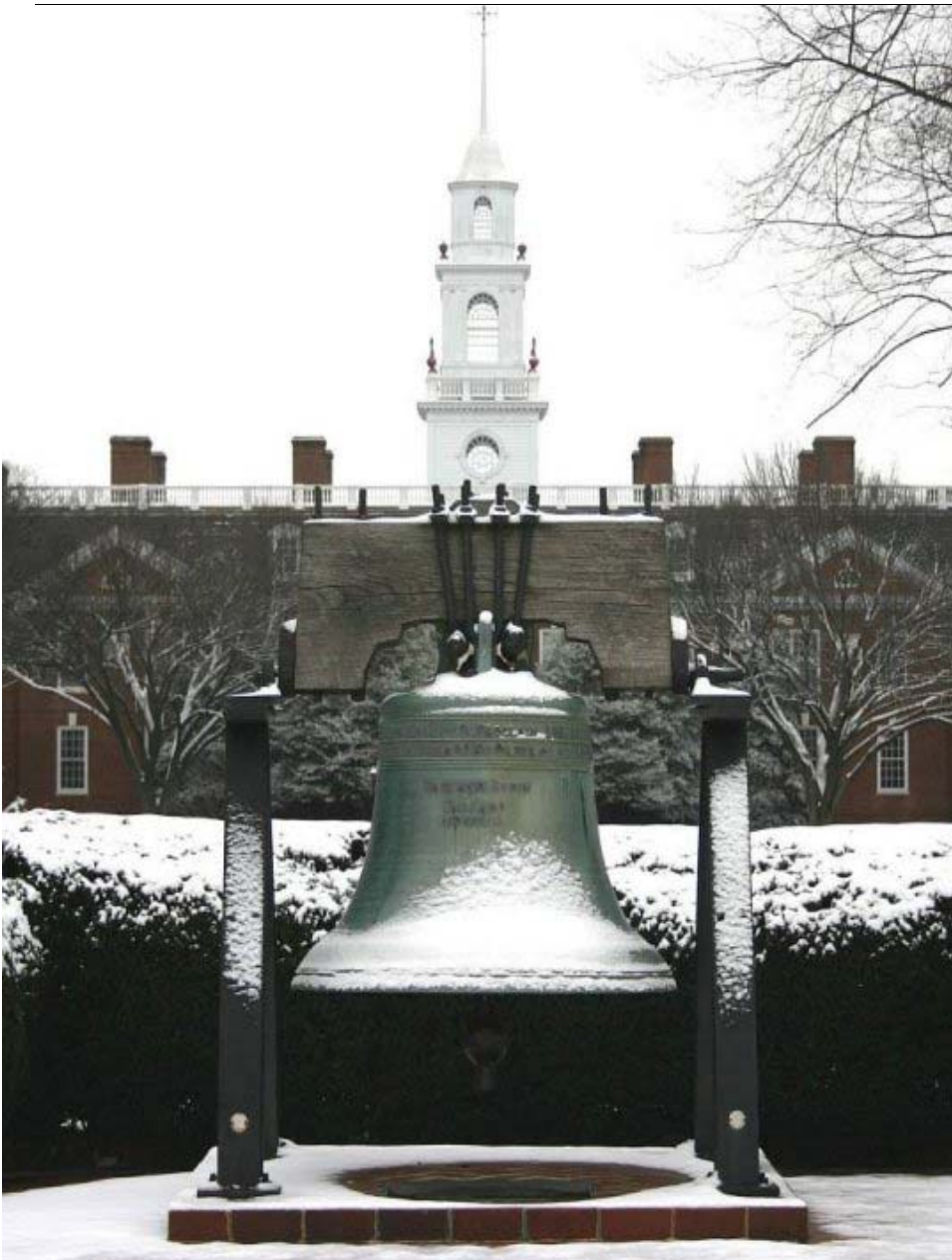

Delaware Register of Regulations

Issue Date: FEBRUARY 1, 2017

Volume 20 - Issue 8, Pages 591 - 666



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Proposed
Final

General Notices

Calendar of Events &
Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before January 16, 2017.

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INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 17	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 701

PUBLIC NOTICE**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****701 Unit Count****A. TYPE OF REGULATORY ACTION REQUIRED**

Reauthorization of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education intends to amend 14 **DE Admin. Code** 701 Unit Count. The Department of Education reviewed this and other regulations which were four years or older as part of the 2016 Regulation Review as required by 29 **Del.C.** §10407. Public comment was received for this regulation in which the Department of Education was asked to include language that provides more control over how local education agencies use the units they receive. The Department cannot mandate the requested change. Therefore, the regulation is being readopted in its original form.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by ensuring that the unit count is correctly documented.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended

regulation is intended to continue to help ensure all students receive an equitable education by ensuring the unit count is correct.

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

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

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

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

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

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

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

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

***Please Note:**

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

[http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 602RFA 02-01-17.pdf](http://regulations.delaware.gov/register/february2017/proposed/20%20DE%20Reg%20602RFA%2002-01-17.pdf)

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

701 Unit Count

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 716

PUBLIC NOTICE

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

716 Maintenance of Local School District and Charter School Personnel Records

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education intends to amend 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records. The Department of Education reviewed this and other regulations which were four years or older as part of the 2016 Regulation Review as required by 29 **Del.C.** §10407. An internal review of this regulation was done to confirm it procedurally aligns with guidance from the Division of Public Archives relative to school personnel records. Therefore, only a few minor edits were made for clarity and

continuity with other regulations.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not directly address student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not address an equitable education for students.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not address student's legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 603RFA 02-01-17.pdf>

716 Maintenance of Local School District and Charter School Personnel Records

1.0 Definitions

"Delaware Public Archives (DPA)" means the division within the Department of State that is charged with administering, implementing and enforcing all provisions of the Delaware Public Records Law.

"Employee" ~~shall in this case mean~~ means any person whose terms of employment are adequate to qualify the employee for the earning of credit toward pension.

"Termination" ~~in this case does~~ means, not refer only to retirement, but to any reason for the employee to ~~leave~~ leaves the district.

2.0 Records Retention

- 2.1 Records for all school district and charter school employees shall be kept up to date including:

- 2.1.1 Salary data records for each year of employment in the school district or charter school. (Total salary paid identified as fiscal or calendar year); and
- 2.1.2 Records that show sick leave days earned and used and the number of days available at any time; and
- 2.1.3 The record of vacation time for those employees whose terms of employment provide for earned vacation.
- 2.1.4 All forms and documents that become part of the Delaware Performance Appraisal System II (DPAS II) shall be retained in the individual's personnel file until there are at least five (5) complete summatives. The oldest complete set of evaluation forms and documents may be purged from the personnel file once the sixth set is complete.

3.0 Records Retention

- 3.1 Each school district and charter school shall keep the records referred to in sSection 2.0 above for all employees' inactive personnel files for at least fifty (50) years following termination of employment.
- 3.42 For the security of records and the protection of the personnel for whom the information is recorded, it is recommended that original records are to be maintained at the school district or charter school for three (3) years after termination of an employee and a successful audit of such records. Records shall be purged in accordance with the *Delaware Public Archives School Districts General Records Retention Schedule* and prepared for storage according to the "*Delaware Public Archives Records Management Handbook Preparation of Records for Short-Term Storage*". Records shall remain in their original format and shall then be transferred to DPA and retained in storage for the balance of the fifty (50) required years. Local District and charter school records officers and authorized agents may request files from storage in accordance with DPA's procedures for requesting files. At the end of the retention period, the documents will be destroyed in accordance with DPA's destruction procedures.
- 3.23 The style and form of the records shall be at the discretion of the local school districts or charter schools, except that records transferred to the Delaware Public Archives for storage shall be in a format acceptable to DPA. Individual local school districts and charter schools may elect to have their records recorded onto a different type of media at district expense, in accordance with DPA guidelines.
- 3.23.1 The information referred to above shall be maintained and available for any employee or former employee seeking information concerning their own employment records for a period of fifty (50) years after termination of employment. (It is recommended that for the convenience of employees and former employees that school districts and charter schools develop an alphabetically arranged file showing the name of each employee and the disposition of his or her records.)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 731

PUBLIC NOTICE

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

731 School Food Service Employees

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education intends to amend 14 **DE Admin. Code** 731 School Food Service Employees. The Department of Education reviewed this and other regulations which were four years or older as part of the 2016 Regulation Review as required by 29 **Del.C.** §10407. While no public comment was received for this regulation,

internal staff reviewed the regulation per the required five year review cycle. A few minor edits were made for the purpose of clarification and continuity with other regulations.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not address an equitable education for students.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not address student's legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 605RFA 02-01-17.pdf>

731 School Food Service Employees

1.0 Experience

School food service employees may be granted one (1) ~~year's~~ year of experience for each creditable year of experience in similar employment.

2.0 Determination of Employee Staffing and Formula

2.1 School districts shall determine the salaries paid to cafeteria workers as follows:

- 2.1.1 Of the total number of full time workers assigned to a food preparing cafeteria, a maximum of two may be paid as a cook and baker. Satellite schools are eligible for ~~state~~ State funded positions as set forth in 14 ~~Del.C. §1322 (c)(a)~~.

3.0 Salary Formula

- 3.1 The salaries prescribed in 14 **Del.C.** §1322~~(e)~~(c) for general workers, cooks and bakers shall be paid by the State from funds not derived from local food service operations as determined by the formula:
 - 3.1.1 Seven (7) hours of labor per 100 meals determined as follows:
 - 3.1.1.1 Total number of reimbursable lunches served in the base month; plus
 - 3.1.1.2 Total number of reimbursable breakfasts served in the base month; plus
 - 3.1.1.3 Total of all other meals served in the base month determined by aggregating all income.
 - 3.1.1.3.1 The number of meals prepared and served shall be based on the average reported for the month of October on the monthly reimbursement claim.
- 3.2 Each school district shall submit to the Department of Education a computation sheet for cafeteria workers with data showing hourly rate and hours worked not to exceed the maximum allowed under state formula.
- 3.3 Each school district shall submit a roster of cafeteria managers to the Department of Education showing names of managers and the salaries prescribed in 14 **Del.C.** §1322(a). Each district shall also submit a computation sheet as prescribed by the Department of Education to determine the number of meals served according to the state formula.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 750

PUBLIC NOTICE

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

750 Support Personnel Salary Supplements for Additional Training

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education intends to amend 14 **DE Admin. Code** 750 Support Personnel Salary Supplements for Additional Training. The Department of Education reviewed this and other regulations which were four years or older as part of the 2016 Regulation Review as required by 29 **Del.C.** §10407. While no public comment was received for this regulation, internal staff reviewed the regulation per the required five year review cycle. A few minor formatting changes were made for the purpose of clarification and continuity with other regulations.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. IMPACT CRITERIA

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not relate to ensuring all students receive an equitable education.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not address student's legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 607RFA 02-01-17.pdf>

750 Support Personnel Salary Supplements for Additional Training

1.0 Definitions:

"Certificate" means a document issued by the Department of Education that verifies completion of the additional training required for a Level I, Level II or Bachelor's degree status for support personnel.

"Department" means the Delaware Department of Education.

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

"Support Personnel" means an administrative secretary, financial secretary, senior secretary, secretary or clerk employed by a school district, charter school or by the Department of Education.

2.0 Supplements for Additional Training

- 2.1 An administrative secretary, financial secretary, senior secretary, secretary or clerk shall receive as salary the amount that the employee qualifies for under 14 **Del.C.** §1308 plus an annual amount for additional training as defined in 14 **Del.C.** §1309(b). The following shall be the requirements for the salary supplements defined in 14 **Del.C.** §1309(b):
 - 2.42 Professional Secretary Certificate, Level I Salary Supplement Qualifications
 - 2.42.1 Hold a high school diploma or certificate of equivalency; and
 - 2.42.1.1 Complete sixty (60) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related areas; or
 - 2.42.1.2 Pass the Certified Administrative Professional (CAP) examination administered by the International Association of Administrative Professionals (IAAP); or
 - 2.42.1.3 Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option I or Option II, BASIC or above.
 - 2.23 Certified Secretary Certificate, Level II Salary Supplement Qualifications
 - 2.23.1 Hold a high school diploma or certificate of equivalency; and

- 2.23.1.1 Complete an associate degree in business, professional office training or, accounting from a regionally accredited post secondary institution; and have a minimum of five years successful experience as an office professional; or
 - 2.23.1.2 Pass the Certified Administrative Professional (CAP) examination administered by the International Association of Administrative Professionals (IAAP); complete twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional; or
 - 2.23.1.3 Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option I; complete twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional; or
 - 2.23.1.4 Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option II which includes the completion of at least twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional;
- 2.34 Bachelor's Degree Certificate, Level III Salary Supplement Qualifications
- 2.34.1 An individual shall hold a Bachelor's degree from a regionally accredited College.

3.0 Requirements for a Certificate

The Department shall issue Certificates to Support Personnel in local school districts, charter schools and in the Department of Education who have met the requirements for additional training in ~~2.1, 2.2 and 2.3~~ subsections 2.2, 2.3, and 2.4.

4.0 Application Procedures

- 4.1 Applicants for a Certificate for additional training shall submit to the Department the appropriate evidence required to meet the requirements for the type of Certificate requested in ~~2.1, 2.2 and 2.3~~ subsections 2.2, 2.3, and 2.4 as described in subsections 4.1.1 through 4.1.3.
 - 4.1.1 Official transcripts forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.
 - 4.1.2 Evidence of passing scores on the Certified Administrative Professional (CAP) examination as administered by the International Association of Administrative Professionals (IAAP) or passing scores on the Associate Professional Certificate from the Professional Standards Program (PSP), Options I or II, as administered by the National Association of Educational Office Professionals.
 - 4.1.3 Documentation of years of experience if appropriate.
 - 4.1.4 Reapplication is not required unless an applicant intends to apply for a different level of certification under Section 2.0.

5.0 Denial of Certificate

- 5.1 An applicant may be denied a Certificate for an additional training supplement upon a finding that the applicant has failed to meet the requirements set forth herein or is found to have made a materially false or misleading statement on his or her application or supporting materials.
- 5.2 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his or her designee within 10 days of the receipt of the notice of denial. The Secretary's decision shall be final.

PROPOSED 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

Delaware Healthy Children Program State Plan – Health Services Initiative: Vision to Learn

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance is proposing to amend the Title XXI Delaware Healthy Children Program State Plan regarding health service initiatives, specifically, *to increase access for low-income children to needed vision services and glasses.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to: Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, Attention: Kimberly Xavier; by email to Kimberly.xavier@state.de.us; or by fax to 302-255-4425 by March 3, 2017. Please identify in the subject line: CHIP – Health Services Initiative: Vision to Learn.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XXI Delaware Healthy Children Program State Plan regarding health service initiatives, specifically, *to increase access for low-income children to needed vision services and glasses.*

Statutory Authority

- 42 CFR §457.140; *State Plans for Child Health Insurance Programs and Outreach, Budgets*
- 42 CFR §457.618(2); *State Plans for Child Health Insurance Programs and Outreach, Non-primary Expenditures*
- 42 CFR §457.622(2)(i); *State Plans for Child Health Insurance Programs and Outreach, Rate of FFP for State Expenditures*
- Section 2105(a)(1)(D)(ii) of the Social Security Act; *Payments to states for expenditures for health service initiatives*

Background

Under Title XXI of the Social Security Act, a State is eligible for Federal matching funds on certain expenditures only to the extent that those expenditures do not exceed 10% of the State's total computable expenditures on health benefits through the state's Child Health Insurance Program (CHIP). As specified in Section 2105(a)(1)(D)(ii), these capped expenditures must be used for child health assistance under the plan and be targeted toward low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 of the Act. These capped expenditures include those related to health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children); outreach activities under the plan, as provided in section 2102(c)(1) of the Act; translation or interpretation services in connection with the enrollment of, retention of, and use of services under this Title XXI of the Act by, individuals for whom English is not their primary language (as found necessary by the Secretary for the proper and efficient administration of the State plan); and for other reasonable costs incurred by the State to administer the plan.

For the purposes of Title XXI, health services initiatives (either new or ongoing) include activities designed to: protect the public health, protect the health of individuals, improve or promote a State's capacity to deliver public health services, and/or strengthen the human and material resources necessary to accomplish public health goals.

These activities must be for the purposes of improving the health of children (including targeted low income children and other low income children.)

Access to vision exams and glasses is critical for students' educational achievements and health outcomes; 80% of all learning during a child's first 12 years is visual. It comes as no surprise that students with vision problems tend to have lower academic performance, as measured by test scores and grades, and that students' performance in school impacts future employment earnings, health behaviors, and life expectancy. As such, Delaware seeks to use the health services initiative (HIS) option to improve the health of low-income children by increasing their access to needed vision services and glasses through a targeted, school-based initiative.

Summary of Proposal

Purpose

Delaware intends to contract with a non-profit Medicaid participating provider to offer these services on-site at certain Delaware schools. Delaware is currently engaged with Vision to Learn (VTL), which has been serving Delaware children since 2014 and is a certified Medicaid participating provider. VTL is a non-profit, philanthropically-funded entity that provides free eye exams and glasses to students at schools in low-income communities.

Summary of Proposed Changes

If implemented as proposed, plan amendment will accomplish the following, effective January 1, 2017:

Provide a provision in Delaware Healthy Children Program State Plan regarding health service initiatives, specifically, to improve the health of low-income children by increasing their access to needed vision services and glasses through a targeted, school-based initiative. Delaware intends to contract with a community-based, non-profit, Medicaid participating provider to offer these services on-site at Title I Delaware schools in which at least 51% of the student body receives free or reduced price meals.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input regarding this State Plan Amendment Comments must be received by 4:30 p.m. on March 3, 2017.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact

The following fiscal impact for this health service initiative, with effective date of January 1, 2017, was projected using the following assumptions:

- It is estimated that approximately 600 children will receive vision exams and refraction, with 408 children being provided glasses in FY 2017.
- The rate of client growth will increase an average of 6.4% each fiscal year, resulting in an estimated 851 children receiving vision exams and refraction, with 579 children being provided glasses in FY 2018.

PROPOSED REGULATIONS

- The current enhanced Federal Matching Assistance Percentage (FMAP) for CHIP is 90.94%.

The following fiscal impact is projected:

	Federal Fiscal Year 2017 ⁽¹⁾	Federal Fiscal Year 2018
General (State) funds	\$ 6,719	\$ 9,530
Federal funds	\$ 67,441	\$ 95,660

⁽¹⁾ Federal FY 2017 represents 9 months; January 2017 through September 2017

***Please Note:**

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

<http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 610RFA 02-01-17.pdf>

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

[Delaware Healthy Children Program State Plan – Health Services Initiative: Vision to Learn](#)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Elderly and Disabled Waiver Provider Policy Manual

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Elderly and Disabled Waiver Provider Policy Manual, specifically, *as it relates to Home and Community-Based Services Settings*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to: Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, Attention: Kimberly Xavier; by email to Kimberly.xavier@state.de.us; or by fax to 302-255-4425 by 4:30 PM on March 3, 2017. Please identify in the subject line: Elderly and Disabled Waiver Provider Policy Manual.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Elderly and Disabled Waiver Provider Policy Manual, specifically, *as it relates to Home and Community-Based Services Settings*.

Statutory Authority

- 42 CFR §441.530; *Home and Community-Based Settings*
- 42 CFR §441, Subpart G; *Home and Community-Based Services, Waiver Requirements*
- §1915(c) of the Social Security Act; *Home and Community-Based Services*

Background

The Centers for Medicare and Medicaid Services (CMS) published regulations in the Federal Register on January 16, 2014, effective March 17, 2014, which changed the definition of Home and Community-Based Services (HCBS) settings. Delaware's 1115 Demonstration refers to the 1915(c) authority for HCBS services; therefore, the state must comply with these regulatory changes. The final rule provides for a five-year transition process that will allow states to implement this rule in a manner that supports continuity of services for Medicaid recipients and minimizes disruptions in service during implementation. Additionally, the HCBS Final Rule defines the qualities that must be present in all HCBS settings. It also provides expanded and more detailed guidance regarding the provision of HCBS, in particular the right for HCBS recipients to have the ability to exercise personal choice in all aspects of their care. In order to ensure compliance with all requirements of the HCBS Final Rule, DMMA has incorporated these requirements into our Long Term Care Community Services (LTCCS) Provider Policy. All states are required to be fully compliant with all of the requirements of the CMS HCBS Final Rule by March 17, 2019.

Summary of Proposal

Purpose

The purpose of this proposed rule is to revise Delaware's Elderly and Disabled Waiver Provider Policy Manual to include all of the mandatory provisions of the Centers for Medicare & Medicaid Services (CMS) Home and Community Based Services (HCBS) Final Rule.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the revision of the Elderly and Disabled Waiver Provider Policy Manual. Comments must be received by 4:30 p.m. on March 3, 2017.

Provider Manuals Update

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

Fiscal Impact

No fiscal impact is projected as this regulation is only updating the language in Delaware's Elderly and Disabled Waiver Provider Policy Manual to reflect current practices.

*Please Note:

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

<http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 612RFA 02-01-17.pdf>

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

[Elderly and Disabled Waiver Provider Policy Manual](#)

PROPOSED REGULATIONS

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Purchase of Care (POC) - Licensed Exempt Providers

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) proposes to amend the Delaware Social Services Manual (DSSM) regarding child care licensing requirements, specifically, *to revise the definition of licensed exempt child care providers receiving Purchase of Care (POC) funding.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to: Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, Attention: Kimberly Xavier; by email to Kimberly.xavier@state.de.us; or by fax to 302-255-4425 by 4:30pm on March 3, 2017. Please identify in the subject line: Purchase of Care (POC) - Licensed Exempt Providers.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend the Delaware Social Services Manual (DSSM) regarding child care licensing requirements, specifically, *to revise the definition of licensed exempt child care providers receiving Purchase of Care (POC) funding.*

Statutory Authority

- Pub. L. 113-186; *Child Care and Development Block Grant (CCDBG) Act of 2014*
- 42 USC §9858; *Child Care and Development Block Grant, authorization of appropriations,*
- §418 of the Social Securities Act (42 USC §618); *Funding for child care*
- 45 CFR 98; *Child Care and Development Fund*
- 81 FR 67438; *Federal Register Child Care Development Fund*

Background

On November 19, 2014, President Barack Obama signed the (Pub. L. 113-186) into law. The Child Care and Development Block Grant (CCDBG) Act authorizes the Child Care and Development Fund (CCDF), which is the primary Federal funding source devoted to providing low-income families who are working or participating in education or training activities with help paying for child care and improving the quality of child care for all children. The CCDBG Act includes provisions to: (1) Protect the health and safety of children in child care; (2) help parents make informed consumer choices and access information to support child development; (3) provide equal access to stable, high quality child care for low-income children; and (4) enhance the quality of child care and the early childhood workforce. The law requires providers receiving CCDF funds (including those that are license-exempt) to be monitored, at least annually, to determine whether health and safety practices and standards are being followed in the child care setting, including a pre-licensure visit for licensed providers. Among other things, the law allows agencies to develop alternative monitoring requirements for CCDF-funded care provided in the child's home and to exempt relative caregivers from the monitoring requirement, if the agency chooses to do so.

The 2016 Child Care and Development Fund Final Rule updates regulations to incorporate, and in some cases clarify, changes made through the Child Care and Development Block Grant Act of 2014. The rule applies to states, territories and tribes administering CCDF and incorporates and clarifies changes made through the bipartisan CCDBG Act. It also is reflective of helpful comments received on the Notice of Proposed Rulemaking

(NPRM) published in December 2015. Throughout the final rule, ACF responds to the more than 150 comments received during the public comment period and makes changes where appropriate. Where possible, it also aligns child care requirements with new Head Start regulations, including certain requirements for background checks and health and safety trainings for staff.

Summary of Proposal

DSS published this proposed regulation in the December 2016 Delaware *Register*. These regulations were erroneously published under the Division of Medicaid and Medical Assistance. In order to promote transparency and ensure that all applicable parties have an opportunity to participate in the public comment process, DSS has chosen to republish these regulations for further public review and comment.

Purpose

The purpose of this proposal is to revise language in the Delaware Social Services Manual (DSSM) so as to be compliant with changes in the Child Care and Development Fund Final Rule. The final rule requires that all providers receiving Purchase of Care (POC) funding must now to be licensed, including those that were previously license exempt, in order to continue receiving POC funding.

Summary of Proposed Changes

If implemented as proposed, the amendment to the DSSM will accomplish the following, effective May 11, 2017:

Modify DSSM 11004.4.1, Explanation of Certificates, and DSSM 11004.9, Authorizing Child Care Services, to align with the final rule.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the Delaware Social Services Manual provisions regarding Purchase of Care Licensing Requirements. Comments must be received by 4:30 p.m. on March 3, 2017.

Fiscal Impact Statement

Reauthorization of the Child Care Development Block Grant is requiring that child care providers that receive purchase of care funding to become licensed. A revision of current policy in regards to licensed exempt providers will be required. This is a revision of our current policies and will not require additional funding.

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

<http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 614RFA 02-01-17.pdf>

DSS PROPOSED REGULATION #17-004a REVISION:

11004.4.1 Explanation of Certificates

Use the following as a guide to explain the child care certificate package.

A. Parents/caretakers can use this package to select a child care provider of their choice. However, they must select care that is legal. Legal care is care that is licensed or that is exempt from licensing requirements.

B. Licensed Care: ~~In Delaware,~~ All family child care homes and child care centers must have a license to operate in Delaware. Do not allow a parent to select an unlicensed family, or center child care provider.

C. License-exempt Care: The following provider types are exempt from licensing requirements in Delaware:

1. persons who come into the child's own home to care for the parent/caretaker's child,

2. relatives who provide care in their home for the parent/caretaker's child;
- ~~3. public or private school care,~~
- ~~4. preschools and kindergarten care, and~~
- ~~5. before and after school care programs.~~

6. Though the above provider types are exempt from licensing requirements, they are still required to meet certain health and safety standards. These standards are:

1. maintaining documentation of the child's immunization record,
2. safe and clean building premises,
3. providers and those 18 and older who live in the home where care is being provided must not have any record of child abuse or neglect (do not allow persons to provide care where there is a known record of abuse or neglect), and

4. relatives who provide care cannot be part of the welfare grant.

D. Once parents/caretakers know the appropriate provider to select, they also need to know how DSS will pay for the care provided. DSS has established rates above which it will not pay (see Appendix II for current reimbursement rates).

Parents/caretakers will need to know these rates and whether or not the provider is willing to accept them. If the provider is willing, the certificate will act just like a DSS contract and DSS will pay the provider directly less any child care fee. If the provider is not willing, the parent/caretaker will self-arrange care with the individual provider.

If the provider contracted purchase of care slots are full, the provider may offer the parent/caretaker the option of receiving service as a purchase of care plus client. The provider then receives the regular DSS subsidy from the Division, the DSS determined parent fee and any additional fee determined by the provider from the parent/caretaker.

If the provider is not willing to accept purchase of care plus, the parent/caretaker will self-arrange care with the individual provider. The parent/caretaker will pay the provider and submit an original receipt to DSS for reimbursement. The parent/caretaker, however, will only receive reimbursement up to the DSS statewide limit.

E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the Child Abuse/ Neglect History Clearance Form or forms for all members 18 and older living in the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member.

F. Service will not be delayed because of an incomplete child abuse clearance check, but remind parents/caretakers that DSS will not pay for care if, after authorization, the check should reveal a history of abuse or neglect.

G. Allow parents/caretakers one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the parents/caretakers will need to obtain a new certificate if they still wish to receive service.

H. The original copy of the child care certificate is completed and returned by the provider. The certificate package provides instructions for completion. The provider should keep a copy.

I. The client has 60 days from confirmation of eligibility to provide the DSS Case Manager with the name of his/her provider. If the client fails to provide this information his/her case will close.

DSS PROPOSED REGULATION #17-004b REVISION:

11004.9 Authorizing Child Care Services

45 CFR 98.11

All child care services must be authorized before parents/caretakers can receive subsidized child care. Parents/ caretakers can choose any provider who is: ~~either~~

A. licensed, licensed exempt, or self arranged, and

B. approved to receive purchase of care.

No parent/caretaker can receive POC funds to provide child care services to their own children in a home or any other child care facility where the parent/caretaker provides direct care to that child. These parents may be able to get child care assistance if their children are placed in another child care setting.

Authorizations always start after service has been approved. The exact date is selected by the parent/ caretaker. An authorization ends on the last day of the month of the authorization period. At no time can the authorization period exceed the review date. Child care may be authorized only for the days and hours that parents/caretakers need care. The types of care that can be authorized are part time (P), full day (X), and day and a half (T) ~~and double time (D) which is two days~~. All licensed and licensed exempt child care providers can receive up to five (5) absent days, depending on the number of days the child is authorized to attend. Children in self arranged care and children authorized for seven (7) days do not receive absent days.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 74A; (7 **Del.C.** Ch. 74A)
7 **DE Admin. Code** 1352

REGISTER NOTICE

SAN#: 2016-14

1352 Aboveground Storage Tanks

1. TITLE OF THE REGULATIONS:

Administrative Code Section 1352, Regulations Governing Aboveground Storage Tanks

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

The DNREC-Tank Management Section has revised the proposed amendments to Delaware Administrative Code 1352: Regulations Governing Aboveground Storage Tanks (AST Regulations) following a thorough review. The proposed amendments to the AST Regulations were published in the November 1, 2016 Delaware *Register of Regulations*. These revisions to the proposed amendments to the AST Regulations address sections and language inadvertently excluded by both DNREC and the Registrar. The revisions also include amendments by DNREC resulting from comments received at the public hearing held December 6, 2016 and throughout the initial public comment period which ended December 21, 2016.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is not a sunset date related to the proposed regulations.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

The statutory basis for these regulations is Title 7 Delaware Code Chapter 74A, Section 7407A.

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

None.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed amendments to 7 **DE Admin Code** Section 1352: Regulations Governing Aboveground Storage Tanks will be re-opened February 1, 2017 for a 30-day public comment period ending March 3, 2017. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

7. PREPARED BY:

Name/Phone: Alex Rittberg, 302-395-2500

Email: Alex.Rittberg@state.de.us

*Please Note:

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

[http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 617RFA 02-01-17.pdf](http://regulations.delaware.gov/register/february2017/proposed/20%20DE%20Reg%20617RFA%2002-01-17.pdf)

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

1352 Aboveground Storage Tanks

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

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

24 **DE Admin. Code** 1300

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 **Del. C.** Ch. 13 proposes to repeal the following adopted rule in 24 **DE Admin. Code** 1300 Board of Examiners of Private Investigators and Private Security Agencies: Rule 2.0 – Use of Rifle and Shotgun. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by March 3, 2017, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Monday, April 24, 2017, 9:30am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

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

[http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 618RFA 02-01-17.pdf](http://regulations.delaware.gov/register/february2017/proposed/20%20DE%20Reg%20618RFA%2002-01-17.pdf)

1300 Board of Examiners of Private Investigators & Private Security Agencies

(Break in Continuity of Sections)

2.0 ~~Use of Rifle and Shotgun Reserved~~

2.1 ~~Whereas there exists a need for private security guards in the State of Delaware to be equipped to handle situations where the risk of terrorist activity is high, or at special events where there is a high risk of violent activity or attack, the following rules are established to regulate the use of rifles and shotguns by security services contractors in the State.~~

- ~~2.2 The Governor of the State of Delaware, or designee, or the Superintendent of State Police, or designee, may authorize specified security services contractors to deploy security guards with rifles and/or shotguns, as appropriate to the defense of critical infrastructure facilities, or private business facilities and operations reasonably believed to be at risk of violent activity or attack likely to result in injury or significant damage to or loss of property. The situations where such protection would be required would include, but not be limited to:~~
- ~~2.2.1 An increase in the threat level from the Department of Homeland Security to “Imminent Threat Alert”, or higher;~~
 - ~~2.2.2 Special circumstances where additional protection would be deemed appropriate, including but not limited to:
 - ~~2.2.2.1 Credible threats to local facilities or operations;~~
 - ~~2.2.2.2 Response to natural disasters;~~
 - ~~2.2.2.3 Response to biological or chemical threats;~~
 - ~~2.2.2.4 Civil unrest.~~~~
 - ~~2.2.3 Any situation where additional trained responders are required to assist in the protection of life and property in the State of Delaware;~~
 - ~~2.2.4 An armored car company or agency, as defined by 24 Del.C. §1302(1), dealing with a credible threat or genuine risk to life or to property.~~
- ~~2.3 Security guards who would be deployed and authorized to use such additional weaponry would be required to:~~
- ~~2.3.1 Be trained by certified firearms instructors pursuant to State of Delaware standards;~~
 - ~~2.3.2 Be required to re-qualify with the weapons on a three times per year basis;~~
 - ~~2.3.3 Maintain a handgun firearms license through the State;~~
 - ~~2.3.4 Be listed by name on a roster of authorized individuals; and~~
 - ~~2.3.5 Maintain employment in good standing with their security services contractor employer at all times for inclusion on the list.~~
- ~~2.4 Security guards using such firearms would be required to maintain strict compliance with the provisions of 24 Del.C. §1321.~~
- ~~2.5 Rifles deemed appropriate for use in the State would be .30 caliber weapons, .223 caliber weapons, 9mm rifle type weapons, and other weapons approved by the Superintendent, or designee, as need and technology dictate. Shotguns would be of the 12 gauge law enforcement/military style weapons. All firearms would be subject to the approval of the Superintendent or designee.~~

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

1300 Board of Examiners of Private Investigators & Private Security Agencies

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

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

PUBLIC NOTICE

101 Regulations Governing Bingo

Pursuant to 28 **Del.C.** §1508(a)(2), the Delaware Board of Charitable Gaming has proposed revisions to its

rules and regulations. The rules pertaining to bingo and instant bingo are modified to achieve consistency with recent statutory changes. A public hearing will be held on February 22, 2017 at 10:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address, "Attention: Meredith Hurley," in accordance with 29 Del.C. §10118(a).

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

<http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 619RFA 02-01-17.pdf>

101 Regulations Governing Bingo

1.0 Definitions

(Break in Continuity Within Section)

"Instant Bingo or sealed game" A game of chance played with sealed or covered cards which must be opened in some fashion by the holder such that the cards reveal instantly whether the holder has won a prize. This type of game includes but is not limited to games commonly known as "rip-offs" or "Nevada pull-tabs."

(Break in Continuity of Sections)

3.0 Bingo Licenses

- 3.1 Upon receiving an application, the Board shall make an investigation of the merits of the application. ~~The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license.~~ The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.

(Break in Continuity Within Section)

4.0 Conduct of Bingo

(Break in Continuity Within Section)

- 4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 12:00 p.m. and the operation of a function shall be limited to six hours. ~~Instant bingo is~~ or sealed games are permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.
- 4.3 No person under the age of eighteen (18) may participate in any bingo game. No person under the age of 18 shall be permitted to participate in any instant bingo or sealed game. Persons between the ages of 16 through 18 may conduct or assist in conducting the bingo game and persons over the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.

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

101 Regulations Governing Bingo

DIVISION OF PROFESSIONAL REGULATION

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

PUBLIC NOTICE

1100 Board of Dentistry and Dental Hygiene

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to revise its regulations. The proposed amendments to regulation 8 adds regulatory provisions for inactive status pursuant to 24 **Del.C.** §1126(e). The proposed changes to Regulation 11 eliminates several crimes that are listed as substantially related to the practice of dentistry and dental hygiene, and the proposed addition of Regulation 13 adds provision for the practice of teledentistry pursuant to 24 **Del.C.** §1101(19).

The Board will hold a public hearing on the proposed rule change on March 16, 2017 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meredith Hurley, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 2, 2017.

***Please Note:**

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

<http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 621RFA 02-01-17.pdf>

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

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION

1400 BOARD OF ELECTRICAL EXAMINERS

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

PUBLIC NOTICE

1400 Board of Electrical Examiners

Pursuant to 24 **Del.C.** §1406(a)(1), the Delaware Board of Electrical Examiners has proposed revisions to its rules and regulations. The rules pertaining to crimes substantially related to the practice of electrical services are proposed to be amended.

A public hearing will be held on March 1, 2017 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address, "Attention: LaTonya Brown".

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be March 16, 2017, 15 days following the public hearing.

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

<http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 621aRFA 02-01-17.pdf>

PROPOSED REGULATIONS

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

17.0 Crimes substantially related to work of an Electrician.

- 17.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the work of an electrician in the State of Delaware without regard to the place of conviction:
- 17.1.4 ~~Offensive touching.~~ 11 ~~Del.C.~~ §604
 - 17.1.21 Menacing (felony). 11 **Del.C.** §602
 - 17.1.32 Reckless endangering in the first degree. 11 **Del.C.** §604
 - 17.1.43 Assault in the second degree. 11 **Del.C.** §612
 - 17.1.54 Assault in the first degree. 11 **Del.C.** §613
 - 17.1.65 Manslaughter. 11 **Del.C.** §632
 - 17.1.76 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
 - 17.1.87 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634
 - 17.1.98 Murder in the second degree. 11 **Del.C.** §635
 - 17.1.409 Murder in the first degree. 11 **Del.C.** §636
 - 17.1.4410 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
 - 17.1.4211 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
 - 17.1.4312 Rape in the fourth degree. 11 **Del.C.** §770
 - 17.1.4413 Rape in the third degree. 11 **Del.C.** §771
 - 17.1.4514 Rape in the second degree. 11 **Del.C.** §772
 - 17.1.4615 Rape in the first degree. 11 **Del.C.** §773
 - 17.1.17 ~~Sexual extortion.~~ 11 ~~Del.C.~~ §776
 - 17.1.4816 Sex offender unlawful conduct against a child. 11 **Del.C.** §777A
 - 17.1.4917 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree. 11 **Del.C.** §778
 - 17.1.2018 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree. 11 **Del.C.** §778A
 - 17.1.21 ~~Continuous sexual abuse of a child.~~ 11 ~~Del.C.~~ §778
 - 17.1.22 ~~Dangerous crimes against a child.~~ 11 ~~Del.C.~~ §779
 - 17.1.23 ~~Unlawful imprisonment in the second degree.~~ 11 ~~Del.C.~~ §781
 - 17.1.2419 Unlawful imprisonment in the first degree. 11 **Del.C.** §782
 - 17.1.2520 Kidnapping in the second degree. 11 **Del.C.** §783
 - 17.1.2621 Kidnapping in the first degree. 11 **Del.C.** §783A
 - 17.1.2722 Arson in the second degree. 11 **Del.C.** §802
 - 17.1.2823 Arson in the first degree. 11 **Del.C.** §803
 - 17.1.29 ~~Criminal mischief.~~ 11 ~~Del.C.~~ §811
 - 17.1.30 ~~Trespassing with intent to peer or peep into a window or door of another.~~ 11 ~~Del.C.~~ §820
 - 17.1.31 ~~Burglary in the third degree.~~ 11 ~~Del.C.~~ §824
 - 17.1.3224 Burglary in the second degree. 11 **Del.C.** §825
 - 17.1.3325 Burglary in the first degree. 11 **Del.C.** §826
 - 17.1.3426 Home invasion. 11 **Del.C.** §826A
 - 17.1.3527 Robbery in the second degree. 11 **Del.C.** §831
 - 17.1.3628 Robbery in the first degree. 11 **Del.C.** §832
 - 17.1.3729 Carjacking in the second degree. 11 **Del.C.** §835
 - 17.1.3830 Carjacking in the first degree. 11 **Del.C.** §836

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- 17.1.3931 Theft; lost or mislaid property; mistaken delivery (felony). 11 **Del.C.** §842
- 17.1.4032 Theft; false pretense (felony). 11 **Del.C.** §843
- ~~17.1.41 Theft of services. 11 **Del.C.** §845~~
- 17.1.4233 Extortion. 11 **Del.C.** §846
- 17.1.4334 Theft of rented property (felony). 11 **Del.C.** §849
- 17.1.4435 Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices (felony). 11 **Del.C.** §850
- 17.1.4536 Receiving stolen property. 11 **Del.C.** §851
- 17.1.4637 Identity theft. 11 **Del.C.** §854
- 17.1.4738 Forgery. 11 **Del.C.** §861
- ~~17.1.48 Falsifying business records. 11 **Del.C.** §872~~
- ~~17.1.49 Tampering with public records in the second degree. 11 **Del.C.** §873~~
- ~~17.1.50 Offering a false instrument for filing. 11 **Del.C.** §877~~
- 17.1.5139 Issuing a false certificate. 11 **Del.C.** §878
- 17.1.5240 Unlawful use of credit payment card. 11 **Del.C.** §903
- ~~17.1.53 Deceptive business practices. 11 **Del.C.** §906~~
- 17.1.5441 Criminal impersonation of a police officer. 11 **Del.C.** §907B
- ~~17.1.55 Securing execution of documents by deception. 11 **Del.C.** §909~~
- 17.1.5642 Insurance fraud. 11 **Del.C.** §913
- 17.1.5743 Home improvement fraud. 11 **Del.C.** §916
- 17.1.5844 New home construction fraud. 11 **Del.C.** §917
- 17.1.5945 Dealing in children. 11 **Del.C.** §1100A
- ~~17.1.60 Abandonment of child. 11 **Del.C.** §1101~~
- 17.1.6146 Endangering the welfare of a child. 11 **Del.C.** §1102
- 17.1.6247 Crime against a vulnerable adult. 11 **Del.C.** §1105
- ~~17.1.63 Unlawfully dealing with a child. 11 **Del.C.** §1106~~
- ~~17.1.64 Endangering children. 11 **Del.C.** §1107~~
- 17.1.6548 Possession of child pornography. 11 **Del.C.** §1111
- 17.1.6649 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
- 17.1.6750 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 17.1.6851 Sexual exploitation of a child. 11 **Del.C.** §1108
- 17.1.6952 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- ~~17.1.70 Sexual solicitation of a child. 11 **Del.C.** §1112A~~
- 17.1.7153 Perjury in the second degree. 11 **Del.C.** §1222
- 17.1.7254 Perjury in the first degree. 11 **Del.C.** §1223
- ~~17.1.73 Falsely reporting an incident. 11 **Del.C.** §1245~~
- 17.1.7455 Hate crimes. 11 **Del.C.** §1304
- 17.1.7556 Stalking. 11 **Del.C.** §1312
- 17.1.7657 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338
- 17.1.7758 Adulteration. 11 **Del.C.** §1339
- 17.1.7859 Possession of a firearm during a felony. 11 **Del.C.** §1447
- 17.1.7960 Theft of a firearm. 11 **Del.C.** §1451
- ~~17.1.80 Organized crime and racketeering. 11 **Del.C.** §1503~~
- 17.1.8161 Breaking and entering, etc. to place or remove equipment. 11 **Del.C.** §2410
- 17.1.8262 Unlicensed practice as an Electrician 24 **Del.C.** §§1407; 1422

PROPOSED REGULATIONS

- 17.2 Crimes substantially related to the work of an electrician shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

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

1400 Board of Electrical Examiners

**DIVISION OF PROFESSIONAL REGULATION
5100 BOARD OF COSMETOLOGY AND BARBERING**

Statutory Authority: 24 Delaware Code, Section 5106(a)(1) (24 **Del.C.** §5106(a)(1))
24 **DE Admin. Code** 5100

PUBLIC NOTICE

5100 Board of Cosmetology and Barbering

Pursuant to 24 **Del.C.** §5106(a)(1), the Board of Cosmetology and Barbering ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on February 27, 2017 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Cosmetology and Barbering, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board, "Attention: Melanie Alexander," at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be March 14, 2017, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Board will decide whether to adopt the revisions as proposed.

The proposed revisions amend the requirements for temporary permits and apprenticeship licenses. Curricula is added for apprenticeships, for both cosmetologists and barbers, for the 3,000-hour program and the 1,500-hour merged program as set forth in 24 **Del.C.** §5107(a)(3)(c) and (f). Finally, the new Section 18.0 is amended to delete crimes not substantially related to the practice of the professions regulated by the Board thereby removing unnecessary barriers to licensure.

***Please Note:**

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

[http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 624RFA 02-01-17.pdf](http://regulations.delaware.gov/register/february2017/proposed/20%20DE%20Reg%20624RFA%2002-01-17.pdf)

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

5100 Board of Cosmetology and Barbering

**DIVISION OF PROFESSIONAL REGULATION
CONTROLLED SUBSTANCE ADVISORY COMMITTEE**

Statutory Authority: 16 Delaware Code, Section 4731(a) (16 **Del.C.** §4731(a))

PUBLIC NOTICE

Uniform Controlled Substances Act Regulations

Pursuant to 16 **Del.C.** §4731(a), the Delaware Secretary of State ("Secretary") proposes revisions to the

Uniform Controlled Substance Act ("UCSA") rules and regulations. The proposed regulation is attached hereto as Exhibit A.

The Secretary has proposed revisions to Section 9.0 pertaining to the safe prescribing of opioid analgesics. Subsection 9.6 sets forth the requirements of the medical evaluation that must be performed by a practitioner before a subsequent prescription is issued. The new subsection 9.7 adds two exemptions to subsection 9.6. These exemptions permit continuity of care for acute pain while ensuring patient safety.

In addition, on December 15, 2016, the Secretary issued a Final Order adopting emergency regulations adding the synthetic opioid known as U-47700 to Schedule I. This Final Order was published in the Delaware *Register of Regulations* on January 1, 2017, Volume 20, Issue 7. Pursuant to the Administrative Procedure Act, the Secretary's Final Order will only be effective for a maximum of 120 days but may be renewed once for an additional period of sixty days. 29 Del.C. §10119(3). Therefore, the Secretary has proposed the addition of subsections 10.3.1 and 10.3.1.2 to the UCSA rules and regulations.

Any person who wishes to present written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments no later than Friday, March 3, 2017 to:

Christine Mast, Administrative Specialist III
Office of Controlled Substances
Delaware Division of Professional Regulation
Cannon Building, Suite 203
861 Silver Lake Blvd.
Dover, Delaware 19904
Email: christine.mast@state.de.us
Fax: (302) 739-2711.

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

<http://regulations.delaware.gov/register/february2017/proposed/20 DE Reg 624aRFA 02-01-17.pdf>

Uniform Controlled Substances Act Regulations (Break in Continuity of Sections)

9.0 Safe Prescribing of Opioid Analgesics

(Break in Continuity Within Section)

9.6 Subsequent prescriptions. Subject to the exemptions set forth in subsection 9.7, After the first time ~~outpatient~~ prescription, or after the patient has been issued outpatient prescription(s) totaling up to a seven day supply, prior to issuing a subsequent prescription for an opioid analgesic for Acute Pain, the practitioner must perform an appropriate evaluation of the patient's medical history and condition, including the following:

(Break in Continuity Within Section)

9.7 Exemptions to subsection 9.6:

9.7.1 If a patient has been discharged from an in-patient facility or out-patient surgical center, and, in the professional medical judgment of the practitioner, more than a seven-day supply of an opiate is required to treat the patient's acute medical condition, the practitioner may issue a second prescription for not more than a seven-day supply without satisfying the requirements of subsection 9.6.

9.7.2 If a practitioner satisfies the requirements of subsection 9.6 at the time of the first time prescription, the practitioner may issue a subsequent prescription for not more than a seven-day supply without repeating the requirements of subsection 9.6.

9.78 Chronic Pain patients. In addition to the requirements of subsection 9.6, the practitioner must adhere to the following additional requirements for Chronic Pain patients:

9.78.1 Query the PMP at least every six months, more frequently if clinically indicated, or whenever the patient is also being prescribed a benzodiazepine;

PROPOSED REGULATIONS

- 9.78.2 Query the PMP whenever the patient is assessed to potentially be at risk for substance abuse or misuse or demonstrates such things as loss of prescription(s), requests for early refills or similar behavior;
- 9.78.3 Administer fluid drug screens at least once every six months;
- 9.78.4 Obtain a signed Treatment Agreement, pursuant to subsection 9.3.13;
- 9.78.5 Conduct a Risk Assessment as defined in subsection 9.3.10;
- 9.78.6 Document in the patient's medical record alternative treatment options that have been tried by the patient, including non-pharmacological treatments, and their adequacy with respect to providing sufficient management of pain;
- 9.78.7 Make efforts to address psychiatric and medical comorbidities concurrently, rather than sequentially, when concurrent treatment is clinically feasible; and
- 9.78.8 At the practitioner's discretion, seek a case review and consult with, or otherwise refer the patient to, a state-licensed physician who holds a subspecialty board certification in addiction psychiatry from the American Board of Psychiatry and Neurology or an addiction certification from the American Board of Addiction Medicine or an addiction specialist if any of the following occur:
- 9.78.8.1 Adulterated drug tests;
- 9.78.8.2 Diversion of prescribed medications; or
- 9.78.8.3 The patient has obtained controlled substances elsewhere without disclosure to the physician, as evidenced by PMP data.
- 9.89 Practitioners treating the following patients are exempted from the requirements of this Regulation:
- 9.89.1 Hospice care patients;
- 9.89.2 Active cancer treatment patients;
- 9.89.3 Patients experiencing cancer-related pain;
- 9.89.4 Terminally ill/palliative care patients; and
- 9.89.5 Hospital patients, during the hospital stay, including any prescription issued at the time of discharge, so long as that discharge prescription is for a quantity of a 7-day supply or less.

10.0 Procedures for Adoption of Regulations

(Break in Continuity Within Section)

- 10.3 Emergency Regulations. If the Secretary of State, upon the recommendation of the Committee, finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than twenty (20) days notice and states in writing his/her reasons for that finding, the Secretary of State may proceed without prior notice or hearing or upon any abbreviated notice and hearing he/she finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not precluded.
- 10.3.1 Pursuant to 16 **Del.C.** §4713 the Secretary of State finds that the synthetic opioid, 3, 4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700) and its isomers, esters, ethers, salts and salts of isomers, esters and ethers, has high potential for abuse; has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision, and therefore:
- 10.3.1.2 The Secretary of State, as authorized by 16 **Del.C.** §4713, does hereby add by rule 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700) and its isomers, esters, ethers, salts and salts of isomers, esters and ethers, in Schedule I of the Uniform Controlled Substances Act, 16 **Del.C.** Ch. 47.

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

Uniform Controlled Substances Act Regulations

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.

DELAWARE RIVER BASIN COMMISSION

ORDER

Notice of Final Rulemaking: Regulatory Program Fees and Water Supply Charges

Amendments to the Rules of Practice and Procedure Concerning Regulatory Program Fees and to the Basin Regulations - Water Supply Charges Concerning Rates

Proposed: Delaware *Register of Regulations* (19 DE Reg. 1052-1057 (06/01/2016)) on June 1, 2016.

Adopted: December 14, 2016 by the Delaware River Basin Commission, Pamela M. Bush, Esq., Secretary.

Filed: December 29, 2016 as a final regulation.

Effective: January 1, 2017.

Summary: The Commission amends the *Rules of Practice and Procedure and the Basin Regulations - Water Supply Charges*, respectively, to adopt a new project review fee structure and provide for automatic inflation adjustments. These changes are also incorporated into the Commission's Comprehensive Plan.

Contact: Richard C. Gore, Director of Administration and Finance, 609-883-9500, ext. 201.

Supplementary Information:

Background. The Delaware River Basin Commission ("DRBC" or "Commission") is a Federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states - Delaware, New Jersey, New York and Pennsylvania - and on behalf of the federal government, the North Atlantic Division Commander of the U.S. Army Corps of Engineers. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the state in accordance with Section 14.2 of the Delaware River Basin Compact.

By Resolution No. 2016-9 on December 14, 2016 the Commission approved a comprehensive revision of its project review fee structure, including an automatic annual indexed inflation adjustment for most fees. An inflation adjustment was also approved for DRBC's water supply charges rates applicable to consumptive and non-consumptive surface water withdrawals. The changes to DRBC's regulatory program fees are designed to provide a more predictable and sustainable source of revenues and to close the annual gap in funding needed to support DRBC's project review program. They also adjust the fees program to better align with the One Process/One Permit Program instituted earlier in 2016. The changes to DRBC's water supply charges regulations are designed to help revenues assigned to DRBC's Water Supply Storage Facilities Fund keep pace with inflation.

Public Process. A Notice of Proposed Rulemaking and Public Hearing was posted to the Commission's website on May 9, 2016. A detailed set of questions and answers about the proposal ("FAQs") and a press release accompanied the May 9, 2016 web posting. On May 10, 2016, an email alert, including a link to the notice and supporting documents, was transmitted to all parties subscribed to DRBC's list serve. Notice of the proposed rules was published in the *Federal Register* at 81 FR 35662, June 3, 2016 and appeared in the *Delaware Register of Regulations*, 19 **DE Reg.** 1052, June 1, 2016; *New Jersey Register*, 48 N.J.R. 949, June 6, 2016; *New York State Register*, May 25, 2016 (page 1); and *Pennsylvania Bulletin*, 46 Pa.B. 2967, June 11, 2016. DRBC staff hosted a public informational meeting on the proposal on Wednesday, June 15, 2016 in Washington Crossing, Pa., including presentations by staff and informal questions and answers. The FAQs posted on the Commission's website were thereafter supplemented with questions and responses offered during the informational meeting. A public hearing on the proposed amendments took place at the Commission's office building in West Trenton, N.J. on July 27, 2016 and written comments were accepted through August 12, 2016.

In response to the written and oral comments submitted on the draft rules, staff developed a detailed comment and response document, including modest changes to the rule text. After careful consideration and consultation with staff on the comments and proposed changes to the draft rules, the Commissioners determined that the changes were appropriate, responsive to the public's concerns and a logical outgrowth of the rules as proposed. The changes and the staff response to comments were adopted by unanimous vote of the Commissioners to approve Resolution No. 2016-9 at the Commission's public business meeting on December 14, 2016.

Additional materials. The following additional materials can be found on the Commission's web site, www.drbc.net:

- Resolution No. 2016-9, at http://www.nj.gov/drbc/library/documents/Res2016-09_Fee-Rule.pdf. Attachments to the resolution include a redline version of the regulatory program fees rule text, showing changes between the draft and final versions of the new rule; and a redline version of the schedule of water charges, comparing the text that has been in place since 2011 with the text of this final rule.
- The detailed comment and response document prepared by staff and adopted by the Commission when it approved the final rule on December 14, 2016, at http://www.nj.gov/drbc/library/documents/regs/CR_fees-rulemaking121416.pdf.
- A questions and answers document ("FAQs") prepared by staff to explain the purpose and effect of the rule changes, at http://www.nj.gov/drbc/library/documents/FAQ_fees-charges121416.pdf.
- The Commission's press release dated December 14, 2016, announcing adoption of the project review fees restructuring and amendment of the schedule of water charges, at http://www.nj.gov/drbc/home/newsroom/news/approved/20161214_newsrel_fees.html.
- Updated versions of the *Rules of Practice and Procedure* and the *Basin Regulations - Water Supply Charges*, at <http://www.nj.gov/drbc/about/regulations/>.

For the reasons set forth in the preamble, the Delaware River Basin Commission has amended parts 401 and 420 of title 18 of the Code of Federal Regulations as set forth below:

PART 401 – RULES OF PRACTICE AND PROCEDURE

[18 CFR 401 has been amended by a new § 401.43 which reads as follows:]

§ 401.43 Regulatory program fees.

(a) Purpose. The purpose of this section is to provide an adequate, stable and reliable stream of revenue to cover the cost of the Commission's regulatory program activities, an important means by which the Commission coordinates management of the shared water resources of the Basin. Activities to be covered by the fees include the review of applications for projects that are subject to review under the *Delaware River Basin Compact* and implementing regulations; and ongoing activities associated with such projects, including but not limited to, effluent

and ambient monitoring, data analysis, hydrodynamic and water quality modeling, and coordination with state and federal agencies.

(b) Types of fees. The following types of fees are established by this section:

(1) Docket Application Fee. Except as set forth in paragraph (b)(1)(iii) of this section, the docket application fee shall apply to:

(i) Project requiring a DRBC-issued docket or permit. Any project that, in accordance with the *Delaware River Basin Compact* and DRBC regulations, requires a Commission-issued docket or permit, whether it be a new or existing project for which the Commission has not yet issued an approval or a project for which the renewal of a previous Commission approval is required.

(ii) Project requiring inclusion in the comprehensive plan. Any project that in accordance with section 11 or section 13.1 of the *Delaware River Basin Compact* and DRBC regulations must be added to the Comprehensive Plan (also, "Plan"). In addition to any new project required to be included in the Plan, such projects include existing projects that in accordance with section 13.1 of the *Compact* are required to be included in the Plan and which were not previously added to the Plan. Any existing project that is changed substantially from the project as described in the Plan shall be deemed to be a new and different project for purposes of this section.

(iii) Exemptions. The docket application fee shall not apply to:

(A) Any project for which the Signatory Party Agency serves as lead under the One Permit Program rule (§ 401.42), unless such project must be added by the Commission to the Comprehensive Plan.

(B) Any project for which an agency, authority or commission of a signatory to the *Compact* is the primary sponsor. Projects sponsored by political subdivisions of the signatory states shall not be included in this exemption. For purposes of this section "political subdivisions" shall include without limitation municipalities, municipal utility authorities, municipal development corporations, and all other entities not directly under the budgetary and administrative control of the Commission's members.

(2) Annual monitoring and coordination fee. -- (i) Except as provided in paragraph (ii) below, an annual monitoring and coordination fee shall apply to each active water allocation or wastewater discharge approval issued pursuant to the *Compact* and implementing regulations, regardless of whether the approval was issued by the Commission in the form of a docket, permit or other instrument, or by a Signatory Party Agency under the One Permit Program rule (§ 401.42). The fee shall be based on the amount of a project's approved monthly water allocation and/or approved daily discharge capacity.

(ii) For any withdrawal or diversion covered in part by a certificate of entitlement issued pursuant to 18 CFR § 420.31-32 of the water supply charges regulations, the annual monitoring and coordination fee shall be based on the allocated amount, if any, in excess of the quantity specified in the entitlement.

(3) Alternative Review Fee. In instances where the Commission's activities and related costs associated with the review of an existing or proposed project are expected to involve extraordinary time and expense, an alternative review fee equal to the Commission's actual costs may be imposed. The Executive Director shall inform the project sponsor in writing when the alternative review fee is to be applied and may require advance payment in the amount of the Commission's projected costs. Instances in which the alternative review fee may apply include, but are not limited to, matters in which:

(i) DRBC staff perform a detailed pre-application review, including but not limited to the performance or review of modeling and/or analysis to identify target limits for wastewater discharges.

(ii) DRBC staff perform or review complex modeling in connection with the design of a wastewater discharge diffuser system.

(iii) DRBC manages a public process for which the degree of public involvement results in extraordinary effort and expense, including but not limited to, costs associated with multiple stakeholder meetings, special public hearings, and/or voluminous public comment.

(iv) DRBC conducts or is required to engage third parties to conduct additional analyses or evaluations of a project in response to a court order.

(4) Additional fees. -- (i) Emergency approval. A request for an emergency certificate under § 401.40 to waive or amend a docket condition shall be subject to a minimum fee in accordance with paragraph (e) of this section. An alternative review fee also may be charged in accordance with paragraph (b)(3) of this section.

(ii) Late filed renewal application. Any renewal application submitted fewer than 120 calendar days in advance of the expiration date or after such other date specified in the docket or permit or letter of the Executive Director for filing a renewal application shall be subject to a late filed renewal application charge in excess of the otherwise applicable fee.

(iii) Modification of a DRBC approval. Following Commission action on a project, each project revision or modification that the Executive Director deems substantial shall require an additional docket application fee calculated in accordance with paragraph (e) of this section and subject to an alternative review fee in accordance with paragraph (b)(3) of this section.

(iv) Name change. Each project with a docket or permit issued by the DRBC or by a Signatory Party Agency pursuant to the One Permit Program rule (§ 401.42) will be charged an administrative fee as set forth in paragraph (e) of this section.

(v) Change of ownership. Each project that undergoes a "change in ownership" as that term is defined at 18 CFR 420.31(e)(2) will be charged an administrative fee as set forth in paragraph (e) of this section.

(c) Indexed adjustment. On July 1 of every year, beginning July 1, 2017, all fees established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.¹ In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the docket application fee and annual monitoring and coordination fee will remain unchanged. Following any indexed adjustment made under this paragraph (c), a revised fee schedule will be published in the Federal Register by July 1 and posted on the Commission's website. Interested parties may also obtain the fee schedule by contacting the Commission directly during business hours.

¹ Consumer Price Index – U / Series ID: CWURA102SA0 / Not Seasonally Adjusted / Area: Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD / Item: All items / Base Period: 1982-84=100.

(d) Late payment charge. When any fee established by this section remains unpaid 30 calendar days after the payment due date provided on the Commission's invoice, an incremental charge equal to 2% of the amount owed shall be automatically assessed. Such charge shall be assessed every 30 days thereafter until the total amount owed, including any late payment charges has been paid in full.

(e) Fee schedules. The fees described in this section shall be as follows.

TABLE 1 TO §401.43--DOCKET APPLICATION FILING FEE

Project Type	Docket Application Fee	Fee Maximum
Water Allocation	\$400 per million gallons/month of allocation ¹ , not to exceed \$15,000 ¹ . Fee is doubled for any portion to be exported from the basin.	Greater of: \$15,000 ¹ or Alternative Review Fee
Wastewater Discharge	Private projects: \$1,000 ¹ Public projects: \$500 ¹	Alternative Review Fee
Other	0.4% of project cost up to \$10,000,000 plus 0.12% of project cost above \$10,000,000 (if applicable), not to exceed \$75,000 ¹	Greater of: \$75,000 ¹ or Alternative Review Fee

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

TABLE 2 to §401.43--ANNUAL MONITORING AND COORDINATION FEE

	Annual Fee	Allocation
Water Allocation	\$300 ¹	< 4.99 mgm
	\$450 ¹	5.00 to 49.99 mgm
	\$650 ¹	50.00 to 499.99 mgm
	\$825 ¹	500.00 to 9,999.99 mgm
	\$1,000 ¹	> or = to 10,000 mgm
		Annual Fee
Wastewater Discharge	\$300 ¹	< 0.05 mgd
	\$610 ¹	0.05 to 1 mgd
	\$820 ¹	1 to 10 mgd
	\$1,000 ¹	>10 mgd

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

TABLE 3 to §401.43--ADDITIONAL FEES

Proposed Action	Fee	Fee Maximum
Emergency Approval Under 18 CFR 401.40	\$5,000	Alternative Review Fee
Late Filed Renewal Surcharge	\$2,000	--
Modification of a DRBC Approval	At Executive Director's discretion, Docket Application Fee for the appropriate project type.	Alternative Review Fee
Name change	\$1,000 ¹	--
Change of Ownership	\$1,500 ¹	--

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

PART 420 – BASIN REGULATIONS – WATER SUPPLY CHARGES

[18 CFR § 420.41 has been revised to read as follows:]

§ 420.41 Schedule of water charges.

The schedule of water charges established in accordance with § 420.22 shall be as follows:

- (a) \$80 per million gallons for consumptive use, subject to paragraph (c) of this section; and
- (b) \$0.80 per million gallons for non-consumptive use, subject to paragraph (c) of this section.
- (c) On July 1 of every year, beginning July 1, 2017, the rates established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published

by the U.S. Bureau of Labor Statistics during that year.¹ In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the water charges rates will remain unchanged. Following any indexed adjustment made under this paragraph (c), revised consumptive and non-consumptive use rates will be published in the Federal Register by July 1 and posted on the Commission's website. Interested parties may also obtain the rates by contacting the Commission directly during business hours.

¹ Consumer Price Index – U / Series ID: CWURA102SA0 / Not Seasonally Adjusted / Area: Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD / Item: All items / Base Period: 1982-84=100.

Dated: December 29, 2016

Pamela M. Bush,
Commission Secretary

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 260

REGULATORY IMPLEMENTING ORDER

260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to repeal 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA. This regulation is being repealed as it is outdated and determined to be no longer needed. Districts and charter schools participating in these child nutrition programs are required to follow federal law governing these programs (known as Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et seq.). This federal law creates a high standard for program requirements that exceed the current regulation.

Notice of the proposed regulation repeal was published in the *News Journal* and the *Delaware State News* on December 1, 2016, in the form hereto attached as Exhibit "A". No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA as it is outdated and determined to be no longer needed.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA attached hereto as Exhibit "B" is hereby repealed.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA in the form attached hereto as Exhibit "B" is hereby repealed.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 19, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of January 2017.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 19th day of January 2017.

***Please note that no changes were made to the regulation as originally proposed and published in the December 2016 issue of the *Register* at page 396 (20 DE Reg. 396). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 262

REGULATORY IMPLEMENTING ORDER

262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to repeal 14 **DE Admin. Code** 262 General Administrative Appeal Procedures for National School Lunch Program (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action. This regulation is being repealed as it is outdated and determined to be no longer needed. Districts and charter schools participating in these child nutrition programs are required to follow federal law governing these programs (known as Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et seq.). This federal law creates a high standard for program requirements that exceed the current regulation.

Notice of the proposed regulation repeal was published in the *News Journal* and the *Delaware State News* on December 1, 2016, in the form hereto attached as Exhibit "A". No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 262 General Administrative Appeal Procedures for National School Lunch Program (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action as it is outdated and determined to be no longer needed.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 262 General Administrative Appeal Procedures for National School Lunch Program (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 262 General Administrative Appeal Procedures for National School Lunch Program (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action attached hereto as Exhibit "B" is hereby repealed.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 262 General Administrative Appeal Procedures for National School Lunch Program (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action in the form attached hereto as Exhibit "B" is hereby repealed.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 19, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of January 2017.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 19th day of January 2017.

***Please note that no changes were made to the regulation as originally proposed and published in the December 2016 issue of the *Register* at page 399 (20 DE Reg. 399). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 264

REGULATORY IMPLEMENTING ORDER

264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to repeal 14 **DE Admin. Code** 264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA. This regulation is being repealed as it is outdated and determined to be no longer needed. Districts and charter schools participating in these child nutrition programs are required to follow federal law governing these programs (known as Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et seq.). This federal law creates a high standard for program requirements that exceed the current regulation.

Notice of the proposed regulation repeal was published in the *News Journal* and the *Delaware State News* on December 1, 2016, in the form hereto attached as Exhibit "A". No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA as it is outdated and determined to be no longer needed.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA attached hereto as Exhibit "B" is hereby repealed.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA in the form attached hereto as Exhibit "B" is hereby repealed.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 19, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED the 19th day of January 2017.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 19th day of January 2017.

***Please note that no changes were made to the regulation as originally proposed and published in the December 2016 issue of the *Register* at page 402 (20 DE Reg. 402). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 852

REGULATORY IMPLEMENTING ORDER

852 Child Nutrition

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to repeal 14 **DE Admin. Code** 852 Child Nutrition. This regulation is being repealed as it is outdated and determined to be no longer needed. Districts and charter schools participating in these child nutrition programs are required to follow federal law governing these programs (Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et seq.). This federal law creates a high standard for program requirements that exceed the current regulation.

FINAL REGULATIONS

Notice of the proposed regulation repeal was published in the *News Journal* and the *Delaware State News* on December 1, 2016, in the form hereto attached as Exhibit "A". No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 852 Child Nutrition as it is outdated and determined to be no longer needed.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 852 Child Nutrition. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 852 Child Nutrition attached hereto as Exhibit "B" is hereby repealed.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 852 Child Nutrition in the form attached hereto as Exhibit "B" is hereby repealed.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 19, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of January 2017.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 19th day of January 2017

***Please note that no changes were made to the regulation as originally proposed and published in the December 2016 issue of the *Register* at page 405 (20 DE Reg. 405). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

852 Child Nutrition

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Chiropractors' Services

IN THE MATTER OF:

REVISION OF THE REGULATION
OF DELAWARE'S
TITLE XIX MEDICAID STATE PLAN
Attachment 3.1-A Page 3,
Attachment 3.1-A Page 3 Addendum, and
Attachment 4.19-B Page 26

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding Medical and other types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for chiropractors' services*. 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 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 2, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Medical and other types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for chiropractors' services*.

Statutory Authority

- §1905(a)(6) of the Social Security Act, *Medical care furnished by licensed practitioners*
- §1905(g) of the Social Security Act, *State plan provision of chiropractors' services*
- 42 CFR §440.60, *Medical or remedial care provided by licensed practitioners*
- 42 CFR §440.225, *State plan optional services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- 42 CFR §440, *Subpart C, Benchmark benefit and benchmark equivalent coverage*

Background

As a result of the Affordable Care Act, states were required to expand Medicaid eligibility to low-income adults beginning January 1, 2014, under section 1937 of the Social Security Act (hereafter referred to as the Act). Enacted as part of the Deficit Reduction Act of 2005, section 1937 of the Act provides states with significant flexibility to design Medicaid benefit packages under the State plan. As a result, 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 through an Alternative Benefit Plan. "Benchmark" means that the benefits are at least equal to one of the statutorily specified benchmark plans; "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. These section 1937 benchmark options are minimum standards and states can augment coverage with additional benefits.

In May of 2014, the Center for Medicaid Services (CMS) approved Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) submitted Delaware's Alternative Benefit Plan (ABP) with an effective date of January 1, 2014. The ABP included benchmarks and benchmark equivalent services reflective of the current Medicaid State Plan. Additionally, DMMA added chiropractors' services to the ABP for this newly eligible low-income, adult population. Previously, Delaware's Medicaid State Plan only covered chiropractors' services for children under the authority of 42 CFR §441 Subpart B, Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) of Individuals under Age 21. However, DMMA would like to extend coverage of chiropractors' services to all Delaware Medicaid beneficiaries in an effort to increase the quality of care, as well as reduce long-term costs of treating chronic pain.

Pain is a leading cause of disability and a major contributor to healthcare utilization. Musculoskeletal pain disorders include a wide range of acute and chronic injuries or inflammatory conditions that cause pain in the body's joints; ligaments; muscles; nerves; tendons; and structures that support the limbs, neck, and back. Conventional medical treatment for chronic musculoskeletal pain (e.g., nonsteroidal anti-inflammatory drugs and surgery) and use of opioids often lack long-term benefit or subject patients to other risks, such as medication side

effects and opioid dependency. It is also costly to the United States, not just in terms of health care expenses and disability compensation, but with respect to lost productivity and employment, reduced incomes, lost school days, and decreased quality of life. According to the National Health Statistics Report, No. 98, issued on October 12, 2016, "Use of Complementary Health Approaches for Musculoskeletal Pain Disorders Among Adults: United States, 2012," there is increasing clinical trial evidence for the efficacy of some complementary health approaches in treating specific musculoskeletal pain disorders, such as chiropractic care and other functional medicine techniques.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to expand coverage and allow reimbursement for chiropractors' services for all Medicaid eligible individuals.

Summary of Proposed Changes

Effective for services provided on and after January 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1-A Page 3, Attachment 3.1-A Page 3 Addendum, and 4.19-B Page 26 of the Medicaid State Plan to expand coverage and allow reimbursement for chiropractors' services for all Medicaid eligible individuals.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the establish coverage and reimbursement methodologies for chiropractors services. Comments must be received by 4:30 p.m. on December 31, 2016.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact

The expansion of chiropractic services is proposed as a cost effective alternative to traditional pain treatment and management services. There is no estimated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

No public comments were received for this regulation.

The Department finds that the proposed changes as set forth in the December 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Medical and other types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for chiropractors'*

services, is adopted and shall be final effective February 11, 2017.

Rita M. Landgraf, Secretary, DHSS
1/17/2017

***Please note that no changes were made to the regulation as originally proposed and published in the December 2016 issue of the *Register* at page 407 (20 DE Reg. 407). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Chiropractors' Services

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XXI Delaware Healthy Children Program State Plan - Premium Requirements

IN THE MATTER OF:

REVISION OF THE REGULATION
OF DELAWARE'S
TITLE XXI DELAWARE HEALTHY CHILDREN
PROGRAM STATE PLAN
SECTIONS 8.21 AND 8.5
DIVISION OF SOCIAL SERVICES MANUAL
18700

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*. 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 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 2, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*.

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
- Title XXI of the Social Security Act, *State Children's Health Insurance Program*
- 42 CFR Part 457, *State Children's Health Insurance Programs (SCHIPs)*
- 16 Delaware Code, Section 9909

Background

The Balanced Budget Act of 1997, enacted on August 5, 1997, established the "State Children's Health Insurance Program (SCHIP)" by adding Title XXI to the Social Security Act. The purpose of this program is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Delaware's SCHIP program called the Delaware Healthy Children Program (DHCP) is authorized under Title 19, Chapter 99, and Section 9905 of the Delaware Code.

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.

The conversion to MAGI-based income eligibility standards impacts the percentages of the Federal Poverty Level (FPL) used to set the premium levels under CHIP. The Centers for Medicare and Medicaid Services (CMS) advised Delaware that the State needed to amend the Delaware's Children's Health Insurance Program (CHIP) State Plan to update the premium levels to account for the MAGI-based conversion standards. Therefore, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) drafted a proposed CHIP State Plan Amendment (SPA) to change the percentages of the Federal Poverty Level (FPL) applied to the premium levels and to describe the incentives for pre-payment of premiums. The proposed regulation was published in the September 2014 Delaware *Register of Regulations* for public comment. The final regulation was published in the November 2014 Delaware *Register of Regulations* and the SPA was submitted to CMS on December 17, 2014. DMMA worked with CMS over the course of two (2) years to re-work the language in Delaware's CHIP State Plan to reflect the new ACA requirements, and update the CHIP family premium cost sharing amounts to be consistent with the state's approved Modified Gross Income conversion plan. The SPA was approved on May 19, 2016.

Summary of Proposal

Effective July 1, 2014, CHIP families have been required to pay monthly premiums according to federal poverty level (FPL) as detailed below:

1. The ten dollar (\$10.00) per family per month premium for families with incomes between 101% and 133% of the Federal Poverty Level (FPL) is obsolete. Children in these families transitioned to Medicaid effective January 1, 2014.
2. The conversion to MAGI-based standards results in a premium of fifteen dollars (\$15.00) per family per month for families with incomes ranging from 143% to 176% of the FPL, and \$25 PFPM for families with incomes ranging from 177% to 212% of the FPL (refer to CHIP MAGI State Plan Page CS21 for information on the effect of non-payment of premiums). This was a change from the original premium of fifteen dollars (\$15.00) per family per month for families with incomes between 134% and 166% of the FPL and a premium of twenty-five dollars (\$25.00) per family per month for families with incomes between 167% and 212% of the FPL that was proposed in September 2014.

Section 8 of the DHCP State Plan and Section 18700 of the Division of Social Services Manual (DSSM) have been amended to reflect the above-referenced change to the premium levels.

In addition, based on agency review, DHSS/DMMA amended the DHCP state plan at section 8.2.1 to update the language regarding incentives for pre-payment of premiums. The updated language reflects incentives for pre-payment of premiums that have been in practice since the inception of Delaware's CHIP program. These incentives are described at Section 18700 of the Division of Social Services Manual (DSSM).

The following regulations show the changes from the final version that was published in the December 2014 register to those that CMS approved on May 19, 2016.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input regarding these required changes made at the direction of the Center for Medicare and Medicaid Services (CMS). Comments were to have been received by 4:30 p.m. on January 2, 2017.

Provider Manuals Update

Applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact Statement

These regulations are being published to share changes made as a result of CMS feedback and direction. Current practice is not changing; therefore, there is no fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

SCPD did not identify any shortfalls with the proposed standards. They uniformly benefit families since they raise the thresholds which trigger the premium requirement. For example, the \$15/month premium previously applied to families with countable income at or above 143% of the Federal Poverty Level. That threshold has been raised to families with countable income at or above 177% of the Federal Poverty level.

SCPD endorsed the proposed regulation since the changes are being prompted by CMS and benefit families.

Agency Response: DMMA appreciates SCPD's endorsement.

No changes were made to the regulation as a result of these public comments.

The Department finds that the proposed changes as set forth in the December 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, Premium Requirements, is adopted and shall be final effective February 11, 2017.

Rita M. Landgraf, Secretary, DHSS
1/17/2017

***Please note that no changes were made to the regulation as originally proposed and published in the December 2016 issue of the *Register* at page 416 (20 DE Reg. 416). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[Title XXI Delaware Healthy Children Program State Plan - Premium Requirements](#)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 3103 (16 Del.C. §3103)
16 DE Admin. Code 4205

ORDER

4205 Vital Statistics

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Vital Statistics. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 3104.

On November 1, 2016 (Volume 20, Issue 5), 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 December 12, 2016, 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 Home Health Agencies - Aide Only (Licensure) were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (November 1, 2016 through December 12, 2016).

Entities offering written comments include:

- ACLU of Delaware, Kathleen MacRae, Executive Director
- Equality Delaware, Inc., Lisa Goodman, President and Equality Delaware Foundation, Mark Purpura, President
- National Center for Transgender Equality, Arli Christian, State Policy Counsel

Comment from the Delaware ACLU

I write in support of the proposed amendments to 16 Del. Admin. Code 4205 (the "Regulation") that were published in the Delaware *Register of Regulations* on November 1, 2016.

The proposed amendments to the Regulation are necessary updates to the requirements for amending a birth certificate based on gender identity in order to align the birth certificate amendment process with contemporary medical standards. Currently, the Regulation requires both gender transition surgery and a court order confirming the surgery to be provided in order to amend a person's birth certificate to accurately reflect the person's gender identity. The proposed amendments to the Regulation would replace those requirements with an affidavit of gender identity by the person seeking to amend their birth certificate, along with an affidavit of a licensed medical or mental health professional stating that the individual seeking the birth certificate amendment has undergone appropriate treatment for that individual for the purpose of gender transition. The ACLU of Delaware is pleased that the proposed amendments to the Regulation recognize that contemporary medical standards do not require any particular blanket form of treatment for gender transition, and are based on assessments of appropriate treatment for gender transition on an individualized basis. The flexibility afforded by the proposed amendments is consistent with contemporary medical standards and will allow more transgender individuals to have legitimate access to the birth certificate amendment process.

It is vitally important to the well-being of transgender individuals that they be permitted to have identity documents that accurately reflect their gender identity. In addition, it is also vitally important that transgender individuals have the ability to present identity documents that are consistent in terms of gender identity. Similar updates to the requirements for changing the gender marker on drivers licenses was implemented by the State of Delaware a number of years ago. The proposed amendments to the Regulation will allow more transgender individuals to have identity documents (drivers license, passport, etc.) that consistently match in terms of gender identity.

We thank the Office of Vital Statistics for their work in promulgating the proposed amendments to the Regulation, and urge the Office of Vital Statistics to enact the proposed amendments to the Regulation as published as soon as possible.

Comments from Equality Delaware

On behalf of Equality Delaware, Inc. and Equality Delaware Foundation, and the thousands of Delawareans who are members or supporters of our organizations, we write in support of the proposed amendments to 16 Del.

Admin. Code 4205 (the "Regulation") that were published in the Delaware *Register of Regulations* on November 1, 2016.

The proposed amendments to the Regulation are necessary updates to the requirements for amending a birth certificate based on gender identity in order to align the birth certificate amendment process with contemporary medical standards. Currently, the Regulation requires both gender transition surgery and a court order confirming the surgery to be provided in order to amend a person's birth certificate to accurately reflect the person's gender identity. The proposed amendments to the Regulation would replace those requirements with an affidavit of gender identity by the person seeking to amend their birth certificate, along with an affidavit of a licensed medical or mental health professional stating that the individual seeking the birth certificate amendment has undergone appropriate treatment for that individual for the purpose of gender transition. We are pleased that the proposed amendments to the Regulation recognize that contemporary medical standards do not require any particular blanket form of treatment for gender transition, and are based on assessments of appropriate treatment for gender transition on an individualized basis. The flexibility afforded by the proposed amendments is consistent with contemporary medical standards and will allow more transgender individuals to have legitimate access to the birth certificate amendment process.

It is vitally important to the well-being of transgender individuals that they be permitted to have identity documents that accurately reflect their gender identity. In addition, it is also vitally important that transgender individuals have the ability to present identity documents that are consistent in terms of gender identity. Similar updates to the requirements for changing the gender marker on drivers licenses was implemented by the State of Delaware a number of years ago. The proposed amendments to the Regulation will allow more transgender individuals to have identity documents (drivers license, passport, etc.) that consistently match in terms of gender identity.

We thank the Office of Vital Statistics for their work in promulgating the proposed amendments to the Regulation, and urge the Office of Vital Statistics to enact the proposed amendments to the Regulation as published as soon as possible.

Comments from the National Center for Transgender Equality

NCTE submits these comments in support of proposed revisions to the regulations governing Vital Statistics in Title 16 Section 4205 of the Delaware Administrative Code. On behalf of NCTE constituents born in Delaware and in the interest of improving government policies for transgender people everywhere, NCTE is excited to see this modernization in progress. Under these proposed regulations, applicants can obtain new certificates of birth to amend their gender marker by submitting an affidavit from the applicant along with an affidavit from a licensed medical or mental health professional attesting to appropriate treatment for gender transition. This is a great improvement from the previous regulation that required applicants to obtain a court order indicating their sex had been changed by surgical procedure. Below we provide additional information to support why transgender people may need updated birth certificates, why proof of surgery should not be required, and why requiring a court order is unnecessarily burdensome.

Thank you so much for your work on these proposed revisions, and please accept these comments in full support of approval of these revisions to the DE Administrative Code Vital Statistics section.

Transgender People May Need to Amend the Gender Marker on Their Birth Certificates For Practical, Personal, and Safety Reasons

Birth certificates are a critical identity document used in many settings to verify an individual's identity, and having the correct gender marker is important for many practical reasons, in addition to validating a person's intrinsic dignity. Birth certificates are often requested for purposes related to employment, education, and family law, and are a critical identity document used in many settings to verify an individual's identity, and specifically to verify their citizenship. Even in settings where birth certificates themselves are not required, other identity documents based on birth certificates are often required. In order to avoid discrimination in these situations, transgender individuals need access to birth certificates that accurately reflect their gender.

Medical professionals have long recognized the importance of updated identity documents as an intrinsic part of gender transition. The American Psychological Association encourages "legal and social recognition of transgender individuals consistent with their gender identity and expression, including access to identity documents consistent with their gender identity and expression which do not involuntarily disclose their status as transgender for transgender people who permanently socially transition to another gender role."

Amending the gender marker on a birth certificate is important to help avoid discrimination and bias against transgender people. Data from the National Transgender Discrimination Survey shows that a lack of proper identification greatly contributes to discrimination. 40% of transgender people who have shown identification that has a gender marker different than their gender presentation have experienced harassment because of this discrepancy. Another 15% were denied entry or denied service. Three percent (3%) reported being assaulted because of mismatched IDs.² As a result, it is critically important that transgender people be able to provide official documents to potential and current employers that correspond to their gender identity without having to "out" themselves as transgender.

Gender Change Policies Should not Require Surgery or Any Specific Medical Treatment Because Gender Transition Varies

Surgical requirements do not comport with contemporary health care standards, which recognize that gender transition is an individualized process that is not the same for all transgender people.³ Many transgender people cannot undergo surgery for a number of reasons, including fear of complications, the cost of surgery,⁴ inability to take time off school or work for the recovery period, and medical conditions that make surgery impossible. Furthermore, some people choose not to have surgery because they simply do not require it to feel comfortable in their new gender. The World Professional Association for Transgender Health (WPATH), an evidence-based international medical society devoted to understanding and properly treating transgender people, urged "governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures."

Removing the surgery requirement allows transgender people and their healthcare providers to choose the correct course of treatment for each individual without compelling people to undergo any unnecessary, inappropriate, or simply impossible treatment. Additionally, removing a surgery requirement from updating the gender marker on a birth certificate is important for individuals born with intersex conditions. "Intersex" is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn't seem to fit the typical definitions of female or male. Many intersex individuals may not require or desire surgery, but may have a gender marker on their birth certificate that does not align with who they are.

In the proposed Delaware regulations the requirement for proof of surgery is replaced by an affidavit attesting that the individual has had "surgical, hormonal, psychological, or other treatment appropriate for the individual for the purpose of gender transition." This attestation captures the range of treatments that may be appropriate, in each individual case, to facilitate gender transition, and makes updated gender markers accessible for many more transgender people.

Court Order Requirements are an Unnecessary Burden on Registrants

Removing the requirement for a court order avoids putting unnecessary burden on registrants. Court petitions are expensive and complicated, and not all individuals can access the court process. Moreover, not all courts and judges issue court orders for gender change, and even if they do, the standards vary greatly among judges. The majority of courts do not have a clear process or standard for issuing court orders for gender change, and thus some people are granted a petition for gender change while others are denied, often depending on that particular judge's level of education and understanding of transgender issues. Transgender individuals applying for a court order are left to determine how to submit a petition, what documentation a judge will request, what personal medical information they will have to divulge in the courtroom, and whether the judge will treat them with respect. Many transgender people navigate the process without access to legal assistance or financial support.

The court order process also poses many privacy issues as it requires transgender individuals to publicly reveal private medical information. Forcing people to discuss their gender identity and medical treatment they have undergone in open court can cause significant discomfort and psychological trauma. Even if the hearing is done in judge's chambers, and does not require an attorney, the hearing can be extremely intimidating. Additionally, public records of the proceeding can make the person more vulnerable to discrimination, and could expose transgender individuals to physical harm in some communities.

Because of these barriers, allowing an applicant to go directly to the Department of Vital Statistics to request an updated gender marker on their birth certificate is a more efficient and reliable process. The administrative option allows individuals to bypass the expensive and complicated process of obtaining a court order. An administrative procedure also streamlines the application process and ensures uniform access to updated birth certificates.

Conclusion: We Applaud and Support the Proposed Revisions to the DE Administrative Code 4205 Vital Statistics Section 10.7

We fully support and approve the revisions to the DE Administrative Code Vital Statistics pertaining to Amendment of Sex. These proposed regulations align with transgender people's needs to update the gender marker on their birth certificates. The revisions also reaffirm the contemporary healthcare standards while making the gender marker amendment process much more accessible for registrants.

FINDINGS OF FACT:

No changes were made to the regulations based on the comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Vital Statistics is adopted and shall become effective February 11, 2017, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf,
Secretary
1/13/2017

***Please note that no changes were made to the regulation as originally proposed and published in the November 2016 issue of the *Register* at page 346 (20 DE Reg. 346). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4205 Vital Statistics

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 3370A, and 3571S (18 Del.C. §§3370A & 3571S)

**ORDER
Docket No. 3252-2016**

1317 Network Disclosure and Transparency

Proposed Regulation 1317 relating to Network Disclosure and Transparency was initially published in the Delaware *Register of Regulations* on September 1, 2016, and re-published on December 1, 2016. The initial comment period remained open until October 3, 2016, and the second comment period remained opened until January 3, 2017. There was no public hearing on proposed Regulation 1317. Public notices of the proposed Regulation 1317 were published in the *Register of Regulations* in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received on the proposed Regulation 1317 after the initial publication on September 1, 2016 from:

- Delaware Department of Justice, Consumer Protection Unit - Christian Douglas Wright, Director
- Quest Diagnostics, Incorporated - Deirdre Flannery, Director of Government Affairs
- America's Health Insurance Plans (AHIP) - Joshua Keepes, J.D., Regional Director

Following the initial publication of proposed Regulation 1317 on September 1, 2016, the Department changed the Delaware Code references for §3371 to §3370A; modified Section 1.0 and subsections 3.1, 3.4, 4.1, 4.3, and 6.3; inserted a new Section 5.0; renumbered original Sections 5.0, 6.0, 7.0, and 8.0; modified Appendix 1, paragraph 6; and added a new Appendix 2, in response to certain of the comments, and re-published the proposed

Regulation 1317 on December 1, 2016, as modified.

Comments were received on the proposed Regulation 1317 after the second publication on December 1, 2016 from:

- The Delaware Healthcare Association ("DHA")- Wayne A. Smith, President & CEO

DHA requested changes to Sections 3.1 and 4.1 of proposed Regulation 1317 to change the timing of the provision of the out-of-network disclosures to within five business days preceding the performance of the procedure. The Department has determined not to accept this proposed change, as the language currently reflected in Regulation 1317 provides consumers with the benefit of the additional time to review and consider any cost information related to a scheduled procedure. The current language in the Regulation 1317 allows a provider to provide an additional out-of-network disclosure at a later date if the insurance status of the covered person has changed. DHA also proposed adding language to the end of these two sections to give providers the authority to determine whether a particular encounter should be treated as an emergency. The Department has determined to reject this proposal. The authority to determine what constitutes an emergency was not expressly provided for in the statute and there are other provisions in the Insurance Code that define what constitutes an "emergency medical condition."

DHA requested changes to Section 5.0 to expand the provision to all diagnostic services. The Department has determined to reject this proposal. The Department has recognized the unique nature of laboratory services and the necessity to highlight the procedure for laboratory services that do not require an in-person visit to that laboratory (for instance, when labs or cultures are drawn at the health care provider's office and sent to the laboratory for processing). Other diagnostic services that are incidental to an in-patient or ambulatory surgery visit are contemplated in the disclosures required under Sections 3.1 and 4.1 of Regulation 1317.

DHA requested a revision to Appendices 1 and 2 to clearly state that a parent or guardian is the signature for a child. The Department has added a "Relationship to Patient" line on these Appendices in response to that comment. I have determined these changes to be non-substantive and, therefore, no further re-proposal of the regulation is required.

DHA requested that Appendices 1 and 2 be revised so that they are appropriate for a wider range of reading levels. The Department has determined to reject this proposal. The language in the Appendices mirrors the language of the statutes pursuant to which Regulation 1317 is promulgated.

DHA requested that Appendix 1, paragraph 6 be revised because it joins separate time periods for the provision of the out-of-network disclosures and the provider responsibility to provide an estimate of charges. The Department has revised Appendix 1, paragraph 6 to correct a typographical error. The language in that paragraph was intended to define the timeliness of an out-of-network provider providing an estimate of the range of charges a covered person might incur as set forth in Section 3.4 of Regulation 1317. I have determined these changes to be non-substantive and, therefore, no further re-proposal of the regulation is required.

DHA requested clarity as to whether the out-of-network disclosure/consent could be provided verbally with signed documentation provided by the patient at the time of admission. The Department has determined that such a clarification within the regulation is not necessary. The express language of 18 **Del.C.** §§3370A and 3571S requires timely written notice. Initially providing these disclosures verbally would not satisfy the requirements of the law.

The Department has determined that no further modifications will be made to the proposed Regulation 1317.

FINDINGS OF FACT

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

1. 18 **Del.C.** §§3370A and 3571S require a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed Regulation 1317 best serve the interests of the public and of insurers and comply with Delaware law.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §§3370A and 3571S; and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed Regulation 1317 as may more fully and at large appear in the version attached

hereto to be effective 10 days after being published as final.

TEXT AND CITATION

The text of proposed Regulation 1317 last appeared in the *Register of Regulations* Vol. 20, Issue 6, pages 420-421.

IT IS SO ORDERED this 17th day of January 2017.

Trinidad Navarro
Insurance Commissioner

1317 Network Disclosure and Transparency ***(Break in Continuity of Sections)***

APPENDIX 1 – FORM OF FACILITY-BASED PROVIDER DISCLOSURE

Network Disclosure Statement for [Insert Facility Name]

PLEASE RETURN THIS FORM TO [INSERT FACILITY NAME] ON OR PRIOR TO YOUR DATE OF SERVICE

This Facility-Based Provider Disclosure is designed to help ensure that patients receiving medical care from [Insert Facility Name] or any of its facility-based providers have the necessary information to make an informed decision about their medical benefits and care. "Facility-based provider" means a provider who provides health care services to covered persons who are in an in-patient or ambulatory facility, including services such as pathology, anesthesiology, or radiology.

In connection with your upcoming scheduled appointment, [Insert Facility Name] hereby provides the following disclosures:

(Break in Continuity Within Section)

6. An estimate of the range of charges charged by an out-of-network provider for any out-of-network services for which you may be responsible may be requested from, and will be timely provided by, the out-of-network provider. The provision of the **[facility-based provider disclosure estimate of range of charges]** shall be considered timely if it is provided to the covered person within three (3) business days **[after such procedure is scheduled of such request]** if the medical necessity of a procedure allows such time, and if not, in as timely a manner as possible.

(Break in Continuity of Sections)

PATIENT ACKNOWLEDGEMENT/CONSENT

I hereby acknowledge that a provider rendering services to me may be an out-of-network provider and that the services provided by that out-of-network provider may not be covered by my insurance policy. I further acknowledge that I have been informed of my right to request from the out-of-network providers an estimate of the range of charges for any out-of-network services for which I may be responsible. **I AFFIRMATIVELY ELECT TO OBTAIN THE SERVICES AND AGREE TO ACCEPT AND PAY THE CHARGES FOR THE OUT-OF-NETWORK SERVICES NOT COVERED BY MY INSURANCE POLICY.**

Name of Patient: _____

Signature of Patient or Authorized Representative: _____

[Relationship to Patient: _____]

Date: _____

FINAL REGULATIONS

APPENDIX 2 – FORM OF HEALTH CARE PROVIDER DISCLOSURE

Network Disclosure Statement for [Health Care Provider] (Break in Continuity Within Section)

PATIENT ACKNOWLEDGEMENT/CONSENT

I hereby acknowledge that [Insert Health Care Provider Name] may be an out-of-network provider and that the services provided by [Insert Health Care Provider Name] may not be covered by my insurance policy. I further acknowledge receipt of the range of charges for any out-of-network services for which I may be responsible. I AFFIRMATIVELY ELECT TO OBTAIN THE SERVICES AND AGREE TO ACCEPT AND PAY THE CHARGES FOR THE OUT-OF-NETWORK SERVICES NOT COVERED BY MY INSURANCE POLICY.

Name of Patient: _____

Signature of Patient or Authorized Representative: _____

[Relationship to Patient: _____]

Date: _____

*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2016 issue of the *Register* at page 420 (20 DE Reg. 420). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1317 Network Disclosure and Transparency

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C. Ch. 60)
7 DE Admin. Code 1305

Secretary's Order No. 2017-WH-0002

Date of Issuance: January 17, 2017

Effective Date of Regulation Adoption: February 21, 2017

1305 Universal Recycling Regulations

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department") pursuant to 7 Del.C. §§6006, 6010, 29 Del.C. §§10101 *et seq.* and any other relevant authority, the Department issues the following findings of fact, reasons and conclusions as an Order of the Secretary to adopt proposed regulations as final regulations.

BACKGROUND AND PROCEDURAL HISTORY

This Order considers proposed regulations, *Universal Recycling Regulations*, 7 DE Admin. Code 1305 ("Regulation 1305"), which will assist the Department in administering its duties under the Universal Recycling Law ("URL"), *Subchapter III of 7 Del.C. §§6051-59*. The URL sets recycling goals by 2020, which will require increased recycling, particularly from the commercial and multi-family residential sectors.

The Department's Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section ("SHWMS") is responsible for the Department's regulation of solid waste recycling. The SHWMS obtained the Department's approval to commence the regulatory development process with Start Action Notice 2016-03 signed April 18, 2016 to develop proposed regulations. The SHWMS thereafter drafted the proposed regulations and held public workshops in Bear, Lewes, and Dover on September 6, 7, and 14, 2016, respectively. The SHWMS

also kept the Recycling Public Advisory Council¹ ("RPAC") informed of the regulatory developments. The SHWMS prepared the required Regulatory Flexibility Act forms, and submitted them along with the proposed Regulation 1305 and a public notice of a November 21, 2016 public hearing for publication in the November 1, 2016 issue of the Delaware *Register of Regulations*. In addition, on October 30, 2016, the SHWMS had published public notices of the proposed Regulation 1305 and the Department's public hearing in *The News Journal* and the *Delaware State News*.

The Department's hearing officer, Robert P. Haynes, presided over the public hearing held at the Department's offices at 89 Kings Highway, Dover on November 21, 2016, at 4:00. The Department received public comments at the public hearing and written comments following the public hearing. The public comment period closed on December 9, 2016. The public comments were on the proposed requirement on the type and location of containers provided for recycling and the possible liability for picking up recycling containers that had solid waste commingled in them. Overall, the public comments supported adopting proposed Regulation 1305.

The SHWMS provided Mr. Haynes with its Technical Response Memorandum ("TRM"), which recommended that the Department adopt the proposed Regulation 1305 without any change.

Mr. Haynes prepared the attached Hearing Officer's Report ("Report"), which established the record, recommended findings and provided reasons in support of the recommended approval of the proposed Regulation 1305 without any change.

FINDINGS OF FACT

The Department finds that the record, as established in the Report, supports adopting proposed Regulation 1305 as Final Regulations attached hereto in Appendix A. The Final Regulations are the same as proposed Regulation 1305.

The Final Regulations will allow the Department to improve recycling by providing definitions for "waste service provider," "commercial sector," "property managers," and "marketplace." These definitions will improve the regulation of recycling and set forth the responsibilities and duties for waste service providers, property managers, and the commercial sector.

The Final Regulations' responsibilities and duties for waste service providers prohibit them from intentionally commingling source-separated recyclables with other waste. The Department recognizes that waste service providers, often called "haulers," contract with customers to collect trash and recyclables, and that their customers may often place trash into the haulers containers that are to receive only recyclable materials. The Final Regulations require that haulers should not commingle sorted recyclable materials with trash. The Final Regulations prohibit any intentional commingling, and places responsibility on the haulers to take steps to end commingling by their customers. The haulers are in the best position to enforce this prohibition in its contracts with customers, in educating and providing notices to customers, and in providing conveniently located and sufficient containers that will encourage their proper use for recycling.

The Final Regulations require haulers to provide notice to customers at least annually of their single stream recycling services, with instruction on participating. The Department finds that this notice requirement is an important mechanism to improve recycling. Notice and instructions should be effective to promote proper recycling and to increase participation in recycling by changing users' behavior. If a user of containers is unaware of the proper use of the haulers' containers, then they are more likely to use recycling containers to dispose of trash, which will commingle and contaminate the recycling containers.

The Final Regulations do not prescribe how haulers may avoid accepting commingled materials, and such methods are best left to the hauler to decide based upon their customers and circumstances. The Department finds that notice and instruction may be the best possible method to get users to recycle properly; i.e., use the correct containers for recyclables and trash. Haulers may determine that in order to avoid commingling that they should provide more frequent notices and instructions on the containers in order to increase users' awareness of proper recycling that will reduce commingling and increase recycling.

The Final Regulations also require the haulers to provide multi-family residential customers with single stream recyclable containers that are located adjacent, or as close as possible, to the complex's waste disposal containers, and so that recycling access is at least as convenient as waste disposal. Again, the Department finds

1. "[a]dvice the Department... on all aspects of recycling." 7 Del.C. §6058(c).

this requirement reasonable to increase recycling. The Department finds that any inconvenience imposed on using recycling containers will decrease recycling. If haulers are unable to locate containers in compliance with the Final Regulations, then, as noted in the SHWMS TRM and in the Report, the URL provides a procedure to seek relief of the location requirements from the Department based upon the submission of a written justification and the Department's approval of it.

The Final Regulations also regulate property managers in single or multi-family residential sectors by requiring that their tenants have single stream recycling services. The property managers can make single stream recycling available to their tenants by contracting with a hauler. The Department finds it reasonable to regulate property managers, which includes owners and their surrogates. Property managers determine where their complex's waste and recycling containers should be located. In addition, property managers may be able to establish rules governing the conduct of their tenants, which can include rules for proper use of recycling and trash containers to prohibit commingling. The property managers also are appropriate to communicate with tenants, and the URL and the Final Regulations require at least annual notices to tenants. The Department anticipates that more frequent notices may be required to get the users properly recycling, and, as noted in the comments, property managers can send notices when a tenant moves in and thereafter until a tenant properly recycles.

The Final Regulations also set forth the commercial sector's duties to participate in the comprehensive recycling program and to report on its recycling, which the Department can review to determine if sufficient under the URL and the Final Regulations.

The members of the public who attended the public hearing were from the regulated community of haulers and one representative from a recycling center. There were comments on the proposed requirement to locate recycling containers in multi-family residential complexes. The SHWMS TRM and the Report fully address these public comments, and explain that the Final Regulations are consistent with the URL and its intent to make recycling as convenient as waste disposal. The Department anticipates that both the SHWMS and the persons regulated by the Final Regulations will work in good faith to resolve any implementation problems.

The Department's interpretation of the law is that the General Assembly intended that recycling should be encouraged by offering single stream recycling to the residential single family, the multi-family residential and the commercial sectors and that it should be just as easy for users to recycle as it is to dispose of trash. The Final Regulations allow property managers and haulers discretion on how they will stop the commingling and thereby increase recycling, particularly within the multi-family residential and commercial sectors.

The Department finds that the Final Regulations are a reasonable regulatory effort to increase recycling to achieve the goals set forth in the law, which requires by January 1, 2015 the diversion of disposal of 72% of solid waste and 50% of municipal solid waste. 7 **Del.C.** §6056. The law requires annual reporting and the last report submitted, which showed that the recycling rates were 72% for solid waste and 42.6% for municipal waste in 2015 and imposes further increases in recycling by 2020, which the Final Regulations should help achieve.

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, the Department finds that SHWMS has supported the Final Regulations as reasonable and consistent with the law, which requires increased recycling to meet the law's goals. The Department hereby approves the Final Regulations and directs that they be sent to the Delaware *Register of Regulations* for publication in the next available issue with an effective date eleven days after their publication. The Report is hereby adopted to the extent it is consistent with this Order.

The adoption of these Final Regulations will allow Delaware to (1) provide greater environmental protection and reduce human health risks associated with solid waste disposal at landfills; (2) allow the Department to administer the recycling law with regulations designed to promote more recycling, particularly by those who live in multi-family residential apartment complexes and commercial sectors that share with others containers for waste disposal and recycling; and (3) provide notice and reporting requirements that will improve the understanding of recycling and to evaluate the implementation of the Final Regulations.

In conclusion, the Department enters the following ordering paragraphs:

1. Pursuant to 7 **Del.C.** Chapter 6010, the Department has the statutory authority to adopt this Order approving the Final Regulations to promote recycling consistent with 7 **Del.C.** §§6051-59;
2. The Department considered the record developed to support the Final Regulations, as established in the Report, and finds that it supports the adoption of the Final Regulations as a reasonable method to increase

recycling to meet the goals set forth in 7 **Del.C.** §6056;

3. The Department provided proper public notices of the proposed regulations and of the public hearing, and the Department properly allowed the public the opportunity to comment on the proposed regulation beginning November 1, 2016 and ending December 9, 2016, including at a November 21, 2016 public hearing, in compliance with the public comment period required by the law;

4. The Report established the record for this decision and recommended adoption of the Final Regulations set forth in Appendix "A" hereto, which also provides additional reasons and findings supporting this Order;

5. The Final Regulations will: (a) encourage greater use of source separated recycling so that recyclable materials are not included with solid waste disposed in landfills; (b) specify that waste service providers and property managers shall provide at least annual notice to their customers and tenants of the availability of recycling at single or multi-family residential apartments and commercial entities; (c) regulate how property managers provide single stream recycling collection services; (d) implement improved recycling in a manner that does not unduly interfere with small businesses, multi-family residential apartment complexes and commercial entities; and (e) to clarify the requirements for commercial sector entities;

6. The Department has reviewed the Final Regulations in the light of the Regulatory Flexibility Act, 29 **Del.C.** Ch. 104, and determines that they are lawful, feasible and desirable, and shall apply to all Delaware citizens equally;

7. The Final Regulations, as set forth in Appendix "A" hereto, are the same as published in the Delaware *Register of Regulations* and shall go into effect by operation of law not less than ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving the Final Regulations as 7 **DE Admin. Code** 1305: *Universal Recycling Regulations*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and the Department's regulations require and as the Department determines is appropriate.

David S. Small
Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the November 2016 issue of the *Register* at page 353 (20 DE Reg. 353). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1305 Universal Recycling Regulations

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

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

24 **DE Admin. Code** 1100

ORDER

1100 Board of Dentistry and Dental Hygiene

On February 1, 2016, the Delaware Board of Dentistry and Dental Hygiene published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 19, Issue 8. 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 March 16, 2016 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. As a result of the public comments received at that meeting, the Board amended the proposed regulations and re-proposed the regulations on July 1, 2016 and September 1, 2016 for an October 20, 2016 hearing. This notice further indicated that written comments would be accepted by the Board for thirty days, 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 20, 2016, 2016 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. No comments were submitted at that time.

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*;

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

Board Exhibit 3 - March 10, 2016 letter from Dr. Robert Director regarding the proposed education regulation; and

Board Exhibit 4 - Letter from the Delaware State Dental Society regarding the proposed kickback regulation.

There was no verbal testimony given at the public hearing on October 20, 2016. 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 to Board regulations 4.0 and 4.1 seek to clarify that the statutory requirement set forth at 24 **Del.C.** §1122(a)(1) requiring dental candidates to have "received a degree in dentistry from an accredited dental college or university accredited by the Commission on Dental Accreditation of the American Dental Association" may obtain such a degree through either a pre-doctoral dental education program or a post-doctoral dental program of at least 24 months in any specialty that includes a clinical component, and the proposed changes to 12.0, et. seq. seek to clarify that fee-splitting is a basis for discipline of a Delaware dentist or dental hygienist.
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, adopted and promulgated as set forth in the Delaware *Register of Regulations*. 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 15th day of December, 2016.

BOARD OF DENTISTRY AND DENTAL HYGIENE

Thomas A. Mercer, DMD, President

Carol Argo, RDH

Ryan Barhart, DDS

Rozi Berberian, Public Member (absent)

Brian McAllister, DDS, Secretary

Rumiko Nelson, RDH, Hygiene Advisory (absent)

Buffy Parker, RDH, Hygiene

Mary Trinkle, RDH, Hygiene Advisory

June Ewing, Public Member (absent)
Nathaniel Gibbs, Public Member (absent)

Sharon Welsh, DDS
Bruce Mathews, DDS

***Please note that no changes were made to the regulation as originally proposed and published in the July 2016 issue of the *Register* at page 23 (20 DE Reg. 23). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1100 Board of Dentistry and Dental Hygiene

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

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

ORDER

2900 Real Estate Commission

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on December 8, 2016 at a scheduled meeting of the Delaware Real Estate Commission ("Commission") to receive comments regarding proposed amendments to the Commission's Rules and Regulations. The Commission proposed revisions to provide that licensees are required to update their addresses with the Division of Professional Regulation, and a licensee's failure to provide an updated address will not excuse that licensee from discipline for continuing education violations. Section 15.0 has been amended to remove crimes not related to the practice of real estate and thereby eliminate unjustified obstacles to licensure. Finally, certain changes were proposed in the interests of clarity.

The proposed changes to the Rules and Regulations were published in the *Register of Regulations*, Volume 20, Issue 5, on November 1, 2016. Notice of the December 8, 2016 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was December 23, 2016, 15 days following the public hearing. The Commission deliberated on the proposed revisions at its regularly scheduled meeting on January 12, 2017.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Commission Exhibit 1: *News Journal* Affidavit of Publication.

Commission Exhibit 2: *Delaware State News* Affidavit of Publication.

There was no verbal testimony given at the public hearing on December 8, 2016. Further, no written comments were received by the Commission.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony on the proposed amendments to the Commission's Rules and Regulations. There were no public comments provided to the Board either in writing or during the public hearing.

Pursuant to 24 **Del.C.** §2906(a)(1), the Commission has the statutory authority to promulgate Rules and Regulations.

Having received no public comments, the Commission finds no reason to amend the Rules and Regulations as proposed.

Decision and Effective Date

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

IT IS SO ORDERED this 12th day of January, 2017.

DELAWARE REAL ESTATE COMMISSION

Jason Giles, Professional Member, Chairperson

Lynette Scott, Professional Member, Vice Chairperson

Lynn Rogers, Public Member, Secretary

Nathaniel Gibbs, Public Member

Michael Harrington, Sr., Professional Member

Justin Healy, Professional Member (absent)

Nikki Lane, Professional Member

Joseph F. McCann, Public Member

*Please note that no changes were made to the regulation as originally proposed and published in the November 2016 issue of the *Register* at page 357 (20 DE Reg. 357). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2900 Real Estate Commission

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b); (5 Del.C. §121(b))

5 DE Admin. Code 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112 and 1114

ORDER

1103 Instructions for Preparation of Franchise Tax

1104 Estimated Franchise Tax Report

1105 Final Franchise Tax Report

1106 Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in this State

1107 Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware

1108 Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware

1109 Instructions for Calculation of Employment Tax Credits

1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks

1111 Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks

1112 Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks

1114 Alternative Franchise Tax

IT IS HEREBY ORDERED, this 11th day of January, 2017, that amended Regulations 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112 and 1114 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is February 11, 2017. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amended Regulations and their text was published in the December 1, 2016 issue of the Delaware *Register of Regulations*. The Notice also was mailed to all persons who had made a timely written request to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended Regulations and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before January 4, 2017. The Notice further stated that the proposed amended Regulations were available for inspection during regular business hours at the Office of the State Bank Commissioner, 555 E. Lookerman Street, Suite 210, Dover, Delaware 19901, and that copies were available upon request.

2. No written comments concerning the proposed amended Regulations were received on or before January

4, 2017.

3. After review and consideration, the State Bank Commissioner hereby adopts amended Regulations 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1111, 1112 and 1114 as proposed. These amended Regulations were published as proposed amended Regulations in the December 1, 2016 issue of the Delaware *Register of Regulations* and are incorporated herein by reference.

4. After further review and consideration, the State Bank Commissioner hereby adopts amended Regulation 1110 as proposed, with further minor technical and conforming amendments to amended subsections 3.3 and 3.4 of that Regulation. The State Bank Commissioner has determined that these further amendments are not substantive, for purposes of Section 10118(c) of Title 29 of the Delaware Code. The final version of amended Regulation 1110 is attached hereto and incorporated herein by reference.

Robert A. Glen
State Bank Commissioner

1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks

5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101 et al. 0009

Effective Date: September 11, 2004 [~~Proposed~~ February 11, 2017]
(Break in Continuity of Sections)

3.0 Estimated Franchise Tax

(Break in Continuity Within Section)

~~3.1.2~~ 3.3 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in subsection [~~3.1.1~~ 3.2], unless the State Bank Commissioner is satisfied that such failure was not willful.

~~3.1.3~~ 3.4 Form. The estimated franchise tax report shall be in the form set out in Regulation 1111 [~~(formerly No. 5.1101 et al. 0010)~~];.

*Please note that no additional changes were made to the regulations as originally proposed and published in the December 2016 issue of the *Register* at page 423 (20 DE Reg. 423). Therefore, the final regulations are not being republished here in their entirety. A copy of the final regulations is available at:

Banking Regulations

EXECUTIVE DEPARTMENT

DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

Statutory Authority: 29 Delaware Code, Section 5053(k), (29 Del.C. §5053(k))
1 DE Admin. Code 401

ORDER

401 Procedures Regarding Non-State Guaranteed Bonds

Pursuant to 29 Del.C. §5053(k), The Delaware Economic Development Authority (the "Authority") is authorized to prescribe such regulations as may be necessary to carry out the purposes of the act creating the Authority, 29 Del.C. Ch. 50 (the "Act"). The purpose of this Regulation is to regulate the administration of the Act, including, but not limited to, regulation of the process for applying to the Authority for the issuance of Bonds and the Authority's approval of such applications. Having provided due public notice, the Authority adopts the attached Regulation published in the November 1, 2016 edition of the Delaware *Register of Regulations* for the reasons that follow.

SUMMARY OF THE EVIDENCE

1. The Authority has considered increasing requests for Non-Guaranteed State Bond financing such as revenue bonds for charter school financing. The Authority, in consultation with the Delaware Council on Development Finance (the "Council"), identified a need to improve the preparation of Non-Guaranteed State Bond applications for submission to the Council for review and recommendation.

2. As a result of these issues, the Authority issued guidelines for the review of Non-State Guaranteed Bond offerings to protect the financial integrity of the State's authority to issue non-guaranteed and general obligation financing.

3. This amendment focuses on non-rated or below investment grade Non-State Guaranteed Bond offerings. The regulation amends 17 **DE Reg.** 90 (07/01/13) to require the Authority to consult a qualified independent investment advisor to assess the financial viability of applications for bonds. However, the Chairperson of the Authority retains discretion to waive this requirement if the proposed bond offering is projected or rated above BBB- by a nationally recognized rating agency, or a bank is underwriting the offering.

4. The Authority issued and duly noticed the amended Regulation in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

5. The proposed Regulation was published in the *Register of Regulations* on November 1, 2016. For a period of thirty (30) days following publication, the public had the opportunity to offer written comment.

6. No written comments were received by the Authority during the public comment period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The public was given notice and an opportunity to provide the Authority with comments in writing on the proposed Regulation.

2. There were no public comments provided to the Authority during the public comment period.

3. A regulation requiring the authority to consult a qualified independent investment advisor to assess the financial viability of applications for Non-Guaranteed State Bonds in the event that the proposed bond offering is non-rated or is rated below investment grade protects the financial integrity of the State's authority to issue non-guaranteed and general obligation financing.

4. The Regulation provides discretion to waive this requirement in circumstances where the bond offering is projected or rated above BBB- by a nationally recognized rating agency or a bank is underwriting the offering in order that the State ability to issue necessary Non-Guaranteed Bond financially will not be impeded.

5. This Regulation is promulgated under the authority granted to the Authority by 29 **Del.C.** §5053(k) and the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Authority finds that the Regulation shall be adopted as final in the form as proposed. The exact text of the regulations as appeared in the Delaware *Register of Regulations* is attached to this order. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* in February 2017.

IT IS SO ORDERED this 5th day of January 2017 by the Delaware Economic Development Authority.

Bernice Whaley,
CHAIRPERSON,
DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

*Please note that no changes were made to the regulation as originally proposed and published in the November 2016 issue of the *Register* at page 362 (20 DE Reg. 362). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

401 Procedures Regarding Non-State Guaranteed Bonds

DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

Statutory Authority: 29 Delaware Code, Section 5053(k), (29 **Del.C.** §5053(k))
1 **DE Admin. Code** 476

ORDER

476 Energy Alternatives Program Regulation

The Delaware Economic Development Office (DEDO) conducted public hearings in Kent, New Castle and Sussex counties as part of the Governor's Executive Order 36 designed to re-assess the need for the agency's regulations. Based on the public hearings and internal agency review of its regulations, DEDO proposes that Title 1, Section 476 (Energy Alternatives Program Regulation) of the Delaware Administrative Code, 5 **DE Reg.** 1529 (1/1/02), should be deleted because the programs no longer exist or the authorizing statute has been repealed. The Delaware Economic Development Authority (the "Authority") and DEDO are authorized to prescribe such regulations as may be necessary to carry out the purposes of the act creating the Authority, 29 **Del.C.** Ch. 50 (the "Act"). The purpose of this action is to foster governmental efficiency by eliminating unnecessary regulation and bureaucracy. Having provided due public notice, the Authority adopts the attached repeal of the Regulation as published in the November 1, 2016 edition of the Delaware *Register of Regulations* for the reasons that follow.

SUMMARY OF THE EVIDENCE

1. After internal review of its regulations DEDO has proposed the elimination of Title 1, Section 476 (Energy Alternatives Program Regulation) of the Delaware Administrative Code, 5 **DE Reg.** 1529 (1/1/02) in that the underlying programs or statutory authorization no longer exist.
2. In furtherance of the purpose of the Governor's Executive Order 36 to streamline the operation of government and eliminate burdensome regulation, the Energy Alternatives Program regulation should be deleted from the administrative code because the program no longer exists. Maintaining the regulation in the code could create confusion for potential grant applicants.
3. The Authority issued and duly noticed the repeal of the Regulation in accordance with the *Delaware Administrative Procedures Act*, 29 **Del.C.** Ch. 101.
4. The proposed repeal of the Regulation was published in the *Register of Regulations* on November 1, 2016. For a period of thirty (30) days following publication, the public had the opportunity to offer written comment.
5. No written comments were received by the Authority during the public comment period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The public was given notice and an opportunity to provide the Authority with comments in writing on the proposed Regulation.
2. There were no public comments provided to the Authority during the public comment period.
3. The elimination of Title 1, Section 476 (Energy Alternatives Program Regulation) of the Delaware Administrative Code, 5 **DE Reg.** 1529 (1/1/02) is necessary because the program no longer is operative and continuing the reference in the administrative could create confusion for potential applicants and the public. The repeal of this Regulation is consistent with the purpose of the Governor's Executive Order to eliminate unnecessary regulation.
4. This repeal of this Regulation is authorized by 29 **Del.C.** §5005(11), 5053(k) and the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

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

in February 2017.

IT IS SO ORDERED this 5th day of January 2017 by the Delaware Economic Development Authority.

Bernice Whaley,
CHAIRPERSON,
DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

***Please note that no changes were made to the regulation as originally proposed and published in the November 2016 issue of the *Register* at page 364 (20 DE Reg. 364). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

476 Energy Alternatives Program Regulation

DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

Statutory Authority: 29 Delaware Code, Section 5053(k), (29 **Del.C.** §5053(k))
1 DE Admin. Code 477

ORDER

477 Information Technology Training Grant Program Regulation

The Delaware Economic Development Office (DEDO) conducted public hearings in Kent, New Castle and Sussex counties as part of the Governor's Executive Order 36 designed to re-assess the need for the agency's regulations. Based on the public hearings and internal agency review of its regulations, DEDO proposes that Title 1, Section 477 (Information Technology Training Grant Program), 5 **DE Reg.** 2145 (5/1/02), should be deleted from the administrative code for administrative efficiency. The Delaware Economic Development Authority (the "Authority") and DEDO are authorized to prescribe such regulations as may be necessary to carry out the purposes of the act creating the Authority, 29 **Del.C.** Ch. 50 (the "Act"). Having provided due public notice, the Authority does not adopt the attached repeal of the Regulation as published in the November 1, 2016 edition of the Delaware *Register of Regulations* for the reasons that follow.

SUMMARY OF THE EVIDENCE

1. After internal review of its regulations DEDO proposed the elimination of Title 1, Section 477 (Information Technology Training Grant Program), 5 **DE Reg.** 2145 (5/1/02) to further administrative efficiency.
2. Upon further review by the agency, it was determined that it is in the best interests of the State to maintain this regulation in that the program is still operative and the Regulation provides constructive guidance to any participants.
3. The Authority issued and duly noticed the repeal of the Regulation in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.
4. The proposed repeal of the Regulation was published in the *Register of Regulations* on November 1, 2016. For a period of thirty (30) days following publication, the public had the opportunity to offer written comment.
5. No written comments were received by the Authority during the public Comment period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The public was given notice and an opportunity to provide the Authority with comments in writing on the proposed Regulation.
2. There were no public comments provided to the Authority during the public comment period.
3. DEDO concludes that Title 1, Section 477 (Information Technology Training Grant Program), 5 **DE Reg.** 2145 (5/1/02) should be maintained because the program is still operative and the Regulation provides constructive guidance to any participants.

4. The authority to reject repeal of this Regulation is found in 29 **Del.C.** §5005(11), 5053(k) and the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are not necessary as outlined herein, the Authority elects not to repeal the Regulation as proposed; therefore, no changes in this Regulation will become effective ten days following publication of this order in the Delaware *Register of Regulations* in February 2017 and this Regulation will have full force and effect.

IT IS SO ORDERED this 5th day of January 2017 by the Delaware Economic Development Authority.

Bernice Whaley,
CHAIRPERSON,
DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

***Please Note: Due to the decision of the Delaware Economic Development Authority to reject the proposed repeal of this regulation, it appears here as it does in the current Administrative Code available at:**
<http://regulations.delaware.gov/AdminCode/title1/400/477.shtml#TopOfPage>

DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

Statutory Authority: 29 Delaware Code, Section 5053(k), (29 **Del.C.** §5053(k))
1 **DE Admin. Code** 478

FINAL

ORDER

478 Neighborhood Assistance Act Tax Credit Program Regulation

The Delaware Economic Development Office (DEDO) conducted public hearings in Kent, New Castle and Sussex counties as part of the Governor's Executive Order 36 designed to re-assess the need for the agency's regulations. Based on the public hearings and internal agency review of its regulations, DEDO proposes that Title 1, Section 478 (Neighborhood Assistance Act Tax Credit Program), 6 **DE Reg.** 1368 (4/1/03), should be deleted from the administrative code because the programs do not exist or the authorizing statute has been repealed. The Delaware Economic Development Authority (the "Authority") and DEDO are authorized to prescribe such regulations as may be necessary to carry out the purposes of the act creating the Authority, 29 **Del.C.** Ch. 50 (the "Act"). The purpose of this action is to foster governmental efficiency by eliminating unnecessary regulation and bureaucracy. Having provided due public notice, the Authority adopts the attached repeal of the Regulation as published in the November 1, 2016 edition of the Delaware *Register of Regulations* for the reasons that follow.

SUMMARY OF THE EVIDENCE

1. After internal review of its regulations DEDO has proposed the elimination of Title 1, Section 478 (Neighborhood Assistance Act Tax Credit Program), 6 **DE Reg.** 1368 (4/1/03), in that the underlying programs or statutory authorization no longer exist.

2. In furtherance of the purpose of the Governor's Executive Order 36 to streamline the operation of government and eliminate burdensome regulation, the Neighborhood Assistance Act Tax Credit Program regulation should be deleted from the administrative code because the program no longer exists. Maintaining the regulation in the code could create confusion for potential grant applicants.

3. The Authority issued and duly noticed the repeal of the Regulation in accordance with the Delaware

Administrative Procedures Act, 29 **Del.C.** Ch. 101.

4. The proposed repeal of the Regulation was published in the *Register of Regulations* on November 1, 2016. For a period of thirty (30) days following publication, the public had the opportunity to offer written comment.

5. No written comments were received by the Authority during the public comment period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The public was given notice and an opportunity to provide the Authority with comments in writing on the proposed Regulation.

2. There were no public comments provided to the Authority during the public comment period.

3. The elimination of Title 1, Section 478 (Neighborhood Assistance Act Tax Credit Program), 6 **DE Reg.** 1368 (4/1/03), is necessary because the program no longer is operative and continuing the reference in the administrative could create confusion for potential applicants and the public. The repeal of this Regulation is consistent with the purpose of the Governor's Executive Order 36 to eliminate unnecessary regulation.

4. This repeal of this Regulation is authorized by 29 **Del.C.** §5005(11), 5053(k) and the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Authority finds that the repeal of the Regulation shall be adopted as final in the form as proposed. The exact text of the repeal of the regulation as appeared in the Delaware *Register of Regulations* is attached to this order. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* in February 2017.

IT IS SO ORDERED this 5th day of January 2017 by the Delaware Economic Development Authority.

Bernice Whaley,
CHAIRPERSON,
DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

*Please note that no changes were made to the regulation as originally proposed and published in the November 2016 issue of the *Register* at page 364 (20 DE Reg. 364). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

478 Neighborhood Assistance Act Tax Credit Program Regulation

OFFICE OF MANAGEMENT AND BUDGET

STATEWIDE BENEFITS OFFICE

Statutory Authority: 29 Delaware Code, Section 5256 (29 **Del.C.** §5256)
19 **DE Admin. Code** 2007

ORDER

2007 Disability Insurance Program Rules and Regulations

As the Statewide Benefits Office moved to a new location in December 2016, during its public meeting on Monday, January 23, 2017 at the Tatnall Building in Dover, Delaware, the State Employee Benefits Committee (SEBC) approved a change in the address reflected in the Disability Insurance Program (DIP) Rules & Regulations to be published in the February 2017 *Register of Regulations*. Epilogue language referenced below from Section 25 of Senate Bill No. 285 (148th General Assembly) allows the SEBC to amend the Disability Insurance Program (DIP) Rules & Regulations. The attached version of the regulation is effective February 1, 2017.

"**Section 25.** Notwithstanding the provisions of the Administrative Procedures Act, 29 **Del.C.** c. 101 or any other laws to the contrary, the State Employee Benefits Committee is authorized to amend the rules for Employees Eligible to Participate in the State Group Health Insurance Program and the State Disability Insurance Program by approving such amendments and causing the amendments to be published in the *Register of Regulations* with such amendments to be effective as of the date of such publication unless otherwise specified by the State Employee Benefits Committee."

2007 Disability Insurance Program Rules and Regulations
Effective ~~July 1, 2016~~ February 1, 2017
(Break in Continuity of Sections)

11.0 Appeals - STD Claim Determinations

(Break in Continuity Within Section)

- 11.3 Pursuant to 29 **Del.C.** §5258, within 20 days of the postmark date of the DIP insurance carrier and/or Administrator's determination of benefits being appealed, a claimant may file a second level appeal by filing a written petition setting forth with particularity the grounds for second appeal to the Appeals Administrator at the Statewide Benefits Office, who shall conduct an informal review, and who shall have the authority to reverse all or any part of the decision of the DIP insurance carrier and/or Administrator to deny benefits. The claimant's written appeal should be addressed and mailed to:

Appeals Administrator
RE: DISABILITY APPEAL
Statewide Benefits Office
~~500 W. Looekerman Street, Suite 320~~ 97 Commerce Way, Suite 201
Dover, DE 19904
Tel: (302) 739-8331
Fax: (302) 739-8339

The Appeals Administrator or designee, shall issue a final written decision and shall mail it to the claimant by certified mail, return receipt requested, within 30 days of speaking with the claimant.

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

2007 Disability Insurance Program Rules and Regulations

GENERAL NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MANAGEMENT SERVICES

Statutory Authority: 16 Delaware Code, Sections 210-218 (16 Del.C. §§210-218)

Birth to Three Early Intervention

Summary

Birth to Three Early Intervention is required to update policies in order to be in compliance with Individuals with Disabilities Education Act of 2004 (IDEA) Part C regulations. These policies, while already in place, have been formalized, and they are required to go out for public participation and public hearing prior to submission of the FFY 2018 Part C grant application. The policies include:

1. Birth to Three System of Payments Policy
2. Interagency Agreement, including Child Abuse Prevention and Treatment Act (CAPTA) policy and procedures.

Background

Part C of the IDEA, regulations were revised in 2011, and outline requirements for State lead agencies to identify and coordinate available funding resources, put in place methods that define the financial responsibility of each agency providing Part C services, and submit a System of Payments policy with the State's IDEA Part C grant application. This includes the coordination of Medicaid, private insurance, and Part C funds. Part C of the IDEA also requires States to determine how children referenced in section 106(b)(2)B)(xxi) of The Child Abuse Prevention and Treatment Act (CAPTA) are to be screened, and referred to Part C (IDEA regulations 34 CFR §§303.120(b), 303.202, 303.510, 303.511(a)(2) and (b), 303.520, 303.521, 303.522, 303.523, 303.524, 303.525, 303.526, 303.527, and 303.528).

Notice of Public Comment

There will be two public hearings as required by the Public Participation policy:

January 18, 2017, 4:30 - 6:30 p.m.

Herman Holloway Campus

Main Administration Building, Room 198

1901 North Dupont Highway

New Castle, DE 19720

January 19, 2017, 10:00 a.m. - 12:00 noon

Milford Child Development Watch

18 North Walnut Street

Milford, DE 19963

Copies of the proposed policies are available for review by contacting the Birth to Three office at 302-255-9134 (call collect from Kent and Sussex). Send your written comments to Birth to Three, DMS/DHSS, Main Building, Room H105, 1901 N. DuPont Hwy, New Castle, DE 19720 or fax to 302-255-4407.

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Wednesday, February 15, 2017** beginning at 1:30 p.m. A business meeting will be held the following month on **Wednesday, March 15, 2017** beginning at 10:30 a.m. The hearing and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203 and pamela.bush@drbc.nj.gov.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, February 16, 2017 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**Delaware Healthy Children Program State Plan – Health Services Initiative: Vision to Learn**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance is proposing to amend the Title XXI Delaware Healthy Children Program State Plan regarding health service initiatives, specifically, to *increase access for low-income children to needed vision services and glasses.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to: Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, Attention: Kimberly Xavier; by email to Kimberly.xavier@state.de.us; or by fax to 302-255-4425 by March 3, 2017. Please identify in the subject line: CHIP – Health Services Initiative: Vision to Learn.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Elderly and Disabled Waiver Provider Policy Manual

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Elderly and Disabled Waiver Provider Policy Manual, specifically, as it relates to Home and Community-Based Services Settings.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to: Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, Attention: Kimberly Xavier; by email to Kimberly.xavier@state.de.us; or by fax to 302-255-4425 by 4:30 PM on March 3, 2017. Please identify in the subject line: Elderly and Disabled Waiver Provider Policy Manual

The action concerning the determination of whether to adopt the proposed regulation will be based upon the

CALENDAR OF EVENTS/HEARING NOTICES

results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Purchase of Care (POC) - Licensed Exempt Providers

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) proposes to amend the Delaware Social Services Manual (DSSM) regarding child care licensing requirements, specifically, to revise the definition of licensed exempt child care providers receiving Purchase of Care (POC) funding.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to: Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, Attention: Kimberly Xavier; by email to Kimberly.xavier@state.de.us; or by fax to 302-255-4425 by 4:30pm on March 3, 2017. Please identify in the subject line: Purchase of Care (POC) - Licensed Exempt Providers

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

REGISTER NOTICE

1352 Aboveground Storage Tanks

The DNREC-Tank Management Section has revised the proposed amendments to Delaware Administrative Code 1352: Regulations Governing Aboveground Storage Tanks (AST Regulations) following a thorough review. The proposed amendments to the AST Regulations were published in the November 1, 2016 Delaware *Register of Regulations*. These revisions to the proposed amendments to the AST Regulations address sections and language inadvertently excluded by both DNREC and the Registrar. The revisions also include amendments by DNREC resulting from comments received at the public hearing held December 6, 2016 and throughout the initial public comment period which ended December 21, 2016.

The hearing record on the proposed amendments to 7 **DE Admin Code** Section 1352: Regulations Governing Aboveground Storage Tanks will be re-opened February 1, 2017 for a 30-day public comment period ending March 3, 2017. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 **Del. C.** Ch. 13 proposes to repeal the following adopted rule in 24 **DE Admin. Code** 1300 Board of Examiners of Private Investigators and Private Security Agencies: Rule 2.0 – Use of Rifle and Shotgun. If

you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by March 3, 2017, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Monday, April 24, 2017, 9:30am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 BOARD OF CHARITABLE GAMING
PUBLIC NOTICE
101 Regulations Governing Bingo

Pursuant to 28 **Del.C.** §1508(a)(2), the Delaware Board of Charitable Gaming has proposed revisions to its rules and regulations. The rules pertaining to bingo and instant bingo are modified to achieve consistency with recent statutory changes. A public hearing will be held on February 22, 2017 at 10:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address, "Attention: LaTonya Brown," in accordance with 29 **Del.C.** §10118(a).

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

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to revise its regulations. The proposed amendments to regulation 8 adds regulatory provisions for inactive status pursuant to 24 **Del.C.** §1126(e). The proposed changes to Regulation 11 eliminates several crimes that are listed as substantially related to the practice of dentistry and dental hygiene, and the proposed addition of Regulation 13 adds provision for the practice of teledentistry pursuant to 24 **Del.C.** §1101(19).

The Board will hold a public hearing on the proposed rule change on March 16, 2017 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meredith Hurley, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 2, 2017

DIVISION OF PROFESSIONAL REGULATION
1400 BOARD OF ELECTRICAL EXAMINERS
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §1406(a)(1), the Delaware Board of Electrical Examiners has proposed revisions to its rules and regulations. The rules pertaining to crimes substantially related to the practice of electrical services are proposed to be amended.

A public hearing will be held on March 1, 2017 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address, "Attention: LaTonya Brown".

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be March 16, 2017, 15 days following the public hearing.

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DIVISION OF PROFESSIONAL REGULATION
5100 BOARD OF COSMETOLOGY AND BARBERING
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §5106(a)(1), the Board of Cosmetology and Barbering ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on February 27, 2017 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Cosmetology and Barbering, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board, "Attention: Melanie Alexander," at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be March 14, 2017, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Board will decide whether to adopt the revisions as proposed.

The proposed revisions amend the requirements for temporary permits and apprenticeship licenses. Curricula is added for apprenticeships, for both cosmetologists and barbers, for the 3,000-hour program and the 1,500-hour merged program as set forth in 24 **Del.C.** §5107(a)(3)(c) and (f). Finally, the new Section 18.0 is amended to delete crimes not substantially related to the practice of the professions regulated by the Board thereby removing unnecessary barriers to licensure.

DIVISION OF PROFESSIONAL REGULATION
CONTROLLED SUBSTANCE ADVISORY COMMITTEE
PUBLIC NOTICE
Uniform Controlled Substances Act Regulations

Pursuant to 16 **Del.C.** §4731(a), the Delaware Secretary of State ("Secretary") proposes revisions to the Uniform Controlled Substance Act ("UCSA") rules and regulations. The proposed regulation is attached hereto as Exhibit A.

The Secretary has proposed revisions to Section 9.0 pertaining to the safe prescribing of opioid analgesics. Subsection 9.6 sets forth the requirements of the medical evaluation that must be performed by a practitioner before a subsequent prescription is issued. The new subsection 9.7 adds two exemptions to subsection 9.6. These exemptions permit continuity of care for acute pain while ensuring patient safety.

In addition, on December 15, 2016, the Secretary issued a Final Order adopting emergency regulations adding the synthetic opioid known as U-47700 to Schedule I. This Final Order was published in the Delaware *Register of Regulations* on January 1, 2017, Volume 20, Issue 7. Pursuant to the Administrative Procedure Act, the Secretary's Final Order will only be effective for a maximum of 120 days but may be renewed once for an additional period of sixty days. 29 **Del.C.** §10119(3). Therefore, the Secretary has proposed the addition of subsections 10.3.1 and 10.3.1.2 to the UCSA rules and regulations.

Any person who wishes to present written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments no later than Friday, March 3, 2017 to:

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