 Rape in the first degree. 11 **Del.C.** §773.
- 13.1.1914.1.19 Sexual extortion. 11 **Del.C.** §774.
- 13.1.2014.1.20 Continuous sexual abuse of a child. 11 **Del.C.** §776.
- 13.1.2114.1.21 Dangerous crime against a child. 11 **Del.C.** §777.
- 13.1.2214.1.22 Sex offender unlawful sexual conduct against a child. 11 **Del.C.** §777A.
- 13.1.2314.1.23 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree; penalties. 11 **Del.C.** §778.
- 13.1.2414.1.24 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree; penalties. 11 **Del.C.** §778A.
- 13.1.2514.1.25 Female genital mutilation. 11 **Del.C.** §780.
- 13.1.2614.1.26 Kidnapping in the second degree. 11 **Del.C.** §783.
- 13.1.2714.1.27 Kidnapping in the first degree. 11 **Del.C.** §783A.
- 13.1.2814.1.28 Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony. 11 **Del.C.** §787.
- 13.1.2914.1.29 Acts constituting coercion. 11 **Del.C.** §791.
- 13.1.3014.1.30 Arson in the first degree. 11 **Del.C.** §803.
- 13.1.3114.1.31 Burglary in the second degree. 11 **Del.C.** §825.
- 13.1.3214.1.32 Burglary in the first degree. 11 **Del.C.** §826.
- 13.1.3314.1.33 Robbery in the first degree. 11 **Del.C.** §832.
- 13.1.3414.1.34 Carjacking in the second degree. 11 **Del.C.** §835.
- 13.1.3514.1.35 Carjacking in the first degree. 11 **Del.C.** §836.
- 13.1.3614.1.36 Insurance fraud. 11 **Del.C.** §913.
- 13.1.3714.1.37 Health care fraud. 11 **Del.C.** §913A.
- 13.1.3814.1.38 Dealing in children. 11 **Del.C.** §1100A.
- 13.1.3914.1.39 Endangering the welfare of a child; class E or G felony. 11 **Del.C.** §1102.
- 13.1.4014.1.40 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 13.1.4114.1.41 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 13.1.4214.1.42 Possession of child pornography. 11 **Del.C.** §1111.
- 13.1.4314.1.43 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
- 13.1.4414.1.44 Sexual solicitation of a child. 11 **Del.C.** §1112A.
- 13.1.4514.1.45 Hate crimes; felony. 11 **Del.C.** §1304.
- 13.1.4614.1.46 Stalking. 11 **Del.C.** §1312.
- 13.1.4714.1.47 Cruelty to animals; felony. 11 **Del.C.** §1325.
- 13.1.4814.1.48 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- 13.1.4914.1.49 Adulteration. 11 **Del.C.** §1339.
- 13.1.5014.1.50 Lewdness. 11 **Del.C.** §1341.
- 13.1.5114.1.51 Prostitution. 11 **Del.C.** §1342.
- 13.1.5214.1.52 Patronizing a prostitute prohibited. 11 **Del.C.** §1343.
- 13.1.5314.1.53 Promoting prostitution in the third degree. 11 **Del.C.** §1351.
- 13.1.5414.1.54 Promoting prostitution in the second degree. 11 **Del.C.** §1352.
- 13.1.5514.1.55 Promoting prostitution in the first degree. 11 **Del.C.** §1353.
- 13.1.5614.1.56 Permitting prostitution. 11 **Del.C.** §1355.

~~13.1.57~~14.1.57 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136(a), (b) and (c).

~~13.1.58~~14.1.58 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C.** §3913(a), (b) and (c).

~~13.2~~14.2 Crimes substantially related to the practice of massage and bodywork shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

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

5300 Board of Massage and Bodywork

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 LABOR
DIVISION OF UNEMPLOYMENT INSURANCE**

Statutory Authority: 19 Delaware Code, Section 3122 (19 **Del.C.** §3122)
19 **DE Admin. Code** 1201

ORDER

1201 Unemployment Insurance Appeal Board Regulations

Pursuant to 29 **Del.C.** §10118 and 19 **Del.C.** §3122 the Unemployment Insurance Appeal Board issues this Order adopting the below amendment to the Board's Regulations. Specifically, pursuant to 29 **Del.C.** §10113(b)(6), 4.7.4 of the Unemployment Insurance Appeal Board Regulations must be changed without prior publication in order to codify existing agency principle as a result of a recent judicial ruling.

SUMMARY OF THE EVIDENCE

1. Regulation 4.7.4 now states, "the Board shall not receive into evidence any testimony offered by means of a telephone or other electronic or electromagnetic device." The Board's long-standing principle is to interpret "receive into evidence" in Regulation 4.7.4 to mean new evidence entered at the Board level only and that testimony and evidence received over the telephone at the Claims Deputy and Appeals Referee levels may be reviewed by the Board. On November 8, 2017, the Superior Court of the State of Delaware issued a Final Order finding that Regulation 4.7.4's prohibition against telephonic testimony included the review of telephonic testimony entered at the Appeals Referee hearing. The Final Order is inconsistent with the Board's principle and application of its own Regulation; and

2. In order to codify the Board's principle regarding testimony offered by means of a telephone or other electronic or electromagnetic device, the Board amends Regulation 4.7.4 to state as follows (additions are underlined, removals are stricken through):

"4.7.4 The Board shall not receive into evidence any new testimony offered by means of a telephone or other

electronic or electromagnetic device, however the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device."

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on December 1, 2017.

IT IS SO ORDERED this November 15, 2017.

Unemployment Insurance Appeal Board

Elmer L. Newlin, Chairman

Sarah L. Buttner

Vance G. Daniels, Sr.

Beverly R. Bell

Taube Carpenter (absent)

1201 Unemployment Insurance Appeal Board Regulations

1.0 Definitions

As used in these Rules and Regulations, the following definitions shall apply:

“**Board**” shall mean the Unemployment Insurance Appeal Board.

“**Chairman**” shall mean the Chairman of the Board.

“**Hearing Officer**” shall mean the Appeals Referee or his or her designate who heard the initial appeal.

“**Hearsay Evidence**” shall be such evidence so designated by the Delaware Rules of Evidence (D.R.E.).

“**Relevant Evidence**” shall mean evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without this evidence, as set forth in D.R.E. 401.

2.0 Location of Unemployment Insurance Appeal Board

2.1 All correspondence or other papers or documents filed with the Board shall be filed, either by mail or by hand delivery, at the following address: Unemployment Insurance Appeal Board, Department of Labor, 4425 North Market Street, Wilmington, DE 19802. The Board phone number is (302) 761-8370 and the Board's fax number is (302) 761-6635.

2.2 Notices of Appeal to the Board may be filed, by mail or personal delivery, at any local Unemployment Office or at the Board Office listed at Rule 2.1. All notices of Appeal must be in writing.

3.0 Commencement

A hearing before the Board may be initiated by:

3.1 Either party to the action heard by the Hearing Officer upon filing a timely Notice of Appeal with the Board;

3.2 A party whose appeal was dismissed by the Hearing Officer for failure of that party to appear at the scheduled hearing before the Hearing Officer, upon filing of a timely Notice of Appeal with the Board, in which case the Board may, at its sole discretion, remand the case to the Hearing Officer for a prompt hearing to make a full and complete record; or

3.3 The Board *sua sponte* with notice to the parties below or their counsel.

4.0 Hearings

4.1 Purpose. The purpose of a hearing before the Board is to examine the factual and legal bases for the decision rendered by the Hearing Officer. The parties shall not re-litigate the case presented to the

- Referee, but may present additional evidence. Both the referee's record and any new evidence presented to the Board shall be considered by the Board in making its decision.
- 4.2 Presence of parties required. All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.
- 4.3 Representation.
- 4.3.1 At any hearing, a party may appear *pro se* or be represented by an attorney-at-law duly admitted to practice law in the State of Delaware. A corporation or other artificial entity desiring legal representation must be represented by an attorney-at-law duly admitted to practice law in the State of Delaware.
- 4.3.2 The Board or its attorney may examine any witnesses, and move the admissions of documents and things into evidence.
- 4.4 Continuances and Postponements.
- 4.4.1 Applications for a continuance or postponement of any hearing shall be made in writing to the Board office no later than 6 days prior to the hearing. The request shall state the reasons for which the continuance or postponement is requested. The grant or denial of any request for continuance or postponement is within the discretion of the Board Chairman or his or her designee.
- 4.4.2 Applications for any continuance or postponement of any hearing made less than 6 days prior to the hearing shall set forth with specificity the reason(s) for the continuance or postponement, and shall typically be granted only for reasons of unanticipated emergencies.
- 4.4.3 An appealing party may request to withdraw its appeal at any time prior to hearing. All requests for withdrawal must be made in writing.
- 4.5 Length of hearing. Hearings are scheduled to last 20 minutes from the time the presiding member calls the case, except that the Board may extend the length of the hearing at its discretion.
- 4.6 Record. A record shall be made of all hearings before the Board. The record may be made either by a stenographic record or by audio recording. The record does not need to be transcribed unless and until an appeal is taken to Superior Court from the Board's decision.
- 4.7 Evidence.
- 4.7.1 The Board follows the Delaware Rules of Evidence. The Board may admit and consider hearsay evidence, however, the Board shall not base its decision solely on hearsay or other evidence not admissible under the Rules of Evidence.
- 4.7.2 The Board may consider any relevant evidence relating to any issue raised below, whether or not that issue was decided by the Hearing Officer.
- 4.7.3 The admissibility of evidence and determinations of the weight to be given evidence and the credibility of witnesses shall be within the sound discretion of the Board.
- 4.7.4 The Board shall not receive into evidence any new testimony offered by means of a telephone or other electronic or electromagnetic device, however the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device.
- 4.8 Subpoenas.
- 4.8.1 A party may request subpoenas to compel a witness or witnesses to appear at a hearing or to compel the production of documents at or prior to a hearing. Such a request shall be in writing, be received by the Board at least 7 days prior to the hearing, and state the full name and address of the person(s) to be subpoenaed and a detailed description of the documents to be produced. The issuance of such subpoena(s) shall be at the sole discretion of the Board and its attorney.
- 4.8.2 The Board *sua sponte* may issue subpoenas to compel witnesses to appear at a hearing or documents to be produced at or prior to a hearing.
- 4.9 Exhibits. Any party offering any document into evidence at a hearing shall provide at least 4 copies of such document at the time of the hearing.

4.10 Written Submissions. The Board or its attorney may at their discretion request written submissions from the parties prior to or following the hearing.

5.0 Remand

The Board may remand any case to the Hearing Officer at any time and for any purpose at its sole discretion.

6.0 Decisions

- 6.1 The Board shall render its decision promptly, usually within 14 days after the hearing.
- 6.2 The Board may affirm, modify, or reverse, in whole or in part, the decision of the Appeals Referee.
- 6.3 The Board may *sua sponte* affirm, modify or set aside any decision of an appeal tribunal on the basis of evidence previously submitted, without further hearing, or direct the taking of additional evidence or may permit any of the parties to the decision to initiate further appeal before it.
- 6.4 Final decisions shall be accompanied by a notice of the right to appeal the Board's decision to Superior Court pursuant to 19 **Del.C.** §3323.

7.0 Rehearing

At any time subsequent to a Board decision but prior to the Board's decision becoming final, any party to the appeal may request by motion, with notice to all parties, a rehearing before to Board. The motion shall set forth briefly and distinctly the grounds for the motion. The Board shall promptly consider the motion for reconsideration. A copy of the Board's decision on the motion for rehearing shall be mailed to all parties or their counsel if represented by an attorney.

- 7.1 The grant or denial of a motion for rehearing is solely within the discretion of the Board.
- 7.2 The Board shall not consider any motion for rehearing filed after the Board's decision has become final.
- 7.3 The Board shall not consider any motion for rehearing of the Board's denial of a prior motion for rehearing.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF GAMING ENFORCEMENT

Statutory Authority: 29 Delaware Code, Section 4866 (29 Del.C. §4866)

ORDER

301 Interactive Fantasy Sports Contests Regulations

The Delaware Division of Gaming Enforcement, pursuant to 29 **Del.C.** §4866, proposed to adopt the regulations governing the practice of interactive fantasy sports contests in the State of Delaware. As a newly regulated industry that first required licensure by virtue of legislation enacted July 26, 2017, these regulations are comprehensive, and all newly created.

Summary of the evidence and information submitted

The proposed regulations were published in the Delaware *Register of Regulations* on October 1, 2017 and a written comment period was held open for thirty days following this publication. No written comments were received by the Delaware Division of Gaming Enforcement during the written comment period.

Summary of the findings of fact

As the designee of the Governor, the Division of Gaming Enforcement is charged with the responsibility of creating regulations governing the practice of interactive fantasy sports contests. 29 **Del.C.** §4866. Beginning in August 2017, DGE began formulating regulations governing interactive fantasy sports contests in the State of Delaware. In so doing, DGE conducted an in-depth review of its statutory mandates, sought public comment, reviewed the governance of fantasy sports in other states to determine what has and has not worked, and sought and received input from companies in the industry to create the regulations published as proposed on October 1, 2017.

Decision of DGE

Having found that the proposed regulations are necessary as outlined herein, DGE finds that the regulations shall be adopted as final in the form as proposed. A copy of the final regulations are attached hereto as Exhibit A. These regulations will become effective ten days following publication of this order in the Delaware *Register of Regulations* on December 1, 2017.

IT IS SO ORDERED this 7th day of November, 2017 by the Division of Gaming Enforcement.

Gregory Nolt
Director
Division of Gaming Enforcement

***Please note that no changes were made to the regulation as originally proposed and published in the October 2017 issue of the *Register* at page 284 (21 DE Reg. 284). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

301 Interactive Fantasy Sports Contests Regulations

DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 **Del.C.** Ch. 27)
24 **DE Admin. Code** 2400

ORDER

2400 Board of Examiners of Constables

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule 4.0 Badges & Vehicle Markings, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to clarify that the State Seal is not on the badges and that the vehicle markings do not include the State Seal either.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will clarify that the State Seal is not on the badges and that

the vehicle markings do not include the State Seal either.

5. The Board finds that the adoption will have no adverse impact on the public.

6. The Board finds that the amendment is well written and describes its intent to adopt the rule to clarify that the State Seal is not on the badges and that the vehicle markings do not include the State Seal either.

Conclusion

7. The proposed rule was published by the Board in accord with the statutory duties and authority as set forth in 10 **Del.C.** §2701 et seq. and, in particular, 10 **Del.C.** §2702(b).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 **Del.C.** §2701 et. seq.

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

10. The Board therefore adopts this amendment pursuant to 10 **Del.C.** §2702(b) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

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

12. The effective date of this Order shall be December 11, 2017.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 31st day of October, 2017.

Lt. Colonel Monroe B. Hudson, Jr.

Ralph K. Durstein, III, Esquire

Captain Laura O'Sullivan

Chief William E. Bryson (absent)

Mr. John F. Tharan (absent)

***Please note that no changes were made to Section 4.0 of the regulation as originally proposed and published in the July 2017 issue of the *Register* at page 32 (21 DE Reg. 32). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2400 Board of Examiners of Constables

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 100 BOARD OF CHARITABLE GAMING

Statutory Authority: 28 Delaware Code, Section 1508(a)(2) (28 **Del.C.** §1508(a)(2))
10 **DE Admin. Code** 101

ORDER

101 Regulations Governing Bingo

On September 1, 2017 the Delaware Board of Charitable Gaming published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 21, Issue 3. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 27, 2017 at a regularly scheduled meeting of the Board of Charitable Gaming to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony presented at the public hearing. No written comments were received by the Board.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 28 **Del.C.** §1507 the Board has the statutory authority to promulgate rules and regulations to implement or clarify specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 28 **Del.C.** §1507 and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on September 1, 2017. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 25th day of October, 2017.

DELAWARE BOARD OF CHARITABLE GAMING

Janet Williams-Coger, Chairperson (absent)	James Ascione
Francis Gant	S. Jay Mervine
Richard MacDonald	

*Please note that no changes were made to the regulation as originally proposed and published in the September 2017 issue of the *Register* at page 200 (21 DE Reg. 200). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

101 Regulations Governing Bingo

DIVISION OF PROFESSIONAL REGULATION

2700 BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS

Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 **Del.C.** §2706(a)(1))
24 **DE Admin. Code** 2700

ORDER

2700 Board of Registration for Professional Land Surveyors

On July 1, 2017 the Delaware Board of Professional Land Surveyors published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 21, Issue 1. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 21, 2017 at a regularly scheduled meeting of the Board of Professional Land Surveyors to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

Board Exhibit 1- Affidavit of publication of the public hearing notice in the *News Journal*; and
Board Exhibit 2- Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony presented at the public hearing on September 1, 2017. No written comments were received by the Board.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the written public comment periods, or at the public hearing.
3. Pursuant to 24 **Del.C.** §2706(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §2706(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the *Delaware Register of Regulations* on July 1, 2017. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 19th day of October, 2017.

DELAWARE BOARD OF PROFESSIONAL LAND SURVEYORS

James Bielicki, Jr., PLS

Charles Adams, Jr., PLS

Kelly Katz, PLS

Franco R. Bellafante, PLS

Lakiyah Chambers (absent)

Carla Cassell-Carter (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the July 2017 issue of the *Register* at page 35 (21 DE Reg. 35). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2700 Board of Registration for Professional Land Surveyors

OFFICE OF MANAGEMENT AND BUDGET

DIVISION OF FACILITIES MANAGEMENT

Statutory Authority: 29 Delaware Code, Section 6908(a)(6) (29 **Del.C.** §6908(a)(6))
19 **DE Admin. Code** 4104

ORDER

4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

The Office of Management and Budget (OMB) initiated proceedings to amend the Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects (19 **DE Admin. Code** 4104). The OMB proceedings to amend regulations were initiated pursuant to 29 **Del.C.** Chapter 101 and authority as prescribed by 29 **Del.C.** Ch. 69, §6908(a)(6).

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

On June 1, 2017, OMB published proposed amendments related to the Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects in the Delaware *Register of Regulations* (Volume 20, Issue 12). After receiving comments that led to substantive changes, OMB re-published the proposed amendments in the October 1, 2017 Delaware *Register of Regulations* (Volume 21, Issue 4). It was requested at that time that written comments from the public concerning the revised proposed regulations be delivered to OMB by November 3, 2017. OMB did not receive any written comments in response to this request.

FINDINGS OF FACT

OMB finds that the proposed amended regulations as set forth in the October, 2017 *Register of Regulations* (Volume 21, Issue 4) represent a fair balance to protect management, labor and members of the public.

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 amended Regulation be, and that it hereby is, adopted and promulgated. The effective date of this Order is for all large public works projects advertised for bid on or after January 1, 2018.

Michael S. Jackson, Director
Office of Management and Budget

***Please note that no changes were made to the regulation as originally proposed and published in the October 2017 issue of the *Register* at page 284 (21 DE Reg. 284). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects](#)

DELAWARE HEALTH INFORMATION NETWORK**PUBLIC NOTICE****104 Delaware Health Care Claims Database Data Access Regulation**

Agency: Delaware Health Information Network

Contact: Dr. Jan Lee
Chief Executive Officer
(302) 678-0220

Submit Comments by email to info@dhin.org by January 16, 2018.

Title of Proposed Regulation: Delaware Health Care Claims Database Data Access Regulation

Summary of the Regulation:

This regulation supports implementation of 16 **Del.C.** Ch. 103, Subchapter II, The Delaware Health Care Claims Database. It summarizes the allowable purposes for access to claims data, the process by which a request for access to claims data will be reviewed and evaluated, and factors that will be considered in granting or denying such requests. It delineates the structure and duties of the Health Care Claims Database Committee

Sub-regulatory information may be found on the DHIN web site at www.DHIN.org to include the form to be used for requesting access to claims data and the general business rules to be followed by the Health Care Claims Database Committee.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, December 14, 2017 at 5:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****20620.2.3.1 Limitation on the Submission of Requests for Protection of Prior Medical Costs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding Prior Medical Costs, specifically, *to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on January 2, 2018. Please identify in the subject line: Prior Medical Costs Submission Limitation.

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

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****2027 Disqualification of Individuals Convicted of Drug Related Offenses**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Disqualification of Individuals Convicted of Drug Related Offenses specifically, *to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on January 2, 2018. Please identify in the subject line: Disqualification of Individuals Convicted of Drug Related Offenses.

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

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions**

The Department of Insurance gave notice in the Delaware *Register of Regulations* at 21 DE Reg. 271 (10/01/2017) of its proposal to amend Department of Insurance Regulation 1801 relating to reporting forms and instructions for Insurance Holding Company System Regulation. The Department's internal docket number for this regulatory project is 3607-2017.

The purpose of the proposed amendment was to add new subsection 4.5. This new subsection put filers of reporting forms on notice that any statement submitted to the Department pursuant to the National Association of Insurance Commissioners (NAIC) Insurance Holding Company System Regulatory Act, 18 **Del.C.** Ch. 50, should not be considered "filed" until the Commissioner of the Department of Insurance determines that the statement is complete. The Department is also making edits to Section 8.0, Definitions, to comport that section with the Delaware Administrative Code Drafting and Style Manual.

The Department did not hold a public hearing on the proposed regulation. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment until the 1st day of November, 2017, which was thirty days from the date of publication.

The Department received comments from the National Association of Mutual Insurance Companies (NAMIC). A copy of NAMIC's comments may be obtained by contacting the Department at the below address.

The Department is re-proposing proposed new subsection 4.5, but revised to put filers on notice that any Form A statement submitted to the Department pursuant to the National Association of Insurance Commissioners (NAIC) Insurance Holding Company System Regulatory Act, 18 **Del.C.** Ch. 50, should not be considered "filed" until the Commissioner of the Department of Insurance determines that the statement is complete. The Department is also proposing to make the same edits to Section 8.0, Definitions, as were proposed in its October 1 proposal, for the same reason. The Department is also revising Section 23.0 of the regulation to update the effective dates of the existing regulation and of proposed new subsection 4.5.

The text of the proposed amendment appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://insurance.delaware.gov/information/proposedregs/>. The Department of Insurance does not plan to hold a public hearing on the proposed regulation.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. 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, 2nd day, January, 2018. Any such response should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Attn: Regulatory Docket No. 3607-2017
Delaware Department of Insurance
841 Silver Lake Drive
Dover, 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE

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

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 **Del.C.** Ch. 13 proposes to amend the following adopted rules in 24 **DE Admin. Code** 1300 Board of Examiners of Private Investigators and Private Security Agencies: Rule 7.0 - Employment Notification; Rule 8.0 - Private Investigators; rule 9.0 - Delaware Manager/License Holder; 11.0 - Personnel Rosters and Job Assignments; Rule 12.0 - Record Book; Right of Inspection; and Rule 13.0 - Licensing Fees. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by January 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, January 25, 2018, 9:30am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1100 BOARD OF DENTISTRY AND DENTAL HYGIENE
PUBLIC NOTICE

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to revise its regulations. The proposed amendments to Regulation six clarify that live webinars will be accepted as face to face CEs. The proposed amendments to Regulation eight add regulatory provisions for inactive status pursuant to 24 **Del.C.** §1126(e). The proposed amendment to Regulation 10 seeks to incorporate by reference the Board's clinical examination guidelines into its regulations. The proposed changes to Regulation 11 amend technical errors in the substantially related crimes list and adds the crime of misuse of the Prescription Monitoring Program. The proposed change at Regulation 12 adds a requirement that licensees update the Division of Professional Regulation within 10 days of a change in their contact information.

The Board will hold a public hearing on the proposed rule change on December 21, 2017 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meredith Hurley, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 5, 2018.

DIVISION OF PROFESSIONAL REGULATION
1900 BOARD OF NURSING
PUBLIC NOTICE

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise its regulations seeks to bring the regulations into conformity with current law and remove outdated and inconsistent provisions. For example, the proposed changes clarify the timeframe for a new school of nursing to obtain national accreditation;

clarify the timeframe an applicant may take the NCLEX; eliminate the requirement that nurses retain their maiden name on their licenses; clarify that an APRN is not required to maintain a collaborative agreement after obtaining two years and 4,000 hours of collaboration, even if the APRN plans to apply for independent practice; clarifies the definitions of licensed healthcare delivery system and established healthcare organization; eliminates the provision precluding APRNs from prescribing medications to individuals who are not established patients; and eliminates crimes from the exhaustive list of crimes substantially related to the practice of nursing.

The Board will hold a public hearing on the proposed regulation change on January 10, 2018 at 9:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Runkle, Administrative Specialist of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 25, 2018 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
2500 BOARD OF PHARMACY
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations.

A public hearing will be held on January 17, 2018 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Christine Mast, Administrative Specialist for the Delaware Board of Pharmacy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 1, 2018, pursuant to 29 **Del.C.** §10118(a). The Board will deliberate on all of the public comments at its next regularly scheduled meeting.

The proposed changes include provisions for the use of telehealth for patient counseling and updates for the requirements for continuing education audits. Section 8.0 is revised to clarify that its requirements apply to wholesalers, manufacturers, outsourcing facilities and third-party logistic providers. Section 10.0, pertaining to compounders, is stricken and replaced with the requirement that compounders must be in compliance with current USP standards, except that, effective December 1, 2019, compliance with USP 800 will be required. Finally, the requirements for training of pharmacy technicians are updated.

DIVISION OF PROFESSIONAL REGULATION
3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS
PUBLIC NOTICE

The Delaware Board of Examiners of Psychologists, pursuant to 24 **Del.C.** §3506(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to require licensees to update their contact information within 10 days of any such change; clarify that psychological assistant registrants must complete a Board approved internship, not just a 450 hour practicum; enhance continuing education requirements by clarifying the maximum number of credits which may be earned for preparing and presenting scientific papers and posters; and eliminates some of the crimes on the list of those substantially related to the practice of psychology.

The Board will hold a public hearing on the proposed rule change on January 8, 2018 at 9:00 a.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Karen Carn, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904. Written comments will be accepted until January 23, 2018 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
5300 BOARD OF MASSAGE AND BODYWORK
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §5306(a)(1), the Board of Massage and Bodywork ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on January 18, 2018 at 1:30 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Massage and Bodywork, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Gina Bloom, Administrative Specialist for the Delaware Board of Massage and Bodywork, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 2, 2018, pursuant to 29 **Del.C.** §10118(a). The Board will deliberate on all of the public comments at its next regularly scheduled meeting.

The proposed changes serve to implement recent amendments to the Board's Practice Act, Chapter 53 of Title 24 of the Delaware Code, pertaining to the licensure of massage establishments. Section 12.0 sets forth licensure standards, application procedures, and advertising requirements. The Section provides for inspection of any location representing itself as a place where massage and bodywork services will be offered. The Section also sets forth specific prohibitions against illegal activity at such locations in the interests of protection of the public and the individuals working at the locations.
