
Delaware Register of Regulations

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Volume 23 - Issue 6, Pages 407 - 483



IN THIS ISSUE:

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Proposed
Final

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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, 2019.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF RESEARCH STAFF

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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.

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 4111 (14 **Del.C.** §4111)
14 **DE Admin. Code** 251

PUBLIC NOTICE**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****251 Family Educational Rights and Privacy Act (FERPA)****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §4111, the Secretary of Education intends to amend 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA). This regulation is being amended to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and to update references to federal programs.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 6, 2020 to Department of Education, Office of the Secretary, 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, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, 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 does not address student achievement as measured against state achievement standards.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation ensures that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making process 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 amended regulation does not change decision-making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with 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 no less burdensome method for addressing the purpose of the amended regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs 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/december2019/proposed/23 DE Reg 416RFA 12-01-19.pdf>

251 Family Educational Rights and Privacy Act (FERPA)

1.0 Authority and Incorporation of Federal Regulations

- 4.4 The Department of Education ("Department") is authorized by 14 **Del.C.** §4111, to adopt rules and regulations regarding the educational records of students in public and private schools in Delaware. This regulation is intended to govern access to, the confidentiality of, and the amendment of educational records in a manner consistent with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations at 34 CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations.

2.0 Use and Adoption of FERPA by School Districts, Charter Schools, and Private Schools

- 2.1 Each school district, charter ~~school~~ school, and private school shall develop, adopt, and maintain a written policy regarding the educational records of its students. This policy shall address access to such records, the confidentiality of such records, and the method by which the records may be amended. The policy shall comply with FERPA and its implementing regulations.
- 2.2 Each school district, charter school and private school shall periodically review and revise its policy on educational records to ensure continued compliance with FERPA.
- 2.3 Nothing in this regulation shall preclude a school district, charter school, or private school from adopting additional policies regarding educational records so long as those regulations are consistent with FERPA. Nothing in this regulation shall alter a school district or a charter school's duties regarding educational records of children with disabilities pursuant to the Individuals with Disabilities Education Act.

3.0 State Adoption of FERPA

- 3.1 Except as otherwise provided, the Department of Education adopts the federal regulation implementing FERPA (34 CFR part 99), including any subsequent amendment or revision to that

regulation, to the extent the Department maintains educational records on students in attendance in Delaware schools.

- 3.2 Notwithstanding ~~section~~ subsection 3.1, and except as noted herein, the Department shall not be required to annually notify parents or eligible students of their rights under FERPA or this regulation. School districts, charter schools, and private schools shall continue to be responsible for such notification. The Department may also disclose directory information from the educational records it maintains without prior public notification.
- 3.2.1 The Department shall annually notify parents or eligible students of their rights under FERPA or this regulation where said student is in the Delaware Department of Correction system and receiving educational services through the Department's Prison Education Program.
- 3.3 Notwithstanding ~~section~~ subsection 3.1, and except as noted herein, the Department shall not be required to provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation.
- 3.3.1 The Department shall provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation where said student is in the Delaware Department of Correction system and receiving educational services through the Department's Prison Education Program.

4.0 Federal Complaints and Investigations

- 4.1 ~~The Family Policy Compliance Office ("FPCO") of the U.S. Department of Education is responsible for monitoring compliance with FERPA by agencies to which federal education funds have been made available. That office will investigate, process and review violations and complaints that may be filed with it concerning the privacy rights of parents and students of covered agencies. The following is the address of the office: The Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4605. The U.S. Department of Education's Office of the Chief Privacy Officer ("OCPO") provides leadership, oversight, and coordination to ensure Departmental compliance with government initiatives regarding the acquisition, release and maintenance of information. OCPO oversees the administration of FERPA. The Student Privacy Policy Office ("SPPO") leads U.S. Department of Education efforts to protect student privacy by providing leadership, oversight, and coordination to ensure Department and field compliance with several Federal privacy laws and regulations, most notably FERPA. The following is the address of the office: Student Privacy Policy Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4605. Families of students attending schools to which federal education funding has not been made available may also find FPCO's SPPO's interpretations and policy letters useful in understanding their rights under the policies required by this regulation.~~

Nonregulatory note: 14 **DE Admin. Code** 927 Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information addresses this subject for students with disabilities further.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 Del.C. §122(b)(2))
14 DE Admin. Code 877

PUBLIC NOTICE

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

877 Tobacco Policy

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §122(b)(2), the Secretary of Education intends to amend 14 DE Admin. Code 877 Tobacco Policy. The Department has reviewed the regulation to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be amended. Amendments include adding a purpose and definitions, expanding the scope of the regulation to include smoking, and aligning the regulation with 16 Del.C., Chapter 29, Delaware's Clean Indoor Air Act.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 6, 2020 to Department of Education, Office of the Secretary, 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, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

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

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

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation ensures that all students' health and safety are adequately protected by providing guidelines for district and charter school tobacco and smoking policies.

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

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The 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 amended regulation does not change the decision-making authority and accountability for addressing the subject to be regulated.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this 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/december2019/proposed/23 DE Reg 419RFA 12-01-19.pdf>

877 Tobacco and Smoking Policy

1.0 Purpose

- 1.1 The purpose of this regulation is to specify for district and charter schools the elements of a required Tobacco and Smoking Policy, including specifying areas where the policy is in effect, and outlining reporting requirements and timelines.
- 1.2 This regulation aligns with 16 Del.C., Chapter 29, Delaware's Clean Indoor Air Act, and 11 Del.C., Chapter 5, Subchapter V.

2.0 Definitions

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

“Electronic Smoking Device” means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate Smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor or as this term may be amended by 16 Del.C. §2902.

“Smoking” means:

- a. The burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco; or
- b. The use of an Electronic Smoking Device which creates an aerosol or vapor, in any manner or in any form or as this term may be amended by 16 Del.C. §2902.

“Tobacco Product” means:

- a. Any product that is made from or derived from tobacco or that contains nicotine, including: cigarettes, cigars, pipe tobacco, hookah tobacco, chewing tobacco, snuff, snus, or smokeless tobacco and is intended for human consumption by any means including Smoking, heating, chewing, absorbing, dissolving, inhaling, or ingesting as this term may be amended by 11 Del.C. §1115; or
- b. A component or accessory used in the consumption of a Tobacco Product, including filters, rolling papers, and pipes or as this term may amended by 11 Del.C. §1115.

Tobacco Product does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 et seq.) or as this term may be amended by 11 Del.C. §1115.

“Tobacco Substitute” means:

- a. An Electronic Smoking Device employing a mechanical heating element, battery, or circuit to produce aerosol or vapor for inhalation into the body of an individual or as this term may be amended by 11 Del.C. §1115, or
- b. A liquid used in a device under paragraph a. above, including liquids that contain nicotine and liquids that do not contain nicotine or as this term may be amended by 11 Del.C. §1115.

Tobacco Substitute does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) or as this term may amended by 11 Del.C. §1115.

4.03.0 Required Policy

- 3.1 ~~In order to~~ To improve the health of ~~students and students~~, school personnel, ~~and visitors~~, each school district and charter school in Delaware shall have a ~~policy~~ Tobacco and Smoking Policy which at a minimum:
- 4-13.1.1 Prohibits smoking and the use of or distribution of tobacco products and electronic smoking devices in school buildings, on school grounds, in school leased or owned vehicles, even when they are not used for student purposes, and at all school affiliated functions.
 - 4-23.1.2 Includes procedures for communicating the policy to students, school staff, parents, guardians or ~~Relative Caregivers~~ relative caregivers, families, visitors and the community at large.
 - 4-33.1.3 Makes provisions for or refers individuals to voluntary cessation education and support programs that address the physical and social issues associated with nicotine addiction.

2-04.0 The Tobacco and Smoking Policy Shall Apply to

- 2-14.1 Any building, property or vehicle leased, owned or operated by a school district, charter school or assigned contractor.
 - 2-14.1.1 School bus operators under contract shall be considered staff for ~~the purpose of~~ this policy.
- 2-24.2 Any private building or other property including automobiles or other vehicles used for school activities when students and staff are present.
- 2-34.3 Any ~~non-educational~~ non-educational groups utilizing school buildings or other educational assets.
- 2-44.4 Any individual or a volunteer who supervises students off school grounds.

3-05.0 No School or School District Property May Be Used for the Advertising of any Tobacco Product, Tobacco Substitute or Electronic Smoking Device

4-06.0 Reporting Requirements and Timelines

- 4-16.1 Each ~~public~~ school district and charter school shall have an electronic copy of its current ~~tobacco policy~~ Tobacco and Smoking Policy on file with the Department of Education.
- 4-26.2 Each ~~public~~ school district and charter school shall provide an electronic copy of any ~~tobacco policy~~ Tobacco and Smoking Policy within ninety (90) days of such ~~revision(s)~~ revisions regardless of whether said revisions were made as a result of changes to ~~Federal~~ federal, state or local law, regulations, guidance or policies.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 and 1205(b))
14 **DE Admin. Code** 1521

PUBLIC NOTICE

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

1521 Elementary Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1521 Elementary Teacher. The regulation concerns the requirements for a Standard Certificate for Elementary Teacher pursuant to

14 **Del.C.** §1220. The proposed amendments to the regulation include adding the Praxis Elementary Education: Content Knowledge for Teaching assessment and the required minimum passing score; adding Section 9.0, which concerns recognizing standard certificates that were previously issued; and clarification changes throughout the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 6, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOERegulations.comment@doe.k12.de.us. 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 Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve student achievement as measured against state achievement standards.

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

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators, not students' legal rights.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation 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 Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, 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 amended regulation? There is not a less burdensome method for addressing the purpose of this amended 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 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/december2019/proposed/23 DE Reg 421RFA 12-01-19.pdf>

1521 Elementary Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Elementary Teacher. This ~~certification~~ Certification is required for grades K to 6.

1.1.1 Notwithstanding subsection 1.1, the Early Childhood Teacher Certification may be used for K to grade 2 in lieu of this Certification.

2.0 Definitions

2-4 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

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

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

"Fifteen (15) Credits or the Equivalent in Professional Development" means college credits or an equivalent number of hours with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to a degree program from a regionally accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a regionally accredited college or university or other Department-approved provider.

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

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

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

"Passing Score" means a minimum score as established by the Professional Standards Board, in consultation with the Department, and with the approval of the State Board of Education.

"Professional Development" means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and/or perspectives; and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

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

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

"Valid and Current License or Certificate from Another State" means a current full or permanent certificate or license issued by another state. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state.

3.0 Issuance of a Standard Certificate

3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue ~~a Standard Certificate for Elementary Teacher~~ an Elementary Teacher Standard Certificate to an Educator who:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License, or a ~~Standard or~~ Professional Status Certificate issued by the Department prior to August 31, 2003 and meets the requirements set forth in Section 4.0 of this regulation; or

- 3.1.2 Has met the requirements for licensure and holds a Valid and Current License or Certificate from Another State in elementary education; or
- 3.1.3 Has met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 **Del.C.** §1203.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for Certification if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

4.0 ~~Prescribed Knowledge, Skill, and Education~~ **Education, Knowledge, and Skill Requirements**

- 4.1 For an applicant who is applying for his or her first Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
 - 4.1.1 The applicant shall have:
 - 4.1.1.1 Obtained an Early Childhood/Generalist certificate from the National Board for Professional Teaching Standards; or
 - 4.1.1.2 Completed a bachelor's degree from a regionally accredited college or university with a Major or Its Equivalent in elementary education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
 - 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach grades K to 6 as provided in 14 **DE Admin. Code** 1507; or
 - 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in elementary education; or
 - 4.1.1.5 Completed a bachelor's degree from a regionally accredited college or university in any content area and satisfactory completion of fifteen (15) credits or the equivalent in Department-approved Professional Development related to elementary education of which at least six (6) credits must focus on pedagogy.
 - 4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the Fifteen (15) Credits or the Equivalent in Professional Development subject to the Department's approval.
 - 4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the Fifteen (15) Credits or the Equivalent in Professional Development in consultation with the Department and subject to the Department's approval.
 - 4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:
 - 4.1.2.1 On the Praxis Subject Assessment - Elementary Education: Multiple Subjects (ETS Test Code # 5001), the applicant shall have achieved a Passing Score on each of the following subtests:
 - 4.1.2.1.1 Reading and Language Arts Subtest (ETS Test Code # 5002) a Passing Score of 157; and
 - 4.1.2.1.2 Mathematics Subtest (ETS Test Code # 5003) a Passing Score of 157; and
 - 4.1.2.1.3 Social Studies Subtest (ETS Test Code # 5004) a Passing Score of 155; and
 - 4.1.2.1.4 Science Subtest (ETS Test Code # 5005) a Passing Score of 159; or
 - 4.1.2.2 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7801), the applicant shall have achieved a Passing Score on each of the following subtests:

- 4.1.2.2.1 Reading and Language Arts CKT Subtest (ETS Test Code # 7802) a Passing Score of 156; and
- 4.1.2.2.2 Mathematics CKT Subtest (ETS Test Code # 7803) a Passing Score of 143; and
- 4.1.2.2.3 Science CKT Subtest (ETS Test Code # 7804) a Passing Score of 144; and
- 4.1.2.2.4 Social Studies Subtest (ETS Test Code # 7805) a Passing Score of 155; or
- 4.1.2.3 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7811), the applicant shall have achieved a Passing Score on each of the following subtests:
 - 4.1.2.3.1 Reading and Language Arts CKT Subtest (ETS Test Code # 7812) a Passing Score of 156; and
 - 4.1.2.3.2 Mathematics CKT Subtest (ETS Test Code # 7813) a Passing Score of 143; and
 - 4.1.2.3.3 Science CKT Subtest (ETS Test Code # 7814) a Passing Score of 144; and
 - 4.1.2.3.4 Social Studies CKT Subtest (ETS Test Code # 7815) a Passing Score of 153; or
- ~~4.1.2.34.1.2.4~~ The applicant shall have achieved a Passing Score on each of the following subtests:
 - ~~4.1.2.3.14.1.2.4.1~~ Praxis Subject Assessment - Elementary Education: Reading Language Arts Subtest (ETS Test Code # 5002) a Passing Score of 157 or Praxis Elementary Education: Content Knowledge for Teaching Reading and Language Arts CKT Subtest (ETS Test Code # 7802 or 7.8.1.2) a Passing Score of 156; and
 - ~~4.1.2.3.24.1.2.4.2~~ Praxis Subject Assessment - Elementary Education: Mathematics Subtest (ETS Test Code # 5003) a Passing Score of 157 or Praxis Elementary Education: Content Knowledge for Teaching Mathematics CKT Subtest (ETS Test Code # 7803 or 7813) a Passing Score of 143; and
 - ~~4.1.2.3.34.1.2.4.3~~ Praxis Subject Assessment - Elementary Education: Social Studies Subtest (ETS Test Code # 5004) a Passing Score of 155 or Praxis Elementary Education: Content Knowledge for Teaching Social Studies Subtest (ETS Test Code #7805 or 7815) a Passing Score of 155 or Social Studies CKT Subtest (ETS Test Code # 7815) a Passing Score of 153; and
 - ~~4.1.2.3.44.1.2.4.4~~ Praxis Subject Assessment - Elementary Education: Science Subtest (ETS Test Code # 5005) a Passing Score of 159 or Praxis Elementary Education: Content Knowledge for Teaching Science CKT Subtest (ETS Test Code # 7804 or 7814) a Passing Score of 144.
- 4.2 For an applicant who is applying for his or her second or subsequent Standard Certificate, the applicant shall have achieved a Passing Score on one of the following examinations:
 - 4.2.1 On the Praxis Subject Assessment - Elementary Education: Multiple Subjects (ETS Test Code # 5001), the applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.1; or
 - 4.2.2 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7801), the applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.2; or
 - 4.2.3 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7811), the applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.3; or
 - ~~4.2.34.2.4~~ The applicant shall have achieved a Passing Score on each of the subtests as provided in subsection ~~4.1.2.34.1.2.4~~.

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for an Initial License, and the applicant shall also provide all required documentation for the License.

- 5.2 For applicants who are applying for their first Standard Certificate, the following documentation is required with the application for a ~~Standard Certificate for Elementary Teacher~~ an Elementary Teacher Standard Certificate:
- 5.2.1 Evidence of obtaining an Early Childhood/Generalist certificate from the National Board for Professional Teaching Standards, if applicable; and
 - 5.2.2 Official transcript from the applicant's regionally accredited college or university.
 - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's regionally accredited college or university; or
 - 5.2.2.2 Sealed paper transcripts may be submitted.
 - 5.2.2.3 The Department will not accept copies of transcripts; and
 - 5.2.3 If applicable, documents verifying successful completion of Professional Development; and
 - 5.2.4 Official scores on the Praxis Subject Assessment or Praxis Elementary Education: Content Knowledge for Teaching as provided in subsection 4.1.2; and
 - 5.2.5 If applicable, an experience form must be completed in full and signed by the applicant; and
 - 5.2.6 Additional documentation as required by the Department.
- 5.3 For applicants who are applying for their second or subsequent Standard Certificate, the following documentation is required in the application for a Standard Certificate for Elementary Teacher:
- 5.3.1 Official scores on the Praxis Subject Assessment or Praxis Elementary Education: Content Knowledge for Teaching as provided in subsection 4.2; and
 - 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate from Another State in elementary education, the following documentation is required in the application for a Standard Certificate for Elementary Teacher:
- 5.4.1 An official copy of the valid and current educator license or certificate from another state or professional license.

6.0 Validity of a Standard Certificate

- 6.1 A Standard Certificate for Elementary Teacher is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A Standard Certificate for Elementary Teacher is not subject to renewal.

7.0 Revocation of a Standard Certificate

- 7.1 An Educator's ~~Standard Certificate for Elementary Teacher~~ Elementary Teacher Standard Certificate shall be revoked in the event the Educator's Initial, Continuing, or Advanced License or ~~Standard or~~ Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's Standard Certificate application in accordance with 14 **Del.C.** §1222.
- 7.2 An Educator whose Standard Certificate is noticed for revocation is entitled to a full and fair hearing before the Standards Board.
 - 7.2.1 Hearings shall be conducted in accordance with the ~~Standards Board's Hearing Procedures and Rules~~ 14 DE Admin. Code 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

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

9.0 Past Certificate Recognized

The Department shall recognize an Elementary Teacher Standard Certificate that was issued prior to the effective date of this regulation. An educator holding such a Standard Certificate issued by the Department before the effective date of this regulation shall be considered certified as an elementary teacher.

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

PUBLIC NOTICE

Drug Utilization Review (DUR)

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 Title XIX Medicaid State Plan regarding the DUR, specifically, to update provisions included in section 1004 of the SUPPORT Act.

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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2019. Please identify in the subject line: Drug Utilization Review (DUR)

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 Title XIX Medicaid State Plan regarding the DUR, specifically, to update provisions included in section 1004 of the SUPPORT Act.

Statutory Authority

- 42 CFR. §456.703
- SUPPORT Act (P.P. 115-271)

Background

All states, with a Medicaid program that include a drug benefit are required to have a Drug Utilization Review (DUR) program. New provisions for the DUR were included in Section 1004 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for patients and Communities Act (P.P. 115-271) as requirements of the state plan. States were required to describe how they met the requirements for claim review limitations, programs to monitor antipsychotic medications to children and fraud and abuse identification.

*** Please Note: The Proposed Regulation for Drug Utilization Review (DUR), published in the September 1, 2019 issue of the Delaware Register of Regulations (21 DE Reg. 184), is being republished as Proposed to provide additional public notice and comment due to substantive changes.**

Summary of Proposal

Summary of Proposed Changes

Effective for services provided on and after October 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Section 4.26 of Title XIX Medicaid State Plan regarding the DUR, specifically, to update provisions included in section 1004 of the SUPPORT Act.

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 December 31, 2019.

Fiscal Impact

There is no anticipated fiscal impact associated with this policy change.

***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/december2019/proposed/23 DE Reg 427RFA 12-01-19.pdf](http://regulations.delaware.gov/register/december2019/proposed/23%20DE%20Reg%20427RFA%2012-01-19.pdf)

(2) **Due to the formatting requirements of the regulation, it is being attached here as a PDF document:**

[http://regulations.delaware.gov/register/december2019/proposed/DMMA DUR Proposed.pdf](http://regulations.delaware.gov/register/december2019/proposed/DMMA%20DUR%20Proposed.pdf)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 and 29 Delaware Code, Section 7931
(31 Del.C. §512 & 29 Del.C. §7931)

PUBLIC NOTICE**DSSM 80000 Authorization and Regulation of Medicaid/CHIP Accountable Care Organizations**

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 Division of Social Services Manual (DSSM) regarding Accountable Care Organizations, specifically, to set standards for the authorization and regulation for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing 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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2019. Please identify in the subject line: Authorization and Regulation of Medicaid/CHIP Accountable Care Organizations.

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 Division of Social Services Manual (DSSM) regarding Accountable Care Organizations, specifically, to set standards for the authorization and regulation for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs.

Statutory Authority

- 42 CFR 438.6(c)(i)
- 29 **Del.C.** §7931(c)

Background

Four years ago, the Centers for Medicare & Medicaid Services (CMS) awarded Delaware a State Innovation Model grant to achieve five state-defined objectives, one of which was to engage payers to move health care payment to a pay-for-value model based on total cost of care budgeting. Since that time, and following considerable intensive stakeholder work, it has become apparent there are limits to the scope and pace of progress through voluntary adoption of payment and delivery reform by payers and providers. In states that have initiated or implemented reform, state government and stakeholders have collaborated to create mechanisms that bolster and accelerate system transformation.

In its 2017 Report to the Delaware General Assembly on Establishing a Health Care Benchmark, DHSS identified five strategies to advance the adoption of value-based payment (VBP) models, one of which was the implementation of total cost of care alternative payment models within Medicaid managed care contracts and the State Employee Benefit Contracts. In 2018, DHSS increased its focus on alternative payment strategies by adding VBP requirements to its Medicaid managed care contracts for calendar year 2018. Furthermore, in 2019, DHSS released a request for information on the design and development of Medicaid Accountable Care Organizations (ACOs) in Delaware.

In an effort to improve health outcomes for Medicaid patients, lower health care costs, and increase provider accountability for quality and cost, Delaware DHSS is now creating a Medicaid ACO program in which ACOs will work with Medicaid managed care organizations (MCOs) as part of their network providers. An ACO is a group arrangement in which health care practitioners (e.g., hospitals, physicians, and other health care providers) agree to assume responsibility for the quality, outcomes and cost of health care for a designated group of Medicaid and/or CHIP beneficiaries.

Summary of Proposal*Purpose*

The purpose of these regulations is to set forth standards for the authorization and regulation of ACOs for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs.

Summary of Proposed Changes

Effective for services provided on and after February 11, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 80000 of Division of Social Services Manual (DSSM) regarding Accountable Care Organizations, specifically, to set standards for the authorization and regulation for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing 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 December 31, 2019.

Provider Manuals and Communications Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

ACOs will be required to contract with MCOs; will not be contracting with DHSS. DHSS only reviews and authorizes them to contract with the MCOs.

*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/december2019/proposed/23 DE Reg 428RFA 12-01-19.pdf>

80000 Authorization and Regulation of Medicaid/CHIP Accountable Care Organizations

1.0 Authority and Purpose

- 1.1 This regulation is promulgated pursuant to Section 7931(e) of Title 29, Delaware Code.
- 1.2 Pursuant to 42 CFR 438.6(c)(1), states may require a Medicaid Managed Care Organization (MMCO) to implement value-based purchasing (VBP) models for provider reimbursement and to participate in Medicaid-specific delivery system reform initiatives.
- 1.3 Pursuant to 29 Del.C. §7931(c), the Division of Medicaid and Medical Assistance (“DMMA”), which is under the direction and control of the Secretary of the Department of Health and Social Services (“DHSS”), is responsible for the performance of all of the powers, duties, and functions specifically related to Medicaid. This includes regulation and administration of MMCO activity, such as contracting with Accountable Care Organizations (ACOs).
- 1.4 The purpose of these regulations is to set forth standards for the authorization and regulation of ACOs for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs through VBP arrangements which include downside financial risk for participating ACOs.

2.0 Definitions

“Accountable Care Organization” or “ACO” means a group arrangement in which health care practitioners (e.g., hospitals, physicians, other health care providers) agree to assume responsibility for the quality, outcomes and cost of health care for a designated group of Medicaid and/or CHIP beneficiaries.

“ACO Contract” means a contract formed between an ACO and an MMCO that includes payment via a value-based purchasing arrangement as defined by DHSS.

“ACO Requirements” means standards developed by DHSS outlining the qualifications needed for an ACO to participate in the program.

“Value-Based Purchasing” or “VBP” means a model for provider reimbursement that promotes value over volume, such as a shared savings or risk-based arrangement.

3.0 Formation and Existence

- 3.1 Each ACO seeking approval from DHSS shall demonstrate to the satisfaction of DHSS that:
 - 3.1.1 The ACO is duly formed and validly existing under the laws of the State of Delaware.
 - 3.1.2 The ACO has the necessary corporate or company power to perform its obligations under the ACO Requirements and to enter into ACO Contracts with MMCOs.
 - 3.1.3 The ACO has taken all necessary corporate or company action to authorize the execution, delivery, and performance of ACO Contracts.
 - 3.1.4 The execution and delivery of ACO Contracts, and the performance of the ACO’s obligations under the ACO Contract, will not result in a violation of any provision of the ACO’s certificate of incorporation, bylaws, or other governing instrument or document whether at the State or Federal level.

4.0 Duties and Obligations

- 4.1 Each ACO seeking approval from DHSS shall demonstrate to the satisfaction of DHSS that:
 - 4.1.1 The ACO has an organizational/governance structure that will have sufficient authority to ensure the delivery of high quality, cost-effective care to Medicaid/CHIP beneficiaries, as determined by DHSS.

- 4.1.2 The ACO has demonstrated the capability to offer a comprehensive array of coordinated primary care services, specialty care services, and the ability to provide access, either directly or through affiliations/contractual relationships, to behavioral health, acute care, community and social support, long term care, and oral health providers, and other organizations as determined by DHSS or as required in the ACO Contract.
- 4.1.3 The ACO has a plan to support care coordination across the continuum of care, including services that address health-related social needs, within and outside the ACO.
- 4.1.4 The ACO has an electronic health record (“EHR”) system in place and has the capability to exchange data with MMCOs and DHSS, and other designated entities such as the Delaware Health Information Network (DHIN).
- 4.1.5 The ACO has a plan in place to monitor, report, and improve patient health outcomes and quality.
- 4.1.6 The ACO attests that it will not limit beneficiary provider choice and access to providers that are outside the ACO.
- 4.1.7 Any additional requirements that DHSS determines necessary to meet the goals of improving health outcomes and patient experience, while reducing costs.

5.0 Authorization

- 5.1 If upon completion of its application, DHSS finds that the ACO has met the requirements therefor under this regulation, DHSS shall authorize the ACO to enter into an ACO Contract with the Delaware MMCOs for purposes of the Delaware Medicaid/CHIP managed care program.
- 5.2 DHSS’s authorization of an ACO shall be limited to the ACO’s business related to the Delaware Medicaid/CHIP managed care program and shall not authorize the ACO to conduct business that would otherwise require licensure under Title 18 of the Delaware Code.
- 5.3 The ACO shall at all times comply with the requirements set forth under this regulation. DHSS may immediately revoke the ACO’s authorization in accordance with its policies or as a result of a breach thereof by the ACO, or upon the determination of DHSS that the ACO is no longer able to meet the duties and obligations

DIVISION OF PUBLIC HEALTH HEALTH PROMOTION AND DISEASE PREVENTION

Statutory Authority: 16 Delaware Code, Sections 122(3)a. and 707 (16 **Del.C.** §§122(3)a. & 707)
16 **DE Admin. Code** 4202

PUBLIC NOTICE

4202 Control of Communicable and Other Disease Conditions

Pursuant to 16 **Del.C.** §122(3)a. and §707, Health Promotion and Disease Prevention (HPDP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On December 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the Control of Communicable and Other Disease Conditions regulations. The revisions include a change to outbreak reporting requirements and technical corrections.

Copies of the proposed regulations are available for review in the December 1, 2019 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Thursday, January 2, 2020, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

***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/december2019/proposed/23 DE Reg 431RFA 12-01-19.pdf>

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

4202 Control of Communicable and Other Disease Conditions

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)u.1 (16 Del.C. §122(3)u.1)
16 DE Admin. Code 4458

PUBLIC NOTICE**4458 State of Delaware Food Code Regulations**

Pursuant to 16 Del.C. §122(3)u.1, Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the State of Delaware Food Code. On December 1, 2019, the Division of Public Health plans to publish as “proposed” amended State of Delaware Food Code regulations. Due to the extensive number of amendments, the Division has concluded that the current State of Delaware Food Code regulations should be repealed and replaced in their entirety with the U.S. Food and Drug Administration’s 2017 Food Code with amendments.

The proposed Code will introduce several important changes to better serve and protect Delawareans. Changes include:

- New defined terms, including “Outdoor Spaces” which means, “a porch, patio, deck or other structure with less than two contiguous walls that does not require travel through any indoor areas, including for entrance and exit.”
- Allowance of dogs in Outdoor Spaces if a health or safety hazard will not result from the presence.
- Operations that are ordered to cease and desist due to an imminent health hazard will be required to remain closed for at least 24 hours.
- Amending food employee health reporting, restrictions and exclusions to disallow ill food employees from returning to work until 48 hours after being asymptomatic from an undiagnosed disease that resulted in vomiting and/or diarrhea.

Copies of the proposed regulations are available for review in the December 1, 2019 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

NOTICE OF PUBLIC HEARING

A public hearing will be held on Thursday, January 16 at 5:00 p.m. at the Department of Natural Resources and Environmental Control Richardson & Robbins Building Auditorium, located at 89 Kings Highway, Dover, Delaware 19901.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning

the proposed regulations must submit them to Alanna Mozeik by Friday, January 31, 2020, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

***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/december2019/proposed/23 DE Reg 432RFA 12-01-19.pdf](http://regulations.delaware.gov/register/december2019/proposed/23%20DE%20Reg%20432RFA%2012-01-19.pdf)

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

4458 State of Delaware Food Code Regulations

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 49A (16 Del.C. Ch. 49A)
16 DE Admin. Code 4470

PUBLIC NOTICE

4470 State of Delaware Medical Marijuana Code

Pursuant to 16 Del.C. Ch. 49A, Office of Medical Marijuana (OMM), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the State of Delaware Medical Marijuana Code. On December 1, 2019, the Division of Public Health plans to publish as "proposed" revisions to the State of Delaware Medical Marijuana Code. The revisions include the establishment of requirements for Safety Compliance facilities, provisions for the production of edible medical marijuana products and limitations therein, compliance and enforcement procedures, random sampling procedures, the formation of a Compassionate Use patient card, and the addition of specific definitions and technical corrections.

Copies of the proposed regulations are available for review in the December 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Thursday, January 2, 2020, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

***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/december2019/proposed/23 DE Reg 433RFA 12-01-19.pdf](http://regulations.delaware.gov/register/december2019/proposed/23%20DE%20Reg%20433RFA%2012-01-19.pdf)

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

4470 State of Delaware Medical Marijuana Code

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 2533 (18 Del.C. §§311 & 2533)
18 DE Admin. Code 802

PUBLIC NOTICE

802 Delaware Workplace Safety Regulation

A. Type of Regulatory Action Required

Proposal of amendments to existing Regulation 802, Delaware Workplace Safety Regulation.

B. Synopsis of Subject Matter of the Regulation

The Delaware Department of Insurance (the Department) has been implementing its Workplace Safety Program since 1989. Through this program, the Department, in coordination with the Delaware Compensation Rating Bureau, offers Delaware employers an opportunity to lower workers' compensation insurance premiums by participating in the Delaware Workplace Safety Program. Businesses may earn discounts of up to 19 percent by providing and maintaining a safe place to work. More information about the program may be found on the Department's website at <https://insurance.delaware.gov/services/workplacesafetydiscount/>.

The Department is proposing to amend Regulation 802 to specifically emphasize the availability of discounts that may be available to those employers who otherwise qualify for the program and who implement a drug-free workplace program at their worksites.

The Department is also taking the opportunity of this proposal to strike out subsection 7.3 concerning inspections by the Department of Labor, since the Department of Labor does not conduct such inspections, and to make grammatical and formatting edits to the remainder of the regulation.

C. Notice and Public Comment

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 802. The proposed new regulation appears below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 31st day, December, 2019. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
ATTN: Docket 4202-2019
1351 West North St., Ste. 101
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@delaware.gov

***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/december2019/proposed/23 DE Reg 434RFA 12-01-19.pdf>

800 ~~Workmen's~~ Workers' Compensation

802 Delaware Workplace Safety Regulation

1.0 Authority

This regulation is adopted and promulgated by the Insurance Commissioner pursuant to 18 **Del.C.** ~~§341, §2533 §§311 and 2533~~ and promulgated under 29 **Del.C.** Ch.101.

2.0 Purpose

The purpose of this regulation is to:

- 2.1 Enhance the health and safety of workers in the State of ~~Delaware.~~ Delaware;
- 2.2 Provide lower insurance premiums for qualifying employers who currently pay \$3,161 or more of annual Delaware Workers' Compensation ~~premiums.~~ premiums; and
- 2.3 Establish both testing and inspection procedures to determine an employer's qualification for a premium credit under the Workplace Safety Program.

3.0 Scope

- 3.1 ~~All employers who comply with the criteria set forth in this regulation are~~ An employer is eligible for participation in the Workplace Safety Program if the employer complies with the criteria set forth in this regulation.
- 3.2 ~~Only employers whose employees work at Delaware work sites will be~~ are eligible for this program to participate in the workplace Safety Program; and
- 3.3 ~~In the case of an employer who purchases a multi-state workers compensation insurance policy, and safety credit earned by participation in the Workplace Safety Program applies to only that portion of the premium that covers Delaware~~ premiums in multi-state policies workers.

4.0 Eligibility and Premium Credit

- 4.1 An employer is eligible for the Workplace Safety Program if insurance premium credit if:
 - 4.1.1 ~~its~~ The employer's annual workers compensation insurance premium is \$3,161 or more. ~~Workplace Safety credit eligibility is more,~~ based on the most current unit statistical card filing. The Delaware Compensation Rating Bureau ~~will test each~~ is charged with determining whether an employer meets this requirement by taking the most current unit statistical card payroll times current rates times current experience modification to determine the employer's premium ~~size.~~ size; and
 - 4.1.2 The employer submits a Workplace Safety Program Questionnaire to the Department of Insurance in which it provides details of the employer's Workplace Safety Program, including but not limited to:
 - Details concerning the employer's health and safety program, including the effectiveness of that program;
 - Details concerning the employer's employee training program, including data on its adequacy and effectiveness;
 - Details concerning the employer's efforts to identify and eliminate potential hazardous conditions; and
 - Workplace injury data for the three years immediately preceding the date on which the employer submits the Workplace Safety Program Questionnaire to the Department.

5.0 Notice of Employer Eligibility

Employers meeting the ~~premium requirement~~ eligibility requirements set forth in Section 4.0 of this regulation will be notified by the Delaware Department of Insurance seven months in advance of their

policy renewal date. This notification will include(s) instructions for qualifying for a safe workplace credit.

6.0 Eligibility Period

The Department will notify the employer of eligibility, and inform the employer that ~~he~~ the employer must elect at least five (5) months in advance of the date of policy renewal to participate in the Workplace Safety Program. Failure to notify the Department within this time period of an intent to renew participation may preclude the employer's participation in the Workplace Safety Program for the ~~next~~ upcoming year. Election to participate shall commence by contacting the Delaware Department of Insurance.

7.0 Inspections and Cost

~~7.1 There are three options for Workplace Safety Inspections to be conducted. To obtain the Workplace Safety Program premium discount, all inspection procedures and inspection reports must be in compliance with the requirements and standards set forth by this regulation. In the event of multiple applications, only the first application received will be accepted. All inspections must include a thorough review of the following items, which are to be maintained by the employer and made available for the inspector to review:~~

- Any workplace injuries that have occurred within the three years prior to the application.
- The outcome of those injuries, including specific details of the injuries.
- Confirmation of Modification Duty Availability Reports for all injuries, as applicable.
- Any findings or fines relating to workplace safety resulting from the injuries.
- A list of possible assignments for injured workers.
- Any safety measures taken by the employer as a result of the injuries.
- Any drug-free workplace program being implemented by an employer that includes but is not limited to the following components, as applicable:
 - A written policy regarding the use of drugs in the workplace that includes, at a minimum:
 - A statement of purpose concerning the protection of the employer's employees and guests;
 - A general statement concerning what conduct is prohibited;
 - A statement concerning the employer's intent to comply with applicable federal and Delaware statutes and regulations;
 - A description of the employer's drug testing policy, if any, including but not limited to pre-employment testing, reasonable suspicion testing, and post-incident testing;
 - A list of workplace-prohibited substances, which may include but is not limited to amphetamines, cannabinoids, cocaine, opiates, phencyclidine (PCP), and chemical derivatives;
 - Whether marijuana is a prohibited substance in the workplace;
 - A statement concerning the employer's policy that accounts for the use of prescription medications, including the employee's duty to notify any testing laboratory of such substances;
 - A statement concerning the employer's policy on employee consumption of alcohol on premises, including the types of employer functions at which alcohol consumption is permitted and whether an employee is permitted to use alcohol on premise outside of the employees normal working hours;
 - A listing of all employee drug testing procedures (if testing will occur), including but not limited to whether the employer uses an independent laboratory, whether testing includes (or is limited to) urine testing, the employee's right to refuse testing and the consequences for so doing, whether an employee will be compensated for time spent testing, whether the employer pays for the cost of the test;
 - A statement concerning the consequences that arise when an employee tests positive for drugs, both during a pre-employment drug screening and for current

employees, including whether the job applicant or current employee has a right to explain the positive drug test;

- : A statement of confidentiality of information; and
- : A method for ensuring and documenting that an applicant for employment and all current employees receive details of the employer's Drug-Free Program;
- : A copy of the employer's Drug-Free Workplace Poster, certified by the government agency or vendor of the employer's choice;
- : A description of the employer's Employee Assistance Program ("EAP") or proof of resources available to employees such as drug and alcohol counseling services, and a list of treatment centers; and
- : A description of the employer's training program for both supervisors and employees that requires that the training must be completed within 30 days of start date as part of new employee orientation, and that describes how the employer documents that employers and supervisors have completed this training.

NOTE: A recommendation by the inspector based on the above information as to whether or not the employer should receive the workplace safety credit must also be included.

7.2 To obtain the Workplace Safety Program premium credit, all inspection procedures and inspection reports must comply with the requirements and standards set forth in this regulation. In the event of multiple applications, only the first application received will be accepted. Subsections 7.2.1 and 7.2.2 of this regulation set forth the two options according to which a Workplace Safety inspection may be conducted.

~~7.1.1~~7.2.1 All inspections made that are conducted by a representative from an independent safety expert company under contract to the Insurance Department will follow this procedure. shall be conducted as follows:

7.2.1.1 The Insurance Department will notify the inspector of the employer's request. The inspector, in turn, will then contact the employer to set up the first of two inspections. A second unannounced inspection shall be made no later than the expiration date of the policy to which any workplace safety credit based on the inspection will apply to confirm the initial certifications of safety in the workplace. The Department of Insurance will notify the Bureau when an employer successfully completes each scheduled and/or nonscheduled inspection. Failure to pass a scheduled inspection will result in a denial of an employer's eligibility to participate in the Workplace Safety Program. However, the employer, after failing an inspection can request another inspection, after successful completion of which will make them eligible for participation in the Workplace Safety Program.

~~7.1.2~~7.2.1.2 The cost of each inspection will be borne by the employer. The minimum charge for safety inspection is \$150 per location. Each work location must successfully pass both inspections before an employer is entitled to a premium credit under the program. Inspection fees for large and/or complex employers may be established by the Department of Insurance.

~~7.2.2~~7.2.2 Insurers issuing workers compensation insurance in Delaware may submit their own workplace safety inspection procedures for review by the Insurance Department. The Insurance Department shall permit the insurer's inspection to satisfy the inspection requirements of paragraph ~~7.1.4~~ subsection 7.2.1 of this regulation if the inspection procedures are at least as rigorous as those employed by the Insurance Department and its independent safety experts. An insurer's safety inspection procedures must be re-certified on a bi-annual basis to maintain status as an acceptable substitute.

7.3 ~~If the annual workers compensation insurance premium is between \$3,161 and \$10,000 for an eligible employer, the employer may opt to undergo an inspection conducted by a qualified inspector from the Delaware Department of Labor at a cost determined by the Department of Labor but not to exceed the maximum fee as per the inspection charges maintained by the Insurance Department.~~

PROPOSED REGULATIONS

8.0 Renewals and Eligibility

- 8.1 An employer must annually apply for the Workplace Safety Program each year.
- 8.2 For each year after the initial qualification, the inspection requirement for the Workplace Safety Program insurance premium credit will consist of one unannounced inspection. The Department will maintain a list of inspection charges for inspections conducted pursuant to paragraph 7.4 subsection 7.2.1 of this regulation, which will be sent to interested parties upon request.

9.0 Premium Size Ranges and Corresponding Credits

- 9.1 The Workplace Safety ~~credits~~ insurance premium credit will be ~~granted~~ calculated according to the following formula:

$$20\% \times [1.0000 - C]$$
 where "C" is the credibility of the qualified employer in the uniform Experience Rating Plan for the policy period expiring immediately prior to the application of the Safety credit. If the qualified employer was not experience-rated in the policy period expiring immediately prior to the application of the Safety credit, "C" will be set at 0.050 Safety credit packages will be rounded to the nearest whole percent.
- 9.2 If the inspector confirms that an employer maintains a drug-free workplace program that meets the criteria set forth in subsection 7.1 of this regulation, the carrier may offer an additional discount in accordance with rate filings submitted to and approved by the Department.

10.0 Effect upon Mutual Rates and Schedule Rating Credits

- 10.1 Workers' Compensation manual rates shall be adjusted because of implementation of this program. A Delaware Workplace Safety Program Factor shall be included in loss costs and residual market rates. This factor may offset credits given to qualified employers, so that the Workplace Safety Program will neither increase nor decrease premiums for eligible employers in the aggregate.
- 10.2 Schedule rating plan credits given to policyholders for "competitive" reasons cannot be withdrawn. Schedule credits given for safety reasons may be reduced to offset the Workplace Safety Program premium credit.
- 10.3 A Merit Rating Plan shall be implemented which will provide incentives for employers paying less than \$3,161 of annual Delaware Workers' Compensation premiums to maintain safe workplaces.

11.0 Effective Date

This Regulation ~~shall become~~ became effective on November 11, 2013. The 2019 amendments to this regulation shall become effective 10 days after being published as a final regulation.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 **Del.C.** §6010(a) & (c))
 7 **DE Admin. Code** 1124

REGISTER NOTICE
 SAN #2018-07

1124 Control of Volatile Organic Compound Emissions

1. TITLE OF THE REGULATIONS:

7 **DE Admin. Code** 1124 Section 26 "Gasoline Dispensing Facility Stage I Vapor Recovery" and Section 36 "Vapor Emission Control at Gasoline Dispensing Facilities."

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

Since the early 1990s, Delaware's ambient air quality has been in nonattainment for the health based air quality standard for the pollutant ground-level ozone. Because gasoline vapors contain volatile organic compounds (VOC) and contribute to the formation of ground-level ozone, Delaware implemented, in 1993, 7 **DE Admin. Code** 1124 Section 26 and Section 36. Sections 26 and 36 contain requirements to control gasoline vapor emissions from gasoline tanks and motor vehicles at any gasoline dispensing facility (GDF) with a monthly throughput greater than 10,000 gallons (Stage I and Stage II vapor recovery). In addition, since 1998, automobile manufacturers have been required by the federal Clean Air Act (CAA) to install on-board refueling vapor recovery (ORVR) systems on new vehicles.

The ORVR system is effective for controlling gasoline vapor emissions from refueling the ORVR equipped vehicles. However, when Stage II vapor recovery equipped GDF's are refueling ORVR equipped vehicles, fresh air is ingested into the GDF gasoline storage tanks, which leads to vapor growth in the gasoline storage tanks and vapor emissions from those tanks through leaks and pressure relief valves. The CAA allows Delaware to phase-out Stage II vapor recovery requirements, provided overall emissions do not increase.

The Division of Air Quality (DAQ) of the Department of Natural Resources and Environmental Control (DNREC, or the Department) is proposing amendments to Section 26 and Section 36 to require (1) any new GDF to install a Stage I Enhanced Vapor Recovery (EVR) system, instead of a Stage II vapor recovery system, at construction, and (2) any existing GDF to decommission its Stage II vapor recovery system by December 31, 2021 and to install a Stage I EVR system by December 31, 2025. The proposed amendments will also require a regulated GDF to monitor vapor-tight status of its gasoline storage tanks by performing annual pressure decay tests or by installing a continuous pressure monitoring (CPM) system.

DAQ is also proposing to submit to EPA a revision to Delaware State Implementation Plan (SIP), entitled "Decommissioning Stage II Vapor Recovery Systems and Requiring Stage I Enhanced Vapor Recovery Systems at Gasoline Dispensing Facilities." The objectives of the proposed SIP revision are to (1) analyze the regulatory impacts of the above regulation amendments on Delaware's emissions of volatile organic compounds (VOC), and (2) demonstrate that the above regulatory amendments meet the anti-backsliding requirements of the CAA Sections 182(b)(2) and 110(l).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Ch. 60, Sections 6010(a) and 6010(c).

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

None.

6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on January 8, 2020, beginning at 6:00 pm, in DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. Persons wishing to comment on the proposed amendments may do so either orally or in written form at the public hearing on January 8, 2020. In lieu of attending the public hearing, written comment may be submitted to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to DNRECHearingComments@delaware.gov, or via USPS to the below address. The Department will accept public comment through the close of business on Thursday, January 23, 2020.

Theresa Newman, Hearing Officer
DNREC – Office of the Secretary
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Frank F. Gao, Ph.D., P.E.
Division of Air Quality-DNREC
715 Grantham Lane, New Castle, DE 19720
Phone: (302)739-9402; email: Frank.Gao@delaware.gov

***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/december2019/proposed/23 DE Reg 438RFA 12-01-19.pdf>

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

1124 Control of Volatile Organic Compound Emissions

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 1.0 Firearms, and Rule 4.0 Training Requirements. If you wish to view the complete Rule, contact Ms. Ashley N. Bauguess at (302) 672-5337. Any persons wishing to present views may submit them in writing, by January 2, 2020, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Monday, January 27, 2020, 10:00am, 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/december2019/proposed/23 DE Reg 440RFA 12-01-19.pdf>

1300 Board of Examiners of Private Investigators & Private Security Agencies

1.0 Firearm's Policy

(Break in Continuity Within Section)

1.10 Private investigative, private security, and armored car agencies shall be held responsible for monitoring all firearm certification or recertification for their employees for compliance with promulgated rules and regulations.

~~4.401.11~~ All firearms licenses, armed security guard and armed armored car guard, are valid for a period of one ~~year~~ year, subject to proof of compliance of Section 1.0 by submission of shoot certification or recertification forms to the Professional Licensing Section, by January 15th of each year, for the previous calendar year. Private investigative, private security, and armored car agencies must provide the Professional Licensing Section with documentation that employees are compliant with firearm certification and recertification requirements of Section 1.0 by January 15th of each year for the previous calendar year.

~~4.411.12~~ If an individual requests to carry a different approved weapon, while in the performance of their duties as an armed security guard or armed armored car guard, other than the one on file with the Professional Licensing Section, he/she must have approval from the Director of Professional Licensing

~~after submitting certification of a day and low light qualification with the new weapon providing documentation by their respective agency demonstrating that they successfully passed a day and lowlight qualification shoot with their new weapon.~~ Upon approval, the individual can begin to carry the new weapon and the prior qualification of a different weapon will become void. Another day shoot with the new weapon must take place after 90 days, during the same calendar year. Individuals will only be authorized to carry the weapon they last qualified with and provided ~~the shoot certifications~~ proof of qualification to the Professional Licensing Section.

~~4.11.12.1~~ An individual may not change weapons after September 30th, of the current calendar year, without prior approval of the Director of Professional Licensing, after submitting a request to the Professional Licensing Section. If approval is granted, the individual must be certified and ~~submit certification of a day and low light qualification their agency must provide documentation demonstrating that the successfully passed a day and low light qualification shoot with their new weapon~~ to the Professional Licensing Section prior to carrying the weapon.

~~4.12.13~~ Firearms Instructors providing instruction under Section 1.0;

~~4.12.13.1~~ Firearms instructors must be certified by the National Rifle Association as a Law Enforcement Instructor or through a law enforcement training and standards commission (i.e. C.O.P.T.). Certification by another professional firearms training institution as a "certified law enforcement firearms Instructor" must be approved by the Board. Instructors approved by the Board through another professional firearms training institution will have reciprocity approval with any other Board under Department of Safety and Homeland Security, Division of State Police, Professional Licensing Section.

~~4.12.21.13.2~~ Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified handgun instructor may only instruct and qualify individuals with the handgun.)

~~4.12.31.13.3~~ All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify licensed individuals.

(Break in Continuity of Sections)

4.0 Training Requirements

(Break in Continuity Within Section)

4.2 Certified instructors must be employed by a Board approved training facility or a Class B or C agency providing the training. All instructors' certifications will be pursuant to subsection 4.2.1.

4.2.1 Instructors for the training program must be certified by a Board approved training facility by completing an Instructor Certification Course. This course will be developed by an approved training/testing facility with collaboration from the Professional Licensing Section, and approved by the Board. An instructors test shall be mandatory with a passing grade of 75%. If this test is failed, the instructor shall re-take the course and the test until receiving a passing grade before being certified. Instructors who were approved by rules set by previous versions of this Section would remain eligible to instruct as long as they ~~do so pursuant to this Section~~ retake the Instructor Certification Course administered by the Board approved facility by January 1, 2021.

4.2.2 ~~Updates to the training curriculum, approved by the Board, will be sent out to the certified instructors and shall be implemented into the course of instructions. The Board approved training facility shall be responsible for notifications of the updates. In order to remain certified, instructors must take a refresher course offered by a Board approved training facility every five years or sooner as the Board may require. The refresher course will contain updates to the training curriculum and testing materials previously 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

PROPOSED REGULATIONS

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2900 REAL ESTATE COMMISSION**

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

PUBLIC NOTICE**2900 Real Estate Commission**

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations.

A public hearing will be held on January 9, 2020 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Danielle Cross, administrative specialist for the Commission, at the above address or at danielle.cross@delaware.gov. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be **January 24, 2020**, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its next regularly scheduled meeting.

The Commission's proposed regulations include a new subsection 8.5 which sets forth requirements for real estate "teams". New subsection 9.0 addresses the scope of permissible activities under the property management licensure exemption. Revisions to the new Section 12.0, Renewal of Licenses, shorten the late renewal period from 60 to 30 days and clarify that the late renewal period is not an extension of the deadline to complete continuing education. Requirements for licensure reinstatement are amended. As set forth in the new subsection 14.13, new licensees will be required to complete twelve hours of education designed to assist individuals new to the real estate profession. Those twelve hours must be completed within 90 days after the date of initial licensure and will not count towards the continuing education required for license renewal. New licensees will also be required to complete the continuing education applicable to all licensees pursuant to the pro-ration schedule. Finally, as set forth in the new subsection 14.6.7, a minimum fine of \$250 will be imposed for a finding of unjustified noncompliance with continuing education requirements, and a minimum fine of \$1,000 will be imposed for a second finding of unjustified noncompliance.

***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/december2019/proposed/23 DE Reg 442RFA 12-01-19.pdf>

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

2900 Real Estate Commission

**DIVISION OF PROFESSIONAL REGULATION
2925 REAL ESTATE COMMISSION EDUCATION COMMITTEE**

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))
24 **DE Admin. Code** 2925

PUBLIC NOTICE

2925 Real Estate Commission Education Committee

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to the Real Estate Commission Education Guidelines (the "Guidelines").

A public hearing will be held on January 9, 2020 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Danielle Cross, administrative specialist for the Commission, at the above address or at danielle.cross@delaware.gov. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be **January 24, 2020**, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its next regularly scheduled meeting.

The Commission has proposed revisions to the Guidelines to provide that instructor and course application denials are subject to a written request for reconsideration. Instructor qualifications for pre-licensing, broker and continuing education courses have been revised to ensure instructor competence and experience. Pursuant to proposed amendments, continuing education programs must be a minimum of three hours and must be delivered in three hour increments. The proposed revisions emphasize that course sponsors and providers are responsible for the qualifications and conduct of course instructors and clarify that prelicensing school instructors may not use class time for recruiting purposes. Finally, the proposed changes require a prelicensing school to provide prospective students with notice that a criminal history may impact or pose a bar to licensure.

***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/december2019/proposed/23 DE Reg 443RFA 12-01-19.pdf>

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

2925 Real Estate Commission Education Committee

PROPOSED REGULATIONS

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))
26 DE Admin. Code 3007

PUBLIC NOTICE

3007 Electric Service Reliability and Quality Standards

IN THE MATTER OF THE PETITION OF THE PUBLIC
SERVICE COMMISSION STAFF AND DELAWARE
DIVISION OF THE PUBLIC ADVOCATE TO
ESTABLISH A REGULATION FOR DISTRIBUTION
SYSTEM INVESTMENT PLANS FOR DELAWARE
ELECTRIC AND NATURAL GAS UTILITIES (Filed July
2, 2018)

PSC DOCKET NO. 18-0935

ORDER NO. 9485

AND NOW, this 22nd day of October 2019, the Delaware Public Service Commission (“Commission”) hereby finds and orders as follows:

WHEREAS, on June 14, 2018, Senate Substitute No. 1 for Senate Bill 80, establishing a Distribution System Improvement Charge (“DSIC”) for electric and natural gas distribution utilities, was signed into law by Governor John Carney; and

WHEREAS, on April 24, 2018, Commission Staff (“Staff”), the Delaware Division of the Public Advocate (“DPA”) and Delmarva Power & Light Company (“Delmarva”) entered into a Memorandum of Understanding (“MOU”) with respect to Senate Bill 80 providing that:

Delmarva Power, the Public Advocate and Commission Staff agree to work together to develop a proposal to submit to the Commission concerning enhanced distribution planning. Delmarva, DPA and Staff will work in good faith to provide recommendations and to submit any proposals for review and approval to the Commission by September 1, 2019; and

WHEREAS, on May 1, 2018, Chesapeake Utilities Corporation (“Chesapeake”) agreed to “participate in the meetings between Delmarva Power, Staff, and the DPA in a good faith effort to recommend to the Commission some form of distribution planning for Chesapeake that will be tied to DSIC applications;” and

WHEREAS, on July 2, 2018, Staff and the DPA filed a joint petition requesting the Commission to open a docket to examine electric and natural gas utilities’ distribution infrastructure spending and establish regulations for distribution system planning to apply to all electric, natural gas, and Class A water utilities; and

WHEREAS, by Order No. 9242 dated July 10, 2018, the Commission opened this docket to “facilitate working group meetings” for Delmarva, Staff, the DPA and “interested stakeholders to provide recommendations and to submit any proposals for review and approval to the Commission by September 1, 2019;”¹ and

WHEREAS, Delmarva, Chesapeake, Staff and the DPA met frequently as required by Order No. 9242 and the MOU; and

WHEREAS, on August 3, 2019, the DPA filed an unopposed motion with the Commission to extend the deadlines set forth in Order No. 9242, stating that Delmarva, the DPA and Staff had met several times since July 10, 2018 to discuss Delmarva’s electric system distribution planning and to prepare proposed regulations regarding electric system distribution planning, and that although they had made significant progress in preparing proposed electric system distribution planning regulations for the Commission’s review and approval, due to unforeseen events they would be unable to complete that process before the September 1, 2019 deadline; and

WHEREAS, the DPA further stated that during the working groups it became apparent that electric system distribution planning regulations would be more complicated than natural gas distribution system planning

1. The Commission did not require the Class A water utilities to participate in the working group meetings for purposes of drafting distribution planning regulations.

regulations, and so the stakeholders focused their energy on the electric regulations; and

WHEREAS, the DPA requested the Commission to extend the deadline for submitting proposed electric system distribution planning regulations to the Commission to October 22, 2019, and to extend the deadline for submitting proposed natural gas distribution system planning regulations to the Commission's second meeting in January 2020; and

WHEREAS, the Commission granted the DPA's motion in Order No. 9444 dated August 20, 2019; and

WHEREAS, Staff filed proposed electric system distribution planning regulations with the Commission on October 15, 2019, stating that the proposed regulations represented the consensus agreement of Delmarva, Staff, and the DPA, and requesting the Commission to enter an order approving them for publication and comment, pursuant to chapter 101 of the Administrative Procedures Act, 29 **Del.C.** §§10111-10119, with the Delaware Registrar of Regulations in its December 2019 *Register*; and

WHEREAS, the Commission has reviewed the proposed electric system distribution planning regulations that Delmarva, Staff and the DPA have jointly submitted;

**NOW, THEREFORE, BY THE AFFIRMATIVE VOTE OF NO FEWER THAN
THREE COMMISSIONERS, IT IS HEREBY ORDERED:**

1. That pursuant to 29 **Del.C.** §§10113 and 10115(a), the Commission Secretary shall transmit to the Registrar of Regulations for publication on December 1, 2019 in the Delaware *Register of Regulations* a copy of this Order, along with copies of the proposed and current rules (Exhibits A and B, respectively).

2. That the Commission Secretary shall publish in the manner described below the Notice of Proposed Rulemaking attached as Exhibit C. Such notice shall be published in the *Delaware State News* and *The News Journal* by December 1, 2019. The notice shall also be sent to the Delaware Registrar of Regulations for publication on December 1, 2019 in the Delaware *Register of Regulations*.

3. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, the Commission encourages persons or entities to submit written comments on or before January 23, 2020. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on Wednesday, January 8, 2020 at 1:00 p.m. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904.

4. That the Commission reserves jurisdiction and authority to enter such further orders as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair

Harold B. Gray, Commissioner

Commissioner (vacant)

Manubhai C. Karia, Commissioner

K. F. Drexler, Commissioner

ATTEST:

Donna Nickerson, Secretary

PUBLIC NOTICE OF PROPOSED REGULATIONS

The Delaware Public Service Commission ("Commission") proposes to revise its Electric Service Reliability and Quality Standards, found in 26 **DE Admin. Code** 3007, *et seq.* You can review the proposed revised Regulations in the December 2019 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed revised Regulations in the Commission's electronic filing system Delafile at <http://delafile.delaware.gov> and for docket # input 18-0935. If you wish to obtain written copies of the Order and proposed revised Regulations, please contact the Commission at (302) 736-7500. Copies in excess of the first twenty pages are \$0.10 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time copies are retrieved (if you retrieve them in person).

The Commission will hold a public hearing on the proposed revised Regulations on Wednesday, January 8, 2020, at 1:00 p.m. during its regularly-scheduled meeting, in the Hearing Room, Cannon Building, 861 Silver Lake Boulevard, First Floor, Dover, Delaware 19904.

Written comments can be filed electronically in Delafile at <http://delafile.delaware.gov/> by filling out the Public Comment Form located under Public Links. Written comments can also be mailed to Matthew Hartigan, Delaware Public Service Commission, Cannon Building, 861 Silver Lake Boulevard, Suite 100, Dover, Delaware 19904 or via email to matthew.hartigan@delaware.gov, with the subject line "Docket No. 18-0935." Written comments will be accepted through close of business on January 23, 2020 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/december2019/proposed/23 DE Reg 444RFA 12-01-19.pdf>

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

[3007 Electric Service Reliability and Quality Standards](#)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)
14 DE Admin. Code 718

REGULATORY IMPLEMENTING ORDER

718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122, the Secretary of Education intends to repeal 14 DE Admin. Code 718 Health Examinations for Employees of School Districts, Charter Schools and Alternative Programs. This regulation is being repealed as it is unnecessary or unduly burdensome, as these matters are covered by The Americans with Disabilities Act of 1990 as amended ("ADA").

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2019, in the form hereto attached as Exhibit "A". No comments were received for this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to repeal 14 DE Admin. Code 718 Health Examinations for Employees of School Districts, Charter Schools and Alternative Programs because it is unnecessary or unduly burdensome, as these matters are covered by The Americans with Disabilities Act of 1990 as amended ("ADA").

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 DE Admin. Code 718 Health Examinations for Employees of School Districts, Charter Schools and Alternative Programs. Therefore,

pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools and Alternative Programs attached hereto as *Exhibit "B"* is hereby repealed.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools and Alternative Programs repealed hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools and Alternative Programs in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 14, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 14th day of November 2019.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 14th day of November 2019

718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs

~~4.0 Required Physician's Certification~~

~~At initial employment, all employees of school districts, charter schools and alternative programs shall provide a physician's certification that he or she is free (a) from any medical condition which would prevent the applicant from performing the essential functions of the applicant's job and (b) free from any medical condition which cannot be remedied through reasonable accommodations. The physician's certification, along with any other medical information, shall be retained in an individual's file kept in accordance with any Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirement and separate from the individual's personnel file.~~

~~Non regulatory note: See 14 **DE Admin. Code** 805 The School Health Tuberculosis Control Program for TB screening and testing. Also, see 21 **Del.C.** §2708 and 14 **DE Admin. Code** 1105 for requirements for school bus drivers.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(2) and 131 (14 **Del.C.** §§122(b)(2) & 131)
14 **DE Admin. Code** 805

REGULATORY IMPLEMENTING ORDER

805 The School Health Tuberculosis (TB) Control Program

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§122(b)(2) and 131, the Secretary of Education intends to amend 14 **DE Admin. Code** 805 The School Health Tuberculosis (TBD) Control Program. This regulation concerns the health and physical welfare of public school students in the State. This regulation is being amended to clarify the length of time a student who is asymptomatic may remain in school as indicated by a licensed health care provider or Division of

Public Health, and to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on October 1, 2019, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 805 The School Health Tuberculosis (TBD) Control Program in order to clarify the length of time a student who is asymptomatic may remain in school as indicated by a licensed health care provider or Division of Public Health, and to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 805 The School Health Tuberculosis (TBD) Control Program. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 805 The School Health Tuberculosis (TBD) Control Program attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 805 The School Health Tuberculosis (TBD) Control Program hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 805 The School Health Tuberculosis (TBD) Control Program amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 805 The School Health Tuberculosis (TBD) Control Program in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 14, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 14th day of November 2019.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 14th day of November 2019

805 The School Health Tuberculosis (TB) Control Program

1.0 Definitions

"**New School Enterer**" means any child ~~between the ages of one year and twenty one (21) years~~ entering or being admitted to a Delaware public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools. For purposes of this regulation, "new school enterer" shall also include any child who is re-enrolled in a Delaware public school following travel or residency of one month in a location or facility identified by the Delaware Division of Public Health as an area at risk for tuberculosis exposure.

"School Staff and Extended Services Personnel" means all persons hired as full or part time employees in a public school. This includes, but is not limited to teachers, administrators, substitutes, contract employees, bus drivers and student teachers whether compensated or not.

"Tuberculosis Risk Assessment" means a formal assessment by a healthcare professional to determine possible tuberculosis exposure through the use of a health history or questionnaire.

"Tuberculosis Test" means a Mantoux skin test, Quantiferon Gold blood test, or other test approved by the Delaware Division of Public Health.

"Verification" means a documented evaluation of the individual's disease status.

"Volunteers" ~~mean~~ means those persons who give their time to help others for no monetary reward and who share the same air space with public school students and staff on a regularly scheduled basis.

2.0 School Staff and Extended Services Personnel

- 2.1 School Staff and Extended Services personnel shall provide the Tuberculosis Test results from a test administered within the past ~~42~~ twelve (12) months during the first ~~45~~ fifteen (15) working days of employment.
 - 2.1.1 Tuberculosis Test requirements may be waived for public school staff and extended services personnel who present a notarized statement that tuberculosis testing is against their religious beliefs. In such cases, the individual shall complete the Delaware Department of Education TB Health Questionnaire for School Employees or provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.
 - 2.1.1.1 If a school staff member or extended services person, who has submitted a waiver because of religious beliefs, answers affirmatively to any of the questions in the Delaware Department of Education TB Health Questionnaire for School Employees he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.
 - 2.1.2 School Staff and Extended Services Personnel need not be retested if they move, within Delaware, from district to district, district to charter school, charter school to district, or charter school to charter school within a ~~five-year~~ five (5) year period; however, a copy of the result of the latest Tuberculosis Test shall be provided to the new district or charter school within sixty (60) days.
- 2.2 Every fifth year, by October 15th, all public school staff and extended services personnel shall complete the Delaware Department of Education TB Health Questionnaire for School Employees or, within two (2) weeks, provide Tuberculosis Test results administered within the last twelve (12) months.
 - 2.2.1 If a school staff member or extended services staff member answers affirmatively to any of the questions in the *Delaware Department of Education TB Health Questionnaire for School Employees* he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.
- 2.3 All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential personnel medical information.

3.0 Volunteers

- 3.1 Volunteers shall complete the *Delaware Department of Education's TB Health Questionnaire for Volunteers in Public Schools* prior to their assignment and every fifth year thereafter.
 - 3.1.1 If the volunteer answers affirmatively to any of the questions, he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to the students or staff.

- 3.2 ~~Each public school nurse shall collect and monitor all documentation related to the volunteer's School Health Tuberculosis (TB) Control Program and store them in the school nurse's office in a confidential manner. All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential personnel medical information.~~

4.0 New School Enterers

- 4.1 New school enterers shall provide tuberculosis screening results from either a Tuberculosis Test or the results of a Tuberculosis Risk Assessment administered within the past 42 ~~twelve (12)~~ months prior to school entry.
- 4.1.1 If the new school enterer is in compliance with the other school entry health requirements, a school nurse who is trained in the use of the *Delaware Department of Education TB Risk Assessment Questionnaire for Students* may administer the questionnaire to the student's parent(s), guardian(s) or Relative Caregiver or to a new school enterer who has reached the statutory age of majority (18).
- 4.1.1.1 If a student's parent(s), guardian(s) or Relative Caregiver or a student 18 years or older answers affirmatively to any of the questions, he/she shall, within two (2) weeks, provide proof of tuberculosis testing results or provide verification from a licensed health care provider or the Division of Public Health that the student does not pose a threat of transmitting tuberculosis to staff or other students.
- 4.2 ~~School nurses shall record and maintain documentation relative to the School Health Tuberculosis (TB) Control Program. All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential student medical information.~~

5.0 Tuberculosis Status Verification and Follow up

- 5.1 Tuberculosis Status shall be determined through the use of a Tuberculosis Risk Assessment, Tuberculosis Test or other testing, which may include x-ray or sputum culture. Individuals who either refuse the Tuberculosis Test or have positive reactions to the same, or give positive responses to a tuberculosis risk assessment shall provide verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to staff or other students.
- 5.1.1 Verification shall include Mantoux results recorded in millimeters (if test was administered), or other Tuberculosis Test results, current disease status (i.e. contagious or noncontagious), current treatment (or completion of preventative treatment for tuberculosis) and date when the individual may return to his/her school assignment without posing a risk to the school setting.
- 5.1.2 Verification from a health care provider or Division of Public Health shall be required only once if treatment was completed successfully.
- 5.1.3 Updated information regarding disease status and treatment shall be provided to the public school by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.
- 5.1.4 Persons with a positive Tuberculosis Test, without active disease, who do not receive prophylactic treatment shall be excluded from school in the event of showing any signs or symptoms of active, infectious disease as described by the Division of Public Health.
- 5.2 In the event an individual shows any signs or symptoms of active tuberculosis infection, he/she shall be excluded from school until all required medical verification is received by the school. During the specified verification and follow-up an asymptomatic individual, as described by the Division of Public Health, may remain in school until testing and evaluations are completed, but no longer than ~~six (6)~~ ten (10) weeks.

Non regulatory note: See 14 **DE Admin. Code** 930 Supportive Instruction (Homebound)

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapter 31 and Section 1604(8) (14 Del.C. Ch. 31 & §1604(8))

14 DE Admin. Code 930

REGULATORY IMPLEMENTING ORDER

930 Supportive Instruction (Homebound)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. Chapter 31 and §1604(8), the Secretary of Education intends to amend 14 DE Admin. Code 930 Supportive Instruction (Homebound). The Department has reviewed the regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring bases every four years. The Department intends to update the regulation to clarify illness and chronic conditions are not limited to physical illness and includes mental illness and conditions.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on October 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens (GACEC) and Jon Cooper of the Colonial School District. The Council's comments were in support of the amendments but further suggested that a broader category of medical professionals have authority to certify that a child has a mental health condition and that this be reflected in Section 2.3. The Department considered the comments; however, determined the proposed language has appropriately expanded the medical professionals eligible to certify absences due to a mental illness or mental health condition. Dr. Cooper's comments were in support of the proposed amendments as they "appropriately document" that mental health needs are equal to medical needs with regard to supportive instruction.

Clarifications were made regarding supportive instruction for pre-k students enrolled in a district. Several districts are serving pre-k students beyond those covered under IDEA.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 930 Supportive Instruction (Homebound) in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring bases every four years and to update the regulation to clarify illness and chronic conditions are not limited to physical illness and includes mental illness and conditions.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 930 Supportive Instruction (Homebound). Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 930 Supportive Instruction (Homebound) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 930 Supportive Instruction (Homebound) hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 DE Admin. Code 930 Supportive Instruction (Homebound) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 930 Supportive Instruction (Homebound) in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on November 14, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware*

Register of Regulations.

IT IS SO ORDERED the 14th day of November 2019.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 14th day of November 2019

930 Supportive Instruction (Homebound)

1.0 Definition

“**Supportive Instruction**” means an alternative educational program provided at home, in a hospital or at a related site for a student temporarily at home or hospitalized for a sudden physical or mental illness, injury, episodic flare up of a chronic physical or mental health condition, accident, or pregnancy, childbirth, or related medical condition to pregnancy or childbirth. Subject to 14 ~~Del.C.~~, Del.C. §1604(8), this may also include an alternative educational program provided at home to a student that has been suspended, expelled or subject to expulsion based upon the student’s local school district or charter school policy.

- 1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.
- 1.2 Services for children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C 1400 ~~et seq et seq.~~), and its regulations (34 CFR parts 300 and 301), 14 ~~Del.C.~~, Del.C. Ch. 31, and the Department of Education’s regulations on Children with Disabilities (14 ~~DE Admin. Code~~ 922 through 929) shall be provided in accordance with these laws and shall be processed under the district’s or charter school’s special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and its regulations, 14 ~~Del.C.~~, Chapter Del.C. Ch. 31, and the Department of Education’s regulations on Children with Disabilities.
- 1.3 Nothing in this regulation shall alter a district’s or charter school’s duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

2.0 Eligibility for Conditions other than Suspension, Expulsion or Subject to Expulsion

- 2.1 A student enrolled in a school district or charter school is eligible for supportive instruction when the district or charter school receives the required certification that one or more of the following conditions will prevent the student from attending school for at least ten (10) school days:
 - 2.1.1 Sudden physical or mental illness,
 - 2.1.2 Accident,
 - 2.1.3 Episodic flare up of a chronic physical or mental health condition,
 - 2.1.4 Injury, or
 - 2.1.5 Pregnancy, childbirth or related medical condition.
- 2.2 A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician must certify absences due to a medical condition.
 - ~~2.2.1 A student qualifies for supportive instruction during absences because of pregnancy, childbirth, or related medical conditions, which shall be excused absences for as long as deemed medically necessary by a physician or an advanced practice nurse, employed by and who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.~~

~~2.2.22.2.1~~ A student who remains enrolled in school is eligible for supportive instruction during a postpartum period for as long as deemed medically necessary. Postpartum absences shall be certified by a physician or an advanced practice nurse, employed by and who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.

2.3 ~~Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference~~ A licensed clinical mental health provider (such as a Licensed Clinical Social Worker, psychiatric nurse practitioner, psychologist, or psychiatrist) must certify absences due to a mental illness or mental health condition.

2.4 Supportive instruction can be requested as an in school transitional program that follows a period of supportive instruction that was provided outside of the school setting. If the supportive instruction is provided as an in school transitional program, it must be approved through a staff conference.

3.0 Implementation

3.1 Supportive instruction for a student shall begin as soon as the documentation required by Section 2.0 is received. Supportive instruction may continue upon the return to school setting only in those exceptional cases where it is determined that a student needs a transitional program to guarantee a successful return to the school setting in accordance with subsection 2.4.

3.1.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.

3.1.1.1 The school shall provide a minimum of ~~3~~ three (3) hours of supportive instruction each week of eligibility for a K to 5th grade student, and a minimum of five hours each week of eligibility for a ~~6-6th~~ to 12th grade student. There is no minimum for in school transition.

[3.1.1.1.1 For a pre-school student identified with a disability pursuant to 14 Del.C. §3122, the district shall provide supportive instruction each week of eligibility in an amount recommended by the student's individualized education program (IEP) team.

3.1.1.1.2 For an enrolled pre-school student, the district may, but is not required to, provide supportive instruction. There is no minimum number of hours each week of eligibility.]

3.1.1.2 Nothing in this regulation shall prevent a school district or charter school from providing additional hours of supportive instruction to an eligible student from other available funding sources.

3.1.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school setting the following school year.

4.0 Eligibility and Implementation for Suspension, Expulsion, or Subject to Expulsion

If a local school district or charter school provides for supportive instruction (homebound) for students that have been suspended or expelled, the local school district or charter school shall have a written policy, which conforms with 14 **Del.C.** §1604(8), and any of its implementing regulations, regarding eligibility and implementation.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DELAWARE HEALTH CARE COMMISSION

Statutory Authority: 16 Delaware Code, Section 9903 (16 Del.C. §9903)

ORDER

Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing Reinsurance. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsection 9903.

On September 1, 2019 (Volume 23, Issue 3), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 1, 2019, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Reinsurance were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (September 1, 2019 through October 1, 2019).

Entities offering written comments include:

- State Council for Persons with Disabilities (SCPD), Kyle Hodges, Policy Director
- Governor’s Advisory Council for Exceptional Citizens (GACEC), Ann Fisher, Chairperson; Wendy Strauss, Executive Director
- Highmark Blue Cross Blue Shield Delaware, Kellie M. Garson, Esq., Counsel

Comments from the State Council for Persons with Disabilities (SCPD)

The act and regulations are a laudable attempt to both offer more choices to health consumers while proving an incentive and safety net to carriers who offer benefit plans covered by the act if the claims they pay become overwhelming financially. It is also meant to “shore up” the ACA marketplace for Delawareans. Delaware has joined a growing number of states that have instituted a reinsurance program, which includes Alaska, Maine, Maryland, and New Jersey. The threshold amount and the percentage of reimbursement differ from state to state. For example, Maryland’s reinsurance program pays 80% of the individual market claims that are between \$20,000 and \$250,000. If possible, the Executive Director should consider lowering the threshold amount from that stated in the proposal, which should help keep premiums from increasing and may well result in a decrease. Before the reinsurance program, insurers in Maryland had proposed significant rate increases; after implementation of the reinsurance program, Maryland saw the average premium decrease markedly.

- **Response:** The Health Care Commission appreciates this suggestion. Commission staff worked extensively with nationally renowned actuaries to develop a proposal that would be the most appropriate for Delaware’s individual health insurance market in calendar year 2020. However, we will have the opportunity to review and set thresholds each year of the program, and will consider your comments during future updates to the program for calendar year 2021 and beyond.

Comments from the Governor’s Advisory Council for Exceptional Citizens (GACEC)

The Act and regulations are an admirable attempt to both offer more choices to health consumers while proving an incentive and safety net to carriers who offer benefit plans covered by the act if the claims they pay become overwhelming financially. It is also meant to support the ACA marketplace for Delawareans. Delaware has joined a growing number of states that have instituted a reinsurance program, which includes Alaska, Maine, Maryland, and New Jersey. The threshold amount and the percentage of reimbursement differ from state to state.

For example, Maryland's reinsurance program pays 80% of the individual market claims that are between \$20,000 and \$250,000. If possible, the DHCC should consider lowering the threshold amount from that stated in the proposal, which should help keep premiums from increasing and may well result in a decrease. Before the reinsurance program, insurers in Maryland had proposed significant rate increases; after implementation of the reinsurance program, Maryland saw the average premium decrease markedly.

- **Response:** The Health Care Commission appreciates this suggestion. Commission staff worked extensively with nationally renowned actuaries to develop a proposal that would be the most appropriate for Delaware's individual health insurance market in calendar year 2020. However, we will have the opportunity to review and set thresholds each year of the program, and will consider your comments during future updates to the program for calendar year 2021 and beyond.

Comments from Highmark Blue Cross Blue Shield Delaware

We suggest more specificity as to when the reinsurance parameters will be set each year. Ideally, this should be communicated to issuers in 1Q of the year prior to the effective date so that issuers may incorporate these parameters into their rate calculations in advance of the DOI's mandatory rate filing submission deadline in 2Q of the year prior to the effective date.

- **Response:** The Health Care Commission appreciates this suggestion. We want to keep the language pertaining to parameters general at this time, as anything more specific could affect the CMS timetable. We will re-evaluate the parameters, including coinsurance changes, after the first year.

Section 4.1 and its subsections set forth requirements of issuers. Section 4.2 states that "*In lieu of* subsections 4.1.1. through 4.1.8, the State" may contract with CMS to use the EDGE server for its Reinsurance Program.

Are the requirements of Section 4.1 still required of issuers if the State is using the EDGE server?

- **Response:** The Health Care Commission appreciates this comment. The requirements of Section 4.1 would not be required if the State used the EDGE server. At this time, the State is working on a contract to implement the EDGE server in Delaware's reinsurance program.

FINDINGS OF FACT:

Some changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy, should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Reinsurance is adopted and shall become effective December 11, 2019 (ten days), after publication of the final regulation in the Delaware *Register of Regulations*.

10/16/19

Date

DR. KARA ODOM WALKER
SECRETARY

Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund

1.0 Purpose

- 1.1 The purpose of these Regulations is to establish procedures for the Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund established pursuant to House Bill No. 193, 150th General Assembly for the purpose of stabilizing insurance rates and premiums in the individual market and providing greater financial certainty to consumers of health insurance in the State.
- 1.2 Policies and procedures for implementation of these regulations may be established in manuals and other documents by the Executive Director of the Delaware Health Care Commission or the Cabinet Secretary of Delaware Health and Social Services.
- 1.3 Nothing in these regulations shall preempt or otherwise conflict with any applicable state and federal laws and rules.

2.0 Authority

This regulation is promulgated pursuant to the authority granted in Chapter 99, Title 16, of the Delaware Code.

3.0 Definitions

The following definitions shall apply to this regulation:

“Attachment point” means the threshold dollar amount, adopted by the Executive Director, after which point the claims costs of an insured individual's covered benefits under a reinsurance-eligible health benefit plan in a benefit year are eligible for reinsurance payments.

“Benefit year” means a calendar year beginning on or after January 1, 2020 for which reinsurance eligible health benefit plan provides health insurance coverage.

“Cabinet Secretary” means the Cabinet Secretary of Delaware Health and Social Services.

“Coinsurance rate” means the rate at which the Executive Director may reimburse a reinsurance eligible health benefit plan for claims costs incurred after the attachment point and before the reinsurance cap for an insured individual's covered benefits in a benefit year.

“Commission” or **“DHCC”** mean the Delaware Health Care Commission created pursuant to 16 Del.C. §9902.

“DHSS” means Department of Health and Social Services.

“DOI” means Department of Insurance.

“Executive Director” means the Executive Director of the Delaware Health Care Commission or designee.

“Health insurance carrier” or **“carrier”** means any entity that provides health insurance in this State. For the purposes of this regulation, carrier includes an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. The entities providing insurance under the following types of plans do not meet the definition of carrier, per this regulation: plans of health insurance or health benefits designed for issuance to persons eligible for coverage under Titles XVIII, XIX, and XXI of the Social Security Act (42 U.S.C. §§1395 et seq., 1396 et seq., and 1397aa et seq.), known as Medicare, Medicaid; Chapter 52 of Title 29 of the Delaware Code; or any other similar coverage under state or federal governmental plans. Additionally, this regulation shall not apply to stand-alone dental insurance, stand-alone vision insurance, long-term care insurance, disability income insurance and all accident-only insurance.

“Health insurance coverage” means legal entitlement to payment or reimbursement for health care costs, generally under a contract with a health insurance company[; or] a group health plan offered in connection with employment[; ~~or a government program like Medicare, Medicaid, or the Children's Health Insurance Program (CHIP).~~].

“Program” means the Delaware Health Insurance Individual Market Stabilization Reinsurance Program created by 16 Del.C. §9903(g).

“Regulations” mean all parts of the Rules and Regulations pertaining to the Delaware Health Insurance Individual Market Stabilization Reinsurance Program.

“Reinsurance cap” means the threshold dollar amount, adopted by the Executive Director, for claims costs incurred by a reinsurance eligible health benefit plan for an insured individual's covered benefits in a benefit year, after which threshold the claims costs for the benefits are no longer eligible for reinsurance payments.

“Reinsurance eligible claim” means a claim for services covered under a reinsurance eligible health benefit plan that is incurred by a reinsurance eligible issuer during the applicable benefit year and within the period of eligibility for the member that is paid by the reinsurance eligible issuer before June 1 of the following year. A reinsurance eligible claim shall not be adjusted for risk nor for pharmacy rebates. A reinsurance eligible claim does include a claim for certain abortion services, as defined in 45 C.F.R. §156.280(d)(1).

“Reinsurance eligible health benefit plan” means health insurance coverage offered on the individual market that:

1. Constitutes minimum essential coverage, as set forth in 26 U.S.C. §5000A(f);
2. Is approved by the State's ~~health insurance commissioner~~ Insurance Commissioner];
3. Is delivered or issued for delivery by a carrier in the State; and
4. Is not a grandfathered plan as defined in §1251 of the Patient Protection and Affordable Care Act, 29 CFR §2590.715-1251.

"Reinsurance eligible individual" means an individual who is insured in a reinsurance eligible health benefit plan on or after January 1, 2020.

"Reinsurance eligible issuer" means a health insurance carrier that offers a reinsurance eligible health benefit plan to reinsurance eligible individuals.

"Reinsurance payment" means payments issued to a reinsurance eligible issuer in accordance with Section 6.0.

"State" means the State of Delaware.

4.0 Information Reporting

- 4.1 As a condition of receiving reinsurance payments from the program, a reinsurance eligible issuer must provide the following information to the program in the form and manner prescribed by the Executive Director:
 - 4.1.1 The name and company code assigned to the reinsurance eligible issuer by the National Association of Insurance Commissioners;
 - 4.1.2 The identification number assigned to the reinsurance eligible issuer by the DHCC;
 - 4.1.3 The total amount of the reinsurance eligible issuer's reinsurance eligible claims for the benefit year;
 - 4.1.4 The portion of the reinsurance eligible issuer's total reinsurance eligible claims for the benefit year that fall between the attachment point and reinsurance cap;
 - 4.1.5 A summary data file containing ~~the following de-identified~~ information for each reinsurance eligible individual with claims for which reinsurance payments are being requested:
 - 4.1.5.1 ~~The member identification number assigned by the reinsurance eligible issuer to the reinsurance eligible individual;~~
 - 4.1.5.2** The start and end dates of coverage for the reinsurance eligible individual;
 - ~~**4.1.5.3**~~ **4.1.5.2** The DHCC plan identification number for the reinsurance eligible health benefit plan in which the reinsurance eligible individual was enrolled;
 - ~~**4.1.5.4**~~ **4.1.5.3** The total amount of reinsurance eligible claims for the reinsurance eligible individual for the benefit year; and
 - ~~**4.1.5.5**~~ **4.1.5.4** The total amount of reinsurance eligible claims for the reinsurance eligible individual for the benefit year that fall between the attachment point and reinsurance cap.
 - 4.1.6 If requested by the Executive Director~~, in conjunction with the final year end report or an audit~~, a ~~detailed de-identified~~ claims file extracted from the reinsurance eligible issuer's claims processing system that includes the issuer's complete record of all reinsurance eligible claims for the benefit year~~, in accordance with applicable state and federal confidentiality laws~~];
 - 4.1.7 An attestation signed by an executive officer of the reinsurance eligible issuer stating that the information is accurate as of the date of submission; and
 - 4.1.8 Any other information requested by the Executive Director that he or she deems necessary to administer the program~~, in accordance with applicable state and federal confidentiality laws~~].
- 4.2 In lieu of subsections 4.1.1 through ~~4.1.5~~4.1.8, the State may enter a legal agreement with the Centers for Medicare and Medicaid Services (CMS), whereby the State shall use the CMS EDGE server for the purposes of the program.
- 4.3 Carriers must sign an attestation that they meet the submission and data requirements of the State Reinsurance Program through their participation in CMS EDGE Server.

- 4.4 As a condition of receiving reinsurance payments from the program, a reinsurance eligible issuer must submit ~~[the information required under subsection 4.1 to the DHCC; one interim report due on March 31st after the benefit year, containing de-identified data from the prior benefit year with claims paid by February 28th, and an estimate of claims payments still outstanding. This report will be used to aid the Executive Director in setting parameters for future program years. The report shall be issued using a secure method of transmission approved by the Executive Director.~~
- ~~4.4.1 Using a secure method of transmission approved by the Executive Director; and~~
- ~~4.4.2 On the following timeframes:~~
- ~~4.4.2.1 Upon request, one interim report during the benefit year for the purposes of estimating reinsurance payments;~~
- ~~4.4.2.2 One interim report due on February 15th after the benefit year, containing data from the prior benefit year with claims paid by January 31st, and an estimate of claims payments still outstanding. This report will be used to aid the Executive Director in setting parameters for future program years; and~~
- ~~4.4.2.3 One final report due June 30th after the benefit year, containing all reinsurance eligible claims incurred during the prior benefit year and paid by June 1st for the purposes of calculating final reinsurance payments to carriers.]~~
- 4.5 DHCC shall annually receive from the Department of Insurance the actual Second Lowest Cost Silver Plan premium under the Affordable Care Act 1332 waiver, 45 U.S.C. §18052, and an estimate of the premium as it would have been without the waiver.

5.0 Reinsurance Parameters

Annually, the Executive Director shall set an attachment point, cap, and coinsurance rate for the reinsurance program for the upcoming year based on anticipated revenue and recently reported premium, enrollment, and claims data.

6.0 Reinsurance Payments

- 6.1 A reinsurance eligible issuer becomes eligible for a reinsurance payment when the claims costs for at least one reinsurance eligible individual's covered benefits in a calendar year exceed the attachment point.
- 6.2 The Executive Director shall calculate the total reinsurance payment owed to each reinsurance eligible issuer.
- 6.2.1 Subject to subsections 6.2.2 and 6.2.3, the reinsurance payment made to each reinsurance eligible issuer for a benefit year will be the product of the coinsurance rate and the portion of the reinsurance eligible issuer's total reinsurance eligible claims for the benefit year that fall between the attachment point and the reinsurance cap.
- 6.2.2 The Executive Director shall uniformly reduce or increase the coinsurance rate to the extent necessary, but at no time shall the increase exceed 100%, to ensure that reinsurance payments **[equal do not exceed]** the total available funding for the benefit year, as determined by the Executive Director in his or her sole discretion.
- 6.2.3 In making the calculation under subsection 6.2.1, the Executive Director in his or her sole discretion may disregard any or all reinsurance eligible claims reported by a reinsurance eligible issuer under Section 4.0 that cannot be verified as part of the audit described under subsection 7.1.
- 6.3 The program shall issue reinsurance payments to all reinsurance eligible issuers on an annual basis in the year following each benefit year. **[The Executive Director shall issue a payment schedule to all issuers.]**
- 6.4 Payments shall be made directly to reinsurance eligible issuers by a method designated by the Executive Director.

6.5 ~~The program shall not issue reinsurance payments if~~ If the Executive Director determines that a reinsurance eligible issuer has substantively failed to comply with this regulation[, he or she shall give notice thereof to the issuer stating the Executive Director's findings and stating how the nonconformance can be remedied. The Executive Director shall specify a time period for remedying the nonconformance. The program shall not issue reinsurance payments until the nonconformance is remedied].

7.0 Duties of the Administrator

7.1 The program shall be administered by the Executive Director. As administrator of the program, the Executive Director may:

7.1.1 Conduct an audit of the information submitted under Section 4.0.

7.1.2 Notify reinsurance eligible issuers of the results of the calculation described in Section 6.0, including any modifications of the coinsurance rate **[once HCC receives the results from CMS]**.

7.1.3 Issue reinsurance payments to each reinsurance eligible issuer in accordance with Section 6.0.

7.1.4 Assign the functions vested in him or her by the Delaware Health Insurance Individual Market Stabilization Reinsurance Program and these regulations to subordinate officers and employees as he or she deems necessary. The designee shall have the same power and authority that would be afforded to the Executive Director.

7.1.5 Contract with other state agencies and third parties as he or she deems necessary **[to administer the program]**.

7.1.6 Use, access, store, and disclose the information submitted to the program under Section 4.0, including disclosing the information to the ~~Commissioner of the Department of Insurance~~ **Insurance Commissioner, in accordance with applicable state and federal confidentiality laws,** for the purposes of ensuring the efficient administration of the program and to reduce the reporting burden on issuers.

7.1.7 Submit an annual report to the Governor and General Assembly, in consultation with the DHSS and DOI **[and in accordance with applicable state and federal confidentiality laws]**.

7.1.8 Perform other functions he or she deems reasonably necessary to administer the program.

8.0 Document Retention and Audits

8.1 A reinsurance eligible issuer must maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate its requests for reinsurance payments made pursuant to this regulation for a minimum period of 10 years and must make those documents and records available to the program upon request by the Executive Director for purposes of verification, investigation, or audit, **in accordance with applicable state and federal confidentiality laws]**.

8.2 The Executive Director may audit a reinsurance eligible issuer to assess its compliance with the requirements of this **[Section regulation]**. The reinsurance eligible issuer must ensure that its relevant contractors, subcontractors, or agents cooperate with any audit under this Section. If an audit results in a finding of material weakness or significant deficiency with respect to compliance with any requirement of this Section, the reinsurance eligible issuer must complete all of the following:

8.2.1 Within 30 calendar days of the issuance of the final audit report, provide a written corrective action plan to the program for approval;

8.2.2 Implement that plan; and

8.2.3 Provide to the program written documentation of the corrective actions once taken.

8.3 If, at the conclusion of the audit, the Executive Director determines that a reinsurance eligible issuer received excess reinsurance payments, at the request of the Executive Director, the reinsurance eligible issuer shall return the excess payments to the program in a manner to be determined by the Executive Director within 60 days of his or her request.

9.0 Severability

If any provisions of this regulation or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of these regulations which can be given effect, and to this end the provisions of these regulations are declared to be severable.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Telehealth Services Originating Site Fees

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding telehealth services specifically, to add facilities to which originating site fees can be paid. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after January 1, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 4.19-B Page 24 of Title XIX Medicaid State Plan regarding telehealth services originating site fees.

Background

For the purposes of Medicaid, telehealth seeks to improve a patient’s health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site. This electronic communication means the use of interactive telecommunications equipment that includes, at a minimum, audio and visual equipment.

According to the Centers for Medicare and Medicaid Services (CMS), the Medicaid program and the federal Medicaid statute (Title XIX of the Social Security Act) does not recognize telehealth as a distinct service. CMS does note, however, that telehealth “is viewed as a cost-effective alternative to the more traditional face-to-face way of providing medical care” (e.g., face-to-face consultations or examinations between provider and patient) that states can choose to cover under Medicaid and that there is “flexibility inherent in federal law to create innovative payment methodologies for services that incorporate telemedicine technology.”

Statutory Authority

- 42 CFR 410.78, *Telehealth services*
- 42 CFR Part 440, *Services*

Purpose

The purpose of this proposed regulation is to add facilities to which originating site fees can be paid, specifically Federally Qualified Health Centers and School Based Wellness Centers.

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 were to have been received by 4:30 p.m. on October 1, 2019.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

There is no anticipated fiscal impact. There is the potential to improve access to services and implementation will likely reduce cost in higher cost settings such as emergency rooms.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: One commenter endorsed the proposed changes to the Medicaid State Plan to add facilities to which originating site fees can be paid.

Agency Response: DMMA appreciates the endorsement.

Comment: One commenter inquired about any impact on the Telehealth Parity Regulation.

Agency Response: The proposed regulation changes will not impact TITLE 18 INSURANCE DELAWARE ADMINISTRATIVE CODE – 14 Health Insurance Specific Provisions – 1409 Insurance Coverage for Telemedicine and Telehealth.

Comment: One commenter asked for questioned if the originating site fee claims and the PPS triggering claims need to be billed separately or if they could be billed on one claim?

Agency Response: Agency Response: According to Attachment 4.19-B, Page 24 of the STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT, STATE/TERRITORY: DELAWARE, METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES “The site fee is only for the originating site and the site provider would not be entitled to any other payment for the telemedicine service which was delivered by the distant site. Fee schedules for telemedicine provided services are available on the DMAP website at: <https://medicaid.dhss.delaware.gov/provider>.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- State Council for Persons with Disabilities; and
- Westside Family Healthcare.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding telehealth services specifically, to add facilities to which originating site fees can be paid, is adopted and shall be final effective December 11, 2019.

10/29/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary,
DHSS

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

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES (Continued)

Payment for the telehealth originating site facility fee is made at the same percentage of the Medicare rate that is used for practitioner services on the date of service. The State currently pays practitioners at 98% of Medicare rates. The originating site fee will also be paid at 98% of the Medicare fee for the same service.

~~If either the delivering or originating site telemedicine fee methodology conflicts with the State defined reimbursement methodology for the particular provider type, the existing reimbursement methodology will apply. For Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs), where federal regulations mandate specific reimbursement methodologies, that requirement will take precedence over the originating site fee.~~

The site fee is only for the originating site and the site provider would not be entitled to any other payment for the telemedicine service which was delivered by the distant site.

Qualifying provider services include office visits, consultations, psychotherapy, medication management, psychiatric interview or examination, substance abuse screening and brief intervention, neurobehavioral examination, end stage renal disease services and medical nutrition therapy, etc.

Federally Qualified Health Centers and School-Based Wellness Centers acting in the role of an originating site provider with no other separately identifiable service being provided will only be paid the originating site telehealth fees and will not receive reimbursement for an encounter.

The telemedicine payment methodology shall be effective with dates of service on or after ~~July 2, 2012~~ September 1, 2019.

Fee schedules for telemedicine provided services are available on the DMAP website at: <http://www.dmap.state.de.us/downloads> <https://medicaid.dhss.delaware.gov/provider>.

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

Separate reimbursement is not made for the use of technological equipment and systems associated with a telemedicine application to render the service.

TN No. SPA	Approval Date
Supersedes	
TN No. SPA <u>12-011</u>	Effective Date <u>January 1, 2020</u>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Obesity Drugs

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Prescribed Drugs, specifically, to clarify policy related to drugs indicated for the treatment of obesity. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1-A Page 5 of Title XIX Medicaid State Plan regarding Prescribed Drugs, specifically, to clarify policy related to drugs indicated for the treatment of obesity.

Background

Delaware is a founding member of My Healthy Weight, an initiative committed to working with providers and beneficiaries to increase utilization of standardized benefits and to encourage the collection of obesity metrics. The initiative will provide millions of individuals nationally with consistent coverage to support healthy weight change.

As a result of that initiative, DMMA has begun a review of policies related to obesity covered services.

Statutory Authority

42 CFR §440.120

Purpose

The purpose of this proposed regulation is to clarify policy related to drugs indicated for the treatment of obesity.

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 were to have been received by 4:30 p.m. on October 1, 2019.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are

issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: Two commenters endorsed the proposed changes to the Medicaid State Plan to clarify policy related to drugs indicated for the treatment of obesity.

Agency Response: DMMA appreciates the endorsement.

Comment: The commenter suggested the amendment overlooks the issue of mental health. Specifically, the commenter asked the agency to consider removing drugs used for anorexia from the list of Medicaid's excluded drugs.

Agency Response: The agency appreciates the feedback on the exclusion of anorexia drugs. The state continues to address mental health care and improve treatment option aligned clinical guidelines. The referenced class will be added to future drug utilization board meeting agendas for review.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Governor's Advisory Council for Exceptional Citizens;
- State Council for Persons with Disabilities; and
- Nancy G.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Prescribed Drugs, specifically, to clarify policy related to drugs indicated for the treatment of obesity, is adopted and shall be final effective December 11, 2019.

10/29/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary,
DHSS

Revision: HCFA-PM-85-3 (BERC)
May 1985

Attachment 3.1-A
Page 5
OMB No. 0938-0193

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

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES
PROVIDED TO THE CATEGORICALLY NEEDY

12.a. Prescribed Drugs:

Drug Coverage

- 1) Drug products are covered when prescribed or ordered by a physician, or other licensed practitioner within the scope of their practice and when obtained from a licensed pharmacy. Covered drugs, as

defined in Section 1927(k)(2) of the Act, are those which are prescribed for a medically accepted indication, medically necessary, and produced by any pharmaceutical manufacturer, which has entered into and complies with a drug rebate agreement under Section 1927(a) of the Act.

- 2) The State will cover agents when used for cosmetic purposes or hair growth only when the state has determined that use to be medically necessary.
- 3) The State will cover drugs indicated for the treatment of obesity to address weight loss with co-morbid conditions with prior authorization.
- 4) Drugs excluded from coverage by Delaware Medicaid as provided by Section 1927(d)(2) of the Act, include:
 - a. Drugs designated less than effective by the FDA (DESI drugs) or which are identical, similar, or related to such drugs;
 - b. Drugs when used to promote fertility;
 - c. Drugs that have an investigational or experimental or unproven efficacy or safety status;
 - d. Drugs when used for anorexia, weight loss or weight gain, or weight loss for the sole purpose of cosmetic reasons. ~~Drugs indicated for the treatment of obesity to address weight loss with co-morbid conditions are covered by the DMAP with prior authorization.~~
- 5) Non-covered services also include: drugs used to correct sexual dysfunction and compound drugs (compound prescriptions must include at least one medication that on its own would be a covered entity).

Quantity and Duration

1. Dosage limits: Medications are limited to a maximum dose recommended by the FDA and appropriate medical compendia described in section 1927(k) of the Social Security Act, that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are specified in regional or national guidelines published by established expert groups such as the American Academy of Pediatrics, or guidelines recommended by the Delaware Medicaid Drug Utilization Review (DUR) Board and accepted by the DHSS Secretary.

TN No. SPA#	Approval Date _____
Supersedes	
TN No. #17-005	Effective Date <u>October 1, 2019</u>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Excluded Earnings of Temporary Census Workers

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Excluded Earnings of Temporary Census Workers, specifically, *to add additional eligibility groups to that exclusion*. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section

10115 in the September 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Supplement 8A to Attachment 2.6 A Page 2 of Title XIX Medicaid State Plan regarding Excluded Earnings of Temporary Census Workers, specifically, to add additional eligibility groups to that exclusion.

Background

The Centers for Medicare and Medicaid Services (CMS) allows states to exclude the earned income of temporary census workers for purposes of eligibility. The Delaware state plan currently excluded earnings of temporary census workers to ensure that individuals (and their families), who are temporarily hired by the Census Bureau to assist in Census activities, do not lose eligibility for Medicaid because of the income they receive from employment with the Census Bureau. The purpose of this amendment is to add additional eligibility groups to that exclusion.

Statutory Authority

CMS, Informational Bulletin dated July 3, 2019, *Temporary Census Income and Medicaid and CHIP Eligibility*

Purpose

To add additional eligibility groups to that exclusion.

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 were to have been received by 4:30 p.m. on October 1, 2019.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received related to the stated change.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2019 *Register of Regulations*

should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Excluded Earnings of Temporary Census Workers, specifically, to add additional eligibility groups to that exclusion, is adopted and shall be final effective December 11, 2019.

10/29/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary,
DHSS

Supplement 8A to Attachment 2.6A
Page 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: **DELAWARE**

LESS RESTRICTIVE METHODS OF TREATING INCOME
UNDER SECTION 1902(r)(2) OF THE ACT

- All wages paid by the U.S. Census Bureau for temporary employment related to ~~Decennial~~ Decennial Census activities are excluded for the eligibility groups listed below:

For 1902 mandatory eligibility groups:

- Poverty level pregnant women and infants (133% - 200% FPL) under 1902(a)(10)(A)(i)(VI);
- Poverty level children under age 6 (133% FPL) under 1902(a)(10)(A)(i)(VI);
- Poverty level children under age 19 (100% FPL) under 1902(a)(10)(A)(i)(VII), and;
- Qualified Pregnant Women and Children under 1902(a)(10)(A)(i)(III).

For optional categorically needy groups under 1902 as listed below:

NOTE: The Special Income Level Group under 1902(a)(10)(A)(ii)(V), the Individuals Who Would be Eligible if In an Institution Group under 1902(a)(10)(A)(ii)(VI) and the Hospice Group under 1902(a)(10)(A)(ii)(VII) cannot be included in this disregard.

- Individuals Eligible for Cash Except for Institutionalization under 1902(a)(10)(A)(ii)(IV);
- Individuals in Institutions Eligible under a Special Income Level under 1902(a)(10)(A)(ii)(V);
- Ticket to Work Basic Group 1902(a)(10)(A)(ii)(XV); and
- Individuals who would be eligible for **[ease cash]** assistance (AFDC of SSI) if they were not in a medical institution under 1902(a)(10)(A)(ii)(IV).

For 1905(p) eligibility groups:

- Qualified Medicare Beneficiaries (QMBs) under 1902(a)(10)(E)(i);
- Specified-Low Income Medicare Beneficiaries (SLMBs) under 1902(a)(10)(E)(iii); and,
- Qualifying Individuals (QIs) under 1902(a)(10)(E)(iv)(I).

TN No. SPA #	Approval Date
Supersedes	
TN No. SPA #09-001	Effective Date

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

ORDER

1300 Board of Examiners of Private Investigators & Private Security Agencies

Pursuant to the Guidelines in 29 Del.C. Section 10118(b)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on June 1, 2019 (Vol. 20, Issue 12). Following notice and a public hearing on the proposed adoption of amendments to Rule 8.0 *Private Investigators*, 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 *enable individuals to be employed with multiple agencies*.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will *enable individuals to be employed with multiple agencies*.
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 *enable individuals to be employed with multiple agencies*

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 Del.C. Section 1305 et seq. and, in particular, 24 Del.C. Section 1305(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 Del.C. Section 1305 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 Del.C. Section 1305(b) and guidelines of 29 Del.C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be *December 11, 2019*.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the *12th day of November, 2019*.

Lt. Colonel Melissa A. Zebley, Chairman
Director Robert J. Irwin
Vacant - Public Member
Mrs. Sandra C. Taylor
Mr. Mark W. Rainford

Vacant - Private Investigative Agency
Ms. Kelly R. Jansen
Vacant - Private Security Agency
Vacant - Armored Car Agency

*Please note that no changes were made to the regulation as originally proposed and published in the June 2019 issue of the *Register* at page 994 (22 DE Reg. 994). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1300 Board of Examiners of Private Investigators & Private Security Agencies

DEPARTMENT OF STATE**DIVISION OF HISTORICAL AND CULTURAL AFFAIRS**

Statutory Authority: 30 Delaware Code, Section 1815(b) (30 **Del.C.** §1815(b))
1 DE Admin. Code 901

ORDER**901 Historic Preservation Tax Credit Program**

In accordance with 29 **Del.C.** §10118 and 30 **Del.C.** Ch.18, Subch. II, §1815(b), for the reasons set forth herein, the Delaware Department of State, Division of Historical and Cultural Affairs enters this Order amending the Historic Preservation Tax Credit Program regulation.

NATURE OF THE PROCEEDINGS

Pursuant to its authority under 30 **Del.C.** Ch.18, Subch. II, §1815(b), the Division proposes to adopt an amended regulation for the Historic Preservation Tax Credit Program. The amended regulation clarifies Section 7.4 which allows applicants to request an increase in their credit award, revises Section 7.6 to provide a process for distributing unallocated credits and thereby addresses changes to the program made in the 149th and 150th General Assembly of Delaware, and makes other clarifications and technical corrections to Sections 6.5 and 7.6 of the regulation.

The Division gave notice of its intent to amend the regulation in the October 1, 2019 issue of the Delaware *Register of Regulations*. At that same time, the Division submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del.C.** Ch. 104. The Division solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with Delaware law, public notice regarding the proposed amendment of the regulation governing the Historic Preservation Tax Credit Program was published in the Delaware *Register of Regulations*. The public comment period was open from October 1, 2019 through October 31, 2019. Notice of the proposed amendment was also published in the News Journal and in the Delaware State News on October 8, 2019, was posted on the Division's website, and was distributed to recipients of the Division's e-newsletter. The Division received written comments.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Division received written comments from one developer that is an applicant of the tax credit program and from one municipality. The Division of Historical and Cultural Affairs has reviewed and considered each comment, summarized below, and responds as follows:

First, Applicability to Existing Projects: The Division received written comments requesting that "transitional projects," defined as those that were exempted from the regulation changes that went into effect November 11, 2018 (22 **DE Reg.** 409), should also be exempted from the proposed elimination of Section 7.4. Comments included: Denying transitional projects the ability to receive additional credits under Section 7.4 would be unfair and punish projects that were relying on this aspect of the regulation to complete a successful project; That projects were planned with the understanding that the provisions of Section 7.4 were in place in case project costs came in

higher than anticipated; That the ability to apply for increased credits under Section 7.4 informed the applicant's decision to submit a Request for Credit Award based on estimated rather than actual costs, which was still an option at the time the application was made; That a portion of newly available credits (provided for under 81 Del. Laws c. 303 and 82 Del. Laws c. 86) should be set aside and made available to such transitional projects.

Division Response: The Division reconsidered eliminating Section 7.4 of the regulation in its entirety, and the related removal of the third sentence in subsection 8.1.2. The Division has opted instead to revise Section 7.4. The amended regulation eliminates the specification that there be a 5% or greater increase in qualified costs, as the restriction is not supported in the enabling legislation or Delaware Code and could be seen as arbitrary. The Division added language to clarify that consideration of an increase in credits is at the discretion of the State Historic Preservation Officer, when there are documented increases in qualified costs. The Division also added language to notify applicants that the provisions of Section 10 of the regulation, which outlines the administrative review process, apply to disapprovals of a request for increased credits. The numbering of subsections in Section 7.0 and the language of subsection 8.1.2 of the regulation will remain unchanged.

Second, Technical Clarification: The Division received written comments requesting technical clarifications to the section of the regulations that describes how credits are set aside each year for certain types of projects (existing Section 7.6 of the regulation). Comments included: Is it necessary to specify the figure \$5 million as the starting point from which certain set-asides are made, as the current cap is higher.

Division Response: The Division replaced the reference to \$5 million with the phrase "a portion of."

Third, Question about Credits Reserved for Resident Curators: The Division received written comments concerning the credits available to resident curators. Comments included: Asking if the regulation is accurate in its reference to rollover of credits available to resident curators. Asking the Department of State to consider increasing the tax credit benefits available to people/properties in the resident curatorship programs of the State and New Castle County.

Division Response: The Division has reviewed and considered these comments and determined to retain the regulation as is. Existing subsection 7.6.1 of the regulation reflects the language established in Delaware Code regarding carryover of unused credits allotted to Resident Curators. The Division acknowledges that the carryover provision is not in keeping with other requirements of the program. In addition, the Division recognizes that there is current interest in improving the utility of resident curatorship programs in general. However, the Division finds that changes to these aspects of the historic preservation tax credit regulation and program would require legislation.

The Division determined that the changes made to the final regulation are nonsubstantive, in accordance with 29 **Del.C.** §10118(c).

FINDINGS OF FACT

The public was given the required notice of the Division's intention to amend the Historic Preservation Tax Credit Program regulation and was given opportunity to provide the Division with comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. Public comments were received. The Division has responded to the public comments in the Summary of Comments Received with Agency Response and Explanation of Changes. Thus, the Division finds that the proposed regulation, which amends Sections 7.4 and 7.6 of the regulation, should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS SO ORDERED, this 15th day of November 2019 that the proposed Division of Historical and Cultural Affairs Amendment to the Historic Preservation Tax Credit Program Regulation 901 is adopted and shall become effective ten (10) days from the date of its publication in the December 2019 Delaware Register of Regulations, in accordance with 29 **Del.C.** §10118(e) and (g).

Jeffery Bullock
Secretary of State

**901 Historic Preservation Tax Credit Program
(Break in Continuity of Sections)**

7.0 Procedures for Requesting a Credit Award

(Break in Continuity Within Section)

~~7.4 The Delaware State Historic Preservation Officer may consider an increase in a credit award where there has been an increase in qualified costs of greater than 5% of the total.~~

[7.4 The Delaware State Historic Preservation Officer may, at his/her discretion, consider an increase in a credit award where there has been a documented increase in qualified costs. A taxpayer whose request for an increase in credits is disapproved under this subsection may appeal in accordance with the administrative review process established in Section 10.0 of this regulation.]

~~7.5[7.47.5]~~Despite having been assigned a certain credit award, an applicant may only claim the amount of tax credits which are supported by their actual rehabilitation costs.

~~7.6[7.57.6]~~Each fiscal year, [~~\$5 million a portion~~] of the total that is allocated for Credit Awards is to be distributed as follows:

~~7.6.1[7.5.17.6.1]~~\$100,000 is reserved for distribution to qualified resident curators. If, in any fiscal year, there are insufficient qualified resident curators to exhaust this allotment, the unused credit amount will be available in the next fiscal year for award to any eligible project.

~~7.6.2[7.5.27.6.2]~~\$1.5 million is reserved for projects receiving a credit award of not more than \$300,000. After April 1, any unassigned portion of the \$1.5 million is released to be available for credit awards to any eligible project.

~~7.6.3[7.5.37.6.3]~~\$1.5 million is reserved for projects located in Downtown Development Districts, of which \$500,000 is reserved for projects in DDDs receiving tax credits of not more than \$300,000. After April 1, any unassigned portion of the \$1.5 million is released to be available for credit awards to any eligible project.

~~[7.5.47.6.4]~~Any credits authorized by the legislature that are not allocated by Delaware Code to a specific type of project shall be reserved for distribution in accordance with the methods established by Delaware Code.

8.0 Fees for Processing Rehabilitation Certification Request

8.1 Except as provided for under Section 12.0, all applicants who seek a Credit Award for their certified rehabilitation are subject to a fee.

(Break in Continuity Within Section)

8.1.2 The fee for all other applicants is as follows: \$250 due at the time the applicant submits their Request for Certification of Historic Property Application; 1.5% of the credit reservation requested in the Part 2 Certification of Rehabilitation; and 1.5% of the credit reservation or credit award (whichever is more) in the Part 3 Certification of Completion. The fee will be calculated by the Delaware State Historic Preservation Office based on the qualified expenditures indicated in the Part 2 Certification of Rehabilitation and its associated documentation. ~~If the applicant requests an increase the amount of tax credits to be awarded to a project, this will result in a supplemental fee.~~ **[If the applicant requests an increase in the amount of tax credits to be awarded to a project, this will result in a supplemental fee.]** All fees are non-refundable.

*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2019 issue of the *Register* at page 294 (23 DE Reg. 294). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

901 Historic Preservation Tax Credit Program

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 **Del.C.** §6010(a) & (c))
7 **DE Admin. Code** 1124

REGISTER NOTICE SAN #2018-07

7 DE Admin. Code 1124 Section 26.0 “Gasoline Dispensing Facility Stage I Vapor Recovery” and Section 36.0 “Vapor Emission Control at Gasoline Dispensing Facilities”

1. TITLE OF THE REGULATIONS:

7 **DE Admin. Code** 1124 Section 26 “Gasoline Dispensing Facility Stage I Vapor Recovery” and Section 36 “Vapor Emission Control at Gasoline Dispensing Facilities.”

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

Since the early 1990s, Delaware’s ambient air quality has been in nonattainment for the health based air quality standard for the pollutant ground-level ozone. Because gasoline vapors contain volatile organic compounds (VOC) and contribute to the formation of ground-level ozone, Delaware implemented, in 1993, 7 **DE Admin. Code** 1124 Section 26 and Section 36. Sections 26 and 36 contain requirements to control gasoline vapor emissions from gasoline tanks and motor vehicles at any gasoline dispensing facility (GDF) with a monthly throughput greater than 10,000 gallons (Stage I and Stage II vapor recovery). In addition, since 1998, automobile manufacturers have been required by the federal Clean Air Act (CAA) to install on-board refueling vapor recovery (ORVR) systems on new vehicles.

The ORVR system is effective for controlling gasoline vapor emissions from refueling the ORVR equipped vehicles. However, when Stage II vapor recovery equipped GDF’s are refueling ORVR equipped vehicles, fresh air is ingested into the GDF gasoline storage tanks, which leads to vapor growth in the gasoline storage tanks and vapor emissions from those tanks through leaks and pressure relief valves. The CAA allows Delaware to phase-out Stage II vapor recovery requirements, provided overall emissions do not increase.

The Division of Air Quality (DAQ) of the Department of Natural Resources and Environmental Control (DNREC, or the Department) is proposing amendments to Section 26 and Section 36 to require (1) any new GDF to install a Stage I Enhanced Vapor Recovery (EVR) system, instead of a Stage II vapor recovery system, at construction, and (2) any existing GDF to decommission its Stage II vapor recovery system by December 31, 2021 and to install a Stage I EVR system by December 31, 2025. The proposed amendments will also require a regulated GDF to monitor vapor-tight status of its gasoline storage tanks by performing annual pressure decay tests or by installing a continuous pressure monitoring (CPM) system.

DAQ is also proposing to submit to EPA a revision to Delaware State Implementation Plan (SIP), entitled “Decommissioning Stage II Vapor Recovery Systems and Requiring Stage I Enhanced Vapor Recovery Systems at Gasoline Dispensing Facilities.” The objectives of the proposed SIP revision are to (1) analyze the regulatory impacts of the above regulation amendments on Delaware’s emissions of volatile organic compounds (VOC), and (2) demonstrate that the above regulatory amendments meet the anti-backsliding requirements of the CAA Sections 182(b)(2) and 110(l).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Ch. 60, Sections 6010(a) and 6010(c).

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

None.

6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on January 08, 2020, beginning at 6:00 pm, in DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. Persons wishing to comment on the proposed amendments may do so either orally or in written form at the public hearing on January 8, 2020. In lieu of attending the public hearing, written comment may be submitted to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to DNRECHearingComments@delaware.gov, or via USPS to the below address. The Department will accept public comment through the close of business on Thursday, January 23, 2020.

Theresa Newman, Hearing Officer
DNREC – Office of the Secretary
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Frank F. Gao, Ph.D., P.E.
Division of Air Quality-DNREC
715 Grantham Lane, New Castle, DE 19720
Phone: (302)739-9402; email: Frank.Gao@delaware.gov

***Please Note: Due to the size of the State Implementation Plan Revision, it is available here as a PDF document:**

[http://regulations.delaware.gov/register/december2019/general/Regulation 1124 Sections 26.0 and 36.0 SIP.pdf](http://regulations.delaware.gov/register/december2019/general/Regulation%201124%20Sections%2026.0%20and%2036.0%20SIP.pdf)

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 4006(h) and (i) (7 **Del.C.** §4006(h) & (i))
7 **DE Admin. Code** 5101

REGISTER NOTICE**Regulatory Guidance Memorandum RGM-1 Supporting Regulation 5101 Sediment and Stormwater Regulations**

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship Sediment and Stormwater Program has released a regulatory guidance document titled "Regulatory Guidance Memorandum RGM-1" for public review. This document supports **Regulation No. 5101 Sediment and Stormwater Regulations**, as set forth at 7 **Del.C.** §4006(h) and (i).

A synopsis of RGM-1 is as follows: The Delaware State Office of the Natural Resources Conservation Service (NRCS) has adopted the current National Oceanic & Atmospheric Administration (NOAA) Rainfall Distribution curves for the hydrologic design of conservation practices in Delaware in place of the NRCS Type II Rainfall Distribution Curves. In keeping with this, the Delaware Sediment & Stormwater Program will begin accepting the use of the NOAA Rainfall Distribution Curves for the hydrologic design of stormwater management practices intended to comply with the Delaware Sediment & Stormwater Regulations effective January 1, 2020. NOAA Curve C should be used in New Castle and Kent Counties. NOAA Curve D should be used for Sussex County.

The DNREC Sediment and Stormwater Program hereby provides notice of this regulatory guidance document, pursuant to 7 **Del.C.** §4006(i), which incorporates the provisions of 7 **Del.C.** §6004. A public hearing will NOT be held unless the Secretary receives a meritorious request for a hearing within 15 days of date of this notice, ending December 15, 2019. A request for a public hearing shall be in writing and show familiarity with the regulatory guidance document and provide a reasoned statement of the regulatory guidance document's probable impact.

This document may be reviewed at the following link:

<http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

For appointments to review the regulatory guidance document, please contact Elaine Webb, DNREC

Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, or email elaine.webb@delaware.gov.

PREPARED BY:

Elaine Z. Webb

(302) 739-9921

elaine.webb@delaware.gov

OFFICE OF THE SECRETARY

Statutory Authority: 7 Delaware Code, Section 7005(e) (7 **Del.C.** §7005(e))
7 **DE Admin. Code** 101

REGISTER NOTICE

Establishment of DNREC Fees for 7 DE Admin. Code 101

The Department of Natural Resources and Environmental Control (DNREC) has established fees related to Coastal Zone Act (CZA) conversion permits, pursuant to 82 **Del. Laws**, c.86, §80 and 7 **Del.C.** §7005(e). These fees approximate and reasonably reflect the costs necessary to defray the expenses of each activity. Fees will become effective January 1, 2020.

The fees for CZA conversion permits are as follows:

- \$15,000 for conversion permit applications
- \$5,000 for major modifications to conversion permits
- \$1,500 annual fee for conversion permittees

Secretary's Order No. 2019-OTS-0044, which establishes these fees, may be reviewed online at the following website: <https://dnrec.alpha.delaware.gov/secretarys-orders/regulatory/>.

The DNREC Office of the Secretary hereby provides notice of these fees and will accept public comments through December 31, 2019. Public comments may be submitted by email to CZA_Program@delaware.gov or by mail to:

CZA Program
100 W. Water St., Ste. 7B
Dover, DE 19904

Secretary's Order No.: 2019-OTS-0044

**RE: Establishment of DNREC Fees for 7 DE Admin. Code 101,
Regulations Governing Delaware's Coastal Zone, related to
Coastal Zone Act ("CZA") Conversion Permit Applications,
CZA Conversion Permit Modifications, and CZA
Conversion Permittees**

Date of Issuance: November 14, 2019

Effective Date: January 1, 2020

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 82 **Del. Laws**, c.86, §80 and 7 **Del.C.** §7005(e), DNREC hereby establishes fees of \$15,000 for Coastal Zone Act, 7 **Del.C.** §§7001-7015 ("CZA") conversion permit applications, \$5,000 for major modifications to CZA conversion permits, and \$1,500 annually for all CZA conversion permittees. These fees, consistent with §7005(e) and DNREC's annual operating budget proposal, which approximate and

GENERAL NOTICES

reasonably reflect the costs necessary to defray the expenses of each activity, will be established following adequate opportunity for public comment.

Background, Procedural History, and Findings of Fact

In 2017, the Coastal Zone Conversion Permit Act (“CZCPA”) was passed by the General Assembly to address the possible under-utilization of existing industrial properties within the Coastal Zone. The CZCPA allows additional or alternative heavy industry uses to occur at the 14 grandfathered sites, specified in Appendix B of the *Regulations Governing Delaware’s Coastal Zone* (7 **DE Admin. Code** 101), which were amended effective September 11, 2019.

The review of a CZA conversion permit application by the Department’s CZA Program necessitates significant additional activities by DNREC. For example, the CZCPA and the amended *Regulations Governing Delaware’s Coastal Zone* require that DNREC, without limitation, conduct an assessment of impacts to the environment, economy, aesthetics, neighboring uses, and municipal comprehensive plans, as well as impacts of any supporting facilities and previous site uses; evaluate an applicant’s proposed means of offsetting any negative environmental impacts; and evaluate an applicant’s financial assurance.

Additionally, aspects of the CZCPA permitting process necessitate ongoing expenses. Evidence of financial assurance and environment offsets must be verified annually, while a Sea Level Rise and Coastal Storms Plan must be examined and updated every ten years. Each of these activities necessitated by a CZA conversion permit will require expenses by the CZA Program and subject matter experts in the Department, both in the assessment of an application, and on an ongoing basis after a permit is granted.

Reasons and Conclusions

The CZA Program has evaluated the actual direct costs (i.e. hearing room rental, legal notices, court reporter, third party consultants) and estimated staff costs by position (salary and overhead), that will be necessitated in evaluating and administering CZA conversion permits, both initially and on an ongoing basis. I find and conclude that the fees set forth herein approximate and reasonably reflect the costs necessary to defray the expenses of the CZA conversion permitting process and the administration of CZA conversion permits.

I further find and conclude that the fees set forth herein are consistent with 82 **Del. Laws**, c.86, §80 and 7 **Del.C.** §7005(e).

DNREC hereby establishes fees for Coastal Zone Act, 7 **Del.C.** §§7001-7015. Accordingly, this Order approves and directs that the following fees shall be established:

Fee Description	Fee Occurrence	Fee Amount
Conversion Permit	Each Application	\$15,000.00
Conversion Permit Modification	Each Application	\$5,000.00
Permittee Annual Fee	Annually	\$1,500.00

Shawn M. Garvin
Secretary

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission held a public hearing on **Wednesday, November 13, 2019** beginning at **1:30 p.m.** A business meeting will be held on **Wednesday, December 11, 2019** beginning at **10:30 a.m.** The hearing and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania 18977. For more information, visit the DRBC web site at www.drbc.gov or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting December 19, 2019 at 5:00pm in the Townsend Building Cabinet Room, 401 Federal St., Dover, DE.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Drug Utilization Review (DUR)

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 Title XIX Medicaid State Plan regarding the DUR, specifically, to update provisions included in section 1004 of the SUPPORT Act.

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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2019. Please identify in the subject line: Drug Utilization Review (DUR)

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.

*** Please Note: The Proposed Regulation for Drug Utilization Review (DUR), published in the September 1, 2019 issue of the Delaware Register of Regulations (21 DE Reg. 184), is being republished as Proposed to provide additional public notice and comment due to substantive changes.**

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE**DSSM 80000 Authorization and Regulation of Medicaid/CHIP Accountable Care Organizations**

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 Division of Social Services Manual (DSSM) regarding Accountable Care Organizations, specifically, to set standards for the authorization and regulation for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing 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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2019. Please identify in the subject line: Authorization and Regulation of Medicaid/CHIP Accountable Care Organizations.

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

DIVISION OF PUBLIC HEALTH
HEALTH PROMOTION AND DISEASE PREVENTION
PUBLIC NOTICE

4202 Control of Communicable and Other Disease Conditions

Pursuant to 16 **Del.C.** §122(3)a. and §707, Health Promotion and Disease Prevention (HPDP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On December 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the Control of Communicable and Other Disease Conditions regulations. The revisions include a change to outbreak reporting requirements and technical corrections.

Copies of the proposed regulations are available for review in the December 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Thursday, January 2, 2020, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4458 State of Delaware Food Code Regulations

Pursuant to 16 **Del.C.** §122(3)u.1, Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the State of Delaware Food Code. On December 1, 2019, the Division of Public Health plans to publish as “proposed” amended State of Delaware Food Code regulations. Due to the extensive number of amendments, the Division has concluded that the current State of Delaware Food Code regulations should be repealed and replaced in their entirety with the U.S. Food and Drug Administration’s 2017 Food Code with amendments.

The proposed Code will introduce several important changes to better serve and protect Delawareans. Changes include:

- New defined terms, including “Outdoor Spaces” which means, “a porch, patio, deck or other structure with less than two contiguous walls that does not require travel through any indoor areas, including for entrance and exit.”
- Allowance of dogs in Outdoor Spaces if a health or safety hazard will not result from the presence.
- Operations that are ordered to cease and desist due to an imminent health hazard will be required to remain closed for at least 24 hours.
- Amending food employee health reporting, restrictions and exclusions to disallow ill food employees from returning to work until 48 hours after being asymptomatic from an undiagnosed disease that resulted in vomiting and/or diarrhea.

Copies of the proposed regulations are available for review in the December 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

A public hearing will be held on Thursday, January 16 at 5:00 p.m. at the Department of Natural Resources and Environmental Control Richardson & Robbins Building Auditorium, located at 89 Kings Highway, Dover, Delaware 19901.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Friday, January 31, 2020, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE

4470 State of Delaware Medical Marijuana Code

Pursuant to 16 **Del.C.** Ch. 49A, Office of Medical Marijuana (OMM), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the State of Delaware Medical Marijuana Code. On December 1, 2019, the Division of Public Health plans to publish as "proposed" revisions to the State of Delaware Medical Marijuana Code. The revisions include the establishment of requirements for Safety Compliance facilities, provisions for the production of edible medical marijuana products and limitations therein, compliance and enforcement procedures, random sampling procedures, the formation of a Compassionate Use patient card, and the addition of specific definitions and technical corrections.

Copies of the proposed regulations are available for review in the December 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Thursday, January 2, 2020, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER
PUBLIC NOTICE

802 Delaware Workplace Safety Regulation

A. Type of Regulatory Action Required

Proposal of amendments to existing Regulation 802, Delaware Workplace Safety Regulation.

B. Synopsis of Subject Matter of the Regulation

The Delaware Department of Insurance (the Department) has been implementing its Workplace Safety Program since 1989. Through this program, the Department, in coordination with the Delaware Compensation

Rating Bureau, offers Delaware employers an opportunity to lower workers' compensation insurance premiums by participating in the Delaware Workplace Safety Program. Businesses may earn discounts of up to 19 percent by providing and maintaining a safe place to work. More information about the program may be found on the Department's website at <https://insurance.delaware.gov/services/workplacesafetydiscount/>.

The Department is proposing to amend Regulation 802 to specifically emphasize the availability of discounts that may be available to those employers who otherwise qualify for the program and who implement a drug-free workplace program at their worksites.

The Department is also taking the opportunity of this proposal to strike out subsection 7.3 concerning inspections by the Department of Labor, since the Department of Labor does not conduct such inspections, and to make grammatical and formatting edits to the remainder of the regulation.

C. Notice and Public Comment

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 802. The proposed new regulation appears below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 31st day, December, 2019. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
ATTN: Docket 4202-2019
1351 West North St., Ste. 101
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@delaware.gov

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL
DIVISION OF AIR QUALITY
PUBLIC NOTICE
1124 Control of Volatile Organic Compound Emissions**

Since the early 1990s, Delaware's ambient air quality has been in nonattainment for the health based air quality standard for the pollutant ground-level ozone. Because gasoline vapors contain volatile organic compounds (VOC) and contribute to the formation of ground-level ozone, Delaware implemented, in 1993, 7 **DE Admin. Code** 1124 Section 26 and Section 36. Sections 26 and 36 contain requirements to control gasoline vapor emissions from gasoline tanks and motor vehicles at any gasoline dispensing facility (GDF) with a monthly throughput greater than 10,000 gallons (Stage I and Stage II vapor recovery). In addition, since 1998, automobile manufacturers have been required by the federal Clean Air Act (CAA) to install on-board refueling vapor recovery (ORVR) systems on new vehicles.

The ORVR system is effective for controlling gasoline vapor emissions from refueling the ORVR equipped vehicles. However, when Stage II vapor recovery equipped GDF's are refueling ORVR equipped vehicles, fresh air is ingested into the GDF gasoline storage tanks, which leads to vapor growth in the gasoline storage tanks and vapor emissions from those tanks through leaks and pressure relief valves. The CAA allows Delaware to phase-out Stage II vapor recovery requirements, provided overall emissions do not increase.

The Division of Air Quality (DAQ) of the Department of Natural Resources and Environmental Control (DNREC, or the Department) is proposing amendments to Section 26 and Section 36 to require (1) any new GDF to install a Stage I Enhanced Vapor Recovery (EVR) system, instead of a Stage II vapor recovery system, at construction, and (2) any existing GDF to decommission its Stage II vapor recovery system by December 31, 2021

and to install a Stage I EVR system by December 31, 2025. The proposed amendments will also require a regulated GDF to monitor vapor-tight status of its gasoline storage tanks by performing annual pressure decay tests or by installing a continuous pressure monitoring (CPM) system.

DAQ is also proposing to submit to EPA a revision to Delaware State Implementation Plan (SIP), entitled "Decommissioning Stage II Vapor Recovery Systems and Requiring Stage I Enhanced Vapor Recovery Systems at Gasoline Dispensing Facilities." The objectives of the proposed SIP revision are to (1) analyze the regulatory impacts of the above regulation amendments on Delaware's emissions of volatile organic compounds (VOC), and (2) demonstrate that the above regulatory amendments meet the anti-backsliding requirements of the CAA Sections 182(b)(2) and 110(l).

A public hearing will be held on January 8, 2020, beginning at 6:00 pm, in DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. Persons wishing to comment on the proposed amendments may do so either orally or in written form at the public hearing on January 8, 2020. In lieu of attending the public hearing, written comment may be submitted to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to DNRECHearingComments@delaware.gov, or via USPS to the below address. The Department will accept public comment through the close of business on Thursday, January 23, 2020.

Theresa Newman, Hearing Officer
DNREC – Office of the Secretary
89 Kings Highway, Dover, DE 19901

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 1.0 Firearms, and Rule 4.0 Training Requirements. If you wish to view the complete Rule, contact Ms. Ashley N. Bauguess at (302) 672-5337. Any persons wishing to present views may submit them in writing, by January 2, 2020, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Monday, January 27, 2020, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

2900 REAL ESTATE COMMISSION

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations.

A public hearing will be held on January 9, 2020 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Danielle Cross, administrative specialist for the Commission, at the above address or at danielle.cross@delaware.gov. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be **January 24, 2020**, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its next regularly scheduled meeting.

The Commission's proposed regulations include a new subsection 8.5 which sets forth requirements for real estate "teams". New subsection 9.0 addresses the scope of permissible activities under the property management

licensure exemption. Revisions to the new Section 12.0, Renewal of Licenses, shorten the late renewal period from 60 to 30 days and clarify that the late renewal period is not an extension of the deadline to complete continuing education. Requirements for licensure reinstatement are amended. As set forth in the new subsection 14.13, new licensees will be required to complete twelve hours of education designed to assist individuals new to the real estate profession. Those twelve hours must be completed within 90 days after the date of initial licensure and will not count towards the continuing education required for license renewal. New licensees will also be required to complete the continuing education applicable to all licensees pursuant to the pro-ration schedule. Finally, as set forth in the new subsection 14.6.7, a minimum fine of \$250 will be imposed for a finding of unjustified noncompliance with continuing education requirements, and a minimum fine of \$1,000 will be imposed for a second finding of unjustified noncompliance.

DIVISION OF PROFESSIONAL REGULATION
2925 REAL ESTATE COMMISSION EDUCATION COMMITTEE
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to the Real Estate Commission Education Guidelines (the "Guidelines").

A public hearing will be held on January 9, 2020 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Danielle Cross, administrative specialist for the Commission, at the above address or at danielle.cross@delaware.gov. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be **January 24, 2020**, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its next regularly scheduled meeting.

The Commission has proposed revisions to the Guidelines to provide that instructor and course application denials are subject to a written request for reconsideration. Instructor qualifications for pre-licensing, broker and continuing education courses have been revised to ensure instructor competence and experience. Pursuant to proposed amendments, continuing education programs must be a minimum of three hours and must be delivered in three hour increments. The proposed revisions emphasize that course sponsors and providers are responsible for the qualifications and conduct of course instructors and clarify that prelicensing school instructors may not use class time for recruiting purposes. Finally, the proposed changes require a prelicensing school to provide prospective students with notice that a criminal history may impact or pose a bar to licensure.

PUBLIC SERVICE COMMISSION
PUBLIC NOTICE
3007 Electric Service Reliability and Quality Standards

The Delaware Public Service Commission ("Commission") proposes to revise its Electric Service Reliability and Quality Standards, found in 26 **DE Admin. Code** 3007, *et seq.* You can review the proposed revised Regulations in the December 2019 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed revised Regulations in the Commission's electronic filing system Delafile at <http://delafile.delaware.gov> and for docket # input 18-0935. If you wish to obtain written copies of the Order and proposed revised Regulations, please contact the Commission at (302) 736-7500. Copies in excess of the first twenty pages are \$0.10 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time copies are retrieved (if you retrieve them in person).

The Commission will hold a public hearing on the proposed revised Regulations on Wednesday, January 8, 2020, at 1:00 p.m. during its regularly-scheduled meeting, in the Hearing Room, Cannon Building, 861 Silver Lake Boulevard, First Floor, Dover, Delaware 19904.

Written comments can be filed electronically in Delafile at <http://delafile.delaware.gov/> by filling out the Public Comment Form located under Public Links. Written comments can also be mailed to Matthew Hartigan, Delaware

Public Service Commission, Cannon Building, 861 Silver Lake Boulevard, Suite 100, Dover, Delaware 19904 or via email to matthew.hartigan@delaware.gov, with the subject line "Docket No. 18-0935." Written comments will be accepted through close of business on January 23, 2020 pursuant to 29 **Del.C.** §10118(a).
