
Delaware Register of Regulations

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Volume 17 - Issue 8, Pages 792 - 869

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Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before January 15, 2014.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY

Statutory Authority: 25 Delaware Code, Section 7011 (25 **Del.C.** §7011)

PUBLIC NOTICE**202 Rent Increase Dispute Resolution Procedures**

AND NOW, this 8th day of January, 2014, the Delaware Manufactured Home Relocation Authority (the "Authority"), issues the following Order and Public Notice:

1. Pursuant to its statutory authority, at the Authority's board meeting held on January 7, 2014, the Authority adopted a resolution proposing for adoption a comprehensive set of regulations and guidelines (the "Proposed Regulations") to be used in the administration of the Rent Justification Dispute Procedures set forth in 25 **Del.C.** §7043.

2. The Rent Justification Dispute Procedures, by statute, apply to all manufactured home community leases expiring on or after November 30, 2013. Due to time restraints, it was necessary to establish emergency regulations to provide manufactured home community owners and tenants with guidelines and procedures to be used pending the adoption of final regulations and guidelines by the Authority.

3. The emergency regulations, which were published in the Delaware *Register of Regulations* at 17 **DE Reg.** 267 (09/01/13), are scheduled to expire on March 9, 2014.

4. After considering any and all comments to the emergency regulations, the Authority has decided to submit for public comment final "Proposed Regulations".

NOW THEREFORE, for the reasons set forth above, IT IS ORDERED:

1. That the "Rent Increase Dispute Resolution Procedures" (the "Proposed Regulations") attached hereto as Exhibit A are proposed for adoption pursuant to 25 **Del.C.** §7011 and §7043. The Proposed Regulations herein shall be published in the Delaware *Register of Regulations* on February 1, 2014 to provide the public with an opportunity to submit written comments for a period of 30 days after the "Proposed Regulations" are published in the Delaware *Register of Regulations*.

2. Copies of the Proposed Regulations are available by contacting Susanne Lantz, Executive Director of the Authority, at 1675 S. State Street, Suite E, Dover, DE 19901, 302-674-7768.

3. The Authority will entertain written comments to the Proposed Regulations. Anyone wishing to submit written comments should submit such comments by March 2, 2014 to Susanne Lantz, Executive Director of the Authority, at 1675 S. State Street, Suite E, Dover, DE 19901.

4. The Authority shall transmit a copy of this Order and the Proposed Regulations to the Delaware Registrar of Regulations for publication in the next issue of the Delaware *Register of Regulations*.

5. That the Authority reserves the right to hereafter alter, amend, or waive the Regulations adopted herein to the extent that the same may be allowed by law.

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

BY ORDER OF THE AUTHORITY:

Mitch Crane, Chairperson

Dated: January 8, 2014

202 Rent Increase Dispute Resolution Procedures

(Authorization: Section 7011)

1.0 Introduction: Role of Authority Regarding Rent Increase Disputes

The Authority's role in the administration of rent increase disputes is limited to implementing and overseeing the process by which rent increase disputes are resolved and to the extent applicable, funding direct arbitration costs in excess of the arbitration fees paid by the participants in arbitration proceedings under 25 Del.C. §7043. In fulfilling that role, the Authority shall at all times remain neutral and shall not provide legal advice to any party relating to any rent increase dispute.

2.0 Definitions

For the purposes of these regulations, the following words and phrases have the meaning ascribed to them in this Section unless the context of the regulation clearly indicates otherwise, or unless the meaning set forth below is inconsistent with the Act or the manifest intention of the Act.

"Act" means the Delaware Manufactured Home Owners and Community Owners Act set forth in 25 Del.C. Chapter 70.

"Affected home owner" means a leaseholder of a manufactured home community whose rent increase is subject to the provisions of 25 Del.C. §7043.

"Authority" means the Delaware Manufactured Home Relocation Authority.

"Community owner" means the owner of a manufactured home community, as defined in the Act.

"CPI-U" means the average annual increase of the Consumer Price Index For All Urban Customers in the Philadelphia-Wilmington-Atlantic City area for the most recently available preceding thirty-six (36) month period at the time the notice of a rent increase is mailed to the leaseholders.

"Designated representative" means an individual authorized to act on behalf of any party, provided said authorization is in writing and signed by the party on whose behalf the individual is authorized to act.

"Direct arbitration costs" means the following out of pocket costs paid in connection with an arbitration hearing held pursuant to the provisions of 25 Del.C. §7043(c): (a) fees payable to the arbitrator; (b) the reasonable cost of any meeting rooms or facilities used for the arbitration hearing; (c) the cost of the court reporter for attendance at the arbitration hearing; (d) the reasonable out of pocket expenses paid by the arbitrator in connection with the scheduling and holding of the arbitration hearing; and (e) any other costs approved in advance by the Authority and determined by the Authority to constitute a "direct arbitration cost". Direct arbitration costs shall not include the cost of preparing a verbatim transcript of the hearing unless the arbitrator determines that a verbatim transcript is necessary in order for the arbitrator to render a decision.

"HOA" means a home owners association registered with the Authority pursuant to 25 Del.C. §7026(b).

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“Leaseholder” means a person who is a party to a lease subject to the provisions of 25 Del.C. §7040 through 7055.

“Notice to the Authority” or words to that effect shall mean the delivery of notice to the following address: Delaware Manufactured Home Relocation Authority, 1675 S. State Street, Suite E, Dover, DE 19901.

“Party” shall include a community owner, an HOA, and any leaseholder affected by a proposed rent increase.

3.0 Notification of Rent Increase Dispute Resolution Provisions

Each year, the Authority provides community owners with notice of the right of first offer provisions set forth in 25 Del.C. §7026. Simultaneously with the sending of that notice, the Authority shall also provide each manufactured home community owner with a copy of the Rent Increase Dispute Resolution provisions set forth in 25 Del.C. §7040 through 7055 and a copy of any applicable regulations adopted by the Authority.

4.0 Rent Increase Notice Procedures

4.1 A community owner is required to give written notice to each affected home owner, to the Home Owners Association, if one exists, and to the Authority, at least 90 days prior to any increase in lot rent. When more than one tenant is affected by the rent increase, in lieu of providing the HOA or the Authority with copies of each letter sent to each affected tenant, the community owner shall provide the HOA and the Authority with a summary letter (“Summary Letter”) certifying that written notice has been sent to each affected home owner together with a copy of the form of notice provided, which form must contain the information required hereunder. The Summary Letter shall identify all affected home owners by lot number, name, group or phase. If the affected home owners are not identified by name, the community owner shall make the names and addresses available to any affected home owner or HOA upon request. In any such notice, in addition to the information required to be provided under 25 Del.C. §7043(a), the community owner shall (with respect to each affected home owner) state whether or not the proposed rent increase exceeds the CPI-U and provide the following information:

4.1.1 The current monthly lot rent;

4.1.2 The proposed monthly lot rent;

4.1.3 The CPI-U;

4.1.4 The effective date of the rent increase;

4.1.5 The community owner’s contact information, which shall include the name and mailing address of a representative of the community owner authorized to respond to questions relating to the proposed rent increase and schedule any necessary meetings and/or arbitration proceedings required under the Act; and

4.1.6 If the proposed rent increase exceeds the CPI-U, a date, time and place on which the community owner is available to meet with the affected home owners, Home Owners Association, or their representatives, which dates must be within thirty (30) days of the date the notice is mailed out.

5.0 Scheduling of Meetings When Proposed Rent Increase Exceeds CPI-U

When a proposed rent increase exceeds the CPI-U, the Authority shall schedule a meeting between the parties at the time, date, and place set forth in the community owner’s initial notice, unless the Authority determines, based on input from the parties, that said time, date, or place should be changed, in which case the Authority, in its sole discretion, shall schedule the meeting at a time and place to be held no later than thirty (30) days after the mailing of the notice of the rent increase. Unless otherwise agreed to by all of the parties, the meeting shall take place in the county in which the manufactured home community is located. Notice of the time, date and place of the meeting shall be provided to the community owner and the HOA. If no HOA exists, notice of the time, date, and place of the meeting shall be provided to the affected leaseholders, or their designated representative, by the community owner.

6.0 Meeting Procedures

- 6.1 At any meeting held pursuant to 25 Del.C. §7043(b), the community's HOA, if any, shall be the designated representative of those leaseholders who are members of the HOA. Any leaseholders that are not members of the HOA may designate the HOA to represent his or her interest at the meeting and any subsequent arbitration proceeding. Any such designation shall be in writing, shall be signed by the applicable leaseholder, and, if applicable, shall be provided to any arbitrator appointed pursuant to Section 7.0 below. In all other cases, where the number of affected leaseholders exceed five (5), the leaseholders shall designate in writing at least one representative to act on behalf of the affected leaseholders. Any tenant affected by the proposed increase in rent shall have the right to attend the meeting. In all cases the community owner shall designate a representative to act on behalf of the community owner. At each meeting, a "sign-in" sheet shall be available and any person attending the meeting shall be required to sign the sign-in sheet confirming said person's attendance at the meeting. The community owner shall maintain a copy of the sign-in sheet for each meeting and provide the Authority with a copy of the sign-in sheet upon request.
- 6.2 At the meeting, the community owner shall, upon request of any affected home owner or his or her representative, disclose all of the material factors resulting in the decision to increase the rent, including the financial and other pertinent documents and information supporting the reasons for the rent increase.
- 6.3 If the parties are unable to resolve any dispute during the initial meeting, the parties may agree to extend or continue the meeting to a mutually agreeable time and place.
- 6.4 If the parties are able to resolve all disputes relating to the proposed rent increase, the community owner shall so inform the Authority in writing. Any resolution of the rent dispute shall be documented by a writing signed by all of the parties and/or their duly authorized representatives.
- 6.5 If all of the affected parties are unable to resolve the dispute at the final meeting, or are unable to agree on extending or continuing the meeting, any party who has not agreed to a resolution of the issues may, within thirty (30) days from the conclusion of the last meeting, file a petition, together with the \$250.00 arbitration fee, requesting the Authority to appoint a qualified arbitrator to conduct non-binding arbitration proceedings pursuant to 25 Del.C. §7043(c). In order to be considered timely, both the petition and the arbitration fee must be filed and paid to the Authority within the aforesaid thirty (30) day period.
- 6.6 If none of the parties pay the \$250.00 arbitration fee and petition the Authority to appoint a qualified arbitrator within the aforesaid thirty (30) day period, the community owner shall be authorized to implement the proposed rent increase as set forth in the initial notice, or if applicable, the rent otherwise agreed to by the community owner and affected leaseholders.
- 6.7 Any party is entitled to be represented by legal counsel at any meeting provided that said legal counsel is authorized to practice law in the state of Delaware.

7.0 Arbitration Procedures

- 7.1 Upon receipt of a petition to appoint a qualified arbitrator pursuant to 25 Del.C. §7043(c) and the initial \$250.00 arbitration fee from the party filing the petition, the Authority shall prepare a caption setting forth the names of the parties and shall select an arbitrator to serve as the arbitrator and to conduct the non-binding arbitration proceeding. Each arbitration petition shall be assigned a docket number by the Authority. Thereafter, any paper filed with the Authority or appointed arbitrator shall include on the first page the caption and docket number assigned to the case. The initial petition shall include the name, mail and email addresses, telephone and fax numbers of the person filing the petition and the name, address, telephone and fax numbers of the person representing the person filing the petition. The initial \$250.00 arbitration fee shall be paid by the party filing the petition at the time the petition is filed. An original and one copy of the petition shall be provided to the Authority. If the petition is filed by the community owner, a copy of the petition shall be mailed to each affected home owner, and if applicable, to the Home Owners Association (or their respective designated representative) on the same day that the petition is filed. If the petition is filed by an affected home owner, or if applicable, the Home Owners Association, a copy of the petition shall be mailed to the community owner (or the

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community owner's designated representative) on the same day the petition is filed. In the arbitration petition, the party filing the petition should provide a concise statement of the issues to be determined by the arbitrator and certify that a copy of the petition has been delivered to the opposing party or parties or their respective representative(s). The party filing the petition shall also include the names of all home owners affected by the proposed rent increase. Any document required to be mailed shall be mailed by United States mail, first class, with postage prepaid.

- 7.2 The Authority shall endeavor to create a list of members of the Delaware Bar who are both qualified and willing to act as arbitrators.
- 7.3 Any arbitrator appointed by the Authority shall be a member of the Delaware Bar who has provided the Authority with satisfactory evidence of his or her training in alternative dispute resolution.
- 7.4 If all of the parties have agreed in writing to the appointment of a specific Delaware attorney to act as arbitrator, the Authority shall appoint the agreed upon attorney as arbitrator.
- 7.5 Upon receipt of written notice from the Authority of his or her appointment, the appointed arbitrator shall determine whether or not there is any conflict of interest or other matter that would otherwise affect his or her ability to render an impartial decision, in which case the appointed arbitrator shall decline the appointment and the Authority shall appoint another arbitrator. Notwithstanding the foregoing, if all of the parties agree in writing to waive any conflict of interest and the arbitrator is willing to accept the appointment, the appointed arbitrator may accept the appointment. Upon appointment of an arbitrator, the parties shall provide the arbitrator with a list of witnesses who are expected to testify as quickly as possible so that the arbitrator may run a conflict of interest check on all names supplied by the parties.
- 7.6 Where a community owner has proposed rent increases in excess of the CPI-U that would affect leaseholders at different time periods, with the consent of all the parties, the Arbitrator is authorized to consolidate the cases for purposes of the arbitration hearing. Under such circumstances, only one payment of \$250.00 each shall be required from the community owner and leaseholders.
- 7.7 Simultaneously with the filing of a petition to arbitrate, the party filing the petition shall pay to the Authority the \$250.00 arbitration fee set forth in 25 Del.C. §7043(c). The other party or parties shall pay their \$250.00 arbitration fee within fifteen (15) calendar days after the filing of the petition. Where multiple leaseholders are affected by a proposed rent increase, only one payment of \$250.00 shall be required on behalf of all such leaseholders whose rent increase has the same effective date. All such fees collected by the Authority shall be deposited into the Authority's general operating account and shall not be considered a part of the Trust Fund administered by the Authority pursuant to 25 Del.C. §7012. If any party or parties fail to timely pay the required \$250.00 arbitration fee, the arbitrator is authorized to enter judgment against the party or parties failing to pay the arbitration fee.
- 7.8 Unless agreed to in writing by all of the parties, all arbitration hearings must be held within sixty (60) days from the date of the filing of the petition to arbitrate. Where multiple petitions relating to the same matter have been filed, the date of the filing of the first petition shall govern.
- 7.9 As quickly as practicable after an arbitrator is selected, the arbitrator shall contact the parties (or their representatives and by teleconferences, whenever possible) to schedule the hearing at a mutually convenient time and place. Hearings may be held in the evenings or on weekends. Once an arbitrator has been appointed, no *ex parte* communications with the arbitrator are permitted. Prior to the hearing, the arbitrator shall notify the Authority in writing of the time, date, and place of the hearing.
- 7.10 The arbitrator is authorized to schedule an informal preliminary conference with the parties (in person or by telephone) as the arbitrator deems appropriate in order to narrow the issues and minimize the expense of the arbitration process. The arbitrator is authorized to require the parties to exchange or provide to the other parties documents relevant to the rent increase at issue, including documents related to the standards set forth in 25 Del.C. §7042.
- 7.11 At any arbitration hearing:
- 7.11.1 The Delaware Uniform Rules of Evidence shall be used as a guide by the arbitrator for admissibility of evidence submitted at the arbitration hearing;
- 7.11.2 All testimony will be under oath or affirmation administered by the arbitrator, unless waived by all parties;

- 7.11.3 Testimony shall be transcribed and shall be considered a written record;
- 7.11.4 Each witness shall be subject to reasonable cross examination by the opposing party; and
- 7.11.5 The Arbitrator is authorized to limit the number of witnesses to avoid duplication, and where multiple leaseholders are affected by the proposed rate increase, require the affected leaseholders to designate a representative to act on and testify on behalf of all affected leaseholders.
- 7.12 The parties are encouraged to stipulate to undisputed facts and to the admissibility of evidence in order to narrow the issues and minimize the expense of the arbitration process.
- 7.13 Subject to the terms and conditions of any confidentiality designation pursuant to subsection 7.17 below, any exhibit that a party intends to rely upon at the hearing must be provided to the arbitrator and opposing parties at least five (5) business days prior to the hearing, except for good cause shown.
- 7.14 At the hearing, the community owner shall open and close the presentation of evidence. The burden of proof shall be on the community owner.
- 7.15 If a party fails to appear at a scheduled hearing, the arbitrator may enter an order ruling against the party who failed to appear.
- 7.16 All parties to hearings, their counsel, and witnesses shall conduct themselves in a proper manner. Disruptive demonstrations of any kind at hearings shall not be permitted. Any disregard by parties, attorneys or other persons of the rulings of the arbitrator on matters of order or procedure may be noted on the record. The arbitrator may, in his or her discretion, recess or continue any hearing when the conduct of witnesses or other persons unduly disrupts or interferes with the proper conduct of the hearing.
- 7.17 Any party may request that the arbitrator accord confidential treatment to some or all of the information contained in a document. If the claim of confidentiality is challenged by any party, then the party claiming confidential treatment must demonstrate to the arbitrator that the designated information is confidential as recognized by state law. Notwithstanding any claim of confidentiality, any party to the proceeding shall be allowed to inspect a copy of the confidential document upon the signing of a confidentiality agreement in a form approved by the arbitrator.
- 7.18 While a court reporter shall be present at all arbitration hearings, unless specifically requested by the arbitrator, a paper or electronic transcript of the hearing shall not be required. In the absence of a specific request by the arbitrator, any party may, at said parties sole cost and expense, order a paper or electronic transcript of the hearing.
- 7.19 Arbitration hearings conducted pursuant to 25 Del.C. §7043 are deemed private proceedings. Unless otherwise authorized by the arbitrator for good cause shown, attendance at any hearing shall be limited to the following:
- 7.19.1 the arbitrator;
 - 7.19.2 the court reporter;
 - 7.19.3 the parties and their respective legal counsel;
 - 7.19.4 witnesses who are not parties, while testifying; and
 - 7.19.5 at the option of the Authority, representative(s) of the Authority.
- 7.20 Settlements are to be encouraged. If the case settles before a hearing or before the arbitrator issues a decision, the arbitrator, after being informed of any settlement, shall arrange a teleconference with all parties (or their authorized representatives) to confirm the settlement, unless the parties have done so in a writing signed by all of the parties (or their authorized representatives). Upon confirmation of any settlement, the arbitrator shall notify the Authority that a settlement has been agreed to by the parties.
- 7.21 The decision of the arbitrator shall be based solely on the evidence presented at the hearing and based on the standards set forth in 25 Del.C. §7042. The arbitrator shall render his or her decision within fifteen (15) days of the conclusion of the arbitration hearing. Decisions by the arbitrator shall be in writing, shall clearly set forth the date of the issuance of the decision, and shall inform the parties of the right to appeal the decision to the Superior Court by filing, within thirty (30) days of the date of the issuance of the arbitrator's decision, a notice of appeal with the office of the Prothonotary of the county

within which the affected manufactured home community is located. A copy of the decision shall be provided to the Authority.

8.0 Appeals

- 8.1 As provided for in 25 Del.C. §7044, in any arbitration proceeding, the community owner, home owners association, or any affected home owner may appeal the decision of the arbitrator within thirty (30) days of the issuance of the arbitrator's decision. Any such appeal shall be to the Superior Court in the county of the affected community. If a community is located in more than one county, the appeal may be filed in the Superior Court of either county.
- 8.2 Appeals to the Superior Court by law shall be on the record without a trial de novo.
- 8.3 Promptly after the filing of any appeal, the party appealing from the arbitrator's decision shall, at the appealing party's expense, order a copy of the transcript of the arbitration hearing.
- 8.4 Appeals to the Superior Court shall be prosecuted in accordance with Rule 72 of the Delaware Superior Court Rules of Civil Procedure.
- 8.5 The party filing the appeal shall provide a copy of the notice of appeal to the Authority, for informational purposes.

9.0 Computing Time

In computing any time period under these rules, the first day of the designated period of time shall commence on the next day after the event requiring the computation of the time period. The last day of the time period shall be included.

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

PUBLIC NOTICE

501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission, pursuant to 3 Del.C. §10005, proposes to change its Rules in Section 6.0- 6.1.2.2, 6.1.2.3, 6.1.2.4 in Section 7.0- 7.3.5, 7.6.13.14.1.1, 7.6.13.14.1.1.1, 7.6.13.14.1.3, 7.6.13.14.1.4, 7.6.13.14.2.6, 7.6.13.14.2.7 and 7.6.13.14.2.7.1 The Commission will hold a public hearing on the proposed rule changes at Dover Downs on March 11, 2014 at 10:15 am. Written comments should be sent to Mark Davis, Racing Administrator of the Delaware Harness Racing Commission, Department of Agriculture, 2320 South DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on February 1, 2014.

The proposed changes are for the purpose of updating the Rules to reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.html A copy is also available for inspection at the Harness Racing Commission office.

501 Harness Racing Rules and Regulations (Break in Continuity of Sections)

6.0 Types of Races

- 6.1 Types of Races Permitted

In presenting a program of racing, the racing secretary shall use exclusively the following types of races:

(Break in Continuity Within Section)

6.1.2 Added money events which include:

- 6.1.2.1 Stakes;
- ~~6.1.2.2~~ Futurities;
- 6.1.2.~~3~~ Early closing events; and
- 6.1.2.~~4~~ Late closing events

(Break in Continuity Within Section)

7.0 Rules of the Race

(Break in Continuity Within Section)

7.3 Postponement and Cancellation

(Break in Continuity Within Section)

- 7.3.5 Stakes ~~and futurities~~ should be raced where advertised and the meeting may be extended to accomplish this. Any stake ~~or futurity~~ that has been started, but which remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary, except where the Association elects to extend the meeting to complete the race. ~~Horses that are scratched after a heat and before the race is declared finished shall not participate in purse distributions for subsequent heats in the event the race is called off and declared finished.~~

(Break in Continuity Within Section)

7.6 Racing Rules

(Break in Continuity Within Section)

7.6.13 Conduct of the Race

(Break in Continuity Within Section)

7.6.13.14 Impelling of a Horse

7.6.13.14.1 Whips: Drivers will be allowed whips not to exceed 4 feet, plus a snapper not longer than 6 inches. Modification of a whip is prohibited.

7.6.13.14.1.1 Use: At all times, the use of a whip shall be confined to the areas above and between the sulky shafts and the outside wheel disks. Drivers are prohibited from using the whip in a one handed striking motion from the start of the race until the horse reaches the 1/4 mile pole. The one handed use of the whip shall be limited to the striking of the shafts of the sulky or the saddlepad.

7.6.13.14.1.1.1 The terms "striking" or "one handed striking motion" shall **not** be construed to mean a light tapping with the whip, at any point in the race, while maintaining a line in each hand.

7.6.13.14.1.2 Drivers shall keep a line in each hand from the start of the race until the quarter pole.

7.6.13.14.1.3 From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. ~~Once the lead horse is at the 7/8th pole, these restrictions do not apply.~~

7.6.13.14.1.4 Once the lead horse has reached the 7/8 mile pole, the driver may, in a one handed motion, strike the shaft of the sulky or the saddlepad in a reasonable and responsible manner.

7.6.13.14.2 Violations:

- 7.6.13.14.2.1 Whipping under the arch or shafts of the sulky
- 7.6.13.14.2.2 Whipping a horse after the race
- 7.6.13.14.2.3 Causing injury (visible or not) with a whip
- 7.6.13.14.2.4 Striking or jabbing a horse with the butt end of a whip

PROPOSED REGULATIONS

7.6.13.14.2.5 Whipping a horse that is out of contention

7.6.13.14.2.6 Any blatant or exaggerated movements of the whipping arm which will result from raising the elbow above the driver's shoulder height or allowing the hand holding the whip to reach behind the driver while striking with the whip.

7.6.13.14.2.6Z Brutal, excessive, and or indiscriminate use of a whip.

7.6.13.14.2.6Z.1 Inspections: At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or conduct such inspections at their discretion.

(Break in Continuity Within Section)

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

501 Harness Racing Rules and Regulations

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

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

PUBLIC NOTICE

Title XIX Medicaid State Plan - Reimbursement Methodology for Inpatient Hospital Outlier Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) with 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 amending the Title XIX Medicaid State Plan regarding inpatient hospital services, specifically, *Medicaid Inpatient Hospital Outlier Payments*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by March 3, 2014.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Services (DMMA) intends to submit a state plan amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS) regarding Medicaid Inpatient Hospital Outlier Payments.

Statutory Authority

- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*
- 42 CFR §447, Subpart C - *Payment for Inpatient Hospital and Long-Term Care Facility Services*

Background

The State of Delaware reimburses enrolled providers for services provided to Medical Assistance recipients, including hospitals, under the authority of Title XIX of the Social Security Act. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services.

Medicaid Inpatient Hospital Outlier Payments

State Medicaid agencies may pay hospitals for Medicaid inpatient stays using a prospective payment system. To protect hospitals against large financial losses from extraordinarily high-cost cases, State agencies may supplement base payments with an additional payment referred to as a Medicaid inpatient hospital cost outlier payment (Medicaid outlier payment). Medicaid outlier payments are calculated using formulas that vary by State. Because hospitals cannot identify actual costs for specific patients, the formulas apply cost-to-charge ratios to current charges to convert those charges to estimated costs. The formulas include State-determined threshold amounts used to evaluate each claim for outlier status. (The threshold amount is the dollar amount by which the hospital's estimated costs for an inpatient case must exceed its prospective payments for that hospital to qualify for a Medicaid outlier payment.)

Summary of Proposed Amendment

In accordance with public notice requirements of Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205, the Division of Medicaid and Medical Assistance publishes this notice of proposed changes to the reimbursement methodology for inpatient hospital services, specifically, Medicaid Inpatient Hospital Outlier Payments.

Specifically, DMMA proposes to increase the threshold used to qualify claims. Currently, high cost outliers will be identified when the cost of the discharge exceeds the threshold of four (4) times the hospital operating rate per discharge. Effective for dates of services on and after March 1, 2014, the proposal changes the threshold to five (5) times the hospital operating rate per discharge. Outlier cases will be reimbursed at the discharge rate plus sixty-five (65) percent of the difference between the outlier threshold and the total cost of the case. Costs of the case are determined by applying the hospital-specific cost to charge ratio to the allowed charges reported on the claim for discharge.

The agency's proposal involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same.

NOTE: Previous notice to the public, published in the December 24, 2013 issue of the *News Journal* and the December 25, 2013 issue of the *Delaware State News*, originally posted the effective date as January 1, 2014. Please note that the effective date for the proposed change in reimbursement methodology is now March 1, 2014.

The payment adjustment state plan amendment is subject to the approval of the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

The estimates are based on a March 1, 2014 start date. The Federal match rates used were 55.31% for State Fiscal Year (SFY) 2014 and 53.63% for SFY 2015. SFY 2014 and SFY 2015 estimated savings for the outlier payments was \$2,784,202 each of those years.

The projected fiscal impact for this SPA for Federal Fiscal Years 2014 and 2015 is as follows:

	Federal Fiscal Year 2014	Federal Fiscal Year 2015
General (State) Funds	(\$725,818)	(\$1,291,034)
Federal Funds	(\$898,300)	(\$1,493,168)

PROPOSED REGULATIONS

Increasing the hospital payment outlier for discharged claims will reduce the amount paid for those claims. Medicaid cost will be lowered for those claims that meet the outlier requirements.

DMMA PROPOSED REGULATION #14-03

REVISION:

ATTACHMENT 4.19-A
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES INPATIENT HOSPITAL CARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - INPATIENT HOSPITAL CARE (Continued)

Rate Setting Methods - Development of Implementation Year Operating Rates, Updates and Rebasing (Continued)

Other Related Inpatient Reimbursement Policies

Outliers - Effective for dates of services on and after March 1, 2014, High high cost outliers will be identified when the cost of the discharge exceeds the threshold of ~~four~~ five (5) times the hospital operating rate per discharge. Outlier cases will be reimbursed at the discharge rate plus ~~70~~ sixty-five (65) percent of the difference between the outlier threshold and the total cost of the case. Costs of the case will be determined by applying the hospital-specific cost to charge ratio to the allowed charges reported on the claim for discharge.

Effective for dates of service on and after January 1, 2006, any provider with a high cost client case (outlier) will receive an interim payment; that is, a payment prior to the discharge of that patient when the charge amount reaches the designated level. An interim payment will be made for that inpatient stay when the client's charges have reached twenty-five (25) times the general discharge rate of that facility, or when the client's stay is greater than sixty (60) days. Additional interim payments will be made when either of the outlier conditions for an interim payment is met again. The interim payment amount is based on the current reimbursement methodology used to pay outliers. Upon the discharge of the client, the facility will receive the balance of the payment that would have been paid if the case were paid in full at the time of discharge.

DIVISION OF PUBLIC HEALTH AUTHORITY ON RADIATION PROTECTION

Statutory Authority: 16 Delaware Code, §7405 (16 Del.C. § 7405)

PUBLIC NOTICE

Delaware Radiation Control Regulations:
4465 Part A General Provisions
4465 Part B Registration of Radiation Source Facilities and Services
4466 Radiation Technologists/Technicians (Certification)

The Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to three State of Delaware Radiation Control Regulations. Due

to the extensive number of amendments the Division has concluded that this set of three current regulations should be repealed and replaced in their entirety with the proposed regulations being published. The purpose of the amendments is to update the requirements so that they are in concert with current healthcare standards and to align them more closely with current state administrative code and federal requirements. On February 1, 2014, the Division plans to publish as proposed the amended regulations specified below, and hold them out for public comment per Delaware law.

DE Admin Code No.	Current Delaware Citation	Title
4465	Part A	General Provisions
4465	Part B	Registration of Radiation Source Facilities & Service Providers
4466		Radiation Technologists/Technicians (Certification)

NOTICE OF PUBLIC HEARING

A public hearing will be held on February 24, 2014 at 3:00 p.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the February 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Radiation Control at (302) 744-4546.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Friday, March 7, 2014 at:

Deborah Harvey
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us
Phone: (302) 744-4700

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

Delaware Radiation Control Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 7408

7408 TMDLs for Nutrients for the Murderkill River Watershed

REGISTER NOTICE

Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct a Public Hearing regarding proposed amendments to the Total Maximum Daily Loads (TMDLs) Regulation for nutrients and oxygen consuming materials for the Murderkill River Watershed, which was promulgated in June of 2005. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

Since promulgation of the 2005 Murderkill River TMDLs, a multi-year monitoring, research, and modeling study of Murderkill River Watershed by DNREC and other cooperating agencies and institutions resulted in proposing scientifically-based, site-specific dissolved oxygen and nutrient criteria for the tidal Murderkill River. This proposed amendment of the WLA component of the 2005 TMDLs is to comply with these new site-specific dissolved oxygen and nutrient criteria for the tidal Murderkill River.

Possible Terms of the Agency Action

This proposed action will amend the Waste Load Allocation component of the 2005 Murderkill River TMDLs Regulation. DNREC will work with Kent County Government to implement the requirements of the amended Waste Load Allocation.

Statutory Basis or Legal Authority to Act

The authority to develop a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 *et. seq.*, as amended.

Other Legislation That May be Impacted

None

Notice of Public Hearings and Comment Period

The Public Hearing on proposed amendments to the 2005 Murderkill River Watershed TMDLs Regulation will be held at 5:00 p.m., Thursday, February 27, 2014, in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

Please send written comments to Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us). All written comments must be received by March 14, 2014. Electronic submission is preferred.

Copies of the Proposed amendments to the 2005 Murderkill River Watershed TMDL Regulation and technical support documents are available on the Department's website at <http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx> or by contacting Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140.

Prepared By:

John Schneider, Watershed Assessment and Management Section, (302) 739-9939.

7408 TMDLs for Nutrients for the Murderkill River Watershed**1.0 Introduction and Background**

- 1.1 Intensive water quality monitoring performed by Delaware Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Murderkill River and several of its tributaries and ponds are impaired as the result of low dissolved oxygen and high nutrients. Low concentrations of dissolved oxygen are harmful to fish, shellfish, and other aquatic life. With regard to nutrients (nitrogen and phosphorus), although they are essential elements for both plants and animals,

their presence in excessive amounts causes undesirable conditions. Symptoms of nutrient overenrichment include frequent phytoplankton blooms, decreased water clarity, dissolved oxygen deficiency, alteration of composition and diversity of economically important native species of plants and animals, and possible human health effects.

- 1.2 A reduction in the amount of nutrients and oxygen consuming pollutants reaching the waters of the Murderkill River and its tributaries and ponds is necessary to reverse these undesirable impacts. These pollutants and nutrients enter the waters of the Murderkill River from point sources and nonpoint sources. Point sources are end-of-pipe discharges from municipal or industrial wastewater treatment plants. Nonpoint sources include runoff from agricultural and urban areas, septic tank effluent, and ground water discharges.
- 1.3 Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants of concern. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.
- 1.4 DNREC listed the Murderkill River and several of its tributaries and ponds on the Delaware's 1996, 1998, and 2000 303(d) Lists and ~~proposes the following~~ developed and promulgated a Total Maximum Daily Load regulation for nitrogen, phosphorous, and 5-day Carbonaceous Biochemical Oxygen Demand (CBOD₅) in 2005.
- 1.5 Since the promulgation of the 2005 TMDLs, a multi-year monitoring, research, and modeling study of Murderkill River Watershed by DNREC and other cooperating agencies and institutions concluded that new scientifically-based, site-specific dissolved oxygen and nutrient criteria should be adopted for the tidal Murderkill River. This amendment of the WLA component of the 2005 TMDLs is to comply with these new site-specific dissolved oxygen and nutrient criteria for the tidal Murderkill River.

2.0 The Amended Total Maximum Daily Loads (TMDLs) Regulation for the Murderkill River Watershed, Delaware

- ~~**Article 1.** The total nitrogen waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 755.3 pounds per day. The waste load allocation for the Kent County Facility will be 751 pounds per day and for Canterbury Crossing Mobile Home Park will be 4.3 pounds per day.~~
- ~~**Article 2.** The total phosphorus waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 62.7 pounds per day. The waste load allocation for the Kent County Facility will be 62.5 pounds per day and for Canterbury Crossing Mobile Home Park will be 0.2 pounds per day.~~
- ~~**Article 3.** The CBOD₅ (5-day Carbonaceous Biochemical Oxygen Demand) waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 1010.6 pounds per day. The waste load allocation for Kent County Facility will be 1001 pounds per day and for Canterbury Crossing Mobile Home Park will be 9.6 pounds per day.~~
- ~~**Article 4.** Treated wastewater from the City of Harrington wastewater treatment facility shall be used for spray irrigation. However, during the winter season, as well as during wet weather periods, when spray irrigation of treated wastewater is not practical, the effluent may be discharged into Browns Branch. During periods of surface discharge, the maximum discharge flow rate shall not exceed 750,000 gallons per day and daily waste loads shall not exceed 140 pounds per day for total nitrogen, 0.75 pounds per day for total phosphorus, and 37.5 pounds per day for CBOD₅. Furthermore, the total annual waste load discharged from the City of Harrington wastewater treatment facility to the surface waters of Browns Branch shall not exceed 9125 pounds per year for total nitrogen, 55 pounds per year for total phosphorus, and 3000 pounds per year for CBOD₅.~~
- Article 1.** The Kent County Facility shall be the only point source discharge in the Murderkill River Watershed.

PROPOSED REGULATIONS

Article 2. The total nitrogen waste load from the Kent County Facility shall be limited to 897 pounds per day. This load shall be expressed as annual average load in the National Pollutant Discharge Elimination System (NPDES) Permit for this facility.

Article 3. The total phosphorus waste load from the Kent County Facility shall be limited to 51 pounds per day. This load shall be expressed as annual average load in the NPDES Permit for this facility.

Article 4. The CBOD5 (5-day Carbonaceous Biochemical Oxygen Demand) waste load from the Kent County Facility shall be limited to 544 pounds per day.

Article 5. The nonpoint source nitrogen load in the entire watershed shall be reduced by 30 percent (from the 1997 base-line). This shall result in a yearly-average total nitrogen load of 560 pounds per day.

Article 6. The nonpoint source phosphorus load in the entire watershed shall be reduced by 50 percent (from the 1997 base-line). This shall result in a yearly-average total phosphorous load of 96 pounds per day.

Article 7. Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 6, DNREC has determined that, with an adequate margin of safety, water quality standards and nutrient targets will be met in the Murderkill River and its tributaries and ponds.

~~**Article 8.** Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Murderkill River Tributary Action Team, other stakeholders, and the public.~~

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 **Del.C.** §105(a)(1))
24 **DE Admin. Code** 100

PUBLIC NOTICE

100 Board of Accountancy

The Delaware Board of Accountancy, pursuant to 24 **Del.C.** §105(a)(1), proposes to revise its rules and regulations. The proposed addition to the regulation seeks to clarify the regulation to address unintended consequences resulting from the existing language.

The Board will hold a public hearing on the proposed rule change on April 23, 2014 at 9:30 AM, Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator for the Delaware Board of Accountancy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 8, 2014.

100 Board of Accountancy

(Break in Continuity of Sections)

4.0 Requirements for a Certificate and Permit to Practice Certified Public Accountancy (Effective August 1, 2012)

4.1 Each applicant for a certificate and permit to practice certified public accountancy must provide the Board with the following:

(Break in Continuity Within Section)

4.1.4 Evidence in a form satisfactory to the Board that the applicant has completed at least 150 semester hours of college education, including a Baccalaureate Degree or a higher degree or met

the educational requirements of a state that was deemed to be substantially equivalent as of January 1, 2009 and in which the applicant was a CPA examination candidate and passed said exam. The total educational program shall include a concentration in accounting.

(Break in Continuity Within Section)

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

100 Board of Accountancy

DIVISION OF PROFESSIONAL REGULATION

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

PUBLIC NOTICE

1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulations 6.6.1.5, 6.8.5, 6.9.2, 8.11.4, 9.6.1, and 2.4.1.5. The proposed changes clarify the process for renewing licenses in light of the sole option for renewal, the on-line renewal, and eradication of the paper renewal. The changes to 2.4.1.5 are non-substantive and are merely an attempt to clarify a prior change that did not include appropriate renumbering and retitling of the regulations.

The Board will hold a public hearing on the proposed regulation change on March 12, 2014 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until March 27, 2014 pursuant to 29 **Del.C.** §10118(a).

1900 Board of Nursing

(Break in Continuity of Sections)

2.0 Nursing Education Programs

(Break in Continuity Within Section)

2.4 Nursing Education Standards

(Break in Continuity Within Section)

2.4.1 Required Criteria for Nursing Education Programs – The organization and administration of the nursing education shall be consistent with the law governing the practice of nursing. The nursing education program shall be an integral part of a governing institution with appropriate accreditation. The following minimum criteria serve to support the implementation of the Nursing Education Standards:

(Break in Continuity Within Section)

2.4.1.5 Administrator and Faculty Qualifications

(Break in Continuity of Sections)

6.0 Requirements and Procedures for Licensure

(Break in Continuity Within Section)

6.6 Licensure: Biennial Renewal and Reinstatement

PROPOSED REGULATIONS

(Break in Continuity Within Section)

6.6.1 Biennial Renewal of Licensure

(Break in Continuity Within Section)

- 6.6.1.5 Renewal application, along with the required non-refundable fee, shall be completed online by midnight of the last day of the ~~month before the month of expiration~~ renewal period, or a penalty fee will be assessed.

(Break in Continuity Within Section)

6.8 Inactive Status

(Break in Continuity Within Section)

- 6.8.5 A notice of to renew inactive status shall be sent to all persons ~~on the in~~ inactive list status at renewal time. ~~To receive a certificate of inactive status, the licensee shall return the renewal notice with the fee. Renewal shall be completed by online application and payment of the renewal fee.~~ An inactive license not renewed shall become lapsed and is eligible for reinstatement.

(Break in Continuity Within Section)

6.9 Change of Name/address

- 6.9.1 Licensees who legally change their names and wish to change the name on the license, shall provide notarized copies of evidence, such as marriage licenses or court actions. The maiden name will be retained on the license.
- 6.9.2 Notice of change of address shall be submitted ~~in writing~~ online within 30 days of the change. All notices from the Board will be sent to the last address provided by the licensee or applicant to the Board.

(Break in Continuity of Sections)

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

(Break in Continuity Within Section)

8.11 Maintenance of Licensure Status: Reinstatement

(Break in Continuity Within Section)

- 8.11.4 ~~Advanced Practice Nurses who fail to renew their licenses by February 28, May 31, or September 30 of the renewal period shall be considered to have lapsed licenses. After February 28, May 31, or September 30 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.~~
- 8.11.5~~4~~ To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 8.11.4 followed.
- 8.11.6~~5~~ An application for reinstatement of licensure must be filed and the appropriate fee paid.

(Break in Continuity Within Section)

9.0 Rules and Regulations Pertaining to Mandatory Continuing Education

(Break of Continuity Within Section)

9.6 Audit of Licensees

- 9.6.1 The Board will randomly and on an individual basis select licensees for audit within six (6) months following the license renewal ~~date~~ deadline. The Board shall notify the licensees within four (4) weeks of being selected that their records are to be audited for compliance with the continuing education requirements.

(Break in Continuity Within Section)

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

1900 Board of Nursing

DIVISION OF PROFESSIONAL REGULATION

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

PUBLIC NOTICE

2700 Board of Registration for Professional Land Surveyors

The Delaware Board of Professional Land Surveyors, in accordance with 24 **Del.C.** §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to allow professional development hours to be obtained by online courses. The additional changes are of an administrative nature.

The Board will hold a public hearing on the proposed rule changes on March 20, 2014 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 3, 2014.

2700 Board of Registration for Professional Land Surveyors

(Break in Continuity of Sections)

9.0 ~~Procedure for Granting Licenses and License Renewals~~ Issuance and Renewal of License

- 9.1 ~~When an applicant is approved for licensure, the Division of Professional Regulation will send a letter to the applicant advising that person of the prorated license fee. Once the license fee is received by the Division, a license number is issued and mailed to the applicant by the Board for licensure, the Division of Professional Regulation will issue a license number and mail a license to the applicant.~~
- 9.1.1 ~~Lost, destroyed, or mutilated licenses may be replaced by payment of the appropriate fee to the Division of Professional Regulation. 24 Del.C. §2716(c).~~
- 9.1.2 ~~All license and certificate holders shall notify the Board in writing of each change of business address, residence address, e-mail address, telephone number, business telephone number, or trade name within ten (10) days of said change. The information provided shall be sufficiently descriptive to enable the Board to correspond with and locate the licensee or certificate holder.~~
- 9.2 ~~The Division of Professional Regulation will send a renewal notice to the last known address for each licensee at least 30 days prior to renewal. Even if a licensee does not receive a renewal, it is his/her responsibility to renew their license. Each professional land surveyor license and certificate of authorization shall be renewed biennially. The failure of the Board to notify a licensee or certificate holder of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee or certificate holder of the requirement to renew his/her license or certificate pursuant to the Board's regulations and 24 Del.C. Ch. 27.~~
- 9.3 ~~Failure of a licensee or certificate holder to renew his/her license or certificate by the license or certificate expiration date shall cause his/her license or certificate to lapse. A professional land surveyor or certificate of authorization holder whose license or certificate has lapsed may renew his/her license/certificate within six (6) months after the license/certificate expiration date by paying the renewal fee plus a late fee as determined by the Division of Professional Regulation. In addition to~~

PROPOSED REGULATIONS

paying the fees, a professional land surveyor must also attest to the completion of the required PDHs to the Division of Professional Regulation, 24 Del.C. §2711.

- 9.4 Late or lapsed license renewals shall be audited for satisfactory completion of the Board's continuing education requirements.
- 9.5 No professional land surveyor shall practice land surveying in the State of Delaware during the period of time that his/her license is lapsed.
- 9.6 A professional land surveying corporation or partnership must have a certificate of authorization in order to practice, or offer to practice, land surveying as defined in 24 Del.C. §2722 and cannot perform activities defined in 24 Del.C. §2722 while a certificate is lapsed.

10.0 Continuing Education

- 10.1 Biennium Requirements. Effective each biennium, as a condition for renewal of a license for the practice of land surveying, a Professional Land Surveyor shall be required to successfully complete 24 hours of professional development within the preceding biennium. Any licensee who completes in excess of 24 hours of professional development within the preceding biennium may NOT have the excess applied to the requirements for the next biennium.
- 10.1.1 No more than 8 PDHs of the required 24 PDHs for any renewal period may be obtained by an online course.
- 10.1.2 Retired Licensees. Licensees 62 years old and over who are retired (working less than 20 hours weekly) shall need only twelve (12) PDHs, including one ethics and professionalism PDH, each biennium to satisfy the professional development requirements outlined herein. A total of four (4) PDHs may be obtained by online courses each biennium. The required one ethics and professionalism PDH must be obtained by attending a live seminar and cannot be taken online.
- 10.1.3 Multiple State Licensees. Any licensee, who is not a Delaware resident and resides in another state or commonwealth, and is licensed in that state or commonwealth having a comparable continuing education requirement, shall not be required to satisfy these requirements in addition to those of his/her home state, but will satisfy these requirements as a minimum. Any questions regarding compliance with this Section shall be resolved by the Board.
- 10.2 A licensee shall complete at least two (2) hours on ethics and professionalism for each renewal period with no carry-over credit for any biennium renewal period. The required 2 hours on ethics and professionalism must be obtained by attending a live seminar and cannot be taken online.
- 10.3 Sources of Credit. In reviewing and approving applications for PDHs, the Board shall take into consideration:
- 10.3.1 Program Content: Courses must cover land surveying topics and must directly contribute to accomplishment of the primary purpose of continuing education, which is to help assure that licensees possess the knowledge, skills and competence necessary to function in a manner that protects and serves the public interest. The knowledge or skills taught must enable licensees to better serve surveying clients and the subject matter must be directly related to the land surveying practice. All educational courses and their instructors, both live and online, must be approved by the Board.
- 10.3.2 Instruction: The course must be one that will be conducted by a qualified instructor. ~~who will be able to interact directly either in person or by interactive television with all students at all times during the course. The course may be conducted through the use of interactive television or other media which permits continuous mutual communication between the instructor and all students, continuous observation of the instructor by all students, and continuous observation of all students by the instructor. Distance education courses may be acceptable when the sponsor gives the licensee a final exam and sends verification to the Board that the licensee has completed the course with a passing grade. Instructors must submit a complete resume with the PDH course approval request.~~
- 10.3.2.1 ~~Distance education courses are defined as programs whereby instruction does not take place in a traditional classroom setting but rather through other media where teacher and~~

~~student are apart. Distance education may not be utilized with the exceptions of interactive television and verified courses described above.~~

10.3.3 Examples of acceptable topics ~~that are acceptable~~, include but are not limited to:

- ALTA/ACSM land title surveys
- GPS (survey related)
- GIS (survey related)
- Delaware land use laws
- Case law
- Boundary laws and regulations
- Research
- Evidence
- Boundary determination
- Unwritten rights
- Conflict resolution; i.e. boundary line agreements
- Adverse possession
- Highway surveys
- Railroad surveys
- Easements and rights of way
- Geodesy
- Highway design/Highway safety
- Surveyor in court/Expert testimony
- State and international boundaries
- Water boundaries
- Technical writing related to deed descriptions and survey reports
- Mathematics and computer applications of land surveying
- Measurement and analysis
- Photogrammetry and aerial photo interpretation
- Survey standards
- Survey instrumentation
- Business management and professional development related to the land surveying practice;
i.e. surveying contracts,
- communicating with clients, good business planning and management, quality assurance
- Ethics and professionalism
- Liability for land surveyors
- Drainage design
- Sediment and erosion control
- First aid/CPR
- Subdivision Plans and planning
- Land Development Plans and planning
- Grading and Grading Development Plans
- Condominium Plans
- Roadway and Street Design and Planning
- Storm Water Drainage Plans
- Utility Plans and Easements

(Break in Continuity Within Section)

10.5 Pro-Rated Credits for Renewal. A licensee for renewal shall follow the following schedule of reporting PDH credits: if, at the time of renewal, you have been licensed for less than one year, NO continuing

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~~education is required; licensed for more than one year, but less than two years, half (12 PDHs) is required; licensed for two or more years, the full amount (24 PDHs) is required. A licensee for renewal shall follow the following schedule of reporting PDH credits:~~

- 10.5.1 ~~If, at the time of renewal, you have been licensed for less than one year, NO continuing education is required.~~
- 10.5.2 ~~If, at the time of renewal, you have been licensed for more than one year, but less than two years, half (12 PDHs) is required, including one ethics and professionalism PDH. A total of four (4) PDHs may be obtained by online courses. The required one ethics and professionalism PDH must be obtained by attending a live seminar and cannot be taken online.~~
- 10.5.3 ~~If, at the time of renewal, you have been licensed for two or more years, the full amount (24 PDHs) is required, including two ethics and professionalism PDHs. A total of eight (8) PDHs may be obtained by online courses. The required two ethics and professionalism PDHs must be obtained by attending a live seminar and cannot be taken online.~~
- 10.6 Renewal. Any licensee who has submitted a ~~correctly completed paper or an~~ electronic renewal form as required in Section 10.4.1 and has met all other requirements shall be granted renewal.
- 10.7 Audit. Each biennium, the Division of Professional Regulation shall select from the list of ~~potential renewal~~ renewed licensees a percentage, determined by the Board, which shall be selected by random method. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements.
- (Break in Continuity Within Section)***
- 10.10 Noncompliance – Extenuating Circumstances. A licensee ~~applying for renewal~~ may request an extension and be given up to an additional twelve (12) months to make up all outstanding required PDHs providing he/she can show good cause why he/she was unable to comply with such requirements ~~at the same time he/she applies for renewal and provided the statement is received and reviewed by the Board prior to the licensee renewing their license.~~ The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must accompany the renewal application be received and reviewed by the Board prior to the licensee renewing their license. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required PDHs. A licensee who has successfully applied and received Board approval for an extension under this paragraph shall make up all outstanding hours of professional development within the extension period approved by the Board.
- 10.11 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal pursuant to the Administrative Procedures Act.
- 10.12 ~~Retired Licensees. Licensees 62 years old and over who are retired (working less than 20 hours weekly) shall need only twelve (12) PDHs, including one ethics PDH, each biennium to satisfy the professional development requirements outlined herein.~~
- 10.13 ~~Multiple State Licensees. Any licensee, who is not a Delaware resident and resides in another state or commonwealth, and is licensed in that state or commonwealth having a comparable continuing education requirement, shall not be required to satisfy these requirements in addition to those of his/her home state, but will satisfy these requirements as a minimum. Any questions regarding compliance with this Section shall be resolved by the Board.~~

(Break in Continuity of Sections)

16.0 Renewal of Lapsed Licenses

A licensee may renew a license that has lapsed after the renewal date, by payment of the late fee penalty and proof of the required PDHs to the Division of Professional Regulation, if the licensee files for renewal within six (6) months of the most recent renewal date. Section 2711.

47.0 Replacement of Lost, Destroyed or Mutilated Licenses

Lost, destroyed, or mutilated licenses may be replaced by payment of the appropriate fee to the Division of Professional Regulation. Section 2716(e).

186.0 Professional Seals, Rubber Stamps and Signatures

- 186.1 A raised seal shall be used wherever possible.
- 186.2 When a raised seal cannot be used, a rubber seal may be used, but only with red ink so that the lettering will stand out.
- 186.3 The signature must be originally hand written.
- 186.4 The seal to be used by a Delaware licensee shall conform to the above regulation and have two concentric circles. The inner circle shall contain only the words "REGISTERED," "NO.," and "DELAWARE." The area between the two circles shall contain, at the bottom, the words "PROFESSIONAL LAND SURVEYOR" reading counterclockwise and at the top, the name of the licensee as written below, reading clockwise.
- 186.5 The seal acceptable to the Board is the one recognized in the trade as the No. 1 official pocket size, which has an inner circle 1" in diameter and an outer circle 1 ½" in diameter. A sample is below. Replace JOHN DOE AND No. 123 with your name and number.



- 186.6 All new licensees shall provide to the Board a copy of both the raised and rubber seal within 30 days of issuance of their license.

197.0 Crimes substantially related to practice of land surveyors

- 197.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the practice of land surveyor in the State of Delaware without regard to the place of conviction:
 - 197.1.1 Menacing. 11 Del.C. §602
 - 197.1.2 Reckless endangering in the second degree. 11 Del.C. §603
 - 197.1.3 Reckless endangering in the first degree. 11 Del.C. §604
 - 197.1.4 Abuse of a pregnant female in the second degree. 11 Del.C. §605
 - 197.1.5 Abuse of a pregnant female in the first degree. 11 Del.C. §606
 - 197.1.6 Assault in the second degree. 11 Del.C. §612
 - 197.1.7 Assault in the first degree. 11 Del.C. §613
 - 197.1.8 Assault by abuse or neglect. 11 Del.C. §615
 - 197.1.9 Terroristic threatening. 11 Del.C. §621(a)(b)
 - 197.1.10 Unlawful administering drugs. 11 Del.C. §625
 - 197.1.11 Unlawful administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626
 - 197.1.12 Prohibited acts as to substances releasing vapors or fumes. 11 Del.C. §627

- 197.1.13 Vehicular assault in the second degree. 11 **Del.C.** §628
- 197.1.14 Vehicular assault in the first degree. 11 **Del.C.** §629
- 197.1.15 Vehicular homicide in the second degree. 11 **Del.C.** §630
- 197.1.16 Vehicular homicide in the first degree. 11 **Del.C.** §630A
- 197.1.17 Criminally negligent homicide. 11 **Del.C.** §631
- 197.1.18 Manslaughter. 11 **Del.C.** §632
- 197.1.19 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
- 197.1.20 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634
- 197.1.21 Murder in the second degree. 11 **Del.C.** §635
- 197.1.22 Murder in the first degree. 11 **Del.C.** §636
- 197.1.23 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
- 197.1.24 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
- 197.1.25 Rape in the fourth degree. 11 **Del.C.** §770
- 197.1.26 Rape in the third degree. 11 **Del.C.** §771
- 197.1.27 Rape in the second degree. 11 **Del.C.** §772
- 197.1.28 Rape in the first degree. 11 **Del.C.** §773
- 197.1.29 Sexual extortion. 11 **Del.C.** §776
- 197.1.30 Continuous sexual abuse of a child. 11 **Del.C.** §778
- 197.1.31 Female genital mutilation. 11 **Del.C.** §780
- 197.1.32 Unlawful imprisonment in the first degree. 11 **Del.C.** §782
- 197.1.33 Kidnapping in the second degree. 11 **Del.C.** §783
- 197.1.34 Kidnapping in the first degree. 11 **Del.C.** §783A
- 197.1.35 Arson in the first degree. 11 **Del.C.** §803
- 197.1.36 Burglary in the third degree. 11 **Del.C.** §824
- 197.1.37 Burglary in the second degree. 11 **Del.C.** §825
- 197.1.38 Burglary in the first degree. 11 **Del.C.** §826
- 197.1.39 Multiple Offenses. 11 **Del.C.** §827
- 197.1.40 Possession of burglar's tools or instruments facilitating theft. 11 **Del.C.** §828
- 197.1.41 Robbery in the second degree. 11 **Del.C.** §831
- 197.1.42 Robbery in the first degree. 11 **Del.C.** §832
- 197.1.43 Carjacking in the second degree. 11 **Del.C.** §835
- 197.1.44 Carjacking in the first degree. 11 **Del.C.** §836
- 197.1.45 Shoplifting. 11 **Del.C.** § 840
- 197.1.46 Theft. 11 **Del.C.** §841
- 197.1.47 Theft of Services. 11 **Del.C.** §845
- 197.1.48 Extortion. 11 **Del.C.** §846
- 197.1.49 Misapplication of property. 11 **Del.C.** §848
- 197.1.50 Theft of rented property. 11 **Del.C.** §849
- 197.1.51 Receiving stolen property. 11 **Del.C.** §851
- 197.1.52 Identity theft. 11 **Del.C.** §854
- 197.1.53 Forgery. 11 **Del.C.** §861
- 197.1.54 Falsifying business records. 11 **Del.C.** §871
- 197.1.55 Tampering with public records in the second degree. 11 **Del.C.** §873
- 197.1.56 Tampering with public records in the first degree. 11 **Del.C.** §876
- 197.1.57 Offering a false instrument for filing. 11 **Del.C.** §877
- 197.1.58 Issuing a false certificate. 11 **Del.C.** §878

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- 197.1.59 Bribery. 11 **Del.C.** §881
- 197.1.60 Bribe receiving. 11 **Del.C.** §882
- 197.1.61 Issuing a bad check. 11 **Del.C.** §900
- 197.1.62 Criminal impersonation of a police officer. 11 **Del.C.** §907B
- 197.1.63 Unlawfully concealing a will. 11 **Del.C.** §908
- 197.1.64 Fraudulent conveyance of public lands. 11 **Del.C.** §911
- 197.1.65 Fraudulent receipt of public lands. 11 **Del.C.** §912
- 197.1.66 Insurance fraud. 11 **Del.C.** §913
- 197.1.67 Health care fraud. 11 **Del.C.** §913A
- 197.1.68 New home construction fraud. 11 **Del.C.** §917
- 197.1.69 Unauthorized access. 11 **Del.C.** §932
- 197.1.70 Theft of computer services. 11 **Del.C.** §933
- 197.1.71 Interruption of computer services. 11 **Del.C.** §934
- 197.1.72 Misuse of computer system information. 11 **Del.C.** §935
- 197.1.73 Destruction of computer equipment. 11 **Del.C.** §936
- 197.1.74 Dealing in children. 11 **Del.C.** §1100
- 197.1.75 Abandonment of a child. 11 **Del.C.** §1101
- 197.1.76 Endangering the welfare of a child. 11 **Del.C.** §1102
- 197.1.77 Sexual exploitation of a child. 11 **Del.C.** §1108
- 197.1.78 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- 197.1.79 Possession of child pornography. 11 **Del.C.** §1111
- 197.1.80 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 197.1.81 Bribery. 11 **Del.C.** §1201
- 197.1.82 Receiving a bribe. 11 **Del.C.** §1203
- 197.1.83 Giving unlawful gratuities. 11 **Del.C.** §1205
- 197.1.84 Receiving unlawful gratuities. 11 **Del.C.** §1206
- 197.1.85 Perjury in the third degree. 11 **Del.C.** §1221
- 197.1.86 Perjury in the second degree. 11 **Del.C.** §1222
- 197.1.87 Perjury in the first degree. 11 **Del.C.** §1223
- 197.1.88 Making a false written statement. 11 **Del.C.** §1233
- 197.1.89 Threats to public officials. 11 **Del.C.** §1240
- 197.1.90 Assault in a detention facility. 11 **Del.C.** §1254
- 197.1.91 Bribing a witness. 11 **Del.C.** §1261
- 197.1.92 Bribe receiving by a witness. 11 **Del.C.** §1262
- 197.1.93 Tampering with a witness. 11 **Del.C.** §1263
- 197.1.94 Interfering with child witness. 11 **Del.C.** §1263A
- 197.1.95 Bribing a juror. 11 **Del.C.** §1264
- 197.1.96 Bribe receiving by a juror. 11 **Del.C.** §1265
- 197.1.97 Tampering with physical evidence. 11 **Del.C.** §1269
- 197.1.98 Disorderly conduct. 11 **Del.C.** §1301
- 197.1.99 Felony hate crimes. 11 **Del.C.** §1304
- 197.1.100 Harassment. 11 **Del.C.** §1311
- 197.1.101 Aggravated harassment. 11 **Del.C.** §1312
- 197.1.102 Felony stalking. 11 **Del.C.** §1312A
- 197.1.103 Trading in human remains and associated funerary objects. 11 **Del.C.** §1333
- 197.1.104 Adulteration. 11 **Del.C.** §1339

PROPOSED REGULATIONS

- 197.1.105 Carrying a concealed deadly weapon. 11 **Del.C.** §1442
- 197.1.106 Possessing a destructive weapon. 11 **Del.C.** §1444
- 197.1.107 Felony possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447
- 197.1.108 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A
- 197.1.109 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448
- 197.1.110 Theft of a firearm. 11 **Del.C.** §1451
- 197.1.111 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455
- 197.1.112 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458
- 197.1.113 Act of intimidation. 11 **Del.C.** §3532
- 197.1.114 Aggravated act of intimidation. 11 **Del.C.** §3533
- 197.1.115 Prohibited drug offenses A. 16 **Del.C.** §4751
- 197.1.116 Prohibited drug offenses B. 16 **Del.C.** §4752
- 197.1.117 Unlawful delivery of noncontrolled substances. 16 **Del.C.** §4752A
- 197.1.118 Prohibition against transfer, sale and purchase. 7 **Del.C.** §5306
- 197.1.119 Alteration, theft or destruction of will. 12 **Del.C.** §210
- 197.1.120 Receiving or transferring stolen vehicle. 21 **Del.C.** §6704
- 197.2 Crimes substantially related to the practice of professional land surveyors shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

ATTACHMENT A

CONDITION	MARSH	RURAL	SUBURBAN	URBAN	REMARKS AND FORMULA
Unadjusted closure (minimum)	1: 5,000	1:7,500	1:10,000	1:15,000	Loop or between monuments
Angular closure (minimum)	30" N	20" N	15" N	10" N	N = number of angles in traverse
Accuracy of distances	0.10 ft + 200 ppm	0.07 ft + 150 ppm	0.05 ft + 100 ppm	0.03 ft + 50 ppm	100 ppm = 1:10,000
Elevations for boundaries controlled by tides, contours, etc. accurate to:	+ or -.50 ft	+ or -.50 ft	+ or -.50 ft	+ or -.50 ft	Based on NGVD (1929) or NAVD 88
Location of subject property or pertinent improvements, structures, paving, etc.	+ or - 2 ft	+ or - 1 ft	+ or - 0.1 ft	+ or - .10 ft	Any shown improvement within 75 feet of property must use these tolerances
Positional error in map plotting not to exceed: (applies to original map only)	1/10	1/20	1/20	1/40	National Map accuracy calls for 1/.50th inch

Area	0.1 acre	0.1 acre	0.001 acre	+ or - nearest square foot = less than 1 acre; 0.0001 = greater than 1 acre	Areas involving water boundary, Left to discretion of practitioner
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***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

2700 Board of Registration for Professional Land Surveyors

DIVISION OF PROFESSIONAL REGULATION

Board of Veterinary Medicine

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 **Del.C.** §3306(a)(1))
24 DE Admin. Code 3300

PUBLIC NOTICE

3300 Board of Veterinary Medicine

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on March 11, 2014 at 1:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be March 26, 2014, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting on April 8, 2014 at 1:15 p.m., at which time the Board will decide whether to adopt the revisions as proposed.

The Board proposes amendments to Rule 11.0, addressing licensure of veterinary technicians. The revisions strike all references to licensure by educational and/or experiential alternatives. Pursuant to 24 **Del.C.** §3319(a)(1), these alternative methods of licensure expired effective October 1, 2013. As of October 1, 2013, all applicants for licensure as a veterinary technician must show a degree from a veterinary technician program accredited by the AVMA or from a foreign veterinary program approved by the AVMA. Other changes are needed to be consistent with Division of Professional Regulation procedures. Specifically, license renewal is accomplished online and the licensee attests to completion of the required continuing education.

3300 Board of Veterinary Medicine
(Break in Continuity of Sections)

8.0 Licensure - Renewal
(24 Del.C. §3309)

8.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the ~~renewal~~ license expiration date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with ~~evidence~~ attestation of completion of continuing education requirements. Continuing education requirements for renewal are specified in Section 9.0 for veterinarians and Section 14 for veterinary technicians. The

failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

- 8.2 Any licensee who fails to renew his/her license by the ~~renewal~~ license expiration date may still renew his/her license during the one (1) year period immediately following the ~~renewal~~ license expiration date provided the licensee pay a late fee established by the Division of Professional Regulation in addition to the established renewal fee, ~~and~~ submit the renewal application and attest to completing the continuing education requirements for renewal as specified in Section 9.0 for veterinarians and Section 14 for veterinary technicians.

9.0 Continuing Education for Veterinarians

(24 Del.C. §3309(b))

- 9.1 Any veterinarian actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.
- 9.1.1 Twenty-four (24) hours of approved certified continuing education credits must be completed for the immediate two year period preceding each biennial license renewal date.
- 9.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application.
- 9.1.2.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Section 9.1.1.
- 9.1.2.2 Attestation ~~may shall~~ be completed electronically, ~~if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted;~~

(Break in Continuity Within Section)

- 9.1.4 A veterinarian may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence. Application for extension shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the ~~biennial~~ license renewal expiration date.
- 9.1.5 The Board has the power to waive any part of the entire continuing education requirement. Exemptions to the continuing education requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the ~~biennial~~ license renewal expiration date.

(Break in Continuity of Sections)

11.0 Qualification for Licensure by Examination as a Veterinary Technician

(24 Del.C. §3319)

- 11.1 The applicant shall file the following documents:
- 11.1.1 Completed application form obtained from the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.
- 11.1.2 Official transcript from an AVMA-accredited veterinary technician program or from a foreign veterinary program approved by the AVMA, ~~or documentation of completion of acceptable educational and/or experiential alternatives. The following educational and/or experience qualifications shall be considered acceptable alternatives to licensure only if the applicant's application has been approved by the Board no later than October 1, 2013. If an applicant does not pass the examination set forth in Section 11.1.4 within one year after the date of approval of the application, in order to pursue licensure, the applicant shall re-apply for licensure and submit the application fee. Any applicant who re-applys after October 1, 2013 shall have received a~~

~~degree from a veterinary technician program accredited by the AVMA or from a foreign veterinary program approved by the AVMA.~~

- ~~11.1.2.1 a baccalaureate degree in animal science related field as approved by the Board and 2625 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s);~~
- ~~11.1.2.2 a degree from a veterinary technician program that is not accredited by the American Veterinary Medical Association, as approved by the Board, and 2625 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian;~~
- ~~11.1.2.3 a baccalaureate degree in biology, chemistry, psychology, physics, or similar scientific field of study as approved by the Board and 3500 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s);~~
- ~~11.1.2.4 completion of 60 credit hours of coursework in biology, chemistry, psychology, physics, or similar scientific field of study at the postsecondary educational level, as approved by the Board, and 5250 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s);~~
- ~~11.1.2.5 or a period of 7000 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s).~~
- 11.1.3 Letters of good standing from any other jurisdictions in which the applicant is/or has been licensed, certified or registered.
- 11.1.4 Veterinary Technician National Examination (VTNE) or its successor.
- 11.1.5 Check or money order for the license fee. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware."
- 11.2 Proof of education shall consist of a transcript sent directly from school to the Board.
- ~~11.3 Proof of practical experience in animal care and handling shall consist of a notarized letter of endorsement from the supervising veterinarian(s).~~
- 11.43 Only completed application forms will be accepted. Any information provided to the Board is subject to verification.
- 11.54 Applications for any licensure submitted by final year veterinary technician students enrolled in an AVMA-accredited program for the purpose of taking the VTNE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

(Break in Continuity of Sections)

14.0 Continuing Education for Veterinary Technicians

(24 Del.C. §3309(b))

- 14.1 Any veterinary technician actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.
 - 14.1.1 Twelve (12) hours of approved certified continuing education credits must be completed for the immediate two-year period preceding each biennial license renewal date.
 - 14.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application.
 - 14.1.2.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 14.1.1.
 - 14.1.2.2 Attestation ~~may shall~~ be completed electronically, ~~if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted;~~

(Break in Continuity Within Section)

- 14.1.4 A veterinary technician may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness,

PROPOSED REGULATIONS

extended absence from the country, or unique personal hardship which is not the result of professional negligence. Application for extension shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the ~~biennial~~ license ~~renewal~~ expiration date.

- 14.1.5 The Board has the power to waive any part of the entire continuing education requirement. Exemptions to the continuing education requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the ~~biennial~~ license ~~renewal~~ expiration date.

(Break in Continuity of Sections)

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

3300 Board of Veterinary Medicine

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2112, 2210(e), and 2906(e);
29 Delaware Code, Section 10113(a)

(5 Del.C. §§121(b), 2112, 2210(e), and 2906(e); 29 Del.C. §10113(a))

5 DE Admin. Code 2101, 2102, 2103, 2104, 2105, 2106, 2201, 2202, 2203, 2204, 2205, 2206,
2901, 2902, 2903, and 2904

PUBLIC NOTICE

Notice of Proposed Amendments to Regulations of the State Bank Commissioner

Summary

The State Bank Commissioner proposes to amend 16 Regulations adopted in accordance with Title 5, Chapter 21 (Mortgage Loan Brokers), Chapter 22 (Licensed Lenders) and Chapter 29 (Financing the Sale of Motor Vehicles). Regarding Title 5, Chapter 21 (Mortgage Loan Brokers), the proposed amended Regulations are 2101 (Operating Regulation), 2102 (Minimum Records), 2103 (Schedule of Charges), 2104 (Minimum Disclosure and Agreement Requirements), 2105 (Report of Delaware Loan Volume), and 2106 (Report of Delaware Assets). Regarding Title 5, Chapter 22 (Licensed Lenders), the proposed amended Regulations are 2201 (Operating Regulation), 2202 (Minimum Records), 2203 (Schedule of Charges), 2204 (Surety Bond or Irrevocable Letter of Credit), 2205 (Report of Delaware Loan Volume), and 2206 (Report of Delaware Assets). Regarding Title 5, Chapter 29 (Financing the Sale of Motor Vehicles), the proposed amended Regulations are 2901 (Operating Regulation), 2902 (Minimum Records), 2903 (Report of Delaware Loan Volume), and 2904 (Report of Delaware Assets). The purpose of the amended regulations is to clarify, streamline, and update the existing regulations for ease of understanding and increased relevance to current licensee operations. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed regulations in accordance with Title 5 of the Delaware Code. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the February 1, 2014 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 5, 2014, Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after March 5, 2014, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulations 2101, 2102, 2103, 2104, 2105, 2106, 2201, 2202, 2203, 2204, 2205, 2206, 2901, 2902, 2903, and 2904 or make additional changes because of the public comments received.

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

Proposed Amendments to Regulations of the State Bank Commissioner

**DEPARTMENT OF TRANSPORTATION
DIVISION OF TECHNOLOGY AND SUPPORT SERVICES**

Statutory Authority: 17 Delaware Code, Section 132(e) and 29 Delaware Code, Section 8404(8)
(17 **Del.C.** §132(e) and 29 **Del.C.** §8404(8))
2 **DE Admin. Code** 2501

PUBLIC NOTICE**2501 External Equal Opportunity Complaint Procedure****Background**

As authorized under 17 **Delaware Code** Section 132(e) and 29 **Delaware Code**, Section 8404(8), the Delaware Department of Transportation, ("DelDOT"), through its Division of Technology and Support Services, seeks to adopt amendments to its existing regulations regarding procedures for addressing, investigating and responding to complaints of discrimination on the grounds of race, color, religion, sex, age, national origin or disability with respect to its External EEO Programs.

DelDOT previously submitted a version of these regulations for public comment in September of 2012. Those regulations were never finalized, however. The draft submitted here is a complete revision of the existing regulations, first adopted in 2008.

Public Comment Period

DelDOT will take written comments on these proposed revisions to its External Equal Opportunity Complaint Procedures from February 1, 2014 through March 7, 2014. The proposed Regulations appear below.

Any questions or comments regarding this document should be directed to:

John R. McNeal, ADA Title II/Section 504 and Title VI Coordinator
Delaware Department of Transportation
P.O. Box 778

Dover, DE 19903
(302) 760 - 2467 (phone)
(302) 739 - 2254 (fax)
john.mcneal@state.de.us

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

2501 External Equal Opportunity Complaint Procedure

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(b) (14 **Del.C.** §122(b))

REGULATORY IMPLEMENTING ORDER

614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend Title 14 of the Administrative Code by adding a new regulation 14 **DE Admin. Code** 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion. The regulation is required by House Bill 42 of the 146th General Assembly and intended for "Establishing, for purposes of student discipline, uniform definitions for student conduct which may result in alternative placement or expulsion."

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **October 5, 2013**, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens, State Council for Persons with Disabilities, and the American Civil Liberties Union of Delaware. The Department considered all comments and made changes as determined appropriate. A letter to each of the entities related to their comments will be forthcoming.

II. Findings of Facts

The Secretary finds that it is appropriate to amend Title 14 of the Administrative Code by adding a new regulation 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion as required by House Bill 42 of the 146th General Assembly.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend Title 14 of the Administrative Code by adding a new regulation 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion attached hereto as *Exhibit "B"* is hereby added to Title 14 of the Administrative Code. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion hereby added 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** 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion 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 **January 16, 2014**. 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 16th day of January 2014.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 16th day of January 2014

614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion

1.0 Purpose

Pursuant to 14 **Del.C.** §122(b) (26), this regulation provides uniform definitions for student conduct which may result in alternative placement or expulsion. This regulation shall apply to all school districts and charter schools. Nothing contained here shall be interpreted to require the alternative placement or expulsion of a student, nor shall this regulation be interpreted to restrict the ability of school districts and charter schools to determine which student conduct shall result in expulsion or an alternative placement.

2.0 Definitions

[Since some definitions of section 2.0 may not be age appropriate, this section shall not be required to be published in a district or charter school's Student Code of Conduct. The district/charter school shall publish an internet link to this entire regulation in the Student Code of Conduct and provide a paper copy of the regulation upon request of a member of the public.] In this regulation, the following terms shall have the meanings indicated below:

"Alcohol" shall have the same definition as provided in 4 **Del.C.** §101(1).

"Alcohol Liquor" shall have the same definition as provided in 4 **Del.C.** §101(2).

"Crime" shall have the same meaning as provided in 14 **Del.C.** §4112.

"Charter School" means a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code.

"Commission by a student" means that a student has engaged in behavior equivalent to that which is prohibited by law regardless of whether the student has been criminally convicted of the same.

"Dangerous Instrument" shall have the same meaning as provided in 11 Del.C. §222(4).

"Deadly Weapon" shall have the same meaning as provided in 11 Del.C. §222(5).

"Distribute" "Distributing" or "Distribution" means the transfer or attempted transfer of Alcohol, a Drug, a Look Alike Substance, a Drug Like Substance, or Drug Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"District" means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.

"Drug" means any "controlled substance" or "counterfeit controlled substance" as defined in 16 Del.C. §4701 (6) and (7).

"Drug Like Substance" means any noncontrolled and nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of Drug Like Substance does not include tobacco or tobacco products which are governed by 14 DE Admin. Code 877 Tobacco Policy.

"Drug Paraphernalia" shall have the same meaning as provided in 16 Del.C. §4701 (17).

"Expulsion" means, for purposes of this regulation, the exclusion from the regular school setting for a period determined by the local District board or Charter School board.

"Firearm" means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

"Look Alike Substance" means any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a Drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling.

"Nonprescription Medication" means any over the counter medication; some of these medications may be a "Drug Like Substance."

"Possess", "Possessing", or "Possession" means that a student has on the student's person, in the student's belongings, or under the student's reasonable control prohibited items or substances.

"Prescription Drugs" means any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 Del.C. §4701(31), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose Possession it is found.

"Sexual Act" means (1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight; (2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to arouse or gratify the sexual desire of any person.

"School Environment" means within or on school property, and at school sponsored or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at school sponsored extracurricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

"Sexual Intercourse" shall have the same meaning as provided in 11 Del.C. §761(g).

"Sexual Offense" means any offense defined by 11 Del.C. §§763-780 and §§1108-1112A, 1352(2) and 1353[(2)].

"Student Code of Conduct" means the District/Charter School approved document which specifies the rights and responsibilities of students, defines conduct that disrupts/threatens a positive/safe school environment, standardizes procedures for consequences, disciplinary action, and defines due process and grievance procedures.

"Theft" means those acts described in 11 Del.C. §§ 841 through 846 inclusive.

"Use" means that a student is reasonably known to have voluntarily ingested, smoked or otherwise assimilated Alcohol, a Drug or a Drug Like Substance, or is reasonably found to be under the influence of such a substance.

3.0 Uniform Definitions for Student Conduct

The following definitions shall be used whenever a school district or charter school uses such conduct as a basis for alternative placement or expulsion of a student:

"Arson" shall mean ~~[any act utilizing fire, smoke, or explosives which cause alarm or danger to life; including but not limited to willful or malicious burning of school property, its contents, or the property of others]~~ a person recklessly or intentionally damages a building by intentionally starting a fire or causing an explosion].

"Assault III" shall mean: (1) A person intentionally or recklessly causes physical injury to another person; or (2) With criminal negligence the person causes physical injury to another person by means of a Deadly Weapon or a Dangerous Instrument.

"Attorney General's Report (Juvenile Arrest Warrant and Complaint)" shall mean the Department of Justice's report of out-of-school criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and Drug offenses.

"Breaking and Entering" shall mean unauthorized entry of any locked area of the school environment during or after school; including, but not limited to, rooms, classrooms, auditorium, gym, shops, offices, lockers, cabinets and vehicles.

"Bullying" shall mean any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of: (1) Placing a student, school volunteer or school employee in reasonable fear of substantial harm to his or her emotional or physical well-being or substantial damage to his or her property; or (2) Creating a hostile, threatening, humiliating or abusive educational environment due to the pervasiveness or persistence of actions or due to a power differential between the bully and the target; or (3) Interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities or benefits; or (4) Perpetuating bullying by inciting, soliciting or coercing an individual or group to demean, dehumanize, embarrass or cause emotional, psychological or physical harm to another student, school volunteer or school employee.

"Criminal Drug Offense, Commission of" shall mean the Commission by a student of the unlawful Possession, Distribution, or use of Alcohol, a Drug, a Drug-Like Substance, and/or Drug Paraphernalia.

"Criminal Deadly Weapons/Dangerous Instrument Offense, Commission of" shall mean the Commission by a student of an offense prohibited by 11 Del.C. §§1442 through 1458 inclusive.

"Criminal Mischief (Vandalism)" shall mean a student[, in the School Environment,] intentionally or recklessly: (1) Damages tangible property of another person or entity; or (2) Tamper with tangible property of another person so as to endanger person or property.

"Criminal Sexual Offense, Commission of" shall mean the Commission by a student of an offense prohibited by 11 Del.C. §§763 through 780, inclusive, or §§1108 through 1112A, inclusive, or §1352(2) or §1353~~(2)~~.

"Criminal Violent Felony Offense, Commission of" shall mean the Commission by a student of any violent felony as specified in 11 Del.C. §4201(c).

"Cyberbullying" shall mean the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that

student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.

"Dangerous Instrument(s) Possession/Concealment/Sale" shall mean the unauthorized Possession/concealment/sale by a student **[in the School Environment]** of any instrument, article or substance which is readily capable of causing serious physical injury or death.

"Deadly Weapon(s) Possession/Concealment/Sale" shall mean the Possession, concealment, or sale of a Deadly Weapon **[in the School Environment]**.

"Defiance of School Authority" shall mean: (1) A verbal or non-verbal refusal to immediately comply with a reasonable request from school personnel, or refusal to identify oneself at the request of school personnel, and/or refusal to comply with disciplinary action; or (2) A verbal or non-verbal display of disrespect and/or uncivil behavior toward school personnel which either causes a substantial disruption or material interference with school activities.

"Disorderly Conduct" shall mean conduct **[in the School Environment]** which causes public inconvenience, annoyance or alarm or creates a risk thereof by: engaging in fighting or violent tumultuous or threatening behavior or making an unreasonable noise or an offensively coarse utterance or gesture or display or addressing, abusive language to any person present.

~~**"Disruption of the Educational Process" shall mean behavior, which causes a substantial disruption or material interference with school activities.**~~

"Distribution of Drugs and/or Alcohol and/or Drug Paraphernalia" shall mean the sale, transfer, or Distribution in school, on school property, or on school field trip of Drugs or Alcohol.

"Extortion" shall mean to obtain or attempt to obtain money, goods, services, or information from another by force or the threat of force.

"Felony Theft (\$1500 or more)" shall mean: (a) When a person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it; or (b) When a person, in any capacity, legally receives, takes, exercises control over or obtains property of another which is the subject of Theft, and fraudulently converts the property to the person's own use. The Theft is considered a felony when the value of the property received, retained, or disposed of is \$1500 or more or the victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902(2) of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12.

"Fighting" shall mean any aggressive physical altercation between two or more individuals.

"Gambling" shall mean participation in games of chance for money or other things of value.

"Gun Free School's Violation" shall mean the prohibited bringing to school, or Possession while in school of a Firearm by a student.

"Harassment" shall mean any actions or statements ~~**[that intimidate, offend, or defame the dignity or self esteem of individuals or groups. Harassment may include, but is not limited to verbal harassment or abuse, repeated remarks or jokes with demeaning implications or other offensive behavior. Harassment also includes intimidating, offensive or defaming behavior or materials directed at an individual because of that individual's race, national origin, disability, sexual orientation or religion]**~~ made with the intent to harass, annoy, or alarm another person which: A) insults, taunts, or challenges the other person or; B) is a cause of alarming or distressing conduct which serves no legitimate purpose and is done in a manner which the actor knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress].

"Inhalant Abuse" shall mean chemical vapors that are inhaled for their mind-altering effects.

"Medications: Inappropriate Use or Possession" shall mean Possessing or using Nonprescription Medication or Prescription Drugs of any type in the School Environment in violation of ~~**[a charter school or school District's Drug and Alcohol policy 14 DE Admin. Code 612]**~~.

"Misuse of Technology" shall mean:

The use of school technology equipment in:

- Soliciting, using, receiving or sending pornographic or obscene material; or
- Accessing unauthorized email; or

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The unauthorized downloading and/or installing of files; or
Intentionally damaging technology equipment [with]in the School Environment; or

A situation in which a student deliberately:

Tampers with, damages, alters, accesses, crashes, or corrupts the computer/communications system [with]in the School Environment resulting in the loss or corruption of information or the ability of the system to operate; or

In any way disrupts or degrades the school or District's technology infrastructure.

"Offensive Touching" shall mean intentionally touching another person either with a member of his or her body or with any instrument, knowing that the person is thereby likely to cause offense or alarm to such other person; or Intentionally striking another person with saliva, urine, feces or any other bodily fluid, knowing that the person is thereby likely to cause offense or alarm to such other person.

"Pornography" shall mean the Possession, sharing, or production of any known obscene material [with]in the School Environment.

"Rape or Attempted Rape" shall respectively mean sexual intercourse and attempted Sexual Intercourse without consent of the victim in both cases.

"Reckless Burning" shall mean when a person intentionally or recklessly starts a fire or causes an explosion and recklessly places a building or property in danger of destruction or damage or places another person in danger of physical injury.

"Repeated Violations of Student Code of Conduct" shall mean~~[-(1) F]ive or more violations of the school's Code of Conduct within a school year, excluding chronic infractions for tardiness or unexcused absences to school/class~~~~[- or (2) Violation by a student of any behavior contract between the student, his/her legal guardian, and the school].~~

"Sexual Assault" shall mean any unwanted sexual behavior committed by a perpetrator who is a stranger to the victim or by a perpetrator who is known by the victim or related to the victim by blood, marriage or civil union. Behaviors that fall under this definition include but are not limited to: sexual harassment as defined in §763 of Title 11; sexual contact as defined in §761(f) of Title 11; Sexual Intercourse as defined in §761(g) of Title 11; sexual penetration as defined in §761(i) of Title 11; and child sexual abuse as defined in §901 of Title 10.

"Sexual Misconduct" shall mean a consensual sexual act(s) between two individuals within the School Environment.

"Stealing" means taking, exercising control over or obtaining property of another person intending to deprive that person of it or appropriate it.

"Steroids Possession and/or Use" shall mean the unlawful Use or Possession of steroids.

"Tampering with Public Records" shall mean a person knowingly without valid authorization removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any original record or other written material filed with, deposited in or otherwise constituting a record of a public office or public servant.

"Teen Dating Violence" shall mean assaultive, threatening or controlling behavior, including stalking as defined in 11 Del.C. §1312, that one person uses against another person in order to gain or maintain power or control in a current or past relationship. The behavior can occur in both heterosexual and same sex relationships, and in serious or casual relationships.

"Terroristic Threatening" shall mean when: (1) A person threatens to commit any Crime likely to result in death or in serious injury to person or property; or (2) A person commits an act with intent of causing an individual to believe that the individual has been exposed to a substance that will cause the individual death or serious injury.

"Terroristic Threatening - Security Threat" shall mean when a person makes a false statement or statements: (1) Knowing that the statement or statements are likely to cause evacuation ~~[of a building, place of assembly, or facility of public transportation in the School Environment]~~; (2) Knowing that the statement or statements are likely to cause serious inconvenience **[in the School Environment]**; or (3) In reckless disregard of the risk of causing terror or serious inconvenience **[in the School Environment]**.

"Unlawful Sexual Contact III" shall mean when a student has sexual contact with another person or causes the victim to have sexual contact with the student or a third person and the student knows that the contact is either offensive to the victim or occurs without the victim's consent.

"Use and/or Possession of ~~drugs~~ a Drug] and/or Alcohol and/or Drug Paraphernalia" shall mean[, that in the School Environment,] a student unlawfully Possesses, Uses or is under the influence of[, ~~in the School Environment,~~] Alcohol, ~~[Drugs or any prohibited substance~~ a Drug, Drug Paraphernalia, or any substance or paraphernalia consistent with the definitions of these substances or paraphernalia].

["Violation of Behavior Contract" shall mean the failure of a student to comply with the provisions of any behavior contract between the student, his/her legal guardian, and the school.]

4.0 Effective Date

This regulation shall become effective for School Codes of Conduct in the 2014-15 school year.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

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

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to provide notice to the public of its intent to file a state plan amendment with the Centers for Medicare and Medicaid Services (CMS) to establish an Alternative Benefit Plan (ABP) for the eligibility category created pursuant to section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, effective January 1, 2014. 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 December 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Background

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

Through section 1937 Alternative Benefit Plans, State Medicaid programs have the option to provide certain groups of Medicaid enrollees with “benchmark” or “benchmark-equivalent” coverage based on one of three commercial insurance products, or a fourth, “Secretary-approved” coverage option. “Benchmark” means that the benefits are at least equal to one the statutorily specified benchmark plans, and “benchmark-equivalent” means that the benefits include certain specified services, and the overall benefits are at least actuarially equivalent to one of the statutorily specified benchmark coverage packages. The four benchmarks are:

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

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

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

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

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

Administrative Procedures Pertaining to the Alternative Benefit Plan

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

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

Summary of Proposal

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

The ABP intends to cover the ten (10) essential health benefits as described in 42 C.F.R. 440.347 to include family planning services, early periodic screening, diagnostic and treatment services for individuals under age 21 years; mental health or substance use disorder benefits in accordance with the Mental Health Parity and Addiction Equity Act; and, a compliance statement regarding section 5006(e) of the American Recovery and Reinvestment Act. In fact, the alternative benefit plan will be an identical plan with the Delaware Medicaid State Plan in effect on January 1, 2014 and will include all of the same Medicaid benefits and services provided to current Medicaid beneficiaries.

Cost Sharing

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

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

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

Fiscal Impact

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DMMA received no public comments regarding this state plan amendment.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to establish and implement Delaware Medicaid Program Alternative Benefit Plan (ABP), is adopted and shall be final effective February 10, 2014.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #14-01**ALTERNATIVE BENEFIT PLAN**

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

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

Effective January 1, 2014, Delaware's Alternative Benefit Plan (ABP) intends to cover the required ten (10)

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

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

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

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

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

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

Cost Sharing

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

State Plan Amendment

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

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

Public Comments

The public is invited to comment on the State's proposed Alternative Benefit Plan amendment request. Written comments may be sent to: Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or via fax to 302-255-4425. For consideration, written comments must be received by 4:30 p.m. on December 31, 2013. Please identify in the subject line: Proposed Delaware Medicaid Program Alternative Benefit Plan Amendment.

Fiscal Impact Statement

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

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

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

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) *to update the earned income disregard percentage used for the treatment of income for poverty level pregnant women and infants under age one (1)*. 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 December 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Background

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

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

Modified Adjusted Gross Income (MAGI) Conversion Plan

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

Summary of Proposal

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

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

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

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

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

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

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

Fiscal Impact Statement

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

As background, based on changes in federal law, DMMA was prompted to modify its calculation of the Medicaid countable income cap for pregnant women and infants under age 1. This resulted in an anomaly, i.e., pregnant women and infants under age 1 would be eligible with countable income up to 209% of the federal poverty level (FPL) but children between 1 and 18 would be eligible with countable income up to 212% of the FPL. DMMA would like to have the same standard so it is proposing to adopt the 212% FPL standard for both groups. CMS recommended that DMMA effect the revisions "immediately" (p. 598) so DMMA is issuing both an emergency and proposed regulation. DMMA indicates there is no negative financial impact on the State resulting from the proposed change. At p. 599.

Since the proposal would increase access to the Medicaid program with no negative financial impact, SCPD endorses the proposed regulation subject to consideration of a potential amendment. Both the emergency and proposed regulations recite that "Delaware will disregard an equal amount to the difference...". SCPD suspects that DMMA may have intended to recite that "Delaware will disregard an amount equal to the difference..."

Agency Response: Please be advised that the language used in the proposal reflects CMS guidance. DMMA thanks the Council for the endorsement. No change to the regulation was made as a result of this comment.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2013 *Register of Regulations*

should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) *to update the earned income disregard percentage used for the treatment of income for poverty level pregnant women and infants under age one (1) to 212% of the Federal Poverty Level (FPL)* is adopted and shall be final effective February 10, 2014.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #14-02a
REVISION:**

Supplement 8c to ATTACHMENT 2.6-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: DELAWARE

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

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

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

**DMMA FINAL ORDER REGULATION #14-02b
REVISION:**

15200.4 Financial Eligibility

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

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

15300.3 Financial Eligibility

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

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

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

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

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)y and z (16 Del.C. §122(3)y and z)

ORDER

4408 Facilities that Perform Invasive Medical Procedures

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing Facilities that Perform Invasive Medical Procedures. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Del.C. § 122(3)y and z.

On October 1, 2013 (Volume 17, Issue 4), 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 31, 2013, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Facilities that Perform Invasive Medical Procedures were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Entities offering written comments include:

- Medical Society of Delaware, Stephen J. Kushner, D.O., President
- State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson
- Governor’s Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson
- Anesthesia Advisory Consultants, Lawrence S. Giordano, DDS (Recent Former Consultant); and, Raymond Petrunich, DMD (Current Consultant)

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

Medical Society of Delaware, Stephen J. Kushner, D.O., President:

On behalf of the Medical Society of Delaware, thank you for your diligent work in the crafting of these proposed regulations and for the opportunity to provide comments. In this letter we offer a number of technical amendments and suggestions. We also would like to restate an overarching concern we submitted in April, 2013. However, we appreciate your efforts and care in the process.

While we recognize the statutory requirements as to the scope of these regulations, we would like to briefly reiterate our letter sent in response to the April version of these regulations. That is, the Medical Society is concerned that these regulations improperly intermingle facility specifications and practitioner conduct. The statutory and regulatory combination of these separate concerns confuses the facility standards with the practice of medicine in reporting “adverse events.” Incidents in the practice of medicine should be left to the purview of the Board of Medical Licensure and Discipline and such changes should be included in their regulations.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency disagrees that the reporting of adverse events will improperly intermingle facility specifications and practitioner conduct. The reporting of adverse events will facilitate the monitoring of the safe and sanitary environment within facilities that perform invasive medical procedures. The regulations do not regulate physician licenses or practice; only the safety of the care provided in the facilities that perform invasive medical procedures. Issues related to physician licensure will continue under the oversight of the Division of Professional Regulation.

Additionally, we suggest the following technical amendments:

- 2.0 Definitions – The definition “Anxiolysis” references the definition of “Minimal Sedation” which “means a drug-induced state during which: (1) patients respond normally to verbal commands, (2) cognitive and physical coordination may be impaired but airway reflexes and ventilatory and cardiovascular functions are unaffected.” Clinically, anxiolysis is broad and anything that relieves

anxiety falls under the definition. Thus use of common anxiety medications such as any of the range of oral benzodiazepines would trigger “minimal sedation” and “Anesthesia” which is likely not the intent. We would suggest a curbed definition of Anxiolysis which would read: “means minimal sedation, as defined below, delivered intravenously” or by similar narrowing language.

Agency Response: The Agency appreciates and acknowledges these comments. Upon consideration of the comment and review of current literature, the Agency will further clarify the definition of anesthesia to exclude (1) the administration of less than 50% nitrous oxide in oxygen with no other sedative or analgesic medications by any route or (2) a single, oral sedative or analgesic medication administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.

- 3.8 could be worded more clearly. Does the qualification of requiring “post-anesthesia care experience and certification in [ACLS]” apply to all in that list or only to a registered nurse? We believe the intent is the latter, but it is ambiguous.

Agency Response: The Agency appreciates and acknowledges these comments. The language referencing the post-anesthesia care experience and certification in advanced cardiac life support requirement in 3.8 is specific to the registered nurse. The regulation wording will be re-ordered to clearly reflect this requirement.

- 3.9 under Patient Care is overreaching. Requiring a physician/dentist/podiatrist to be on-site at all times until medical discharge does not take into account the role of other medical staff in facilities and the relationship facilities have with emergency providers. We suggest either expanding the list, requiring a formal relationship with emergency services, or striking this provision.

Agency Response: The Agency appreciates and acknowledges these comments. The standards of practice require the practitioner that performed that invasive medical procedure be onsite and immediately available until the patient is discharged from the facility; therefore, the regulation will remain as written.

- 4.3.3 states that “[t]he facility must forward a complete investigative report to the Department within 30 calendar days of the event.” Will a template or parameters be provided by the Department?

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will not have a template to complete investigative reports. However, in the event of an adverse event, the facility will be expected to complete a root cause analysis of the incident and provide the Department with a thorough investigative report including details of the incident, the root cause analysis, follow-up that was completed as a result of the incident/investigation and any other pertinent information.

- 4.7.1 states “[t]he facility shall develop and maintain policies and procedures based upon accepted standards of practice.” This is a broad requirement. Facilities follow standards of practice developed by professional and regional organizations and are not in the position to develop them. Striking “develop and” may be sufficient.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees and will revise the regulation to state, “The facility shall maintain policies and procedures based upon accepted standards of practice.”

- 4.11 requires that a facility that chooses to stop performing invasive medical procedures and voluntarily surrenders accreditation must notify the Department in writing 30 days prior to the voluntary surrender of accreditation or cessation of invasive medical procedures. Why is this time requirement necessary? While closures do happen, a checklist to ensure a facility closes without harming patients may help avoid unnecessary financial hardships that are inadvertently possible in a 30 day requirement.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency disagrees and the regulation will remain as written. The intent of this regulation is to ensure patients receive safe care in the event that a facility chooses to voluntarily surrender accreditation and stop performing invasive medical procedures.

As to Section 8.0 Disciplinary Actions, the Medical Society has concerns both at the broad discretion granted the Department as well as the time frames during which a facility may be closed. In the rare occasion that facilities have to close to address concerns, the goal should be to re-open these facilities as quickly as possible, not only to ensure their viability as small businesses, but to make sure Delawareans continue to receive necessary care.

- Under 8.2.1.1, the standard of “immediate and substantial risk to the health or safety of any person” is undefined and overbroad. While we appreciate the need for the Department to have flexibility to address health concerns, baseline criteria would help guide all stakeholders and set a standard for any administrative hearings.

Agency Response: The Agency appreciates and acknowledges these comments. The goal of the Department

is to ensure the safety of those Delawareans receiving services in facilities that perform invasive medical procedures. Because of the broad range of invasive medical procedures that are performed in these facilities, this regulation, as written, provides the appropriate latitude to determine compliance with a multitude of standards. The Department agrees with the Medical Society and the goal will be to re-open these facilities as quickly as possible, not only to ensure their viability as small businesses, but to make sure Delawareans continue to receive necessary care.

- Under 8.2.1.1.1, we appreciate a cap of 90 days for a closure and a mechanism for continuance if requested, but the time frames within the 90 days are far too long. An expedited hearing under 8.3.3.3.2 is a useful mechanism, but 15 days for action upon receipt and then another 30 days—the starting point of which is unclear, we suggest starting the time at the time of the order—for a decision are both also too long. We would like to point out that food establishments closed for imminent health hazards receive faster regulatory hearings. Under Delaware Food Code 8-602.10(B)(2), a permit holder “shall not be suspended for a period longer than ten (10) government business days without a hearing. Failure to hold a hearing within the ten (10) government business day period shall automatically terminate the suspension.” The Medical Society suggests that keeping medical facilities open and serving the public is as important as keeping our food establishments open and would request similar or faster time frames as well as an extinguishing cap that would allow facilities to re-open if no timely action is taken.

Agency Response: The Agency appreciates and acknowledges these comments. The timeframes included within these regulations are in compliance within the Administrative Procedures Act within Delaware Code.

- Related, we appreciate and value the mechanism that allows a plan to be submitted to correct unsafe practices, but we suggest both 8.3.3.2.2 and 8.3.3.2.3 have a faster required response rate. Perhaps a new 8.3.3.2.4 which states “The Department shall evaluate a plan and revisit a closed facility within 48 hours or 72 hours if including non-government business days” to ensure that facilities are able to resume treating those in need as soon as possible.

Agency Response: The Agency appreciates and acknowledges these comments. The Department will review the plan of correction immediately upon receipt and a revisit will be conducted expeditiously upon the receipt of an acceptable plan of correction.

- Lastly, 8.3.1.2 allows for closing an entire facility and not just the performance of medical procedures. While situations may arise, although hopefully not, where this is required, there should be a mechanism to allow a facility to be able to quickly and reliably resume practice if the problem is contained.

Agency Response: The Agency appreciates and acknowledges these comments. The mechanism for a facility to resume practice already exists through the submission and implementation of an acceptable plan of correction as outlined in the regulations.

State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health’s (DPH’s) proposal to adopt a new regulation regarding facilities that perform invasive procedures using anesthesia. The proposed regulation was published as 17 **DE Reg.** 397 in the October 1, 2013 issue of the Register of Regulations. SCPD provided commentary on the initial set of proposed regulations in April 2013 and has the following observations on the revised version.

Governor’s Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson:

The Governor’s Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of public Health (DPH) proposal to adopt new regulations regarding facilities that perform invasive procedures using anesthesia. The GACEC provided commentary on the initial set of proposed regulations in April 2013 and would like to share the following observations on the revised version.

The State Council for Persons with Disabilities and The Governor’s Advisory Council for Exceptional Citizens submitted the following comments:

1. In §2.0, definition of “accredited facility”, second sentence, SCPD, GACEC recommends insertion of “the” between “from” and “facility”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will insert the word “the” between “from” and “facility”.

2. In §2.0, definition of “accredited organization”, second sentence, SCPD, GACEC recommends the following revision - “...organization requires facilities to complete self-assessments and expert surveyors to conduct

thorough reviews.”

Agency Response: The Agency appreciates and acknowledges these comments. The Agency acknowledges the lack of a preposition and will change the definition of “accrediting organization” to “...organization requires facilities to complete self-assessments and expert surveyors to conduct thorough reviews.”

3. In §2.0, the definition of “certified registered nurse anesthetist” is simply “an individual currently licensed under 24 **Del.C.** Ch. 19.” This definition is problematic since it would literally mean anyone licensed under that chapter (LPN; RN; APN) qualifies as a nurse anesthetist under the regulations. There is no separate license or certification of a nurse anesthetist mentioned in Chapter 19, only a passing reference in §1902(b)(1).

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will clarify the definition of “certified registered nurse anesthetist” to read, “an individual currently licensed as an advanced practice nurse currently licensed under 24 **Del.C.** Ch. 19.”

4. In §2.0, definition of “general anesthesia”, SCPD, GACEC recommends not capitalizing “(t)he in Par. (2) and inserting “and” before “(4)”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will not capitalize “(t)he” in Par. (2) and insert “and” before “(4)”.

5. In §2.0, definition of “invasive medical procedure”, the reference to “major conduction anesthesia or sedation” is surplusage since the terms are included in the definition of “anesthesia.”

Agency Response: The Agency appreciates and acknowledges these comments. The definition of “invasive medical procedure” reflects the statutory definition and will remain as written.

6. In §2.0, definition of “minimal sedation, SCPD, GACEC recommends inserting “and” before “(2)”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will insert the word “and” before “(2)”.

7. In §2.0, the definitions of “physician” and “physician assistant” are identical. Consider the following revisions:

“Physician” means an individual currently licensed as a physician under 24 **Del.C.** Ch. 17.

“Physician Assistant” means an individual currently licensed as a physician assistant under 24 **Del.C.** Ch. 17.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will clarify the definitions of “physician” and “physician assistant” to read “**Physician** means an individual currently licensed as a physician under 24 **Del.C.** Ch. 17” and “**Physician Assistant** means an individual currently licensed as a physician assistant under 24 **Del.C.** Ch. 17”.

8. In §2.0, definition of “time-out”, the reference to “site” is not intuitive. It suggests that the team does not know its location.

Agency Response: The Agency appreciates and acknowledges these comments. The standard requirements of a “time-out” include correctly identifying the patient, the procedure and the site; therefore, the definition of “time-out” will remain as written.

9. In §3.2, insert a comma after “anesthetist”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will insert a comma after “anesthetist”.

10. In §3.5.1.11, delete “and”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will delete “and” at the end of §3.5.1.11.

11. In §3.5.1.12, substitute a semicolon for the period.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will substitute a semicolon for the period after the word “monitor” in §3.5.1.12.

12. In §3.5.1.13, insert “which” between “cart” and “include”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will insert the word “which” between “cart” and “include” in §3.5.1.13.

13. In §3.5.1.13.2, substitute a semicolon for the period. Compare §6.2.2.2.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will substitute a semicolon for the period in §3.5.1.13.2.

14. In §3.5.2, substitute “; and” for the period.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will substitute

“; and” for the period at the end of §3.5.2.

15. In §4.6, substitute “prohibit licensed individuals” for “prohibit a licensed individual” since there is otherwise a plural pronoun (“their”) which refers back to a singular noun (“individual”).

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will replace the word “their” with “his/her” to resolve conflict between a plural pronoun and a singular noun.

16. In §4.11, delete the comma after “accreditation”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will delete the comma after the word “accreditation” in §4.11.

17. In §5.1, delete the comma after “environment”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will delete the comma after the word “environment” in §5.1.

18. In §6.2.7, add a semicolon.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will add a semicolon at the end of §6.2.7.

19. In §6.2.8, delete “and”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will delete the word “and” at the end of §6.2.8.

20. In §6.2.9, insert a semicolon.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will insert a semicolon at the end of §6.2.9.

21. Delete §§6.2.10.1 and 6.2.10.2 while amending §6.2.10 to read as follows: “A separate anesthesia record for each administration of anesthesia which must include:”

Agency Response: The Agency appreciates and acknowledges these comments. The Agency recognizes the similarity of the requirements and will amend §6.2.10 to read “A separate anesthesia record for each administration of anesthesia which must include:” Therefore, §§6.2.10.1 and 6.2.10.2 will be deleted as the requirements will be contained in §6.2.10.

22. Renumber §§6.2.10.2.1 through 6.2.10.2.9 as 6.2.10.1 through 6.2.10.9. Substitute “; and” for the period after the renumbered 6.2.10.9.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will renumber §§6.2.10.2.1 through 6.2.10.2.9 as 6.2.10.1 through 6.2.10.9; however, the period after the renumbered 6.2.10.9 will remain.

23. Delete the comma after “near”.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will delete the comma after “near” in §7.1.

24. Section 8.2.1.1.1 categorically caps the duration of an order of closure to 90 days in the absence of a request for continuance of the date of a Departmental hearing. This is problematic.

A. Under §§8.3.3.3.1 and 8.3.3.3.1.1, a hearing could routinely occur on the 80th day after issuance of the closure order and §8.3.3.3.1.3 suggests that the hearing decision could be issued on the 110th day. During days 91-109, the closure order would no longer be in effect and the facility could reopen. If a continuance were granted per 8.2.1.1.1, this time period would be extended and the facility could reopen for an even longer period.

B. Under §8.3.3.1, if the facility takes no action on an order of closure, the order of closure remains in effect. It is not capped at 90 days per §8.2.1.1.1.

Agency Response: The Agency appreciates and acknowledges these comments. If a facility requests a hearing, the request must be received by the Department within 20 calendar days from the date on which the order to close was issued and the hearing must be held within 60 days from the date on which the order to close was issued; therefore, completing the entire process within the 90 day timeframe. The 90 day timeframe is to ensure the timely resolution for those facilities requesting an administrative hearing and those facilities choosing to address and correct the issues leading to an order to close. If a facility takes no action to correct the issues that led to the order to close, the facility must remain closed. The regulation will remain as written.

25. Section 9.3.1 addresses unannounced inspections. SCPD, GACEC recognizes that §9.3.1.1 mirrors the statute. However, the Department’s licensing authority might also authorize unannounced inspections at any time. As written, §9.3 would arguably bar the Department from initiating an unannounced inspection in the absence of a complaint or DPR referral. The Division may wish to add a catch-all provision (§9.3.1.3) to read as follows:

“Anytime as otherwise authorized by law or applicable regulation.”

Agency Response: The Agency appreciates and acknowledges these comments. The regulation will remain as written.

26. The exclusion in §9.5.1.1 is contrary to the statutory definition of “facility”. See Title 16 **Del.C.** §122(3)y.3.C. If the Stockley Center, Mary Campbell Center, or other long-term care facility engaged in invasive procedures (including dental and podiatry procedures), they should be required to comply with the regulation.

Agency Response: The Agency appreciates and acknowledges these comments. The Stockley Center, Mary Campbell Center and other long-term care facilities, and the healthcare services provided within these facilities, are regulated by Title 16 Chapter 11.

Anesthesia Advisory Consultants, Lawrence S. Giordano, DDS (Recent Former Consultant); and, Raymond Petrunich, DMD (Current Consultant):

We have been Anesthesia Advisory Consultants to the Board of Dentistry for many years. We have been administering the regulations concerning dentists (under Title 24, 1100 Board of Dentistry, 7.0 to 7.6.3. for at least 25 years.

As we read the proposed regulations of “4408 Facilities that Perform Invasive Medical Procedures”, we note the definitions of the various types of anesthesia and sedations, which includes the definition of Anxiolysis or (more recently called) Minimal sedation. While this is a quite logical inclusion when defining types of sedation, it creates an unnecessary problem for dentists. That problem is that this inclusion would now require all dentists who utilize minimal sedation to be inspected.

As you may also know, the regulations concerning anesthesia for dentists can issue three different types of Permits. Each dentist must qualify for the specific Permit he/she is applying for, and then must fulfill that Permits requirements. The Permit for Minimal sedation (only) is called a Restricted II Permit, and requires the dentist to have taken a specific course of at least 14 hours, and it must include actual patient administration, under personal supervision by an instructor. This is better understood as nitrous oxide inhalation sedation, unfortunately sometimes called “laughing gas”.

Most dentists will meet this requirement in Dental School, and if they submit official documentation of the course, we (the AAC, Anesthesia Advisory Consultants) recommend to the Board that they be granted a Restricted II Permit. Inspection of their facility is not required by our regulations because we believe this technique is particularly safe, the equipment is not complicated, they have been adequately trained to administer this technique, and the equipment has “fail safety” built into it.

For example, the machines limits how high a concentration one could use, and if somehow oxygen is lost, then no nitrous oxide will flow, etc.

So that you fully appreciate the Anesthesia regulations, the other two Permits do require an initial inspection, and a re-inspection every five years. These inspections are delineated in the regulations and are very comprehensive, especially as it relates to the Unrestricted Permit.

The AAC must use the criteria developed by the American Association of Oral and Maxillofacial Surgeons when it does the inspections. These criteria have been developed in liaison with the American Society of Anesthesiologists, American Dental Association (and many other pertinent organizations).

While we have no documentation to prove it, we think there is no other medical specialty who would use “Minimal sedation”, as we use it in dentistry (which in practicality, means the use of Nitrous Oxide Inhalation as the sedative agent and technique). Thus, dentists would be the only ones affected by this inclusion, and the AAC does not think this is necessary.

Obviously, none of these comments relate to other requirements of the law, but only as it relates to anesthesia and sedation by dentists.

We therefore ask that an exemption be given to dentists who have a Restricted II Permit, from the requirement of inspection of their facility, as it relates to anesthesia/sedation.

Agency Response: The Agency appreciates and acknowledges these comments. Upon consideration of the comment and review of current literature, the Agency will further clarify the definition of anesthesia to exclude (1) the administration of less than 50% nitrous oxide in oxygen with no other sedative or analgesic medications by any route or (2) a single, oral sedative or analgesic medication administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.

The public comment period was open from October 1, 2013 through October 31, 2013.

Based on comments received during the public comment period, only non-substantive changes have been made to the proposed regulations. The regulations have been approved by the Delaware Attorney General's office

and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Based on public comments received, non-substantive changes were made to the proposed regulations. 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 Facilities that Perform Invasive Medical Procedures are adopted and shall become effective February 11, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

4408 Facilities that Perform Invasive Medical Procedures

(Break in Continuity of Sections)

2.0 Definitions

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

"Accredited Facility" means a facility that is accredited by an accrediting organization approved by the Department. Approval requires an accrediting organization to be independent from **[the]** facility.

"Accrediting Organization" means an organization able to measure the quality of facility's services and performance against nationally-recognized and evidenced-based standards that focus on (1) ensuring quality health care and provider competence, (2) reducing risks, (3) monitoring standards of practice (4) promoting continuous quality improvement, and (5) demonstrating accountability. The organization requires facilities **[to]** complete self-assessments and expert surveyors **[to]** conduct thorough reviews.

"Adverse Event" means the death or serious injury of any patient at a facility; a reasonable determination by the Department that death or serious injury may result from any unsafe or unsanitary condition at a facility; or the initiation of any criminal investigation arising out of or relating to any diagnosis, treatment or other medical care at a facility.

"Anesthesia" means anxiolysis, conscious sedation, deep sedation, major conduction anesthesia, minimal sedation, moderate sedation or general anesthesia. ~~Local anesthesia is not included in this definition.~~ **This definition excludes: (1) local anesthesia, (2) the administration of less than 50% nitrous oxide in oxygen with no other sedative or analgesic medications by any route, or (3) a single, oral sedative or analgesic medication administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain].**

"Anxiolysis" means minimal sedation.

"ASA Classification" means the American Society of Anesthesiologists's physical status classification of preoperative patients for anesthetic risk assessment.

"Certified Registered Nurse Anesthetist" means an individual currently licensed **[as an advanced practice nurse]** under 24 Del.C. Ch.19.

"Complaint" means a complaint filed by a patient or current facility employee in writing, in such format as the Department requires.

"Conscious Sedation" means moderate sedation

"Deep Sedation" means a drug-induced depression of consciousness during which: (1) patients cannot be easily aroused but respond purposefully following repeated or painful stimulation, (2) the ability to independently maintain ventilatory function may be impaired, (3) patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate, and (4) cardiovascular function is usually maintained.

"Dentist" means an individual currently licensed [as a dentist] under 24 Del.C. Ch. 11.

"Department" means the Delaware Department of Health and Social Services or its designee.

"Facility" means a location at which any invasive medical procedure is performed, but shall not include any hospital, as defined in 16 Del.C. §1001(2), or any freestanding birthing center, freestanding surgical center or freestanding emergency center as such terms are defined in defined in 16 Del.C. §122 (3)p.

"General Anesthesia" means a drug-induced loss of consciousness during which: (1) patients are not arousable, even by painful stimulation, (2) ~~the~~ the ability to independently maintain ventilatory function is often impaired, (3) patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function, [and] (4) cardiovascular function may be impaired.

(Break in Continuity Within Section)

"Minimal Sedation" means a drug-induced state during which: (1) patients respond normally to verbal commands, [and] (2) cognitive and physical coordination may be impaired but airway reflexes and ventilatory and cardiovascular functions are unaffected.

(Break in Continuity Within Section)

"Physician" means an individual currently licensed [as a physician] under 24 Del.C. Ch. 17.

"Physician Assistant" means an individual currently licensed [as a physician assistant] under 24 Del.C. Ch. 17.

"Plan of Correction" means a facility's written response to findings of regulatory non-compliance. Plans must adhere to the format specified by the Department, include acceptable timeframes in which deficiencies will be corrected and must be approved by the Department.

"Podiatrist" means an individual currently licensed [as a podiatrist] under 24 Del.C. Ch. 5.

"Procedure" means invasive medical procedure.

"Registered Nurse" means an individual currently licensed [as a registered nurse] under 24 Del.C. Ch.19.

"Serious Injury" means physical injury that creates a substantial risk of death, or that causes serious disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ or which causes the termination of a pregnancy without the consent of the pregnant female.

"Time-out" means a pause in action conducted in the procedure room immediately before the procedure is to begin. The time-out (1) involves the entire operative team, including the patient, (2) uses active communication and (3) includes correctly identifying: the patient, the procedure, and the site.

3.0 Patient Care

3.1 The physician/dentist/podiatrist must determine that the facility is an appropriate forum for the particular procedure(s) to be performed on the particular patient.

3.2 The physician/dentist/podiatrist and/or when involved, the certified registered nurse anesthetist[,] must determine whether the patient is an appropriate candidate for the anesthesia to be provided in the facility using the ASA classification system.

(Break in Continuity Within Section)

3.5 The facility must maintain equipment and supplies, unless precluded or invalidated by the nature of the patient, procedure, or equipment, including but not limited to:

3.5.1 Age-appropriate and size-appropriate monitors, resuscitative equipment, supplies and medication in accordance with the scope of the procedures and the anesthesia services provided, including, but not limited to:

(Break in Continuity Within Section)

3.5.1.11 Temperature monitoring device:[and]

- 3.5.1.12 End tidal CO2 monitor[;]
- 3.5.1.13 Crash cart [which] shall include:
 - 3.5.1.13.1 Appropriate resuscitative equipment; and
 - 3.5.1.13.2 Medications for surgical, procedural or anesthetic complications[;]
- 3.5.2 Appropriate sterilization equipment[; and]
- 3.5.3 Adequate procedure room lighting.
- 3.6 Written informed consent is required prior to the procedure reflecting:
 - 3.6.1 The patient's knowledge of the identified risks of the procedure (including anesthesia);
 - 3.6.2 The consent to the procedure;
 - 3.6.3 The licensed individual performing the procedure;
 - 3.6.4 The type of anesthesia to be administered; and
 - 3.6.5 The anesthesia provider.
- 3.7 The facility must maintain a policy/procedure for a time-out to ensure the risk of medical error is minimized.
- 3.8 A [registered nurse with post-anesthesia care experience and certification in Advanced Cardiac Life Support or a] physician/dentist/podiatrist/physician assistant/certified registered nurse anesthetist ~~[or registered nurse with post anesthesia care experience and certification in Advanced Cardiac Life Support]~~ must monitor the patient until the patient has met the facility's criteria for discharge.
- 3.9 A physician/dentist/podiatrist must be available onsite during patient treatment and until the patients are medically discharged.

4.0 General Requirements

(Break in Continuity Within Section)

- 4.6 All personnel who provide clinical care in a facility must be qualified to perform services commensurate with appropriate levels of education, training and experience and in keeping with practice standards. Nothing in these regulations shall prohibit a licensed individual from performing procedures within ~~their~~ his/her] scope of practice.
- 4.7 All services shall be provided in a safe and effective manner in accordance with accepted standards of practice.
 - 4.7.1 The facility shall ~~develop and~~ maintain policies and procedures based upon accepted standards of practice.
- 4.8 Back-up power sufficient to ensure patient protection in the event of an emergency shall be immediately available.
- 4.9 There must be sufficient space in the room in which the procedure is being performed.
 - 4.9.1 The room shall accommodate all necessary equipment and personnel allowing for expeditious access to the patient and all resuscitation and monitoring equipment.
- 4.10 All equipment shall be maintained and functional to ensure patient safety.
- 4.11 A facility that chooses to stop performing invasive medical procedures and voluntarily surrenders accreditation[;] must notify the Department in writing, 30 days prior to the voluntary surrender of accreditation or cessation of invasive medical procedures.

5.0 Infection Control

- 5.1 The facility must provide and maintain a functional and sanitary environment[;] to avoid sources and transmission of infections and communicable diseases.

(Break in Continuity of Sections)

6.0 Medical Record

- 6.1 A legible, comprehensive and accurate medical record must be maintained for each patient evaluated or treated.
- 6.2 The medical record must include:
 - 6.2.1 Patient identifying information;
 - 6.2.2 Patient's medical history and a physical examination:
 - 6.2.2.1 Inclusive of the cardiorespiratory system and other systems related to the diagnosis;
 - 6.2.2.2 Completed within 30 days prior to the procedure;
 - 6.2.3 Diagnosis and plan of care;
 - 6.2.4 Appropriate diagnostic reports;
 - 6.2.5 Informed consent;
 - 6.2.6 Documentation of the time-out;
 - 6.2.7 Operative/procedure report[;]
 - 6.2.8 Pathology reports, if applicable: **[and]**
 - 6.2.9 Outcome and follow-up plans[;]
 - 6.2.10 ~~Documentation of anesthesia used:~~ **A separate anesthesia record for each administration of anesthesia which must include:]**
 - ~~6.2.10.1~~ **A separate anesthesia record must be kept for all anesthesia/sedation:**
 - ~~6.2.10.2~~ **Documentation must include:]**
 - 6.2.10.~~2~~.11 Type of anesthesia;
 - 6.2.10.~~2~~.12 Drug type, dose and route;
 - 6.2.10.~~2~~.13 Time of administration;
 - 6.2.10.~~2~~.14 Fluids administered;
 - 6.2.10.~~2~~.15 Patient weight;
 - 6.2.10.~~2~~.16 Vital signs monitoring;
 - 6.2.10.~~2~~.17 Estimated blood loss;
 - 6.2.10.~~2~~.18 Duration of procedure; and
 - 6.2.10.~~2~~.19 Any complication or unusual event related to the procedure or anesthesia.
- 6.2.11 Intra-procedure and post-procedure monitoring.
- 6.3 The facility must ensure the security and confidentiality of the medical record in accordance with state and federal laws.

7.0 Patient Rights

- 7.1 The facility must post written notice of patient rights in a conspicuous place, at or near[.] the entrance in a manner which is plainly visible and easily read by the patients (or their representatives, if applicable) waiting for treatment.

(Break in Continuity of Sections)

*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2013 issue of the *Register* at page 397 (17 DE Reg. 397). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

4408 Facilities that Perform Invasive Medical Procedures

FINAL REGULATIONS

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS Office of Workers' Compensation

Statutory Authority: 19 Delaware Code, Section 2322 F(j) (19 **Del.C.** §§2322F(j))
19 **DE Admin. Code** 1341

ORDER

1341 Workers' Compensation Regulations

A public meeting was held on December 2, 2013, by the Department of Labor to receive public comments relating to revised sections of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions") to make Medi-Span the sole source for the average wholesale price (AWP) used to calculate pharmacy fees and reduce the fees for hot/cold packs (19 **DE Admin. Code** 1341, sections 4.13.2.1 and 4.28.1.7). The members of the Health Care Advisory Panel ("HCAP"), signed below, recommend that the Secretary of Labor adopt this proposal as it was published in the Register of Regulations, Volume 17, Issue 5 (November 2013).

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Exhibits Admitted Prior to and During the Public Meeting:

Exhibit 1 -*Delaware State News*, Affidavit of publication of notice of public meeting.

Exhibit 2 -*News Journal*, Affidavit of publication of notice of public meeting.

Exhibit 3 -State of Delaware Public Meeting Calendar electronic posting of today's meeting.

Exhibit 4 -Healthcare Solutions Written Public Comments

After the Panel concluded with their introductions, the public was invited to share their comments.

No members of the public attended the meeting and no additional comments were received during the public meeting.

The HCAP agreed to submit and recommend for adoption by the Delaware Department of Labor the revisions to the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions").

RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

The HCAP is persuaded that the proposals are consistent with administering the statutory directives in the workers' compensation law. In 2013, the Administrative Procedures Act changed to extend the public comment period 15 days past the date of the public meeting, which is December 17, 2013. Any further public comment received between December 2, 2013 and December 17, 2013, is included in the attached addendum, along with an e-mail reaffirmation from each Panel member present at the December 2, 2013, public meeting. If no further public comment was received, no addendum will exist.

RECOMMENDATION

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 2nd day of December, 2013.

HEALTH CARE ADVISORY PANEL

Joseph J. Rhoades, Esq., Chair

Bruce Rudin, M.D., Vice Chair

Barry Bakst, D.O.

Theodore W. Becker, Jr.

Douglas Briggs, D.C.

Glenn Brown, MMSC, PT

James Downing, M.D.

Matthew Eppley, M.D.

Harry Gravell

A. Richard Heffron

Theresa Smith

Joseph J. Straight, M.D.

ADDENDUM TO DECEMBER 3, 2013, RECOMMENDATION

A public meeting was held on December 2, 2013, by the Department of Labor to receive public comments relating to revised sections of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions") to make Medi-Span the sole source for the average wholesale price (AWP) used to calculate pharmacy fees and reduce the fees for hot/cold packs (19 **DE Admin. Code** 1341, sections 4.13.2.1 and 4.28.1.7). Pursuant to 29 **Del.C.** §10118(a), December 17, 2013, marked the deadline (15 days after the public meeting) to receive written public comments on the above revisions. This addendum lists the additional public comments received. The members of the Health Care Advisory Panel (HCAP) members present at the December 2, 2013, public meeting and whose electronic signatures appear below, reaffirm their recommendation that the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Volume 17, Issue 5 (November 2013).

SUMMARY OF THE ADDITIONAL EVIDENCE AND INFORMATION SUBMITTED

Additional Exhibits Admitted:

Exhibit 5 - Written comments submitted by Brian Allen, Vice President Government Affairs, Progressive Medical.

Exhibit 6 - Written comments submitted by Kevin Tribout, Executive Director, Government Affairs, PMSI.

ADDITIONAL RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

The HCAP received electronic copies of the Exhibits 5 and 6, which were submitted after December 2, 2013, and before the December 17, 2013, deadline to receive public comments. For both exhibits, a majority of the Panel reaffirmed their yes vote in favor of moving forward with the regulation changes. In light of the additional written public comments, the HCAP is still persuaded that these additional proposals are consistent with administrating the statutory directives in the workers' compensation law.

DECISION AND EFFECTIVE DATE

Having reviewed and considered the record and recommendations of members of the Health Care Advisory Panel to adopt revisions of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), the revisions are hereby adopted by the Delaware Department of Labor and made effective **February 11, 2014**.

TEXT AND CITATION

The proposed Fee Schedule Instructions and Guidelines notice appeared in the *Register of Regulations*, Volume 17, Issue 5 (November 1, 2013). The Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions") are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the department's website: www.delawareworks.com.

DEPARTMENT OF LABOR

John McMahon, Secretary of Labor

***Please note that no changes were made to the regulation as originally proposed and published in the November 2013 issue of the *Register* at page 488 (17 DE Reg. 488). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1341 Workers' Compensation Regulations

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

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

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

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule 4.0 – Training Requirements, 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 amendments to require mandatory testing upon completion of the sixteen (16) hours of training.

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 these rules will require mandatory testing upon completion of the sixteen (16) hours of training.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment/adoption is well written and describes its intent to adopt the rules to require mandatory testing upon completion of the sixteen (16) hours of training.

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.** §1304 et seq. and, in particular, 24 **Del.C.** §1304(b)(3).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §1304 et. seq.
9. The Board concludes that the adoption of 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.** §1304(b)(3) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. 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 February 11, 2014.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 30th day of January, 2014.

Lt. Colonel James Page, Chairman

Timothy P. Mullaney, Sr., Esquire

William G. Bush, IV, Esquire
Mr. Michael D. Connelly
Ms. Kelly R. Jansen
Mr. Wayne A. Keller

Mrs. Heather M. Shupe
Mrs. Sandra C. Taylor
Mr. Harvey A. Woods, III

***Please note that no changes were made to the regulation as originally proposed and published in the December 2013 issue of the *Register* at page 607 (17 DE Reg. 607). 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 PROFESSIONAL REGULATION
Board of Landscape Architecture**

Statutory Authority: 24 Delaware Code, Section 205 (24 Del.C., §205)
24 DE Admin. Code 200

ORDER

200 Board of Landscape Architecture

NATURE AND STAGE OF THE PROCEEDINGS

On June 1, 2013, the Delaware Board of Landscape Architects published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 16, Issue 12. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on August 8, 2013 at a regularly scheduled meeting of the Delaware Board of Landscape Architects to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on August 8, 2013. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 Del.C. §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 Del.C. §3506(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed revisions to Rules 3.0, 6.1, 6.3.1, 7.9 and 8.3 seek to remove references to paper licensure renewal forms, clarify that license renewal is conducted on-line, make non-substantive verbiage changes to ensure continuity across the Division of Professional Regulation, and clarify that audits are now

FINAL REGULATIONS

conducted after renewal, rather than before.

5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

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

SO ORDERED this 14th day of November, 2013.

BY THE DELAWARE BOARD OF LANDSCAPE ARCHITECTS

Eric Wahl, President

Rachel Dunning, Treasurer

William Bullock

Jeffrey Seemans, RLA, Secretary

Jeffrey Clark, RLA

***Please note that no changes were made to the regulation as originally proposed and published in the June 2013 issue of the *Register* at page 1259 (16 DE Reg. 1259). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

200 Board of Landscape Architecture

DIVISION OF PROFESSIONAL REGULATION

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

ORDER

1100 Board of Dentistry and Dental Hygiene

On September 1, 2013, the Delaware Board of Dentistry and Dental Hygiene published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 17, Issue 3. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 24, 2013 at a regularly scheduled meeting of the Delaware Board of Dentistry and Dental Hygiene to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on October 24, 2013. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods.

or the public hearing.

3. Pursuant to 24 **Del.C.** §1106(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The proposed changes add a new section to the Board's regulations, at 12.0, *et. seq.* The proposed additions define unprofessional conduct within the practice of dentistry and dental hygiene and list examples of such conduct.

5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.

6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §1106(a)(1) and for the reasons set forth above, the Board of Dentistry and Dental Hygiene does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on September 1, 2013. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 19th day of December, 2013.

BOARD OF DENTISTRY AND DENTAL HYGIENE

John Lenz, DDS, President

Blair Jones, DMD

Brian McAllister, DDS, Secretary

Thomas A. Mercer, DMD

Cheryl Calicott-Trawick, Public Member

Lucinda Bunting, DMD

June Ewing, Public Member

Joan Madden, RDH

Nathaniel Gibbs, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the September 2013 issue of the *Register* at page 307 (17 DE Reg. 307). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1100 Board of Dentistry and Dental Hygiene

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY
PUBLIC NOTICE
202 Rent Increase Dispute Resolution Procedures

AND NOW, this 8th day of January, 2014, the Delaware Manufactured Home Relocation Authority (the "Authority"), issues the following Order and Public Notice:

1. Pursuant to its statutory authority, at the Authority's board meeting held on January 7, 2014, the Authority adopted a resolution proposing for adoption a comprehensive set of regulations and guidelines (the "Proposed Regulations") to be used in the administration of the Rent Justification Dispute Procedures set forth in 25 **Del.C.** §7043.

2. The Rent Justification Dispute Procedures, by statute, apply to all manufactured home community leases expiring on or after November 30, 2013. Due to time restraints, it was necessary to establish emergency regulations to provide manufactured home community owners and tenants with guidelines and procedures to be used pending the adoption of final regulations and guidelines by the Authority.

3. The emergency regulations, which were published in the Delaware *Register of Regulations* at **17 Del. Reg. 267 (09/01/13)**, are scheduled to expire on March 9, 2014.

4. After considering any and all comments to the emergency regulations, the Authority has decided to submit for public comment final "Proposed Regulations".

NOW THEREFORE, for the reasons set forth above, IT IS ORDERED:

1. That the "Rent Increase Dispute Resolution Procedures" (the "Proposed Regulations") attached hereto as Exhibit A are proposed for adoption pursuant to 25 **Del.C.** §7011 and §7043. The Proposed Regulations herein shall be published in the Delaware *Register of Regulations* on February 1, 2014 to provide the public with an opportunity to submit written comments for a period of 30 days after the "Proposed Regulations" are published in the Delaware *Register of Regulations*.

2. Copies of the Proposed Regulations are available by contacting Susanne Lantz, Executive Director of the Authority, at 1675 S. State Street, Suite E, Dover, DE 19901, 302-674-7768.

3. The Authority will entertain written comments to the Proposed Regulations. Anyone wishing to submit written comments should submit such comments by March 2, 2014 to Susanne Lantz, Executive Director of the Authority, at 1675 S. State Street, Suite E, Dover, DE 19901.

4. The Authority shall transmit a copy of this Order and the Proposed Regulations to the Delaware Registrar of Regulations for publication in the next issue of the Delaware *Register of Regulations*.

5. That the Authority reserves the right to hereafter alter, amend, or waive the Regulations adopted herein to the extent that the same may be allowed by law.

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

BY ORDER OF THE AUTHORITY:

Mitch Crane, Chairperson

Dated: January 8, 2014

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

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rules in Section 6.0- 6.1.2.2, 6.1.2.3, 6.1.2.4 in Section 7- 7.3.5, 7.6.13.14.1.1, 7.6.13.14.1.1.1, 7.6.13.14.1.3, 7.6.13.14.3.4, 7.6.13.14.2.6, 7.6.13.14.2.7 and 7.6.13.14.2.7.1 The Commission will hold a public hearing on the proposed rule changes at Dover Downs on March 11, 2014 at 10:15 am. Written comments should be sent to Mark Davis, Racing Administrator of the Delaware Harness Racing Commission, Department of Agriculture, 2320 South DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on February 1, 2014.

The proposed changes are for the purpose of updating the Rules to reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.html A copy is also available for inspection at the Harness Racing Commission office.

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, February 20, 2014 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Title XIX Medicaid State Plan - Reimbursement Methodology for Inpatient Hospital Outlier Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) with 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 amending the Title XIX Medicaid State Plan regarding inpatient hospital services, specifically, *Medicaid Inpatient Hospital Outlier Payments*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by March 3, 2014.

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

NOTE: Previous notice to the public, published in the December 24, 2013 issue of the *News Journal* and the December 25, 2013 issue of the *Delaware State News*, originally posted the effective date as January 1, 2014. Please note that the effective date for the proposed change in reimbursement methodology is now March 1, 2014.

The payment adjustment state plan amendment is subject to the approval of the Centers for Medicare and Medicaid Services (CMS).

DIVISION OF PUBLIC HEALTH AUTHORITY ON RADIATION PROTECTION

Delaware Radiation Control Regulations

PUBLIC NOTICE

The Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to three State of Delaware Radiation Control Regulations. Due to the extensive number of amendments the Division has concluded that this set of three current regulations should be repealed and replaced in their entirety with the proposed regulations being published. The purpose of the amendments is to update the requirements so that they are in concert with current healthcare standards and to align them more closely with current state administrative code and federal requirements. On February 1, 2014, the Division plans to publish as proposed the amended regulations specified below, and hold them out for public comment per Delaware law.

A public hearing will be held on February 24, 2014 at 3:00 p.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the February 1, 2014 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Radiation

Control at (302) 744-4546.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Friday, March 7, 2014 at:

Deborah Harvey
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us
Phone: (302) 744-4700

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER RESOURCES

REGISTER NOTICE

7401 Surface Water Quality Standards

The amended Surface Water Quality Standards presented here are the result of a review of the Standards that started with Start Action Notice #2013-32 in 2013. Department staff reviewed factors affecting human health criteria, Environmental Protection Agency (EPA) documents, staff recommendations, and documents related to site-specific criteria for the tidal Murderkill River. A markup of proposed amendments to the Surface Water Quality Standards was prepared for the Register. To ensure compliance with the Clean Water Act and EPA regulations, the State of Delaware, in accordance with 7 **Del.C.** §6010, will amend the State of Delaware Surface Water Quality Standards.

A public hearing on these regulations is scheduled for 5:00 PM on February 27, 2014 in the DNREC Auditorium located in the Richardson & Robbins Building at 89 Kings Highway, Dover, DE, with comments accepted until March 14, 2014.

Additional information, copies of the regulation and supporting documents are available on the internet at this URL: <http://www.dnrec.state.de.us/DNREC2000/Divisions/Water/WaterQuality/Standards.htm>. To request a copy of the proposed revisions to the regulations please contact David Wolanski, Watershed Assessment and Management Section at (302) 739-9939 or by email at david.wolanski@state.de.us.

The procedures for adopting regulations are established in 7 **Del.C.** §6006 and 29 **Del.C.** Chapter 101. Inquiries regarding comments should be directed to Robert Haynes at (302) 739-9039. Written comments should be addressed to: David Wolanski, Watershed Assessment and Management Section, Silver Lake Plaza-Suite 220, 820 Silver Lake Blvd, Dover, DE 19904-2464. Electronic versions of comments are preferred; please e-mail comments to David Wolanski at david.wolanski@state.de.us

DIVISION OF WATERSHED STEWARDSHIP

PUBLIC NOTICE

7408 TMDLs for the Murderkill River Watershed

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct a Public Hearing regarding proposed amendments to the Total Maximum Daily Loads (TMDLs) Regulation for nutrients and oxygen consuming materials for the Murderkill River Watershed, which was promulgated in June of 2005. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

Since promulgation of the 2005 Murderkill River TMDLs, a multi-year monitoring, research, and modeling study of Murderkill River Watershed by DNREC and other cooperating agencies and institutions resulted in proposing scientifically-based, site-specific dissolved oxygen and nutrient criteria for the tidal Murderkill River. This proposed amendment of the WLA component of the 2005 TMDLs is to comply with these new site-specific dissolved oxygen

and nutrient criteria for the tidal Murderkill River.

The Public Hearing on proposed amendments to the 2005 Murderkill River Watershed TMDLs Regulation will be held at 5:00 p.m., Thursday, February 27, 2014, in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

Please send written comments to Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us). All written comments must be received by March 14, 2014. Electronic submission is preferred.

Copies of the Proposed amendments to the 2005 Murderkill River Watershed TMDL Regulation and technical support documents are available on the Department's website at <http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx> or by contacting Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
100 Board of Accountancy

The Delaware Board of Accountancy, pursuant to 24 **Del.C.** §105(a)(1), proposes to revise its rules and regulations. The proposed addition to the regulation seeks to clarify the regulation to address unintended consequences resulting from the existing language.

The Board will hold a public hearing on the proposed rule change on April 23, 2014 at 9:30 AM, Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator for the Delaware Board of Accountancy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 8, 2014.

DIVISION OF PROFESSIONAL REGULATION
1900 Board of Nursing
PUBLIC NOTICE

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulations 6.6.1.5, 6.8.5, 6.9.2, 8.11.4, 9.6.1, and 2.4.1.5. The proposed changes clarify the process for renewing licenses in light of the sole option for renewal, the on-line renewal, and eradication of the paper renewal. The changes to 2.4.1.5 are non-substantive and are merely an attempt to clarify a prior change that did not include appropriate renumbering and retitling of the regulations.

The Board will hold a public hearing on the proposed regulation change on March 12, 2014 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until March 27, 2014 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
2700 Board of Registration for Professional Land Surveyors
PUBLIC NOTICE

The Delaware Board of Professional Land Surveyors, in accordance with 24 **Del.C.** §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to allow professional development hours to be obtained by online courses. The additional changes are of an administrative nature.

The Board will hold a public hearing on the proposed rule changes on March 20, 2014 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be

sent to Amanda McAtee, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 3, 2014.

DIVISION OF PROFESSIONAL REGULATION**Board of Veterinary Medicine****PUBLIC NOTICE****3300 Board of Veterinary Medicine**

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on March 11, 2014 at 1:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be March 26, 2014, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting on April 8, 2014 at 1:15 p.m., at which time the Board will decide whether to adopt the revisions as proposed.

The Board proposes amendments to Rule 11.0, addressing licensure of veterinary technicians. The revisions strike all references to licensure by educational and/or experiential alternatives. Pursuant to 24 **Del.C.** §3319(a)(1), these alternative methods of licensure expired effective October 1, 2013. As of October 1, 2013, all applicants for licensure as a veterinary technician must show a degree from a veterinary technician program accredited by the AVMA or from a foreign veterinary program approved by the AVMA. Other changes are needed to be consistent with Division of Professional Regulation procedures. Specifically, license renewal is accomplished online and the licensee attests to completion of the required continuing education.

OFFICE OF THE STATE BANKING COMMISSIONER**PUBLIC NOTICE****Notice of Proposed Amendments to Regulations of the State Bank Commissioner****Summary**

The State Bank Commissioner proposes to amend 16 Regulations adopted in accordance with Title 5, Chapter 21 (Mortgage Loan Brokers), Chapter 22 (Licensed Lenders) and Chapter 29 (Financing the Sale of Motor Vehicles). Regarding Title 5, Chapter 21 (Mortgage Loan Brokers), the proposed amended Regulations are 2101 (Operating Regulation), 2102 (Minimum Records), 2103 (Schedule of Charges), 2104 (Minimum Disclosure and Agreement Requirements), 2105 (Report of Delaware Loan Volume), and 2106 (Report of Delaware Assets). Regarding Title 5, Chapter 22 (Licensed Lenders), the proposed amended Regulations are 2201 (Operating Regulation), 2202 (Minimum Records), 2203 (Schedule of Charges), 2204 (Surety Bond or Irrevocable Letter of Credit), 2205 (Report of Delaware Loan Volume), and 2206 (Report of Delaware Assets). Regarding Title 5, Chapter 29 (Financing the Sale of Motor Vehicles), the proposed amended Regulations are 2901 (Operating Regulation), 2902 (Minimum Records), 2903 (Report of Delaware Loan Volume), and 2904 (Report of Delaware Assets). The purpose of the amended regulations is to clarify, streamline, and update the existing regulations for ease of understanding and increased relevance to current licensee operations. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed regulations in accordance with Title 5 of the Delaware Code. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the February 1, 2014 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Lookerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed regulations or submit written suggestions, data, briefs

or other materials to the Office of the State Bank Commissioner at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 5, 2014, Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after March 5, 2014, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulations 2101, 2102, 2103, 2104, 2105, 2106, 2201, 2202, 2203, 2204, 2205, 2206, 2901, 2902, 2903, and 2904 or make additional changes because of the public comments received.

DEPARTMENT OF TRANSPORTATION
DIVISION OF TECHNOLOGY AND SUPPORT SERVICES
PUBLIC NOTICE

2501 External Equal Opportunity Complaint Procedure

Background

As authorized under 17 **Delaware Code** Section 132(e) and 29 **Delaware Code**, Section 8404(8), the Delaware Department of Transportation, ("DelDOT"), through its Division of Technology and Support Services, seeks to adopt amendments to its existing regulations regarding procedures for addressing, investigating and responding to complaints of discrimination on the grounds of race, color, religion, sex, age, national origin or disability with respect to its External EEO Programs.

DelDOT previously submitted a version of these regulations for public comment in September of 2012. Those regulations were never finalized, however. The draft submitted here is a complete revision of the existing regulations, first adopted in 2008.

DelDOT will take written comments on these proposed revisions to its External Equal Opportunity Complaint Procedures from February 1, 2014 through March 7, 2014. The proposed Regulations appear below.

Any questions or comments regarding this document should be directed to:

John R. McNeal, ADA Title II/Section 504 and Title VI Coordinator
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760 - 2467 (phone)
(302) 739 - 2254 (fax)
john.mcneal@state.de.us