
Delaware Register of Regulations

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before December 15, 2016.

Cover Photo by
Dolores Michels



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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
February 1	January 17	4:30 p.m.
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.

DIVISION OF RESEARCH STAFF

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Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1101

Amendment to Secretary's Order No.: 2016-A-0037

1101 Definitions and Administrative Principles

***Please Note:** The Secretary's Order that approved Final Regulations to Amend 7 **DE Admin. Code** 1101, Definitions and Administrative Principles, Section 2.0: Definitions, published in the December 2016 issue of the *Delaware Register of Regulations* (20 DE Reg. 458), contained a typographical error. The Department's Effective Date of the Amendments was incorrectly stated as November 11, 2016. The heading containing the error is reprinted below with the Effective Date corrected. The correct Effective Date of the aforementioned Amendments is December 11, 2016. This correction has already been made by the State Registrar in the internal regulatory text, so as to reflect the proper Effective Date in the January 2017 issue of the *Delaware Register of Regulations*. The Issuance Date of the final regulation amendments remains the same.

Secretary's Order No.: 2016-EC-0037

**RE: Approving Final Regulations to Amend 7 DE Admin. Code §1101,
Definitions and Administrative Principles, Section 2.0: Definitions**

Date of Issuance: October 12, 2016

Effective Date of the Amendment: ~~November 11, 2016~~ December 11, 2016

David S. Small, Secretary
Date: December 14, 2016

***Please Note: A PDF version of the final regulation is available at:**

1101 Definitions and Administrative Principles

(<http://regulations.delaware.gov/register/december2016/final/20 DE Reg 458 12-01-16.pdf>)

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.

Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

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

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

ORDER**Uniform Controlled Substances Act Regulations****DELAWARE DEPARTMENT OF STATE
BEFORE THE SECRETARY OF STATE**

**In Re: EMERGENCY RULE
 PLACING U-47700
 IN SCHEDULE I**

Final Order

WHEREAS, the Secretary of the Delaware Department of State ("Secretary") has been charged by the Delaware legislature with placing substances in Schedule I if the Secretary finds that the substances: (1) have high potential for abuse; and (2) have no accepted medical use in treatment in the United States or lack accepted safety for use in treatment under medical supervision. 16 **Del.C.** §4713; and

WHEREAS, available data and information for 3,4-dichloro-*N*-[2-(dimethylamino)cyclohexyl]-*N*-methylbenzamide (U-47700) indicate that this synthetic opioid has a high potential for abuse, no currently accepted medical use in treatment in the United States and lacks accepted safety for use under medical supervision; and

WHEREAS, U-47700 is not currently listed in any schedule under Delaware law; and

WHEREAS, U-47700, also known as "Pink," is a synthetic opioid recently encountered by law enforcement and public health officials and is being abused for its opioid properties. It is available over the Internet and is marketed as a "research chemical." The DEA is aware of the identification of U-47700 from toxicology reports and other evidence in a number of states, including New Jersey and Pennsylvania and has received data documenting at least 46 confirmed fatalities associated with the substance. The safety risks to users are significant and the

SUMMARY OF THE EVIDENCE

The Committee reviewed the Federal Drug Enforcement Administration ("DEA") Final Order temporarily placing U-47700, and its isomers, esters, ethers, salts and salts of isomers, esters and ethers, into Schedule I. 81 FR 79389 (Nov. 14, 2016).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

16 **Del.C.** §4713 establishes that "[t]he Secretary [of State] shall place a substance in Schedule I if the Secretary finds that the substance: (1) Has high potential for abuse; and (2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision." Further, emergency regulations may be promulgated pursuant to the Administrative Procedures Act, so long as an agency determines there exists "an imminent peril to the public health, safety or welfare." 29 **Del.C.** §10119. Such a regulation 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). The Uniform Controlled Substance Act Regulations also directly address the adoption of emergency regulations. Specifically, the regulations state at Section 9.3:

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.

U-47700, also known as "Pink," is a synthetic opioid recently encountered by law enforcement and public health officials. Scientific literature shows that U-47700 is being abused for its opioid properties. It is available over the Internet and is marketed as a "research chemical." The DEA is aware of the identification of U-47700 from toxicology reports and other evidence in a number of states, including New Jersey and Pennsylvania. Further, the DEA has received data documenting at least 46 confirmed fatalities associated with U-47700. The abuse of U-47700 leads to the same public health risks as heroin, fentanyl and other opioid analgesic substances. The safety risks to users are significant and the public health risks include large numbers of drug treatment admissions, emergency room visits and fatal overdoses. The DEA concluded that U-47700 has a high potential for abuse, no currently accepted medical use in treatment in the United States and a lack of accepted safety for use under medical supervision. The DEA consequently issued a Final Order temporarily placing U-47700 in Schedule I.

For the reasons set forth in the DEA Final Order published November 14, 2016, the Committee finds that allowing the synthetic opioid U-47700 to remain unscheduled in the State of Delaware presents an imminent peril to the public health, safety and welfare. The Committee therefore recommends that U-47700 be added to Schedule I of the Delaware Uniform Controlled Substances Act.

RECOMMENDATION

In order to protect the public and address the peril posed by U-47700, the Committee recommends an emergency regulation be adopted in a manner as follows:

Following the existing rule 10.2.1, insert a new rule 10.3 as follows:

10.3 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 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.

IT IS SO RECOMMENDED this 9th day of December 2016.

BY THE DELAWARE CONTROLLED SUBSTANCE ADVISORY COMMITTEE

Michael Kremer
Herb E. Von Goerres
Jo Ann Baker
Stephen Ruggles
Alex Zarrow (absent)

Mark Hanna
Art Jankowski (absent)
Luis Garcia (absent)
Philip Kim (absent)

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

10.0 Severability*(Break in Continuity Within Section)*

10.3 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 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. 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** 712

PUBLIC NOTICE

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

712 Employee Leave

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** 712 Employee Leave. 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 requires current employees to use their annual leave in a lump sum when retired/terminated so that a new employee can be hired. The Department consulted with district Human Resources Directors on the comment received. This group stated the issue was not a concern and they did not support the change as requested. The Department did make changes to the annual leave portion of the regulation for purposes of clarification.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 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 Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

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

state achievement standards.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The 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 directly 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 regulations 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/january2017/proposed/20 DE Reg 517RFA 01-01-17.pdf>

712 Employee Leave

1.0 Sick Leave

- 1.1 Sick leave accumulated by an employee of any state agency or school district shall be transferred when said employee begins subsequent employment in a school district. If there is a break in service the transfer can only occur if the break was for less than six (6) months.
- 1.2 Sick leave days are made available at the start of the fiscal year, but adjustments for employees who terminate service prior to the end of the school year shall be made in the final paycheck.

2.0 Annual Leave

Subject to any limitation imposed by statute, accumulated annual leave shall be paid upon termination of employment. The ~~employee~~ employer may allow the employee to either remain on the regular payroll until such time as all annual leave is exhausted; or receive a lump sum payment for all unused annual leave ~~on~~ in the employee's final paycheck. The vacated position may be filled at any time provided that the two employees do not receive compensation for the same pay period. Accumulated annual leave shall not be transferred between different employing state agencies or school districts.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 733

PUBLIC NOTICE

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

733 Payment of Substitutes for Teachers

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 733 Payment of Substitutes for Teachers. 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 prohibits school districts from requiring teachers to pay for substitutes out of their own money. The Department does not possess the authority to make the requested change. The Department reviewed this regulation beyond the comments received and made changes for purposes of clarification. The regulation is being reviewed pursuant to the required five year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 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 Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

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

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not directly help to ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulations 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/january2017/proposed/20 DE Reg 519RFA 01-01-17.pdf>

733 Payment of Substitutes for Teachers

1.0 Payment of Substitutes for Teachers

- 1.1 State substitute teacher funds may be used to pay substitutes for State funded teachers when the ~~state~~ State funded teachers are unavailable for duty under the provisions of 14 **Del.C.** §1318, 29 **Del.C.** §5524 and 29 **Del.C.** §5933 (for sick leave calculations for teachers qualifying for workers' compensation).
- 1.2 Substitutes for ~~state~~ State funded teachers may also be paid from State substitute teacher funds for:
 - 1.2.1 Military leave for training or duty not in excess of 15 working days per year.
 - 1.2.2 ~~Kindergarten Teachers on Abbreviated Days. In order to allow kindergarten teachers additional time for parent conferences, substitute teachers may be hired using state substitute teacher funding for ½ day on abbreviated days when kindergarten is scheduled.~~
 - 1.2.3~~2~~ Teachers participating in Department of Education ~~initiated committee work~~ led professional learning and project assignments.
- 1.3 Substitutes for State funded teachers who are absent without pay may be charged to ~~the Division I teacher salary line~~ State funds.
- 1.4 Substitutes for teachers who are paid from federal funds shall be paid from federal funds from the federal program involved or local funds.
- 1.5 Substitutes for teachers who are paid from local funds shall be paid from local funds.
- 1.6 Substitutes for teachers who are paid from State funds for a fractional part of a State teacher unit and a fractional part from other funds shall be paid on the same proportional basis.
- 1.7 Substitutes shall be paid from State substitute teacher funds the amounts authorized for the various classes of substitutes as provided for in 14 **Del.C.** §1326. School districts paying more for teacher substitutes than prescribed in 14 **Del.C.** §1326 shall do so from local or federal funds. Federal funds may be used only if the federal program permits that use.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1503

PUBLIC NOTICE

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

1503 Educator Mentoring

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1503 Educator Mentoring. This regulation concerns comprehensive induction program activities required of educators. It is necessary to amend this regulation due to changes to 14 **Del.C.** Ch. 12.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before Tuesday, January 31, 2017 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation relates to mentoring and professional development activities that help to improve the quality of the Delaware educator workforce and the quality of instruction for Delaware's children.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation relates to mentoring and professional development activities that help to improve the quality of the Delaware educator workforce and the quality of instruction for Delaware's children.

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

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

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

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

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

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the local school boards implementing this amended regulation. There will be additional expense to the state for the additional year of mentoring.

*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/january2017/proposed/20 DE Reg 520RFA 01-01-17.pdf>

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

1503 Educator Mentoring

PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1510

PUBLIC NOTICE

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

1510 Issuance of Initial License

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 DE Admin. Code 1510 Initial License. This regulation concerns the requirements for licensure of educational personnel pursuant to 14 Del.C. Ch. 12. It is necessary to amend this regulation due to changes to 14 Del.C. Ch. 12.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before Tuesday, January 31, 2017 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve student achievement by establishing requirements for the issuance of a provisional license and an initial license to educators.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards.
3. Will the amended regulation help to ensure all student's health and safety are adequately protected? The amended regulation addresses educator licensure, not students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator licensure, not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in cooperation and consultation with the Department of Education, and with the approval of the State Board of Education.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.
9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of this amended regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation?

There is no expected cost to the state and to the local school boards 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/january2017/proposed/20 DE Reg 522RFA 01-01-17.pdf](http://regulations.delaware.gov/register/january2017/proposed/20%20DE%20Reg%20522RFA%2001-01-17.pdf)

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

1510 Issuance of Initial License

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

Federally Qualified Health Centers - Long-Acting Reversible Contraceptives

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 proposing to amend the Title XIX Medicaid State Plan regarding Federally Qualified Health Care Centers, specifically, *to increase access to Long-Acting Reversible Contraceptives*.

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 January 31, 2017. Please identify in the subject line: FQHC - LARC.

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 XIX Medicaid State Plan regarding Federally Qualified Health Care Centers, specifically, *to increase access to Long-Acting Reversible Contraceptives*.

Statutory Authority

- §1902(a)(19) of the Social Security Act, *Care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- §1905(a)(4)(C) of the Social Security Act, *Family Planning Services and Supplies*
- §1927 of the Social Security Act, *Payment for Covered Outpatient Drugs*
- 42 CFR §440.210, *Required services for the categorically needy; family planning services*
- 42 CFR §441.20, *Family Planning Services and Supplies*
- 42 CFR §440.120, *Prescribed drugs*
- 42 CFR §447.45, *Timely claims payment*
- State Medicaid Manual, Section 4270, *Family Planning Services*

Background*Family Planning Services and Supplies*

Family planning is classified as a "mandatory" benefit under Medicaid, meaning that all Medicaid programs must cover family planning, but states have considerable discretion in identifying the specific services and supplies that are included in the benefit. There is no formal definition of family planning in the Medicaid program. Rather, federal law at Section 1905(a)(4)(C) generally allows payment for "family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age who are eligible under the State plan and who desire such services and supplies." Contraception is one of the primary services included as family planning, and most states offer broad coverage for prescription contraceptive products in their Medicaid programs. Family planning providers include office-based physicians, federally qualified health centers, family planning clinic, health departments, and other clinics. Medicaid beneficiaries can obtain family planning services and supplies from any Medicaid-participating provider. This freedom of choice is maintained even if the individual is enrolled in a managed care plan.

Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) currently provides Medicaid coverage and reimbursement for family planning services and supplies, including LARCs. LARCs are long-acting reversible contraceptives, such as intrauterine devices (IUDs) and contraceptive implants. The Center for Medicaid and CHIP Services (CMCS), the U.S. Department of Health and Human Services Secretary's Advisory Committee on Infant Mortality (SACIM), the Health Resources and Services Administration, and the American Congress of Obstetricians and Gynecologists (ACOG) all recommend the use of LARCs.

States may cover LARCs through the pharmacy benefit or medical benefit. Covering LARCs through the pharmacy benefit means that dispensing pharmacies bill the state for the LARCs and applicable dispensing fees, then deliver the LARCs to providers for insertion or administration. The provider then bills the state for the furnished insertion or implantation service. In many cases this is appropriate; however, these steps may present barriers to access in some instances since this process requires the Medicaid recipient to see the provider twice: once to obtain the LARC prescription and then again for insertion or administration. While covering LARCs through the medical benefit could address these barriers to access, high upfront costs required to maintain a stock of LARCs, may deter providers from implementing this approach, resulting in barriers to access due to a potential unwillingness of providers to furnish LARCs.

Summary of Proposal

The purpose of the proposed rule is to provide a mechanism for Federally Qualified Health Centers (FQHC) to be compensated for these expensive LARCs that are not included in the FQHC's rates. This would provide FQHC's the ability to maintain an adequate stock of LARCs, thus increasing access to important family planning services for Medicaid recipients.

Summary of Proposed Changes

If implemented as proposed, the state plan amendment will accomplish the following, effective January 1, 2017: Add language to Attachment 4.19-B, Page 2, that provides a mechanism for FQHCs to receive reimbursement for distributed LARCs based on actual acquisition cost (ACC).

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 expansion of existing nondiscrimination protections to be all-inclusive and to ensure compliance with Federal Regulation. Comments must be received by 4:30 p.m. on January 31, 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 proposed regulation modifies Division of Medicaid and Medical Assistance's practice and procedures to assist FQHCs in administering LARCs. It does not have a fiscal impact; the policy change is budget neutral.

***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/january2017/proposed/20 DE Reg 523RFA 01-01-17.pdf>

DMMA PROPOSED REGULATION #17-001 REVISION:

ATTACHMENT 4.19-B
Page 13

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES -
OTHER TYPES OF CARE

FEDERALLY QUALIFIED HEALTH CENTERS

The Health Care Financing Administration (HCFA) requires that Federally Qualified Health Centers (FQHCs) be reimbursed in compliance with the Benefits Improvement and Protection Act (BIPA) of 2000. Effective January 1, 2001, Delaware will pay 100% of reasonable cost based on an average of the Fiscal Year 1999 and 2000 audited cost report.

FQHCs are assigned a prospectively determined rate per clinic visit based in actual costs reported on their audited cost reports, and they do not correspond with the Federal Fiscal Year, they would span more than one fiscal year. Starting July 1, 2001, the Medicare Economic Index will be used to inflate their rates. The computation is also adjusted each year to reflect any increase or decrease in the Center's Scope of Services.

The Delaware Medical Assistance Program (DMAP) requires that a new provider submit a cost report so that a rate based on reasonable costs can be established. Any new FQHC/RHC will be capped at 100% of the highest rate that Medicaid pays to a FQHC for the initial rate year.

Primary Care costs are separated from Administrative and General costs for purposes of rate calculation. The Administrative and General component is capped at 40% of the highest cost. Each cost component is inflated by the current HCFA Medicare Economic Index.

Medicaid will ensure 100% cost payments regardless of the payment mechanism.

The rate year for FQHC services is July 1 through June 30.

The payment methodology for FQHCs will conform to section 702 of the BIPA 2000 legislation.

The payment methodology for FQHCs will conform to the BIPA 2000 requirements Prospective Payment System.

For services provided on or after January 1, 2017 the cost of long-acting reversible contraceptives (LARCs) will be based on actual acquisition cost (AAC). The FQHC must submit a separate claim to be reimbursed for the AAC of a LARC.

PROPOSED REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Nondiscrimination

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 proposing to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding nondiscrimination, specifically, *to modify language to be more inclusive and to ensure compliance with Federal Regulation.*

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 January 31, 2017. Please identify in the subject line: Nondiscrimination.

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 XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding nondiscrimination, specifically, *to modify language to be more inclusive and to ensure compliance with Federal Regulation.*

Statutory Authority

- 45 CFR Part 80; *Nondiscrimination under Programs Receiving Federal Assistance through the Department Of Health And Human Services Effectuation of Title Vi Of The Civil Rights Act Of 1964*
- 45 CFR Part 84; *Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance*
- 45 CFR Part 90; *Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance*
- 45 CFR Part 92; *Nondiscrimination on The Basis of Race, Color, National Origin, Sex, Age, or Disability in Health Programs or Activities Receiving Federal Financial Assistance and Health Programs or Activities Administered by the Department of Health and Human Services or Entities Established under Title I of the Patient Protection And Affordable Care Act*
- 7 CFR §272.6(a); *Food Stamp Program, Nondiscrimination compliance*
- 42 CFR §440.262; *State Plan requirements, Access and cultural considerations*
- Title VI of the Civil Rights Acts of 1964
- §504 of the Rehabilitation Act of 1973

Background

The Department of Health and Social Services (DHSS) is the agency designated by the State as responsible for Delaware's public assistance programs. Within the Department, the Division of Social Services (DSS) is responsible for administering the following programs in an accurate and timely fashion while treating clients with respect and dignity: Temporary Assistance for Needy Families (TANF), General Assistance Program, Food Supplement Program, Refugee Resettlement Program, Child Care Subsidy Program, and Employment and Training Services. Additionally, the Division of Medicaid and Medical Assistance (DMMA) is responsible for furnishing medical assistance to eligible low-income families and to eligible aged, blind and/or disabled people whose income is insufficient to meet the cost of necessary medical services.

DHSS, and its divisions, are required to provide these services in accordance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 7 CFR §272.6(a), 42 CFR §440.262; and 45 CFR Parts 80, and 84, 90, and 92, such that no individual shall be subject to discrimination under this plan on the grounds of race, color, national origin, age, disability, sex, sexual orientation, gender identity, religious creed, political beliefs, limited English proficiency (LEP) and/or retaliation.

Summary of Proposal

The purpose of the proposed rule is to expand existing nondiscrimination protections to be more inclusive and to ensure compliance with Federal Regulation.

Summary of Proposed Changes

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

- Modify language on page 87, in Section 7 - General Provisions, to include discrimination based on sex, sexual orientation, gender identity, and limited English proficiency (LEP).

If implemented as proposed, the Delaware Social Services Manual (DSSM) amendment will accomplish the following, effective March 11, 2016:

- Modify language in the following sections, to include discrimination based on sex, sexual orientation, gender identity, and limited English proficiency (LEP):
 - DSSM 1000 Definitions
 - DSSM 1006 Guaranteeing Civil Rights and Non-Discrimination
 - DSSM 1006.1 Ensuring Non-discrimination in the Provision of Services
 - DSSM 1006.4 Assuring Compliance in Area Operations
 - DSSM 1006.6 Publicizing the Civil Rights Program
 - DSSM 1007 Making Civil Rights Complaints
 - DSSM 1007.3 Routing Civil Rights Complaints
 - DSSM 1007.4 Keeping Track of Civil Rights Complaints

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 expansion of existing nondiscrimination protections to be more inclusive and to ensure compliance with Federal Regulation. Comments must be received by 4:30 p.m. on January 31, 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 proposed regulation clarifies practice and procedures currently used by the Division of Medicaid and

Medical Assistance and Division of Social Services and therefore will result in no fiscal impact.

***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/january2017/proposed/20 DE Reg 526RFA 01-01-17.pdf>

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

Nondiscrimination

DIVISION OF PUBLIC HEALTH

Statutory Authority: 18 Delaware Code, Section 3365 (18 Del.C. §3365)
16 DE Admin. Code 4102

PUBLIC NOTICE

4102 School-Based Health Centers

The Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing School-Based Health Centers (4102). The purpose of the amendments is to make technical corrections to bring the regulations in line with recently revised statutes. On January 1, 2017, DPH plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the January 1, 2017 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the DPH at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, February 10, 2017, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

***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/january2017/proposed/20 DE Reg 528RFA 01-01-17.pdf>

4102 School-Based Health Centers

1.0 Statement of Purpose

These regulations are intended to implement the provisions of 18 Del.C. §3365 and ~~3547G~~ 3571G, school-based health centers. These regulations apply to medical vendors who provide services at school-based health centers and health insurance plans who reimburse for covered medical services. These regulations define: (1) services offered in a school-based health center; (2) criteria for recognition as a school-based health center; (3) interactions with primary care providers; and (4) criteria for health promotion.

2.0 Definitions

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

“**Agency**” means the Division of Public Health, Bureau of Adolescent and Reproductive Health, school-based health center program.

“**Parent**” means ~~the parent or legal guardian authorized to enroll a student in the school based health center~~ a parent as defined by 13 Del.C. §8-201 or a nonparent or agency charged with caring for a child during the child's minority.

“**School-based health center**” means a health care clinic located in or near a school facility that is organized through school and health provider relationships that provides services designated in ~~section~~ Section 4.0 of this regulation.

“**Student**” means a child or adolescent who is enrolled in school.

3.0 Designation as a School-Based Health Center

(Break in Continuity Within Section)

- 3.2 A health care clinic may be designated as a school-based health center (SBHC) by the Agency if it has demonstrated that it meets the criteria provided in ~~paragraphs~~ Sections 4.0-8.0 in these regulations. The Agency shall be the sole arbiter of the satisfaction of these criteria.

(Break in Continuity Within Section)

4.0 Service Provision

- 4.1 ~~In order to obtain services at the SBHC, a minor student must be enrolled in the SBHC by his or her parent/guardian or relative caregiver acting pursuant to an Affidavit of Establishment of Power to Consent to Medical Treatment of Minors in accordance with Title 13 Del.C. §708. A student of the age of 18 years or more may consent for himself or herself.~~

- 4.2 A SBHC shall be open during hours accessible to students. Information on hours of operation must be posted in areas frequented by students.

- 4.32 ~~A SBHC is required to make services available under the categories of physical health, mental health, health education, and nutrition consultation/education, as outlined in this section~~ All SBHCs shall provide through licensed professionals, primary health services to children, including comprehensive health assessments, diagnosis, and treatment of minor, acute, and chronic medical conditions, referrals to and follow-up for specialty care and oral and vision health services, mental health and substance use disorder assessments, crisis intervention, counseling, treatment, and referral to a continuum of mental health and substance abuse services including emergency psychiatric care, community support programs, inpatient care, and outpatient programs.

4.3.1 Physical Health

4.3.1.1 ~~Assessment, diagnosis and treatment of minor illness/injury.~~

4.3.1.2 ~~Immunizations, in accordance with recommendations from the Division of Public Health.~~

4.3.2 Mental Health

4.3.2.1 ~~Individual and group counseling.~~

4.3.2.2 ~~Referral for long term counseling and mental health evaluations and emergency treatment.~~

4.3.3 Health Education

4.3.3.1 ~~Individual, group or classroom education, including but not limited to, healthy lifestyles and preventive health.~~

4.3.4 Nutrition Consultation/Education

4.3.4.1 ~~Individual, group or classroom education, including but not limited to, healthy eating and weight management.~~

- 4.3.5 Subject to school board approval

~~4.3-5.1~~ Diagnosis and treatment of sexually transmitted diseases, reproductive health, provision of contraceptives, and HIV testing and counseling. ~~Provision of these services by SBHCs is~~ may be provided by a SBHC subject to the approval of the school board governing the SBHC locale.

~~4.3-64~~ Promotion of vaccination among enrolled students

~~4.3-64.1~~ SBHCs must promote provision of all vaccinations required or recommended by the Division of Public Health to enrolled students either on site or through referral to a primary care provider.

~~4.3-64.2~~ SBHCs shall promote vaccination among students through education and awareness activities.

5.0 Staffing

5.1 A SBHC shall provide services through health professionals who: maintain up to date Delaware licensure, training and proper certification in their individual discipline for the population to be served.

~~5.1.1 Are experienced in community health and providing health services to school aged children and adolescents.~~

~~5.1.2 Have knowledge of health promotion and preventive health strategies for children and adolescents.~~

~~5.1.3 Maintain up to date training and proper certification for the population to be served.~~

5.2 The organizational structure of the SBHC must be adequate to provide for appropriate clinic supervision of staff, and to ensure that staff are assigned responsibilities that are consistent with their education and experience and legally within their scope of practice. Staffing of the SBHC must include: an individual designated as having overall responsibility for the management of the SBHC.

~~5.2.1 An individual designated as having overall responsibility for the management of the SBHC.~~

~~5.2.2 A licensed advanced practice nurse, physician assistant or physician, on a part time basis at minimum.~~

~~5.2.3 An individual trained and experienced in nutrition for school aged children and adolescents.~~

~~5.2.4 A licensed clinical social worker, psychologist or mental health counselor.~~

~~5.2.5 An individual responsible for the management of medical records.~~

6.0 Billing and Reimbursement

~~6.1 SBHCs are required to implement and maintain a third party insurance billing process for services provided.~~

6.2 A SBHC shall not charge co-pays or any other out-of-pocket fees for use of SBHC services.

6.32 The following services shall be exempt from third-party billing:

~~6.32.1 Any services provided to a student related to an evaluation or assessment of eligibility under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq, or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq.; and~~

~~6.32.2 Any services provided to a student implementing an Individualized Education Program (IEP) or Section 504 Plan developed in conformity with either of the above federal laws.~~

6.43 Insurance information on each student enrolled in the SBHC must be updated annually at minimum.

(Break in Continuity of Sections)

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

4102 School-Based Health Centers

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3) (16 Del.C. §122(3))
16 DE Admin. Code 4463

PUBLIC NOTICE

4463 Licensing and Registration of Operators of Public Water Supply Systems

On January 1, 2017, the Department of Health and Social Services, Division of Public Health, Office of Drinking Water, plans to publish revised Licensing and Registration of Operators of Public Water Supply Systems and hold them out for public comment per Delaware law.

The regulations have been revised to include changes necessary to update requirements for public water system operators to ensure that requirements for training, certification and licensure are in line with federal requirements and industry standards.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Friday, February 10, 2017 to:

Jamie Mack, Executive Assistant
Office of the Director
Delaware Division of Public Health
Jesse Cooper Building
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Fax: 302-739-3984

***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/january2017/proposed/20 DE Reg 531RFA 01-01-17.pdf>

4463 Licensing and Registration of Operators of Public Water Supply Systems

(Break in Continuity of Sections)

3.0 Advisory Council For Certification Of Public Water System Operators

(Break in Continuity Within Section)

3.2 Membership:

3.2.1 The Advisory Council shall consist of a minimum of ~~nine~~ seven members. Membership shall consist of:

3.2.1.1 one representative designated by the Division who shall serve as Secretary/Treasurer, responsible for maintaining all appropriate records and conducting the daily business of the Advisory Council;

3.2.1.2 ~~three~~ one representatives of the public-at-large;

(Break in Continuity Within Section)

3.4 Responsibility and Authority:

(Break in Continuity Within Section)

3.4.3 At least four members in attendance at any meeting shall constitute a quorum of the Advisory Council.

(Break in Continuity of Sections)

6.0 License Classification and Operator Qualifications

6.1 License Classification

PROPOSED REGULATIONS

(Break in Continuity Within Section)

6.1.2 Four specialty class licenses are also established:

6.1.2.1 ~~Water Supply Operator-in-Training (OIT)~~

(Break in Continuity Within Section)

6.2 Operator Qualifications

(Break in Continuity Within Section)

6.2.2 A water-treatment operator-in-training who lacks either, the education or experience requirements for a base-level license may receive an interim Operator-in-Training (OIT) license, for a maximum of one year, pending fulfillment of the regular license requirements. The interim OIT license depends on: (1) approval by the Secretary, (2) recommendation by the Advisory Council and (3) successful completion of the base-level written examination.

6.2.2.1 An OIT must be employed at a water system performing the duties of an operator consistent with the definition of operator in these Regulations continuously for one year before becoming eligible for full licensure.

6.2.2.1.1 An applicant that passes the Base Level Exam or Distribution Exam must obtain a job with a Delaware water system within two years of passing the test. Failure to obtain the job within the two year period will require submittal of a new application and retaking the appropriate exam.

(Break in Continuity Within Section)

~~6.2.6 The Secretary may allow a water facility to be grandfathered by approving a valid, base level license and any applicable endorsements to the individual(s) the governing body or owner of a public water system certifies to have been in responsible charge and/or operated a water facility on the effective date of these Regulations, under the following criteria: Water facility operators and Distribution system operators shall not be grandfathered.~~

~~6.2.6.1 The individual(s) provide documentation to the Advisory Council to the fact they have been in a position of Direct Responsible Charge and/or operated a water facility for at least five years prior to the adoption date of these Regulations; and~~

~~6.2.6.2 The individual submits an application for a license pursuant to this subsection on or before July 1, 2001.~~

~~6.2.6.3 A license and endorsement(s) granted under subsection 6.2.6 of these Regulations shall not be transferable to another water system.~~

(Break in Continuity Within Section)

7.0 Licensing Procedures

(Break in Continuity Within Section)

7.2 Once an applicant satisfies requirements provided in this regulation, and provides proof of employment as an operator at a Delaware water system, the candidate, upon recommendation by the Advisory Council, shall be issued a suitable license by the Secretary. The license shall indicate all endorsements for which the operator is qualified, the date of issuance and date of expiration.

7.3 Renewal of License. It is the responsibility of the licensee to file a renewal application with the Advisory Council. The Advisory Council is not required to notify licensees of expiration dates.

(Break in Continuity Within Section)

7.3.2 All operators, including grandfathered operators, Distribution System Operators, and Limited License holders, must receive an additional 20 educational contact hours every two years to be eligible to renew their license.

7.3.2.1 ~~At least 50% of training (10 educational contact hours) must be obtained in classes directly related to waterworks operation, treatment or distribution.~~

7.3.2.2 Educational contact hours are required of all licensees and shall be completed prior to the time a license is to be renewed. Extra educational contact hours do not carry over to the next licensing period. Licensees will only get educational contact hour credit for their first

attendance of approved courses during each licensing period. Licensees may retake an approved course in the same licensing period but will not receive additional educational contact hour credit.

(Break in Continuity Within Section)

7.7 A licensee with an active license may request in writing to be placed on inactive status. Inactive status can be renewed on a biennial basis by attestation of completing the required continuing education for licensure. Inactive licenses shall be reactivated by the Advisory Council upon written request and payment of the appropriate fee set by the Division.

7.7.1 An operator is not authorized to work as a licensed operator in this State during the period of inactive status.

(Break in Continuity of Sections)

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

4463 Licensing and Registration of Operators of Public Water Supply Systems

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 6010 (7 Del.C. §6010)

7 DE Admin. Code 7401

REGISTER NOTICE

SAN # 2016-15

7401 Surface Water Quality Standards

1. TITLE OF THE REGULATIONS:

7401 Surface Water Quality Standards

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

Update to table in section 4.5.7.1 to comply with USC Title 33 Chapter 26 Subchapter III Section 1313(i)(1)(B) in Federal Law. This update will modify bacteria water quality standards for the Atlantic Ocean from Cape Henlopen to the Delaware/Maryland state line.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §6010

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

Regulations Governing the Control of Water Pollution

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7401 Surface Water Quality Standards Section 4.5.7.1 will be open January 2, 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. A public hearing on the proposed amendment will be held on February 23, 2017 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

PROPOSED REGULATIONS

7. PREPARED BY:

David Wolanski David.Wolanski@state.de.us (302)-739-9939

*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/january2017/proposed/20 DE Reg 533RFA 01-01-17.pdf>

7401 Surface Water Quality Standards (Break in Continuity of Sections)

4.0 Criteria To Protect Designated Uses

(Break in Continuity Within Section)

4.5 The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified:

(Break in Continuity Within Section)

4.5.7 Bacterial Water Quality Criteria

4.5.7.1 Primary and Secondary Contact Recreation Waters:

The following criteria shall apply:

Waterbody Type	Single-Sample Value (Enterococcus Colonies/100 ml)	Geometric Mean (Enterococcus Colonies/100 ml)
Primary Contact Recreation Fresh Waters	185	100
Primary Contact Recreation Marine Waters	104	35
Secondary Contact Recreation Fresh Waters	925	500
Secondary Contact Recreation Marine Waters	520	175
<u>Atlantic Ocean Waters from Cape Henlopen to the Delaware/Maryland State Line</u>	<u>The statistical threshold value of weekly samples collected over a 30 day period shall not exceed 130 in more than 10 percent of the samples collected.</u>	<u>The Geometric Mean of weekly samples collected over a 30 day period shall not exceed 35.</u>

The purpose of these criteria is to provide the Department with a basis to assess water quality trends and pollution control needs with regard to primary and secondary contact recreation in waters of the State and to meet Federal Beaches Environmental Assessment and Coastal Health (BEACH) Act Requirements. The criteria apply to enterococcus bacteria determined by the Department to be of non-wildlife origin based on best scientific judgment using available information. Swimming in waters affected by runoff during runoff periods may present an elevated risk of gastrointestinal illness and is not recommended.

(Break in Continuity Within Section)

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

7401 Surface Water Quality Standards

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS**

Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 Del.C. §2604(a)(1))
24 DE Admin. Code 2600

PUBLIC NOTICE**2600 Examining Board of Physical Therapists and Athletic Trainers**

Pursuant to 24 Del.C. §2604(a)(1), the Delaware Examining Board of Physical Therapists and Athletic Trainers ("Board") has proposed revisions to its rules and regulations.

Revisions to Section 9.0 clarify that foreign-educated applicants must demonstrate that their education is substantially equivalent to the current first professional degree in the United States. Section 11.0, pertaining to licensure reactivation and reinstatement, is amended to add requirements for ethics continuing education and current CPR certification. Individuals seeking reinstatement will also be required to undergo a criminal background check. Section 15.0, regarding advanced training requirements, has been revised. Currently, in many athletic venues, there is a shortage of on-the-field coverage by athletic trainers. To address this shortage, subsection 15.3 provides for three categories of physical therapists which may provide on-the-field coverage. Subsection 15.3 includes supervision and training requirements to ensure that on-the-field coverage is provided by qualified health care professionals. Finally, Section 17.0 has been amended to delete a number of crimes which the Board determined are not substantially related to the practice of physical therapy and athletic training. Certain other substantially related crimes are added pursuant to changes to the criminal code pertaining to crimes against children and changes to the Uniform Controlled Substances Act.

A public hearing will be held on January 24, 2017 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments 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 Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be February 8, 2017 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

***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/january2017/proposed/20 DE Reg 535RFA 01-01-17.pdf](http://regulations.delaware.gov/register/january2017/proposed/20%20DE%20Reg%20535RFA%2001-01-17.pdf)

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

2600 Examining Board of Physical Therapists and Athletic Trainers

PROPOSED REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

2700 BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS

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

PUBLIC NOTICE

2700 Board of Registration for Professional Land Surveyors

The Delaware Board of Professional Land Surveyors, in accordance with 24 Del.C. §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to eliminate references to the continuing education ethics requirement and revise the list of crimes substantially related to the practice of land surveying. The Board will hold a public hearing on the proposed rule changes on February 16, 2017 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meredith Hurley, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

***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/january2017/proposed/20 DE Reg 536RFA 01-01-17.pdf>

2700 Board of Registration for Professional Land Surveyors

(Break in Continuity of Sections)

10.0 Continuing Education

10.1 Biennium Requirements.

Effective each biennium, as a condition for renewal of a license for the practice of land surveying, a Professional Land Surveyor shall be required to successfully complete 24 hours of professional development within the preceding biennium. Any licensee who completes in excess of 24 hours of professional development within the preceding biennium may NOT have the excess applied to the requirements for the next biennium.

10.1.1 No more than 8 PDHs of the required 24 PDHs for any renewal period may be obtained by an online course.

10.1.2 Retired Licensees. Licensees 62 years old and over at the time of license renewal who are retired (working less than 20 hours weekly) shall need only twelve (12) PDHs each ensuing biennium to satisfy the professional development requirements outlined herein. A total of four (4) PDHs may be obtained by online courses each biennium. ~~The required one ethics and professionalism PDH must be obtained by attending a live seminar and cannot be taken online.~~

(Break in Continuity Within Section)

10.2 Sources of Credit. In reviewing and approving applications for PDHs, the Board shall take into consideration:

(Break in Continuity Within Section)

10.2.8 College level courses directly related to land surveying or professional development directly related to land surveying shall be counted as 40 PDH per credit hour. Ten (10) PDHs will be counted for each CEU (continuing education unit) earned.

(Break in Continuity Within Section)

10.4 Pro-Rated Credits for Renewal. A licensee for renewal shall follow the following schedule of reporting PDH credits:

(Break in Continuity Within Section)

- 10.4.2 If, at the time of renewal, you have been licensed for more than one year, but less than two years, half (12 PDHs) is required, ~~including one ethics and professionalism PDH~~. A total of four (4) PDHs may be obtained by online courses. ~~The required one ethics and professionalism PDH must be obtained by attending a live seminar and cannot be taken online.~~
- 10.4.3 If, at the time of renewal, you have been licensed for two or more years, the full amount (24 PDHs) is required, ~~including two ethics and professionalism PDHs~~. A total of eight (8) PDHs may be obtained by online courses. ~~The required two ethics and professionalism PDHs must be obtained by attending a live seminar and cannot be taken online.~~

(Break in Continuity of Sections)

17.0 Crimes substantially related to practice of land surveyors

- 17.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the practice of land surveyor in the State of Delaware without regard to the place of conviction:
- ~~17.1.1 Menacing. 11 Del.C. §602~~
 - ~~17.1.2 Reckless endangering in the second degree. 11 Del.C. §603~~
 - 17.1.3~~1~~ Reckless endangering in the first degree. 11 Del.C. §604
 - 17.1.4~~2~~ Abuse of a pregnant female in the second degree. 11 Del.C. §605
 - 17.1.5~~3~~ Abuse of a pregnant female in the first degree. 11 Del.C. §606
 - 17.1.6~~4~~ Assault in the second degree. 11 Del.C. §612
 - 17.1.7~~5~~ Assault in the first degree. 11 Del.C. §613
 - 17.1.8~~6~~ Assault by abuse or neglect. 11 Del.C. §645~~1103B~~
 - 17.1.9~~7~~ Terroristic threatening. 11 Del.C. §621~~(a)(b)~~
 - ~~17.1.10 Unlawful administering drugs. 11 Del.C. §625~~
 - 17.1.11~~8~~ Unlawful administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626
 - ~~17.1.12 Prohibited acts as to substances releasing vapors or fumes. 11 Del.C. §627~~
 - ~~17.1.13 Vehicular assault in the second degree. 11 Del.C. §628~~
 - 17.1.14~~9~~ Vehicular assault in the first degree. 11 Del.C. §629
 - 17.1.15~~10~~ Vehicular homicide in the second degree. 11 Del.C. §630
 - 17.1.16~~11~~ Vehicular homicide in the first degree. 11 Del.C. §630A
 - 17.1.17~~12~~ Criminally negligent homicide. 11 Del.C. §631
 - 17.1.18~~13~~ Manslaughter. 11 Del.C. §632
 - 17.1.19~~14~~ Murder by abuse or neglect in the second degree. 11 Del.C. §633
 - 17.1.20~~15~~ Murder by abuse or neglect in the first degree. 11 Del.C. §634
 - 17.1.21~~16~~ Murder in the second degree. 11 Del.C. §635
 - 17.1.22~~17~~ Murder in the first degree. 11 Del.C. §636
 - 17.1.23~~18~~ Unlawful sexual contact in the second degree. 11 Del.C. §768
 - 17.1.24~~19~~ Unlawful sexual contact in the first degree. 11 Del.C. §769
 - 17.1.25~~20~~ Rape in the fourth degree. 11 Del.C. §770
 - 17.1.26~~21~~ Rape in the third degree. 11 Del.C. §771
 - 17.1.27~~22~~ Rape in the second degree. 11 Del.C. §772
 - 17.1.28~~23~~ Rape in the first degree. 11 Del.C. §773
 - 17.1.29~~24~~ Sexual extortion. 11 Del.C. §776~~774~~
 - 17.1.30~~25~~ Continuous sexual abuse of a child. 11 Del.C. §778~~776~~
 - 17.1.31~~26~~ Female genital mutilation. 11 Del.C. §780
 - 17.1.32~~27~~ Unlawful imprisonment in the first degree. 11 Del.C. §782

- 17.1.3328 Kidnapping in the second degree. 11 **Del.C.** §783
- 17.1.3429 Kidnapping in the first degree. 11 **Del.C.** §783A
- 17.1.3530 Arson in the first degree. 11 **Del.C.** §803
- 17.1.3631 Burglary in the third degree. 11 **Del.C.** §824
- 17.1.3732 Burglary in the second degree. 11 **Del.C.** §825
- 17.1.3833 Burglary in the first degree. 11 **Del.C.** §826
- ~~17.1.39 Multiple Offenses. 11 **Del.C.** §827~~
- 17.1.4034 Possession of burglar's tools or instruments facilitating theft. 11 **Del.C.** §828
- 17.1.4435 Robbery in the second degree. 11 **Del.C.** §831
- 17.1.4236 Robbery in the first degree. 11 **Del.C.** §832
- 17.1.4337 Carjacking in the second degree. 11 **Del.C.** §835
- 17.1.4438 Carjacking in the first degree. 11 **Del.C.** §836
- 17.1.4539 Shoplifting (felony). 11 **Del.C.** § 840
- 17.1.4640 Theft (felony). 11 **Del.C.** §841
- 17.1.4741 Theft of Services. 11 **Del.C.** §845
- 17.1.4842 Extortion. 11 **Del.C.** §846
- 17.1.4943 Misapplication of property (felony). 11 **Del.C.** §848
- 17.1.5044 Theft of rented property (felony). 11 **Del.C.** §849
- 17.1.5445 Receiving stolen property (felony). 11 **Del.C.** §851
- 17.1.5246 Identity theft. 11 **Del.C.** §854
- 17.1.5347 Forgery (felony). 11 **Del.C.** §861
- ~~17.1.54 Falsifying business records. 11 **Del.C.** §871~~
- ~~17.1.55 Tampering with public records in the second degree. 11 **Del.C.** §873~~
- 17.1.5648 Tampering with public records in the first degree. 11 **Del.C.** §876
- ~~17.1.57 Offering a false instrument for filing. 11 **Del.C.** §877~~
- 17.1.5849 Issuing a false certificate. 11 **Del.C.** §878
- ~~17.1.59 Bribery. 11 **Del.C.** §881~~
- ~~17.1.60 Bribe receiving. 11 **Del.C.** §882~~
- 17.1.6450 Issuing a bad check (felony). 11 **Del.C.** §900
- ~~17.1.62 Criminal impersonation of a police officer. 11 **Del.C.** §907B~~
- 17.1.6351 Unlawfully concealing a will. 11 **Del.C.** §908
- 17.1.6452 Fraudulent conveyance of public lands. 11 **Del.C.** §911
- 17.1.6553 Fraudulent receipt of public lands. 11 **Del.C.** §912
- 17.1.6654 Insurance fraud. 11 **Del.C.** §913
- 17.1.6755 Health care fraud. 11 **Del.C.** §913A
- 17.1.6856 New home construction fraud (felony). 11 **Del.C.** §917
- 17.1.6957 Unauthorized access. 11 **Del.C.** §932
- 17.1.7058 Theft of computer services. 11 **Del.C.** §933
- 17.1.7459 Interruption of computer services. 11 **Del.C.** §934
- 17.1.7260 Misuse of computer system information. 11 **Del.C.** §935
- 17.1.7361 Destruction of computer equipment. 11 **Del.C.** §936
- 17.1.7462 Dealing in children. 11 **Del.C.** §44001100A
- 17.1.7563 Abandonment of a child. 11 **Del.C.** §1101
- 17.1.7664 Endangering the welfare of a child. 11 **Del.C.** §1102
- 17.1.7765 Sexual exploitation of a child. 11 **Del.C.** §1108
- 17.1.7866 Unlawful dealing in child pornography. 11 **Del.C.** §1109

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- 17.1.7967 Possession of child pornography. 11 **Del.C.** §1111
- 17.1.8068 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 17.1.8469 Bribery. 11 **Del.C.** §1201
- 17.1.8270 Receiving a bribe. 11 **Del.C.** §1203
- 47.1.83 Giving unlawful gratuities. 11 **Del.C.** §1205
- 47.1.84 Receiving unlawful gratuities. 11 **Del.C.** §1206
- 47.1.85 Perjury in the third degree. 11 **Del.C.** §1224
- 17.1.8671 Perjury in the second degree. 11 **Del.C.** §1222
- 17.1.8772 Perjury in the first degree. 11 **Del.C.** §1223
- 47.1.88 Making a false written statement. 11 **Del.C.** §1233
- 17.1.8973 Threats to public officials. 11 **Del.C.** §1240
- 17.1.9074 Assault in a detention facility. 11 **Del.C.** §1254
- 17.1.9475 Bribing a witness. 11 **Del.C.** §1261
- 17.1.9276 Bribe receiving by a witness. 11 **Del.C.** §1262
- 17.1.9377 Tampering with a witness. 11 **Del.C.** §1263
- 17.1.9478 Interfering with child witness. 11 **Del.C.** §1263A
- 17.1.9579 Bribing a juror. 11 **Del.C.** §1264
- 17.1.9680 Bribe receiving by a juror. 11 **Del.C.** §1265
- 47.1.97 Tampering with physical evidence. 11 **Del.C.** §1269
- 47.1.98 Disorderly conduct. 11 **Del.C.** §1304
- 17.1.9981 Felony hate crimes. 11 **Del.C.** §1304
- 47.1.100 Harassment. 11 **Del.C.** §1314
- 17.1.40182 Aggravated harassment Stalking. 11 **Del.C.** §1312
- 47.1.102 Felony stalking. 11 **Del.C.** §1312A
- 47.1.103 Trading in human remains and associated funerary objects. 11 **Del.C.** §1333
- 17.1.40483 Adulteration. 11 **Del.C.** §1339
- 17.1.40584 Carrying a concealed deadly weapon. 11 **Del.C.** §1442
- 17.1.40685 Possessing a destructive weapon. 11 **Del.C.** §1444
- 17.1.40786 Felony possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447
- 17.1.40887 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A
- 17.1.40988 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448
- 17.1.44089 Theft of a firearm. 11 **Del.C.** §1451
- 17.1.44190 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455
- 17.1.44291 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458
- 17.1.44392 Act of intimidation. 11 **Del.C.** §3532
- 17.1.44493 Aggravated act of intimidation. 11 **Del.C.** §3533
- 47.1.115 Prohibited drug offenses A. 16 **Del.C.** §4751
- 47.1.116 Prohibited drug offenses B. 16 **Del.C.** §4752
- 47.1.117 Unlawful delivery of noncontrolled substances. 16 **Del.C.** §4752A-
- 47.1.118 Prohibition against transfer, sale and purchase. 7 **Del.C.** §5306
- 17.1.44994 Alteration, theft or destruction of will. 12 **Del.C.** §210
- 17.1.42095 Receiving or transferring stolen vehicle. 21 **Del.C.** §6704
- 17.2 Crimes substantially related to the practice of professional land surveyors shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

PROPOSED REGULATIONS

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

[2700 Board of Registration for Professional Land Surveyors](#)

DIVISION OF PROFESSIONAL REGULATION

3100 BOARD OF FUNERAL SERVICES

Statutory Authority: 24 Delaware Code, Section 3105(a)(1) (24 Del.C. §3105(a)(1))
24 DE Admin. Code 3100

PUBLIC NOTICE

3100 Board of Funeral Services

Pursuant to 24 Del.C. §3105(a)(1), the Delaware Board of Funeral Services has proposed revisions to its rules and regulations. The rules pertaining to funeral establishment requirements and crimes substantially related to the practice of funeral services are amended.

A public hearing will be held on March 28, 2017 at 10 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 Funeral Services, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board, c/o Meredith Hurley, at the above address 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/january2017/proposed/20 DE Reg 540RFA 01-01-17.pdf>

3100 Board of Funeral Services (Break in Continuity of Sections)

4.0 Establishment Permits

(Break in Continuity Within Section)

- 4.2 Unless exempt under 24 Del.C. §3101(6), the building in which funeral services are provided shall contain a room having the fixtures necessary for the care and preparation of human remains for funeral service, burial, entombment or cremation. Such fixtures include, at a minimum, embalming machine and table, aspirator, embalming instruments, embalming fluids, an operating drainage system, syringes, needles and surgical supplies and an operating ventilation system.

(Break in Continuity of Sections)

11.0 Crimes substantially related to the provision of Funeral Services

- 11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the provision of Funeral Services in the State of Delaware without regard to the place of conviction:

(Break in Continuity Within Section)

11.1.6 Assault by abuse or neglect. 11 Del.C. §~~645~~ 1103B.

11.1.7 ~~Unlawfully administering of drugs.~~ 11 Del.C. §625.

11.1.8~~7~~ Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.

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- ~~11.1.9 Prohibited acts as to substances releasing vapors or fumes. 11 Del.C. §627.~~
11.1.408Manslaughter. 11 Del.C. §632.
11.1.449Murder by abuse or neglect in the second degree. 11 Del.C. §633.
11.1.120Murder by abuse or neglect in the first degree. 11 Del.C. §634.
11.1.131Murder in the second degree. 11 Del.C. §635.
11.1.142Murder in the first degree. 11 Del.C. §636.
11.1.153Promoting suicide. 11 Del.C. §645
11.1.164Abortion. 11 Del.C. §651
~~11.1.17 Self-abortion. 11 Del.C. §652~~
~~11.1.18 Issuing abortion articles. 11 Del.C. §653~~
~~11.1.19Unlawful sexual contact in the third degree. 11 Del.C. §767~~
11.1.2015Unlawful sexual contact in the second degree. 11 Del.C. §768
11.1.2416Unlawful sexual contact in the first degree. 11 Del.C. §769
11.1.2217Rape in the fourth degree. 11 Del.C. §770
11.1.2318Rape in the third degree. 11 Del.C. §771
11.1.2419Rape in the second degree. 11 Del.C. §772
11.1.2520Rape in the first degree. 11 Del.C. §773
~~11.1.26 Sexual extortion. 11 Del.C. §776~~
11.1.2721Bestiality. 11 Del.C. ~~§777~~ 775
11.1.2822Continuous sexual abuse of a child. 11 Del.C. ~~§778~~ 776
11.1.2923Dangerous crimes against a child. 11 Del.C. ~~§779~~ 777
11.1.3024Female genital mutilation. 11 Del.C. §780
11.1.3425Kidnapping in the second degree. 11 Del.C. §783
11.1.3226Kidnapping in the first degree. 11 Del.C. §783A
~~11.1.33 Acts constituting coercion. 11 Del.C. §791~~
11.1.3427Arson in the third degree. 11 Del.C. §801
11.1.3528Arson in the second degree. 11 Del.C. §802
11.1.3629Arson in the first degree. 11 Del.C. §803
~~11.1.37 Reckless burning or exploding. 11 Del.C. §804~~
11.1.3830Burglary in the third degree. 11 Del.C. §824
11.1.3931Burglary in the second degree. 11 Del.C. §825
11.1.4032Burglary in the first degree. 11 Del.C. §826
11.1.4433Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828
11.1.4234Robbery in the second degree. 11 Del.C. §831
11.1.4335Robbery in the first degree. 11 Del.C. §832
11.1.4436Carjacking in the second degree. 11 Del.C. §835
11.1.4537Carjacking in the first degree. 11 Del.C. §836
11.1.4638Felony theft. 11 Del.C. §841
11.1.4739Theft; lost or mislaid property. 11 Del.C. §842
11.1.4840Theft; false pretense. 11 Del.C. §843
11.1.4941Extortion 11 Del.C. ~~§844~~ 846
11.1.5042Theft, extortion; claim of right as an affirmative defense. 11 Del.C. ~~§846~~ 847
11.1.5143Misapplication of property. 11 Del.C. §848
11.1.5244Use, possession manufacture, distribution and sale of unlawful telecommunication and access devices. 11 Del.C. §850
11.1.5345Receiving stolen property. 11 Del.C. §851

- ~~11.1.54~~ Unauthorized use of a vehicle. ~~11 Del.C. §853~~
- 11.1.55 46 Identity theft. 11 Del.C. §854
- 11.1.56 47 Forgery. 11 Del.C. §861
- 11.1.57 48 Possession of forgery devices. 11 Del.C. §862
- 11.1.58 49 Falsifying business records. 11 Del.C. §871
- 11.1.59 50 Tampering with public records in the second degree. 11 Del.C. §873
- 11.1.60 51 Tampering with public records in the first degree. 11 Del.C. §876
- 11.1.61 52 Offering a false instrument for filing. 11 Del.C. §877
- 11.1.62 53 Issuing a false certificate. 11 Del.C. §878
- ~~11.1.63~~ Bribery. ~~11 Del.C. §881~~
- 11.1.64 Bribe receiving. 11 Del.C. §882
- 11.1.65 54 Unlawful use of credit card. 11 Del.C. §903
- 11.1.66 55 Reencoder and scanning devices. 11 Del.C. §903A
- ~~11.1.67~~ Criminal impersonation. ~~11 Del.C. §907~~
- 11.1.68 56 Criminal impersonation, accident related. 11 Del.C. §907A
- 11.1.69 57 Criminal impersonation of a police officer. 11 Del.C. §907B
- 11.1.70 58 Unlawfully concealing a will. 11 Del.C. §908
- ~~11.1.71~~ Securing execution of documents by deception. ~~11 Del.C. §909~~
- 11.1.72 59 Insurance fraud. 11 Del.C. §913
- 11.1.73 60 Use of consumer identification information. 11 Del.C. §914
- 11.1.74 61 Use of credit card information. 11 Del.C. §915
- 11.1.75 62 Unauthorized access. 11 Del.C. §932
- 11.1.76 63 Misuse of computer system information. 11 Del.C. §935
- 11.1.77 64 Endangering the welfare of a child. 11 Del.C. §1102
- ~~11.1.78~~ Endangering the welfare of an incompetent person. ~~11 Del.C. §1105~~
- 11.1.79 Unlawfully dealing with a child. 11 Del.C. §1106
- 11.1.80 65 Sexual exploitation of a child. 11 Del.C. §1108
- 11.1.81 66 Unlawfully dealing in child pornography. 11 Del.C. §1109
- 11.1.82 67 Possession of child pornography. 11 Del.C. §1111
- 11.1.83 68 Sexual solicitation of a child. 11 Del.C. §1112A
- 11.1.84 69 Perjury in the second degree. 11 Del.C. §1222
- 11.1.85 70 Perjury in the first degree. 11 Del.C. §1223
- ~~11.1.86~~ Making a false written statement. ~~11 Del.C. §1233~~
- 11.1.87 71 Tampering with physical evidence. 11 Del.C. §1269
- 11.1.88 72 Hate crimes. 11 Del.C. §1304
- ~~11.1.89~~ Aggravated harassment. ~~11 Del.C. §1312~~
- 11.1.90 73 Abusing a corpse. 11 Del.C. §1332
- 11.1.91 74 Trading in human remains and associated funerary objects. 11 Del.C. §1333
- 11.1.92 75 Adulteration. 11 Del.C. §1339
- 11.1.93 76 Desecration of a burial place. 11 Del.C. §1340
- 11.1.94 77 Act of intimidation. 11 Del.C. §3532
- 11.1.95 78 Aggravated act of intimidation. 11 Del.C. §3533
- 11.1.96 79 Attempt to intimidate. 11 Del.C. §3534.
- 11.1.97 80 Alteration, theft, or destruction of will. 12 Del.C. §210
- ~~11.1.98~~ Abuse, Neglect Mistreatments or Financial Exploitation of residents or patients. ~~16 Del.C. §1136~~
- ~~11.1.99~~ Controlled substance prohibited acts A. ~~16 Del.C. §4751~~

- ~~11.1.100 Controlled substance prohibited acts B. 16 Del.C. §4752.~~
- ~~11.1.101 Trafficking in marijuana, cocaine, illegal drugs, —metamphetamines, L.S.D., or designer drugs. 16 Del.C. §4753A~~
- ~~11.1.102 Possession and delivery of noncontrolled prescription drug. 16 Del.C. §4754A (d) E felony~~
- ~~11.1.103 Hypodermic syringe or needle delivering or possessing; disposal; exceptions. 16 Del.C. §4757~~
- ~~11.1.104 Distribution to persons under 21 years of age. 16 Del.C. §4761~~
- ~~11.1.105 Purchase of drugs from minors. 16 Del.C. §4761A~~
- ~~11.1.106 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property. 16 Del.C. §4767~~
- ~~11.1.107 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768~~
- ~~11.1.40881 Duty of driver involved in accident resulting in injury or death to any person. 21 Del.C. §4202~~
- 11.2 Crimes substantially related to the provision of Funeral Services 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:**

3100 Board of Funeral Services

DIVISION OF PROFESSIONAL REGULATION

3600 BOARD OF GEOLOGISTS

Statutory Authority: 24 Delaware Code, Section 3606(a)(1) (24 Del.C. §3606(a)(1))

24 DE Admin. Code 3600

PUBLIC NOTICE

3600 Board of Geologists

Pursuant to 24 Del.C. §3606(a)(1), the Board of Geologists has proposed revisions to its rules and regulations.

A public hearing will be held on February 10, 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Geologists, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 Del.C. §10118(a), the final date to receive written comments will be February 27, 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 Board's proposed revisions include a new Section 7.1.1.1 which will allow an applicant to take the Fundamentals of Geology ("FG") examination during that applicant's final semester in an accredited geosciences program leading to a degree. The examination is given just twice a year, in March and October. This change will enable the applicant to take the FG examination in March rather than waiting until October. The applicant will still be required to meet all other requirements for licensure, including passing the Practice of Geology examination. The results of the FG examination will be disclosed to the applicant after the final transcript is received. In addition, the list of automatically approved continuing education course providers, in Section 6.10, is amended to add the Pennsylvania Council of Professional Geologists. Finally, Section 6.10.54 is stricken to eliminate Board discretion to add providers to that list. Licensees will still have the option of seeking specific course approval from the Board.

***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/january2017/proposed/20 DE Reg 543RFA 01-01-17.pdf>

PROPOSED REGULATIONS

3600 Board of Geologists (Break in Continuity of Sections)

6.0 Continuing Education

(Break in Continuity Within Section)

6.10 Automatic Approval for course work sponsored by the following Professional Societies:

(Break in Continuity Within Section)

6.10.42 Pennsylvania Council of Professional Geologists (PCPG)

6.10.423 Petroleum History Institute (PHI)

6.10.434 Seismological Society of America (SSA)

6.10.445 Society of Economic Geologists (SEG)

6.10.456 Society of Exploration Geophysicists (SEG)

6.10.467 Society of Independent Professional Earth Scientists (SIPES)

6.10.478 Society of Mineral Museum Professionals (SMMP)

6.10.489 Society for Mining, Metallurgy, and Exploration, Inc. (SME)

6.10.490 Society for Organic Petrology (TSOP)

6.10.501 Society for Sedimentary Geology (SEPM)

6.10.542 Society of Vertebrate Paleontology (SVP)

6.10.523 Soil Science Society of America (SSSA)

6.10.534 United States Permafrost Association (USPA)

6.10.54 Other professional or educational organizations as approved periodically by the Board.

(Break in Continuity Within Section)

7.0 ASBOG Examination

7.1 An applicant wishing to sit for any portion for the ASBOG examination required for a license as a Geologist shall make application in writing, on forms provided by the Board.

7.1.1 An applicant wishing to sit for the ASBOG Fundamentals of Geology (FG) Exam may do so provided they meet the minimum educational requirements set forth in 24 **Del.C.** §3608(a)(1). To apply, the applicant must fill out the request to sit for the ~~fundamentals~~ FG Exam application and submit their transcripts [to date] to the Board for approval. Once taken, the applicants score will be held on file indefinitely by ASBOG.

7.1.1.1 Notwithstanding the requirements of subsection 7.1.1, an applicant may take the FG Exam during the applicant's final semester in an accredited geosciences program leading to a degree according to the educational requirements set forth in 24 Del.C. §3608(a)(1). The results of the FG Exam will be disclosed to the applicant after receipt of the official transcript.

(Break in Continuity Within Section)

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

(Break in Continuity Within Section)

8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designee(s) or the Director of the Division of Professional Regulation or his/her designee in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate(s) shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, ~~as outlined in subsection 10.8 of this section.~~

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

3600 Board of Geologists

DIVISION OF PROFESSIONAL REGULATION

5300 BOARD OF MESSAGE AND BODYWORK

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

PUBLIC NOTICE

5300 Board of Massage and Bodywork

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

A public hearing will be held on February 16, 2017 at 1:30 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Massage and Bodywork, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** § 10118(a), the final date to receive written comments will be March 3, 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 Board has proposed the addition of a definition of “school or approved program” of massage and bodywork and has included specific requirements for documentation of education. These proposed changes will address the widespread problem of applicants presenting invalid and falsified diplomas and school records. The continuing education requirements have been clarified and language has been added to state that a licensee’s failure to provide an updated address to the Division of Professional Regulation will not excuse that licensee from discipline for continuing education violations. The new Section 13.0 has been amended to remove crimes not related to the practice of massage and bodywork and thereby eliminate unjustified obstacles to licensure. Finally, various rules and regulations have been modified for clarity and consistency.

***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/january2017/proposed/20 DE Reg 545RFA 01-01-17.pdf>

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

5300 Board of Massage and Bodywork

PROPOSED REGULATIONS

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Sections 302, 2711 and 3102 (21 Del.C. §§302, 2711 and 3102)
2 DE Admin. Code 2217

PUBLIC NOTICE

2217 Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents

The Delaware Department of Transportation, Division of Motor Vehicles (the "DMV") hereby gives notice of intent to update the Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents regulation to meet Delaware State Law and Federal Regulation changes.

This proposal adds the use of the State Pointer Exchange System (SPEXS) electronic verification system definition and procedures into the regulation.

Public Comment Period

The DMV will take written comments on these proposed revisions to Section 2217 of title 2, Delaware Administrative Code, from January 3, 2017 through February 3, 2017.

The public may submit their comments to Kami Beers, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-4750 Attn: Kami Beers.

***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/january2017/proposed/20 DE Reg 546RFA 01-01-17.pdf>

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

[2217 Driver License and Identification Card Application Procedures](#)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 255

REGULATORY IMPLEMENTING ORDER

255 Definitions of Public School, Private School and Nonpublic School

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School. This regulation is being amended in order to include and clarify definitions of various types of schools as well as to change the title of the regulation to more accurately reflect its content.

This regulation was previously published in the *News Journal* and the *Delaware State News* on July 1, 2016. At that time substantive changes regarding the definitions of "Charter School" and "Reorganized School District" required it to be republished. Notice of the current proposed regulation was published in the *News Journal* and the *Delaware State News* on November 1, 2016, in the form hereto attached as Exhibit "A". During the most recent publication comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Both Councils endorsed the changes the Department of Education made to the regulation. The Department made grammatical changes as indicated.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School in order to include and clarify definitions of various types of schools as well as to change the title of the regulation to more accurately reflect its content.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 15, 2016. 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 15th day of December 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 15th day of December 2016

255 Definitions of ~~Public School, Private School and Nonpublic School~~ Types of Schools

1.0 ~~Public School Purpose~~

~~A public school shall mean a school or Charter School having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators. It also shall include the agencies of states and cities which administer the public funds. The purpose of this regulation is to define various types of schools and educational entities operating in the State of Delaware identified in Title 14 of the Delaware Code.~~

2.0 ~~Private School Definitions~~

~~A private school shall mean a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised and shall be interpreted further to include an accredited or approved college or university.~~

~~The following words and terms are applicable unless a specific regulation, statute or the context in which they are used clearly indicates otherwise:~~

~~"Charter School" means a non-home-based public school including two or more of grade kindergarten through twelve, operating in an approved physical plant for the personal physical attendance of all students and is managed by a board of directors. It exists under a charter granted by a public school district or the Delaware Department of Education, with the approval of the State Board of Education, pursuant to 14 **Del.C.** Ch. 5.~~

~~"Homeschool" means a nonpublic school as defined in 14 **Del.C.** §2703A.~~

~~"Local Education Agency (LEA)" means a reorganized traditional school district, vocational/technical school district[,] or Charter School[,] legally constituted and established[,] under Delaware law for either administrative control or direction of public elementary or secondary school(s).~~

"Nonpublic School" means a private school or any home school as defined in this regulation or 14 Del.C. §2703A.

"Private School" means a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised.

"Public School" means a physical plant having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators. A Charter School, as defined herein, is also a public school.

"Reorganized School District" means a clearly defined geographic subdivision of the state organized for the purposes of administering public education in that area.

"School District" means either a Reorganized School District or a Vocational-Technical School District or both depending upon the context in which the term is used.

"Vocational-Technical School District" means a subdivision of the state, the boundaries of which are co-extensive with the boundaries of the county in which it is located, organized for the purposes of administering vocational and technical education in that area.

3-0 Nonpublic School

A nonpublic school shall mean a private school as that term is defined in paragraph 2.0 of this regulation or any homeschool defined in 14 ~~Del.C. §2703A.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 925

REGULATORY IMPLEMENTING ORDER

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended to align with changes made to 14 **Del.C.** Ch. 31, regarding the appointment of individuals to represent the educational interest of children with disabilities.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2016 in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the changes the Department made to the regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs to align it with changes made to 14 **Del.C.** Ch. 31 regarding the appointment of individuals to represent the educational interest of children with disabilities.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.

Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 925 Children with Disabilities Subpart D,

Evaluations, Eligibility Determination, Individualized Education Programs attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 15, 2016. 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 15th day of December 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 15th day of December 2016

State Board of Education

Teri Quinn Gray, Ph.D., President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Nina L. Bunting

*Please note that no changes were made to the regulation as originally proposed and published in the October 2016 issue of the *Register* at page 233 (20 DE Reg. 233). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

925 Children with Disabilities Subpart D

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 926

REGULATORY IMPLEMENTING ORDER

926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children. This regulation is being amended to align with changes made to 14 **Del.C.** Ch. 31, regarding the appointment of individuals to represent the educational interest of children with disabilities.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2016 in the form hereto attached as Exhibit "A". Comments were received from the Attorney General's Office,

Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the proposed regulation. However, the Councils did suggest that Section 20.1.2 could be clarified to include the option of a "supported decision-making agreement" as a new Health and Social Services law specifically authorizes agents appointed in this matter to assist with accessing educational records and assisting with the education decision-making. The Department does not believe this statement is needed, as the intent of the amended regulation is to provide for an educational representative to make decisions on behalf of students with disabilities, not to regulate for supported or assisted decision making for all adults. There was only a slight change to the Authority reference in Section 20.0. The reference was moved to the end of the section and §3132 was added for further clarification.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children in order to align with changes made to 14 **Del.C.** Ch. 31, regarding the appointment of individuals to represent the educational interest of children with disabilities.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children.

Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 15, 2016. 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 15th day of December 2016

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 15th day of December 2016

State Board of Education

Teri Quinn Gray, Ph.D., President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Nina L. Bunting

**926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children
(Break in Continuity of Sections)**

20.0 Transfer of Parental Rights at Age of Majority

(Break in Continuity Within Section)

20.2 *If such an individual is not identified, the IEP team shall promptly facilitate a referral to the Department of Education for appointment of an educational surrogate parent. An appointed educational representative shall have the same authority as a parent under 14 Del.C. §3101(7).*

(Break in Continuity Within Section)

20.2.2 *The capacity determination is limited to exercise of rights under 14 Del.C. Ch. 31 or this regulation and shall not affect exercise of rights in any other context. In furtherance of this limitation, any other statute notwithstanding, the capacity determination shall not be admissible as evidence of competency or capacity in any non-educational judicial or administrative proceeding.*

(Authority: 20 U.S.C. 1415(m); 14 Del.C. §§3110[, 3132])

*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2016 issue of the *Register* at page 234 (20 DE Reg. 234). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Patient Pay Calculation for Division of Developmental Disabilities Services (DDDS) Waiver Recipients

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Delaware Social Services Manual (DSSM) regarding Patient Pay Calculations, specifically, to change the entity responsible for the collection of the patient pay amount for Division of Developmental Disabilities Services (DDDS) waiver recipients. 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 November 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 2016 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 Delaware Social Services Manual (DSSM) regarding Patient Pay Calculations, specifically, *to change the entity responsible for the collection of the patient pay amount for Division of Developmental Disabilities Services (DDDS) waiver recipients.*

Statutory Authority

- Social Security Act §1915(c), *Home and community-based services*
- 42 CFR §435.217, *Individuals receiving home and community-based services*

- 42 CFR §435.726(a) and (b), *Post-eligibility treatment of income of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.*

Background

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in 1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The Centers for Medicare & Medicaid Services (CMS) recognizes that the design and operational features of a waiver program will vary depending on the specific needs of the target population, the resources available to the State, service delivery system structure, State goals and objectives, and other factors. A State has the latitude to design a waiver program that is cost-effective and employs a variety of service delivery approaches, including participant direction of services.

The Delaware Division of Medicaid and Medical Assistance (DMMA), in partnership with the Division of Developmental Disabilities Services (DDDS) has operated the DDDS waiver since 1987. This waiver is targeted to individuals with intellectual disabilities (including brain injury) and autism spectrum disorder who can no longer live independently or with their family. The waiver includes an array of services and supports designed to enable the individual to live safely in the community and to respect and support their desire to work or engage in other productive activities.

Summary of Proposal*Purpose*

The purpose of this policy amendment is to change the entity responsible for the collection of the patient pay amount for Division of Developmental Disabilities Services (DDDS) waiver recipients so as to be compliant with federal regulation.

Summary of Proposed Changes

If implemented as proposed, this regulation will accomplish the following, effective January 11, 2017:

Change Delaware Social Services Manual, 20720, to list the entity responsible for the collection of the patient pay amount for Division of Developmental Disabilities Services (DDDS) waiver recipients from DDDS to the provider of Residential Habilitation.

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 Patient Pay Calculation proposed regulation. Comments were to have been received by 4:30 p.m. on December 1, 2016.

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

The proposed regulation is clarifying rules of practice and procedure by the agency and has 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:

First, many DDDS waiver participants have one provider for residential habilitation and a different provider for day programming. Under the proposal, the residential provider would be paid 100% of the patient pay amount. The attached CMS regulation (42 C.F.R. §435.726) does not literally apportion the patient pay contribution exclusively to the residential habilitation provider. It only generally refers to "home and community-based services". DMMA may wish to assess whether 100% of the patient pay contribution is required to be paid exclusively to the residential provider. If not, the proposed approach may be inequitable for day program providers.

Agency Response: While the patient pay amount is not required to be paid to any particular provider type, the payments to the waiver residential providers tend to be the largest payments and are, therefore, the logical service to which to apply the patient payment. Splitting the patient payment across multiple providers would add administrative burden for both the state and for the providers. As long as the monthly payment to the residential provider is sufficiently large to accommodate the entire patient pay amount, it will be deducted from the payment to the residential provider.

Second, SCPD assumes part of the rationale for the proposal is reduction of the administrative burden of DDDS accounting/allocating the patient pay funds. However, DDDS is the representative payee for the SSI/SSDI monthly benefits for several hundred DDDS clients. Therefore, reciting that "(i)individuals receiving Residential Habilitation...will submit their patient pay amount directly to the provider" will ostensibly still result in DDDS (as representative payee) allocating patient pay funds to providers. Moreover, if an individual defaults in payment to the provider, SCPD assumes this should affect waiver eligibility which is within the province of DDDS, not the provider. Therefore, if this change in approach is not required by federal regulation, DMMA may wish to consider retention of the current approach.

Agency Response: The Council is correct in pointing out that DDDS is the representative payee for many waiver recipients. For those individuals, DDDS will distribute the patient payment to the provider acting on behalf of the waiver member. The change in the regulation clarifies that it is the provider's responsibility to ensure that the patient pay is collected for each individual. The regulation does not prohibit DDDS from acting on behalf of the individual in its capacity as representative payee. For those individuals for whom DDDS is not the representative payee, the provider will work directly with the individual or his or her guardian or non-DDDS representative payee to ensure that they receive the patient payment amount.

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

DMMA is appreciative of these comments from the SCPD. DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding Patient Pay Calculations, specifically, to change the entity responsible for the collection of the patient pay amount for Division of Developmental Disabilities Services (DDDS) waiver recipients, is adopted and shall be final effective January 11, 2017.

Rita M. Landgraf, Secretary, DHSS
12-16-2016

***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 340 (20 DE Reg. 340). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Patient Pay Calculation for Division of Developmental Disabilities Services (DDDS) Waiver Recipients

DIVISION OF PUBLIC HEALTH

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

ORDER

4462 Public Drinking Water Systems

NATURE OF THE PROCEEDINGS:

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

On October 1, 2016 (Volume 20, Issue 4), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 Del.C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by November 11, 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

STATE OF DELAWARE REGULATIONS GOVERNING PUBLIC DRINKING WATER SYSTEMS

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

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

Program Response: All comments listed were addressed through minor technical corrections to the regulations published as proposed in the October 1, 2016, *Delaware Register*.

Comments provided by the US EPA:

The language at 4.2.2.4.1. I Mandatory Health Effects Language for Microbiological Contaminants, specifically for E.coli, contains the phrase "some of the elderly". To be consistent and as stringent as the Federal language, this phrase must read "the elderly". Similar language is also found in Appendix a to Section 6.0 and must be similarly revised.

Additional comments pertain to the regulations listed below as follows:

Lead and Copper Rule Short Term Revisions

Section 10.10.1.3: In the fourth sentence, change the phrase "switching corrosion inhibitor products (e.g., alum to ferric chloride)." to "switching corrosion inhibitor products (e.g., orthophosphate to blended phosphate)."

Phase 11-V Chemicals

- Section 9.1.3.4.2: In the second sentence, change "<3,300 persons" to ≤3,300 persons".
- Section 9.2.2.1.10.3: In the second sentence, change "<3,300 persons" to ≤3,300 persons".
- Section 9.2.2.2.12: Change the reference to section 9.2.2.3.15 to section 9.2.2.2.15, and the reference to section 9.2.2.3.11.3 to section 9.2.2.2.11.3.
- Remove the bracket(I) from the designation for Section 9.2.2.2.17.14.
- Section 9.2.2.2.17.2.2: Change "+40 percent" to "±40 percent" and change the reference to "subsection 9.2.4.17.2.1" to "subsection 9.2.2.2.17.2.1".

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed State of Delaware State of Delaware Regulations Governing Public Drinking Water Systems (4462) is adopted and shall become effective January 11, 2017, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary
12-28-2016

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

4462 Public Drinking Water Systems

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1104

Secretary's Order No.: 2016-A-0047

Date of Issuance: November 21, 2016

Effective Date of the Amendment: January 11, 2017

1104 Particulate Emissions from Fuel Burning Equipment
1105 Particulate Emissions from Industrial Process Operations
1124 Control of Volatile Organic Compound Emissions
1142 Specific Emission Control Requirements

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to the proposed Revisions to the Delaware State Implementation Plan ("SIP") to address the Start-up, Shutdown, and Malfunction ("SSM") SIP Call of the United States Environmental Protection Agency ("USEPA", "EPA") of June 12, 2015 (see 80 FR 33840). As a result of a petition to EPA by the Sierra Club, the EPA has identified thirty-six (36) states with inadequate SIPs as they relate to SSM activities. EPA has specifically identified seven (7) existing Delaware rules in the SIP Call. The seven Delaware regulations cited by EPA were 7 **DE Admin. Code** 1104, 1105, 1108, 1109, 1114, 1124, and 1142. As a result, Delaware is proposing revisions to four of these regulations, as follows, to wit: 7 **DE Admin. Code** 1104, 1105, 1124 and 1142.

While the three remaining regulations noted above (7 **DE Admin. Code** 1108, 1109, and 1114) are also part of the aforementioned SIP Call, the Department is not proposing revisions to the same at this time. 7 **DE Admin. Code** 1109 and 1114 are at this present time being removed from the SIP. With regard to 7 **DE Admin. Code** 1108, the Department had already removed the offending SSM language when that regulation was last revised in 2013. As such, the Department is formally addressing all three of these remaining regulations, but not proposing any amendments to the same as part of this present action.

It should be noted that the Department received comments prior to the public hearing of October 25, 2016 from both the Sierra Club and the EPA on the aforementioned proposed regulatory Amendments and SIP revisions. As

noted within the Department's Technical Response Memorandum ("TRM") prepared in this matter by the Division of Air Quality ("DAQ"), Delaware does not agree that its SIP is deficient. Despite this disagreement, the Department has proposed these Amendments to both its regulations and SIP as referenced above, to avoid the imposition of potential federal Clean Air Act ("CAA") sanctions. Delaware has designed the proposed revisions to (1) remove the Director's discretion provisions from the SIP that EPA believes fail to comply with the CAA, (2) comport with EPA guidance and the regulatory structure the EPA has established in other actions, and (3) maintain the elements removed from the SIP as State-only requirements, because Delaware believes the conditions are necessary to administer good air quality management policy. Further, Delaware believes that, from an environmental perspective, the proposed revisions reflect no change at all, because the proposal retains the disputed provisions as State-enforceable-only provisions. Lastly, Delaware opines that, from EPA's perspective, the removal of the offending provisions from the SIP should be considered as SIP strengthening, thus approvable and non-controversial.

The Department has the statutory basis and legal authority to act with regard to the proposed regulatory Amendments and SIP revisions as referenced above, pursuant to 7 **Del.C.** Chapter 60. The aforementioned proposed Amendments and SIP revisions were initially published in the October 1, 2016 edition of the Delaware *Register of Regulations*, and were presented and thoroughly vetted by the Department at the public hearing held on October 25, 2016. Members of the public attended that hearing, however, no comment was received by the Department at that time. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through November 9, 2016, however, none was received during the post-hearing phase of this promulgation. All proper notification and noticing requirements concerning the aforementioned regulatory Amendments and proposed SIP revisions were met by the Department in this matter.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 21, 2016 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed regulatory Amendments and SIP revisions as attached to the Report as Appendix "B".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed Amendments to the following existing Delaware regulations: (1) 7 **DE Admin. Code** 1104, "*Particulate Emissions from Fuel Burning Equipment*"; (2) 7 **DE Admin. Code** 1105, "*Particulate Emissions from Industrial Process Operations*"; (3) 7 **DE Admin. Code** 1124, "*Control of Volatile Organic Compound Emissions*"; (4) 7 **DE Admin. Code** 1142, "*Specific Emission Control Requirements*", as well as the proposed revisions to the Delaware SIP, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of both the aforementioned regulatory Amendments and SIP revisions. The promulgation of the regulatory Amendments and proposed SIP revisions referenced above will enable the Department to (1) remove the Director's discretion provisions from the SIP that EPA believes fail to comply with the CAA; (2) comport with EPA guidance and the regulatory structure the EPA has established in other actions; (3) maintain the elements removed from the SIP as State-only requirements because Delaware believes the conditions are necessary to administer good air quality management policy, as referenced above; and (4) avoid the imposition of CAA sanctions.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 1104, "*Particulate Emissions from Fuel Burning Equipment*"; 7 **DE Admin. Code** 1105, "*Particulate Emissions from Industrial Process Operations*"; 7 **DE Admin. Code** 1124, "*Control of Volatile Organic Compound Emissions*"; and 7 **DE Admin. Code** 1142, "*Specific Emission Control Requirements*", as well as the proposed revisions to the Delaware SIP, pursuant to 7 **Del.C.** Ch. 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory amendments and SIP revisions as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and SIP revisions, and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments and SIP revisions, including at the time of the public hearing held on October 25, 2016, and held the record open through close of business on November

9, 2016, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. The Department's Hearing Officer's Report, including its established record and the aforementioned recommended regulatory Amendments and proposed SIP revisions as set forth in Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of the aforementioned regulatory Amendments and proposed SIP revisions will enable the Department to (1) remove the Director's discretion provisions from the SIP that EPA believes fail to comply with the CAA; (2) comport with EPA guidance and the regulatory structure the EPA has established in other actions; (3) maintain the elements removed from the SIP as State-only requirements because Delaware believes the conditions are necessary to administer good air quality management policy, as referenced above; and (4) avoid the imposition of CAA sanctions;

6. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "B5" regarding same, as the proposed regulation Amendments are required by federal law. Moreover, the Department believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed SIP revision, as published in the October 1, 2016 Delaware *Register of Regulations*, and as set forth in Appendix "B" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after its publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final regulatory amendments to 7 **DE Admin. Code** 1104, "*Particulate Emissions from Fuel Burning Equipment*"; 7 **DE Admin. Code** 1105, "*Particulate Emissions from Industrial Process Operations*"; 7 **DE Admin. Code** 1124, "*Control of Volatile Organic Compound Emissions*"; and 7 **DE Admin. Code** 1142, "*Specific Emission Control Requirements*", as well as the proposed revisions to the Delaware SIP, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

***Please Note: Due to the size of the final regulations, they are not being published here. A copy of the regulations are available at:**

1104 Particulate Emissions from Fuel Burning Equipment
1105 Particulate Emissions from Industrial Process Operations
1124 Control of Volatile Organic Compound Emissions
1142 Specific Emission Control Requirements

DIVISION OF ENERGY AND CLIMATE

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)

Secretary's Order No.: 2016-EC-0048

Date of Issuance: December 15, 2016

Effective Date of the Amendment: January 11, 2017

2105 Evaluation, Measurement and Verification Procedures and Standards

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 29 **Del.C.** §§8058 and 8059, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to the proposed revised new regulation, to wit: 7 **DE Admin. Code** §2105: Evaluation, Measurement & Verification Procedures and Standards ("EM&V Regulations"). This promulgation seeks to finalize proposed revised new EM&V regulations as follows, to wit: (1) develop and govern the overall approach to the evaluation of energy efficiency and demand response programs in Delaware; (2) standardize evaluation approaches for the assessment of energy efficiency and demand response programs; (3) provide specific guidance to Program Administrators¹, contractors and stakeholders for the evaluation of energy efficiency and demand response programs; and (4) ensure consistency between Program Administrators' energy efficiency evaluation plans, analysis, and reporting efforts.

Senate Bill 150 (with House Amendment 2) passed on July 1, 2014, was signed by Governor Markell on August 6, 2014, and was codified as 29 **Del.C.** §8059. This legislation enables Delaware electric and gas utilities to provide cost-effective energy efficiency programs to their customers, and helps Delaware meet the requirements of the Energy Efficiency Resource Standard Act ("EERS Act", "EERS"). Said legislation also requires DNREC to develop regulations to govern the expansion of cost-effective energy efficiency programs in Delaware, pursuant to 29 **Del.C.** §8059(h)(3).

The State of Delaware's Energy Efficiency Advisory Council ("EEAC") was also created pursuant to 29 **Del.C.** §8059. This thirteen-person council is comprised of energy efficiency stakeholders from DNREC, the Delaware Sustainable Energy Utility ("SEU"), and affected energy providers and representatives from the manufacturing, commercial environmental, agricultural, low-income, and residential sectors. The EEAC assists affected energy providers in the development of energy efficiency, peak demand reduction, and emission-reducing fuel switching programs. In collaboration with the Delaware Public Advocate ("DPA") and Public Service Commission ("PSC"), the EEAC is tasked to review energy efficiency program plans to ensure that programs are deployed and energy savings targets are met through evaluation, measurement, and verification standards.

The Department oversees the competitive process for acquiring EEAC consulting services, as well as the management of day-to-day consultant efforts. The Chair of the EEAC, and any subcommittees therein, are charged to plan, implement and review the responsibilities defined within the proposed new EM&V Regulations. The EEAC reviews and recommends programs submitted by Program Administrators ("PAs"), reviews and approves the recommendations of subcommittees, and reviews and recommends portfolio-level EM&V plans and budgets. Independent Evaluation Contractors ("IECs") provide technical advice and information, develop and recommend EM&V plans and budgets, and conduct all EM&V research and tasks.

The aforementioned proposed new EM&V Regulations define the standards for EM&V procedures as administered by the EEAC. The Department believes that EM&V is a vital tool in creating consensus around the impact of current and future investments to reduce energy use and peak demand in Delaware. Results from EM&V are critical to the assessment of progress in meeting Delaware's energy efficiency and peak demand targets as outlined in the EERS, the State of Delaware's "Lead by Example" policy, and the Delaware SEU's legislated goals. The results from EM&V provide valuable feedback to improve programs during implementation (or suggest their cancellation), inform the development of new programs, and guide the allocation of resources.

The Department's Division of Energy & Climate commenced the regulatory development process with Start Action Notice 2014-08 dated October 23, 2014. The Department published its initial proposed regulation Amendments in the August 1, 2016 Delaware *Register of Regulations*. After numerous public workshops, stakeholder meetings, discussions and reviews, the Department placed legal notices in both the *News Journal* and the *Delaware State News* advertising that a public hearing would be held on August 29, 2016, to provide an opportunity for the public to comment on the draft regulation.

Members of the public attended the August 29, 2016 hearing, and comment was received by the Department with regard to the proposed measures referenced above, both at the time of the public hearing and during the post-hearing phase of this promulgation. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

The hearing record formally closed with regard to public comment at close of business on September 13, 2016. At that time, all comments received from the public (both at the time of the hearing and during the post-hearing process) were thoroughly reviewed by responsible Department staff, and a formal Technical Response

Memorandum was prepared in response to the same by the Department's Division of Energy & Climate ("Division TRM"), and was incorporated into the Hearing Officer's Report as Appendix "A".

This Division TRM, dated October 12, 2016, summarizes the hearing record compiled in this matter, documents the exhaustive review performed by the Department with regard to the comment received regarding this proposed regulatory promulgation, and offers the Department's response to all comments received throughout this long regulatory process. Of note is the fact that, in response to some of the comment received, the Department has made changes to the proposed new regulation. These changes do not alter the meaning or function of the proposed regulation, but rather provide additional clarity and greater understanding for the regulated community. Thus, since these changes are not construed to be substantive in nature, no additional re-publication or noticing of this proposed regulation is necessary at this time.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated December 2, 2016 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed *revised* new Regulation as attached to the Report as Appendix "B".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed *revised* new regulation, to wit: 7 **DE Admin. Code** §2105: *Evaluation, Measurement & Verification Procedures and Standards*, is well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory revised new regulation be promulgated as final. Further, I find that the Department's experts in the Division of Energy and Climate fully developed the record to support adoption of this *revised* new regulation.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* new regulation, pursuant to 29 **Del.C.** §8059(h);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed *revised* new regulation as final, as shown in Appendix "B";
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on August 29, 2016, and held the record open through close of business on September 13, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on this proposed new regulation before making any final decision;
4. While the Department made changes to the initially proposed regulatory language, as set forth in the above-referenced Division TRM of October 12, 2016, such changes do not alter the meaning or function of the proposed new regulation, and therefore no additional re-publication or noticing of this proposed regulation is necessitated at this time;
5. The Department's Hearing Officer's Report, including its established record and the recommended proposed revised new regulation as set forth in Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;
6. The adoption of the proposed revised new regulation, 7 **DE Admin. Code** §2105: *Evaluation, Measurement & Verification Procedures and Standards*, will allow Delaware to (1) develop and govern the overall approach to the evaluation of energy efficiency and demand response programs in Delaware; (2) standardize evaluation approaches for the assessment of energy efficiency and demand response programs; (3) provide specific guidance to Program Administrators, contractors and stakeholders for the evaluation of energy efficiency and demand response programs; and (4) ensure consistency between Program Administrators' energy efficiency evaluation plans, analysis, and reporting efforts.
7. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
8. The Department's proposed *revised* new regulation, as originally published in the August 1, 2016 Delaware *Register of Regulations*, and as *revised and* set forth in Appendix "B" of the aforementioned Report, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final *revised* new regulation, which shall go into effect ten days after their

publication in the next available issue of the Delaware *Register of Regulations*; and

9. The Department shall submit this Order approving as final the proposed revised new regulation, 7 DE **Admin. Code** §2105: *Evaluation, Measurement & Verification Procedures and Standards*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

¹"Program Administrator (PA)" is a defined term, both statutorily and within this new proposed regulation, as follows: "...any effected energy providers, as defined by 29 Del.C. §8059(h) and any other entities who deliver energy efficiency programs and want the energy savings generated to count toward the statewide energy reductions goals."

2105 Regulations Governing Evaluation, Measurement, and Verification Procedures and Standards

1.0 Authority

These regulations are promulgated pursuant to 29 Del.C. §8059(h). [Affected energy providers that are not regulated by the Commission may elect to develop, implement and fund programs for energy efficiency and peak demand reduction recommended for approval by the boards of directors for rural electric cooperative or the pertinent local regulatory authorities for municipal electric companies.]

(Break in Continuity of Sections)

3.0 Definitions

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

(Break in Continuity Within Section)

"Deemed Savings" means a measurement of energy savings or demand savings for a single unit of an installed energy efficiency measure or adopted efficiency practice that (a) is determined *ex ante* and applied to all such measures without further measurement or verification, and (b) has been developed from data sources and analytical methods that are widely considered acceptable for the measure and purpose. ~~Deemed savings values are agreed upon by the EEAC in advance of program implementation. If evaluation results indicate a need to change a deemed savings value, the new value will only be applied prospectively to measures not yet installed. Individual parameters or calculation methods can also be deemed.~~

(Break in Continuity Within Section)

"Program Administrator (PA)" means ~~investor owned or municipal utilities and other entities administering any energy efficiency program governed by 29 Del.C. §8059(h)~~, any effected energy providers, as defined by 29 Del.C. §8059(h) and any other entities who deliver energy efficiency programs and want the energy savings generated to count towards the statewide energy reduction goals.]

(Break in Continuity of Sections)

6.0 Evaluation Requirements

(Break in Continuity Within Section)

6.2 Benefit-Cost Analysis

6.2.1 Energy Efficiency [programs and] portfolios in Delaware must meet the benefit-cost requirements outlined in these regulations. PAs shall develop program and portfolio plans to achieve **[overall]** positive net benefits based on the cost-effectiveness test described below. PAs are responsible for providing prospective planned cost-effectiveness test results to EEAC for review at the program and portfolio level. In addition, the IECs and PAs must provide the EEAC with retrospective cost-effectiveness test results at the program and portfolio level. Portfolios shall be developed to

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maximize long term cost-effectiveness and consider investing in the activities and resources needed to establish the groundwork for programs in the future.

(Break in Continuity Within Section)

6.2.5 EEAC Responsibilities for Benefit-Cost Analysis

(Break in Continuity Within Section)

6.2.5.4 Coordinate with the PSC and the Public Advocate to provide advice on benefit-cost metrics, metric values, and calculation approaches.]

~~6.2.6 DNREC Responsibilities for Benefit-Cost Analysis~~

~~6.2.6.1 Coordinate with the PSC and the Public Advocate to provide advice on benefit cost metrics, metric values, and calculation approaches.]~~

6.2.~~[76]~~ Program Administrator Responsibility for Benefit-Cost Analysis

6.2.~~[76]~~.1 Develop estimates of avoided costs and line losses, for review, discussion and approval by the EEAC.

6.2.~~[76]~~.2 Perform benefit-cost analysis for energy efficiency measures, programs and portfolios for planning purposes using Delaware TRM values and best available information as appropriate.

6.2.~~[76]~~.3 Provide IECs with appropriate input data and ensure that the IECs perform required benefit-cost analyses based on ex-post evaluation results and submit timely reports to the EEAC.

6.2.~~[76]~~.4 Report planned and ex-post benefit-cost calculation results to EEAC.

6.2.~~[76]~~.5 Provide data and benefit-cost analyses models to the EEAC for review, if requested

(Break in Continuity Within Section)

7.0 Evaluation Budgeting and Budget Management

(Break in Continuity Within Section)

7.2 The EEAC shall consider the following when approving the proposed EM&V Plans and when recommending EM&V activities:

(Break in Continuity Within Section)

7.2.4 Field measurement and verification efforts should focus on the ~~[components programs]~~ of the portfolio that have the greatest risk of lowering the reliability of the total impact estimates.

(Break in Continuity of Sections)

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2016 issue of the *Register* at page 95 (20 DE Reg. 95). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

2105 Evaluation, Measurement and Verification Procedures and Standards

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

3300 BOARD OF VETERINARY MEDICINE

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

24 DE Admin. Code 3300

ORDER

3300 Board of Veterinary Medicine

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 11, 2016 at a scheduled meeting of the Delaware Board of Veterinary Medicine ("the Board") to

receive comments regarding the Board's proposed revisions to its rules and regulations.

The Board proposes a new Section 2.0 to address euthanasia of animals held in shelter, as set forth in 16 **Del.C.** §3004F. Other Sections are revised accordingly to accommodate the specific legal requirements pertaining to shelter animals. The Board also proposes requiring proof of continuing education hours for individuals who do not apply for licensure within the two-year period following examination. In addition, various Sections are amended to clarify the requirements for license renewal, reinstatement and inactive status. Typographical errors are corrected and the rules and regulations are re-numbered to accommodate the new Section 2.0.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 20, Issue 3 on September 1, 2016. Notice of the October 11, 2016 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. The public hearing was held on October 11, 2016. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was October 26, 2016, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on December 13, 2016.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

There were no public comments provided to the Board during the written public comment periods or at the public hearing.

Findings of Fact and Conclusions

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 rules and regulations. There were no public comments provided to the Board during the written public comment periods, or at the public hearing.

During deliberations, the Board noted two technical errors in the proposed revisions. Specifically, in subsections 10.7 and 15.7, the references to "accredited" need to be changed to "approved." As set forth in subsections 10.6 and 15.6, the Board approves, rather than accredits, continuing education programs and sponsors. Inclusion of the term "accredited" was due to administrative oversight.

Pursuant to the Administrative Procedure Act, 29 **Del.C.** §10118(c), if an administrative agency makes a non-substantive change to proposed regulations, the agency shall not be required to repropose the regulation change.

As set forth in 24 **Del.C.** §3306(a)(1), the Board has the statutory authority to promulgate rules and regulations. Having received no public comments, the Board finds no reason to make substantive changes to the rules and regulations as proposed. The Board determines that the non-substantive changes to subsections 10.7 and 15.7 noted herein are necessary in the interests of clarity. The Board approves these non-substantive changes which are included in the final rules and regulations attached hereto as Exhibit A.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations, with the noted non-substantive changes, to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations is attached hereto as Exhibit A.

IT IS SO ORDERED this 13th day of December 2016 by the Delaware Board of Veterinary Medicine.

Erin Whaley, D.V.M., President

Roberta Jackson, V.M.D. (absent)

Joanna Miller, L.V.T., Vice-President

Ann Sellers

Patricia Ennis

Craig Stonesifer, D.V.M.

Lisa Garrison, L.V.T. (absent)

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

910.0 Continuing Education for Veterinarians
(24 Del.C. §3309(b))

(Break in Continuity Within Section)

910.7 The Board may at any time re-evaluate an [~~accredited~~ approved] course or sponsor and withdraw future approval of a previously [~~accredited~~ approved] continuing education course or sponsor.

(Break in Continuity of Sections)

145.0 Continuing Education for Veterinary Technicians
(24 Del.C. §3309(b))

(Break in Continuity Within Section)

145.7 The Board may at any time re-evaluate an [~~accredited~~ approved] course or sponsor and withdraw future approval of a previously [~~accredited~~ approved] continuing education course or sponsor.

*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2016 issue of the *Register* at page 168 (20 DE Reg. 168). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

3300 Board of Veterinary Medicine

DIVISION OF PROFESSIONAL REGULATION

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

ORDER

Uniform Controlled Substances Act Regulations

NATURE OF THE PROCEEDINGS

The Delaware Secretary of State ("Secretary"), through the Controlled Substance Advisory Committee ("Committee"), initiated proceedings to revise the Uniform Controlled Substance Act rules and regulations to add a new Section 9.0 pertaining to the safe prescribing of opioid analgesics. The proceedings to adopt regulations were initiated pursuant to 29 Del.C. §10115 and the authority as prescribed by 16 Del.C. §4731(a).

On July 1, 2015, proposed revisions to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 19, Issue 1. A public hearing was held on July 29, 2015 before the Committee. At its meeting on September 23, 2015, the Committee deliberated on the evidence presented and recommended certain revisions to the Secretary. The Secretary considered both the evidence presented and the Committee's recommendations.

Based on that review, the Secretary struck the version of the rules and regulations published on July 1, 2015. On May 1, 2016, revised rules and regulations were published in the *Delaware Register of Regulations*, Volume 19, Issue 11. The Secretary solicited written comments from the public regarding the proposed rules and regulations allowing the period of time for such submissions to remain open for the 30 days mandated by 29 Del.C. §10118(a).

The Secretary received thirty-two written submissions. Based on those written comments, the rules and regulations were revised further. The current proposed regulations ("Proposed Regulations") were published in the *Register of Regulations* on July 1, 2016, Volume 20, Issue 1. The Secretary solicited written comments from the public regarding the Proposed Regulations allowing the period of time for such submissions to remain open for the 30 days mandated by 29 Del.C. §10118(a).

Summary of the Evidence

The following written comments were submitted in response to the Proposed Regulations published on July 1, 2016:

Exhibit 1: July 29, 2016 letter from Katie Duensing, J.D., Assistant Director for Legislative and Regulatory Affairs, State Pain Policy Advocacy Network, Academy of Integrative Pain Management.

Exhibit 2: August 1, 2016 letter from Dorothy Moore, M.D., President, Medical Society of Delaware.

Secretary of State's Findings and Conclusions

Pursuant to 16 **Del.C.** §4731(a), the Secretary has the statutory authority to promulgate rules and regulations relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this State. The Secretary has reviewed and considered the written comments submitted in response to the Proposed Regulations.

In Exhibit 1, Ms. Duensing reiterated some of the concerns set forth in her May 31, 2016 letter, which was submitted in response to proposed rules and regulations published May 1, 2016. Specifically, Ms. Duensing commented that subsection 9.7.3's requirement of fluid drug screens every six months could be cost prohibitive for many patients, including Medicaid beneficiaries. Ms. Duensing stated that Delaware Medicaid limits the coverage of urine screens to situations where there is an acute change in the patient's physical or mental status. Ms. Duensing suggested aligning Section 9.7.3 with Section 9.6.2, allowing for practitioner discretion, or aligning Section 9.7.3 with the Medicaid rules. Ms. Duensing further suggested amending Section 9.7.3 to include screening options other than fluid drug screens, such as behavioral assessments. Ms. Duensing added that qualitative point-of-care immunoassay testing that can be conducted in a clinical setting is less expensive than lab testing but also less accurate.

Section 9.0 does not specify a particular method of drug screening and does not require that the screening be done through lab testing. In short, the Proposed Regulations permit the use of the type of home drug screening kits which Ms. Duensing described as less expensive but less accurate. In-office drug screening can be used as an assessment tool to be considered in conjunction with other methods of patient assessment, such as the behavioral assessments suggested by Ms. Duensing. However, in light of the urgency of the drug crisis that the Proposed Regulations are designed to address, an absolute requirement of a fluid drug screen is necessary.

In Exhibit 2, Dr. Moore highlighted once again some of the concerns set forth in her May 31, 2016 letter submitted in response to the proposed rules and regulations published on May 1, 2016. Dr. Moore stated that regulations should be just one tactic in a multi-faceted approach to address the problem of prescription abuse and diversion. She added that the State and the medical community can better affect behavioral change through specialty-specific prescribing guidelines as opposed to "reflexively" enacted, "one-size-fits-all," restrictive regulations.

The drafting and multiple re-draftings of the Proposed Regulations have been carefully done with numerous early opportunities for stakeholders to be involved in this process. Public comment has been taken into account and the Proposed Regulations have been revised and re-published accordingly. There is no question that Delaware, and the United States, are in a period of a critical prescription and illicit drug problem. The Proposed Regulations have been promulgated as one important part of a multi-faceted approach to the current crisis. The other elements needed to combat the drug abuse and diversion problem have been discussed over the past 12 - 18 months in various public forums, especially during meetings of the Delaware Prescription Drug Action Committee ("PDAC"), which is co-chaired by a member of the MSD.

With respect to more specific comments, Dr. Moore requested a definition of "7-day episode" in subsection 9.6 to address questions and confusion as to when the 7 days is initiated and how it will be implemented. This term is not referenced in the Proposed Regulation. There is however reference to "seven day supply":

9.6 Subsequent prescriptions. 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....

Proposed subsection 9.6 clearly describes what will trigger the requirement of an "appropriate evaluation."

Dr. Moore also asked that the "physical examination" requirement in subsection 9.6.3 be changed to "periodic" physical examination on the basis that not every re-fill will require a need for a complete physical examination. As set forth in proposed subsection 9.6.3 below, the requisites of the examination are not specified beyond the required documented discussion about opioid analgesics.

9.6.3 Conduct a physical examination which must include a documented discussion between the practitioner and patient to: Elicit relevant history, explain the risks and benefits of opioid analgesics and possible alternatives to the use of opioid analgesics, identify other treatments tried or considered, and determine whether opioid analgesics are contra-indicated:

Given the risks posed by opioid analgesics, a limited evaluation of this nature is appropriate before issuing another prescription.

Dr. Moore further requested that emergency room physicians be exempt from Section 9.0's requirements. In support of this request, Dr. Moore stated that emergency room physicians already limit themselves to 72 hours of prescriptions and query the PMP for "patients of concern." If emergency room physicians prescribe no more than 72 hours of prescriptions, then the requirements of Section 9.0 will not be triggered.

Dr. Moore also addressed concerns that have already been addressed. In the May 31, 2016 correspondence, the MSD asked for a change from "urine" drug screen to "fluid" drug screen to allow for future advances in medical technology. This request was accommodated in the Proposed Regulations published July 1, 2016. Now, Dr. Moore has asked that "fluid" be changed to "urine or fluid." The term "fluid" would certainly encompass urine and no further revision is required. Dr. Moore has once again objected to subsection 9.7.8 as not feasible based on the supply and demand of physicians with subspecialties in addiction. As a threshold matter, referral to a specialist is at the practitioner's discretion. Further, in order to accommodate the original concerns, subsection 9.7.8 was amended to add "addiction specialist."

Finally, in response to Dr. Moore's request that the State provide standardized forms for Treatment Agreements and Informed Consent, PDAC will be provided with numerous examples used in other states for review and comment.

Having addressed these most recent comments, the Secretary finds that the Proposed Regulations published July 1, 2016 in the *Register of Regulations* serve to address the state-wide health crisis caused by the abuse and diversion of opioid analgesics by setting forth minimum requirements for the treatment of both acute and chronic pain. As promulgated, Section 9.0 will enable practitioners to meet the goal of addressing drug overdose, abuse and diversion while ensuring patient access to safe and effective pain care. The Secretary concludes that no further revision is needed and approves the Proposed Regulations as published July 1, 2016.

Decision and Effective Date

The Secretary hereby adopts the Proposed Regulations to be effective April 1, 2017.

Text and Citation

The text of the revised rules and regulations is attached hereto as Exhibit A.

IT IS SO ORDERED this 15th day of December, 2016.

SECRETARY OF STATE

Jeffrey W. Bullock

*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 31 (20 DE Reg. 31). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

Uniform Controlled Substances Act Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)

Secretary's Order No.: 2016-A-0047

Final Revisions to Delaware's State Implementation Plan ("SIP") to address the Start-up, Shutdown, and Malfunction SIP Call of the United States Environmental Protection Agency (U.S. EPA)

Date of Issuance: November 21, 2016

Effective Date of the Amendment: January 11, 2017

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to the proposed Revisions to the Delaware State Implementation Plan ("SIP") to address the Start-up, Shutdown, and Malfunction ("SSM") SIP Call of the United States Environmental Protection Agency ("USEPA", "EPA") of June 12, 2015 (see 80 FR 33840). As a result of a petition to EPA by the Sierra Club, the EPA has identified thirty-six (36) states with inadequate SIPs as they relate to SSM activities. EPA has specifically identified seven (7) existing Delaware rules in the SIP Call. The seven Delaware regulations cited by EPA were 7 DE Admin. Code 1104, 1105, 1108, 1109, 1114, 1124, and 1142. As a result, Delaware is proposing revisions to four of these regulations, as follows, to wit: 7 DE Admin. Code 1104, 1105, 1124 and 1142.

While the three remaining regulations noted above (7 DE Admin. Code 1108, 1109, and 1114) are also part of the aforementioned SIP Call, the Department is not proposing revisions to the same at this time. 7 DE Admin. Code 1109 and 1114 are at this present time being removed from the SIP. With regard to 7 DE Admin. Code 1108, the Department had already removed the offending SSM language when that regulation was last revised in 2013. As such, the Department is formally addressing all three of these remaining regulations, but not proposing any amendments to the same as part of this present action.

It should be noted that the Department received comments prior to the public hearing of October 25, 2016 from both the Sierra Club and the EPA on the aforementioned proposed regulatory Amendments and SIP revisions. As noted within the Department's Technical Response Memorandum ("TRM") prepared in this matter by the Division of Air Quality ("DAQ"), Delaware does not agree that its SIP is deficient. Despite this disagreement, the Department has proposed these Amendments to both its regulations and SIP as referenced above, to avoid the imposition of potential federal Clean Air Act ("CAA") sanctions. Delaware has designed the proposed revisions to (1) remove the Director's discretion provisions from the SIP that EPA believes fail to comply with the CAA, (2) comport with EPA guidance and the regulatory structure the EPA has established in other actions, and (3) maintain the elements removed from the SIP as State-only requirements, because Delaware believes the conditions are necessary to administer good air quality management policy. Further, Delaware believes that, from an environmental perspective, the proposed revisions reflect no change at all, because the proposal retains the disputed provisions as State-enforceable-only provisions. Lastly, Delaware opines that, from EPA's perspective, the removal of the offending provisions from the SIP should be considered as SIP strengthening, thus approvable and non-controversial.

The Department has the statutory basis and legal authority to act with regard to the proposed regulatory Amendments and SIP revisions as referenced above, pursuant to 7 Del.C. Chapter 60. The aforementioned proposed Amendments and SIP revisions were initially published in the October 1, 2016 edition of the Delaware *Register of Regulations*, and were presented and thoroughly vetted by the Department at the public hearing held on October 25, 2016. Members of the public attended that hearing, however, no comment was received by the Department at that time. Consistent with 29 Del.C. §10118(a), the public hearing record remained open for public comment through November 9, 2016, however, none was received during the post-hearing phase of this

promulgation. All proper notification and noticing requirements concerning the aforementioned regulatory Amendments and proposed SIP revisions were met by the Department in this matter.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 21, 2016 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed regulatory Amendments and SIP revisions as attached to the Report as Appendix "B".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed Amendments to the following existing Delaware regulations: (1) **7 DE Admin. Code 1104**, "Particulate Emissions from Fuel Burning Equipment"; (2) **7 DE Admin. Code 1105**, "Particulate Emissions from Industrial Process Operations"; (3) **7 DE Admin. Code 1124**, "Control of Volatile Organic Compound Emissions"; (4) **7 DE Admin. Code 1142**, "Specific Emission Control Requirements", as well as the proposed revisions to the Delaware SIP, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of both the aforementioned regulatory Amendments and SIP revisions. The promulgation of the regulatory Amendments and proposed SIP revisions referenced above will enable the Department to (1) remove the Director's discretion provisions from the SIP that EPA believes fail to comply with the CAA; (2) comport with EPA guidance and the regulatory structure the EPA has established in other actions; (3) maintain the elements removed from the SIP as State-only requirements because Delaware believes the conditions are necessary to administer good air quality management policy, as referenced above; and (4) avoid the imposition of CAA sanctions.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to **7 DE Admin. Code 1104**, "Particulate Emissions from Fuel Burning Equipment"; **7 DE Admin. Code 1105**, "Particulate Emissions from Industrial Process Operations"; **7 DE Admin. Code 1124**, "Control of Volatile Organic Compound Emissions"; and **7 DE Admin. Code 1142**, "Specific Emission Control Requirements", as well as the proposed revisions to the Delaware SIP, pursuant to **7 Del.C. Ch. 60**;

2. The Department has jurisdiction under its statutory authority, pursuant to **7 Del.C. Ch. 60**, to issue an Order adopting these proposed regulatory amendments and SIP revisions as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and SIP revisions, and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments and SIP revisions, including at the time of the public hearing held on October 25, 2016, and held the record open through close of business on November 9, 2016, consistent with **29 Del.C. §10118(a)**, in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. The Department's Hearing Officer's Report, including its established record and the aforementioned recommended regulatory Amendments and proposed SIP revisions as set forth in Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of the aforementioned regulatory Amendments and proposed SIP revisions will enable the Department to (1) remove the Director's discretion provisions from the SIP that EPA believes fail to comply with the CAA; (2) comport with EPA guidance and the regulatory structure the EPA has established in other actions; (3) maintain the elements removed from the SIP as State-only requirements because Delaware believes the conditions are necessary to administer good air quality management policy, as referenced above; and (4) avoid the imposition of CAA sanctions;

6. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with **29 Del.C. Ch. 104** (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "B5" regarding same, as the proposed regulation Amendments are required by federal law. Moreover, the Department believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed SIP revision, as published in the October 1, 2016 Delaware *Register of Regulations*, and as set forth in Appendix "B" as noted above, is adequately supported, is not arbitrary or

capricious, and is consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after its publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final regulatory amendments to 7 **DE Admin. Code** 1104, "Particulate Emissions from Fuel Burning Equipment"; 7 **DE Admin. Code** 1105, "Particulate Emissions from Industrial Process Operations"; 7 **DE Admin. Code** 1124, "Control of Volatile Organic Compound Emissions"; and 7 **DE Admin. Code** 1142, "Specific Emission Control Requirements", as well as the proposed revisions to the Delaware SIP, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small
Secretary

Proposal

Delaware
State Implementation Plan Revision

Revision to Satisfy EPA's State Implementation Plan (SIP) Call Related to Air Emissions During Equipment Start-up and Shutdown

Submitted To
U.S. Environmental Protection Agency

Submitted By
Delaware Department of Natural Resources and Environmental Control

September 15, 2016

1. Introduction

On June 12, 2015 the EPA, identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions (80 FR 33840). Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. The seven Delaware regulations are: 7 **DE Admin. Code** 1104, 1105, 1108, 1109, 1114, 1124 and 1142.

Delaware does not agree with the EPA for the reasons cited in the comments Delaware made to the EPA docket. Despite this disagreement Delaware is revising the Delaware's SIP to comport with the EPA SIP Call to ensure the State is not subject to punitive CAA sanctions. This document details the revisions Delaware is making to the SIP, and demonstrates that these revisions comport with the EPA's interpretation of the CAA and are consistent with the EPA's approach for attainment and maintenance of all National Ambient Air Quality Standards (NAAQS).

2. SIP Revision and Impact Analysis

2.1. 7 DE Admin. Code 1104, Particulate Emissions from Fuel Burning Equipment

2.1.1. Delaware requests that EPA revise 7 **DE Admin. Code** 1104, Particulate Emissions from Fuel Burning Equipment, in the Delaware SIP as follows¹:

4.5 ~~The provisions of this Regulation shall not apply to the start up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 **DE Admin. Code** 1102.~~

1. Along with the new provision (i.e., 2.2) the two provisions that are removed from the SIP (i.e., 1.5 and 2.1) will be retained and enforced by Delaware through the State regulation.

~~2.1 ReservedNo person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum two hour average, from any fuel burning equipment.~~

~~2.2 No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum 30-day rolling average, from any fuel burning equipment.~~

2.1.2. Impact on attainment and maintenance of NAAQS. This revision provides the opportunity for any subject source to compensate for higher emission rates during startup or shutdown events by operating at corresponding lower rates during normal operations, so long as continuous compliance is demonstrated on a 30-day rolling average basis. This revision does not change the existing continuous emission limit in the SIP, nor will it result in any increase in emissions on a tons per year basis.

2.2. **7 DE Admin. Code 1105**, Particulate Emissions from Industrial Process Operations

2.1.1. Delaware requests that EPA revise **7 DE Admin. Code 1105** Particulate Emissions from Industrial Process Operations, in the Delaware SIP as follows²:

~~4.7 The provisions of this Regulation shall not apply to the start up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of **7 DE Admin. Code 1102**.~~

~~2.1 ReservedNo person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot.~~

~~2.2 No person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot on a 30-day rolling average basis.~~

2.1.2. Impact on attainment and maintenance of NAAQS. This revision provides the opportunity for any subject source to compensate for higher emission rates during startup or shutdown events by operating at corresponding lower rates during normal operations, so long as continuous compliance is demonstrated on a 30-day rolling average basis. This revision does not change the existing continuous emission limit in the SIP, nor will it result in any increase in emissions on a tons per year basis.

2.3. **7 DE Admin. Code 1108**, Sulfur Dioxide Emissions from Fuel Burning Equipment. For **7 DE Admin. Code 1108** the provision EPA identified as deficient (i.e., 1.2) was removed from the Regulation under Secretary's Order (2013-A-0021), which was signed on 6/11/2013 and submitted to the EPA as a SIP revision. Since this SIP Call only deals with 1.2 of 1108, and since the revised regulation which does not include 1.2 was submitted to the EPA as a SIP revision, no further action is required under this SIP Call by Delaware relative to **7 DE Admin. Code 1108**.

Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision comports with the EPA's interpretation of the CAA and is consistent with the EPA's approach for attainment and maintenance of all National Ambient Air Quality Standards (NAAQS).

2.4. **7 DE Admin. Code 1109**, Emissions of Sulfur Compounds from Industrial Operations. For **7 DE Admin. Code 1109** Delaware requests that the EPA remove the entire regulation from the Delaware SIP³.

Delaware believes existing federal requirements like, for example, New Source Performance Standards are adequate to ensure attainment and maintenance of sulfur related NAAQS in Delaware. Delaware believes that removal of this regulation from the SIP will not result in any increase in emissions on a ton per year basis, and that this revision comports with the EPA's interpretation of the CAA and is consistent with the EPA's approach for attainment and maintenance of all NAAQS.

2.5. **7 DE Admin. Code 1114**, Visible Emissions. For **7 DE Admin. Code 1114** Delaware requests that the EPA remove the entire regulation from the Delaware SIP⁴.

Delaware believes existing federal requirements like, for example, New Source Performance Standards regulate visible emissions, plus other Delaware SIP regulations that regulate fine particulate matter and fine particulate matter precursors (e.g., 1108 and 1146) are adequate to ensure attainment and maintenance of any particulate related NAAQS in Delaware. Further, there is no quantifiable relationship between visibility emissions

2. Along with the new provision (i.e., 2.2) the two provisions that are removed from the SIP (i.e., 1.7 and 2.1) will be retained and enforced by Delaware though the State regulation.
3. The regulation will be retained and enforced by Delaware.
4. The regulation will be retained and enforced by Delaware.

and fine particulate matter emissions. Delaware believes that removal of this regulation from the SIP will not result in any increase in emissions on a ton per year basis, and that this revision comports with the the EPA's interpretation of CAA and is consistent with the EPA's approach for attainment and maintenance of all NAAQS.

2.6.7 **DE Admin. Code** 1124, Control of Volatile Organic Compound Emissions. For 7 **DE Admin. Code** 1124 Delaware requests that the EPA remove the provision EPA identified as deficient (1.4) from the Delaware SIP as follows:

1.4 ~~Reserved~~The provisions of this regulation shall not apply to the startup and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during startup and shutdown are governed by an Operating Permit issued pursuant to the provisions of 2.0 of 7 **DE Admin. Code** 1102.

Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision should be considered as strengthening the SIP and one which comports with the EPA's interpretation of the CAA and is consistent with EPA's approach for attainment and maintenance of all NAAQS.

2.7.7 **DE Admin. Code** 1142, Section 2.0, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries. For 7 **DE Admin. Code** 1142 Delaware requests that the EPA remove the provision EPA identified as deficient (2.3.1.6) from the Delaware SIP as follows:

2.3.1.6 ~~Reserved~~The standards set out in 2.3 of this regulation shall not apply to the start up and shutdown of equipment when emissions from such equipment during a start up and shutdown are addressed in an operation permit issued pursuant to the provisions of 7 **DE Admin. Code** 1102.

Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision should be considered as strengthening the SIP and one which comports with the CAA and is consistent with EPA's approach for attainment and maintenance of all NAAQS.

3. Conclusion

Based on the analysis in the previous section of this document, Delaware concludes that this regulatory revision including the identified SIP revision will not have any adverse impact on Delaware's overall efforts for attaining and maintaining all NAAQS. Therefore, this SIP revision and its analysis meet the anti-backsliding provision of CAA Sec. 110(1).

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID DISPENSERS

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 **Del.C.** §3706(a)(1))
24 **DE Admin. Code** 3700

3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

Pursuant to 24 **Del.C.** §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board") proposes revisions to its rules and regulations.

On October 1, 2015, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 4. Specifically, the Board's proposed amendments struck the current Section 9.2.1.4, which addresses practice by telecommunications, and added a new Section 10.0, pertaining to telepractice. The new Section 10.0 sets forth standards and requirements in order to allow licensees to engage in telepractice while protecting the public.

A public hearing was held on November 17, 2015 before the Board, and the public comment period for written comment was held open for another 15 days. The Board deliberated on the evidence submitted at its meeting on January 19, 2016. Based on those deliberations, the Board made substantive revisions to the proposed rules and regulations. Therefore, the Board strikes the rules and regulations as proposed in the October 1, 2015 *Register of*

Regulations and proposes revised rules and regulations attached hereto as Exhibit A.

A public hearing was scheduled for November 15, 2016 but has been rescheduled for February 21, 2017 at 2:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be March 8, 2017, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

Nature of the Proceedings

A public hearing was held before the Board on November 17, 2015 in the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public were invited to offer comments on the proposed amendments to the rules and regulations. Members of the public were also invited to submit written comments. In accordance with 29 **Del.C.** §10118(a), the written public comment period was held open until December 2, 2015, which was 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on January 19, 2016.

Summary of the Evidence

At the November 17, 2015 hearing, the following exhibits were made part of the record:

Exhibit 1: *News Journal* Affidavit of Publication.

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

Exhibit 3: October 22, 2015 letter from Robert Overmiller of the Governor's Advisory Council for Exceptional Citizens.

Mr. Overmiller requested a limited exception to Section 10.2.1.2 to permit occasional telepractice sessions with a regular client in the jurisdiction where the client is located.

Exhibit 4: October 28, 2015 letter from Daniese McMullin-Powell of the State Council for Persons with Disabilities.

Ms. McMullin-Powell shared the concerns set forth in Exhibit 3.

Exhibit 5: November 6, 2015 letter from Judith Page, of the American Speech Language Hearing Association.

Ms. Page expressed concern regarding the requirement that the client be located in Delaware. She also commented that Delaware licensees, who may be recognized in their field, would be limited to providing services to clients located in Delaware. Ms. Page made a number of suggestions for inclusion in the proposed rules and regulation: Telepractice services must be equivalent to face-to-face services; licensees must comply with professional standards and must have the knowledge and skill to deliver services by telepractice; the use of technology must be appropriate for each client; include calibration of instruments; assess client's candidacy; provide written notification of the right to refuse services by telepractice; and maintain the confidentiality of records;

Exhibit 6: Undated written comments from the Delaware Speech Hearing Association.

The comments include a request that Section 10.2.1.2 be amended to reflect the client's legal status as a Delaware resident and to include a consultation exemption.

Exhibit 7: November 17, 2015 email and written comments from Illene Courtright.

Ms. Courtright objected to the geographic borders requirement and suggested using instead the legal resident status of the client. She requested an exemption to this requirement for episodic services or informal consultation. Ms. Courtright commented that the informed consent requirement should include the risks and limitations of telepractice.

In addition, testimony was presented, as follows:

Leia Heckman, from the Delaware Speech Hearing Association, addressed the Board regarding her concerns with the proposed regulations. Specifically, Ms. Heckman noted that services provided by telepractice must be equivalent to services face-to-face. Ms. Heckman objected to the requirement that the client must be located in the State of Delaware. This proposed language would limit services for clients who leave the state. Ms.

Heckman suggested inclusion of ASHA's model language pertaining to informed consent. Ms. Heckman advised the Board that DSHA supports ASHA's model language, and requested that the Board consider adopting the consultation exemption.

Christine Cook, a Delaware speech/language pathologist, addressed the Board regarding her concerns pertaining to proposed Section 10.2.4.2, which requires that consultations be conducted face-to-face. Ms. Cook stated that the Board had advocated for an increase in access to services. This section will limit access. Clients should be able to consult with out of state providers by telepractice. Ms. Cook requested the elimination of Section 10.2.4.2.

Liesel Looney, an audiologist from the Nemours Children's Hospital, addressed the Board with her concerns pertaining to proposed Section 10.2.4.2. Ms. Looney reported that there is only one audiologist in Kent and Sussex County who is conducting follow-ups for newborns who fail hearing screenings. Due to the shortage, children are not getting subsequent follow-up appointments. Section 10.2.4.2 would prevent the provision of services by telepractice to this population. There is a need for providing remote services to families who live far from the hospital and lack transportation. Children in underserved areas aren't getting infant hearing screenings and timely intervention. The professional should be responsible for assessing appropriate care.

During the 15-day window for submission of additional written comments, as required by 29 Del.C. §10118(a), the Board received the following documents, which were marked as Exhibits on January 19, 2016:

Exhibit 8: December 1, 2015 letter from Michael Kurliand of Nemours, Alfred I. DuPont Hospital for Children.

Mr. Kurliand objected to inclusion of Sections 10.2.4.2 and Section 10.2.4.1. These sections require face-to-face meetings for initial evaluation, re-evaluations and scheduled discharges. Mr. Kurliand stated that these Sections will dramatically limit access to care, particularly in underserved southern Delaware. Mr. Kurliand also objected to Section 10.2.1.2, which requires clients to be located within the borders of Delaware. Mr. Kurliand suggested that the proposed rules and regulations be amended to permit a Delaware licensee to follow established patients that are not physically in the state of Delaware.

Exhibit 9: December 1, 2015 letter from Yell Inverso of Nemours, Alfred I. DuPont Hospital for Children.

Ms. Inverso objected to the face-to-face requirements in Section 10.2.4.2. Ms. Inverso stated that this language will limit access to care for many patients, including patients in southern Delaware. Ms. Inverso commented on the impact on audiology services. Due to the limited access to audiology services in southern Delaware, infants are not receiving hearing screenings and recommended follow-up services.

Findings and Conclusions

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 rules and regulations.

Pursuant to 24 **Del.C.** §3706(a)(1), the Board has statutory authority to promulgate rules and regulations. The proposed changes seek to establish standards for the delivery of services by telepractice for the professions regulated by the Board.

During deliberations, the Board considered the testimony of witnesses and the documents marked as exhibits. The Board addressed the concerns presented through this evidence. The Board discussed the objection to proposed Section 10.2.1, which requires that the licensee shall have an active Delaware license, and during telepractice treatment, the client shall be located within the borders of the State of Delaware. Certain individuals offering public comment expressed reservations with respect to continuity of care and limiting access to needed services.

The Board declined to amend Section 10.2.1. Care occurs where the client is physically located. A licensee who is licensed in Delaware only would be engaging in unlicensed practice if permitted to treat a client who has left Delaware and is located in another state. The Board would have no jurisdiction with respect to care provided in another state. Section 10.2.1 serves the interests of public protection by ensuring that clients located in Delaware receive care from practitioners properly licensed by the Board.

The Board also addressed the benefits and disadvantages regarding Section 10.2.4.2, which requires that all evaluations be done in a face to face setting. The Board recognized the access problem presented by this language, and decided to amend this Section to specify that only initial evaluations must be performed face to face and not through telepractice. The method of treatment for subsequent evaluations will be left to the discretion of the licensed professional.

The Board noted that other concerns voiced by members of the public are addressed in proposed Section

10.0. In the delivery of services by telepractice, the licensee must meet all standards and requirements applicable to onsite care. See Section 10.2.4.3. The licensee who deliver services by telepractice must possess the specialized knowledge and skills needed for the particular technology. See Section 10.2.4.5. The licensee is responsible for determining that telepractice is appropriate for the particular client. See Section 10.2.4.1. The proposed rules and regulations also require that licensees obtain written, informed consent which includes an outline of the risks of telepractice. See Section 10.2.2.

Finally, the Board decided to strike the last sentence of Rule 10.1 as unnecessary.

3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

1.0 General

- 1.1 Applications and other forms may be obtained from and be returned to the Division of Professional Regulation (Division). Please address correspondence to the Board: ATTN: SLP-AUD-HAD and mail to 861 Silver Lake Blvd., Ste. 203, Dover, DE 19904-2467. Information and forms are also available on the Division's web site dpr.delaware.gov.
- 1.2 Fees required by statute shall be made payable to: "State of Delaware" and remitted to the Division. No license shall be issued until all required fees are paid.
- 1.3 The Administrative Specialist assigned to the Board by the Division performs support functions and serves as the contact person for the Board.

2.0 Licensure Requirements for Speech-Language Pathologists and Audiologists

2.1 Education

- 2.1.1 To be eligible for a license as a Speech/Language Pathologist, the applicant must submit verification by an official transcript of completion of at least a master's degree or its equivalent, from an accredited college or university with major emphasis in speech-language pathology, communication disorders or speech-language and hearing science.
- 2.1.2 To be eligible for a license as an Audiologist, the applicant must submit verification by an official transcript of completion of a doctoral degree from an accredited college or university.

2.2 Clinical Practicum for Speech/Language Pathologists

- 2.2.1 The Speech/Language Pathology applicant must have completed a minimum of 400 clock hours of supervised clinical practicum. Clinical observation may qualify for up to 25 of the hours in the supervised clinical practicum.
- 2.2.2 A minimum of 250 clock hours in the area of specialty of the supervised clinical practicum must have been obtained at the graduate level.

2.3 Clinical Fellowship (CF) for Speech/Language Pathologists

- 2.3.1 The Speech/Language Pathology or Audiology applicant must have the equivalent of nine (9) months of full-time or eighteen (18) months of part time (defined as 15-20 hours per week) supervision in the major professional area in which the license is being sought. The CFY must start after completion of the academic and clinical practicum requirements.

* Supervision is defined as direct observation consisting of 36 supervisory activities, including 18 one hour on-site observations and 18 other monitoring activities. (From standards adopted by the American Speech-Language-Hearing Association (ASHA) in 1985 and revised in 2009, which can be found at www.asha.org)

2.4 National Examination

- 2.4.1 The Speech/Language Pathology and Audiology applicant must have completed and passed the national examination approved by the Division of Professional Regulation for the area of specialty with at least the minimum nationally recommended score. Scores must be sent directly from the testing service to the Division of Professional Regulation.
- 2.4.2 A Speech/Language Pathology or Audiology applicant with a temporary license is permitted to complete the appropriate national examination during the period of the temporary license.

2.5 Application Process-Temporary Licensure

- 2.5.1 An applicant must complete a notarized application for temporary licensure. Items which must be provided to the Division of Professional Regulation include:
 - 2.5.1.1 Official Transcript(s);
 - 2.5.1.2 Payment of appropriate fees.
 - 2.5.1.3 In addition, Speech/Language Pathologist applicants must also provide:
 - 2.5.1.3.1 Documents verifying the appropriate number and level of supervised clinical practicum hours;
 - 2.5.1.3.2 A CF plan on a form approved by the Board, signed by the licensed professional who will provide the supervision;
- 2.5.2 A temporary license is valid for one year from the date of issuance and may be renewed for one year in extenuating circumstances upon application to the Board. The licensee shall take the examination at least once prior to submitting a request for renewal of the temporary license. Requests for Board consideration of a renewal shall be made in writing and sent to the Division of Professional Regulation 60 days prior to expiration.
- 2.6 Application Process -Permanent Licensure
 - 2.6.1 Speech/Language Pathology and Audiology applicants must complete the application on a form approved by the Board and submit the appropriate fee.
 - 2.6.2 An applicant who has ASHA Certification must comply with subSection 2.6.1 and submit a copy of current ASHA certification.
 - 2.6.3 An applicant who is currently licensed in another state, the District of Columbia, or territory of the United States whose standards for licensure are substantially similar to those of this state, must comply with 24 **Del.C.** §3710. Applicants for reciprocal licensure from states not substantially similar to this state shall provide proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in 24 **Del.C.** §3710. Verification of practice shall be by notarized letter from the employer(s).
 - 2.6.4 A Speech/Language Pathologist applicant who has completed the supervised CF in Delaware and has a current temporary license, must submit the following documentation to the Division of Professional Regulation 30 days prior to expiration of the temporary license:
 - 2.6.4.1 proof of completion of the CF,
 - 2.6.4.2 national examination score unless previously provided, and
 - 2.6.4.3 licensure fee.
- 3.0 **Licensure Requirements for Hearing Aid Dispensers**
 - 3.1 Delaware-licensed Audiologists are authorized to dispense hearing aids, pursuant to 24 **Del.C.** §3702(9), and are not required to obtain a separate Hearing Aid Dispensing license. All other applicants shall meet the following requirements:
 - 3.2 Original Licensure
 - 3.2.1 Education: Applicants must have earned a high school diploma or its equivalent.
 - 3.2.2 Training:
 - 3.2.2.1 Applicants shall complete six (6) months of training. The Board will not authorize applicants to take the exam until the training is complete.
 - 3.2.2.2 Training shall be completed under the direct supervision of a Delaware-licensed Hearing Aid Dispenser or Delaware-licensed Audiologist. “**Direct supervision**” means direct, on-site observations of the applicant by the supervisor. Applicants shall be under direct supervision for 100% of the time during the first two (2) months, 50% of the time during the subsequent two (2) months, and 25% of the time during the final two (2) months of the training period.
 - 3.2.2.3 Applicants shall hold a valid, active temporary license during the training period. Training conducted while the applicant is without a valid, active temporary license will not count toward fulfillment of the six-month training requirement.

3.2.2.4 Upon completion of the training period, temporary Hearing Aid Dispensing licensees must submit verification of completion of the training period on a Board-approved form, which shall include the notarized signature of the Delaware-licensed sponsor stating that the training was completed under his or her direct supervision in accordance with ~~Regulation~~ subsection 3.2.2.2. Upon receipt and approval of the training verification, the Board will authorize the applicant to take the examination.

3.2.3 National Examination

3.2.3.1 Applicants for Hearing Aid Dispensing licensure must have completed and passed the national examination approved by the Division, in accordance with scores as recommended by the national testing service, National Institute for Hearing Instruments Studies (NIHIS), or its successor. Upon confirmation from the testing service that an applicant has passed the exam, the Board will issue a Hearing Aid Dispensing license to the applicant.

3.2.3.2 Applicants who fail two (2) examinations may not be reexamined for a period of one (1) year following the second failure. After a second exam failure, an applicant must complete an additional training period pursuant to ~~Regulation~~ subsection 3.2.2 before the Board will grant authorization to retake the exam.

3.3 Temporary Licensure

3.3.1 To obtain a temporary license, applicants must complete the Board-approved licensure application and submit:

3.3.1.1 verification of a high school diploma or its equivalent,

3.3.1.2 payment of the appropriate fees, and

3.3.1.3 a plan for completing the six (6) month training period, which shall include the notarized signature of a Delaware-licensed sponsor stating a willingness to provide direct supervision and training.

3.3.2 A temporary license is valid for one (1) year from the date of issuance and may be renewed once for an additional one-year period in extenuating circumstances upon approval by the Board. Requests for Board consideration of a renewal shall be made in writing and sent to the Division at least 60 days prior to expiration.

3.34 Reciprocal Licensure

An applicant who is currently licensed in another state, the District of Columbia, or territory of the United States, whose standards for licensure are substantially similar to those of this state, must comply with 24 **Del.C.** §3710. Applicants for reciprocal licensure from states not substantially similar to this state shall provide proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in 24 **Del.C.** §3710. Verification of practice shall be by notarized letter from the employer(s).

4.0 Expired Licenses and Inactive Status

4.1 Expired Licenses

4.1.1 A holder of an expired license may renew the license within one year of the date the renewal was due by fulfilling all of the renewal requirements and paying the late fee established by the Division of Professional Regulation.

4.2 Inactive Status

4.2.1 A licensee may apply to the Board for inactive status for up to five years. The license may be reactivated upon application on a form approved by the Board and proof of CEs completed within the preceding 24 months as required by ~~Regulation~~ subsection 8.2.3, and payment of the fee established by the Division of Professional Regulation.

5.0 Requirements for Audiology Aides

5.1 Certification

- 5.1.1 Certification of the Audiology Aide must be by the Council of Accreditation of Occupational Hearing Conservationists, or its equivalent, with documentation. The supervising Delaware-licensed audiologist must annually register each Audiology Aide using a form approved by the Board.
 - 5.2 Direct Supervision
 - 5.2.1 An Audiology Aide assists a licensed audiologist in professional activities with direct supervision by the audiologist. Direct supervision requires the presence of the supervising audiologist on the premises when the aide is performing professional activities.
 - 5.3 Duties of the Audiology Aide
 - 5.3.1 Duties of the Audiology Aide must be specified by the supervising audiologist and may include the following:
 - 5.3.1.1 Air conduction pure tone assessment and data recording.
 - 5.3.1.2 Hearing screenings.
 - 5.3.1.3 Assisting with conditioning techniques.
 - 5.3.1.4 Cursory otoscopy.
 - 5.3.1.5 Basic hearing aid maintenance.
 - 5.3.1.6 Routine instrument sterilization.
 - 5.3.1.7 Biologic and electroacoustic assessment of the audiometer.
 - 5.3.1.8 Clerical support.
 - 5.3.1.9 Participation with the professional in research projects, in service training, or similar endeavors.
 - 5.3.1.10 Other duties as may be appropriately determined with training from and direct supervision of the Delaware licensed audiologist.
- 6.0 Requirements for Speech/Language Pathology Aides**
- 6.1 Education
 - 6.1.1 A Speech/Language Pathology Aide must have a minimum of a high school diploma or its equivalent.
 - 6.2 Direct Supervision
 - 6.2.1 A Speech/Language Pathology Aide assists a licensed Speech/Language Pathologist in professional activities with direct supervision of the Speech/Language Pathologist. Direct supervision requires the presence of the supervising Speech/Language Pathologist at all times where an aide is assisting with testing, and/or treatment.
 - 6.3 Duties of the Speech/Language Pathology Aide
 - 6.3.1 Duties of the Speech/Language Pathology Aide must be specified by the supervising Speech/Language Pathologist and may include the following:
 - 6.3.1.1 Assisting with testing or treatment.
 - 6.3.1.2 Clerical support.
 - 6.3.1.3 Client escort.
 - 6.3.1.4 Preparation of therapeutic materials
 - 6.3.1.5 Equipment maintenance.
 - 6.3.1.6 Participation with the professional in research projects, in service training, or similar endeavors.
 - 6.3.1.7 Other duties as may be appropriately determined with training from and direct supervision of the Delaware licensed Speech/Language Pathologist.

7.0 Electronic Equipment Calibration

- 7.1 Audiologists and Hearing Aid Dispensers shall ensure the annual calibration of the electronic equipment they use to assess hearing. Calibration shall be performed by a certified professional consistent with the standards set by the American National Standards Institute (ANSI).
- 7.2 Audiologists and Hearing Aid Dispensers shall indicate by attestation in the course of license renewal whether they have complied with ~~regulation~~ subsection 7.1 Audiologists who do not have such equipment shall attest to that fact during the course of renewal.

8.0 Continuing Education For All Licensees:**8.1 Philosophy**

- 8.1.1 Continuing education is required by the Board to maintain professional licensure in the fields of Speech/Language Pathology, Audiology and Hearing Aid Dispensing. Continuing education requirements arise from an awareness that these fields are in a continual state of transition due to the introduction of new philosophies and the refinement of already existing knowledge. Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers should continually strive to update their clinical skills in an effort to deliver high quality services.
- 8.1.2 The Board is keenly aware of existing educational opportunities in Delaware and neighboring states and has established regulations which will provide continuing education credit as effortlessly as possible while assuring quality instruction. Credit will be given for participation in a variety of activities that increase knowledge and enhance professional growth.
- 8.1.3 These regulations recognize the financial and time limitations of Delaware's professionals while assuring continued appropriate services to those individuals who require them.

8.2 Continuing Education Criteria

- 8.2.1 One continuing education contact hour (CE) is defined as 60 minutes of attendance/participation in an approved continuing education activity unless otherwise stated. (Therefore, credits and continuing education units (CEUs) issued by various organizations must be translated. e.g., 1.0 ASHA CEU = 10 CE's)
- 8.2.2 The required number of CEs varies with the date of issuance of license, certification and/or professional status. Effective as of the license renewal period beginning August 1, 2009, licensees must meet the following CE requirements:
- 8.2.2.1 New License: There is no CE requirement for a license issued for less than one year. If a license would cover more than one year, but less than 2 years, the licensee is required to obtain 15 CEs or one-half of the required total hours.
- 8.2.2.2 Single License: Individuals with a license in only one (1) area of specialty must obtain a minimum of 30 CEs each two-year license renewal period.
- 8.2.2.3 Dual License: Individuals with licenses in two (2) areas of specialty must obtain a minimum of 30 CEs during each two-year license renewal period, with 15 CEs obtained in each specialty area. One course may be split between specialty areas to fulfill multiple CE requirements. Content must be shown to be relevant to those areas.
- 8.2.2.4 Temporary License: All CE requirements will be waived for temporary licensees; however, individuals are encouraged to participate in continuing education activities during their CFY period.
- 8.2.2.5 Hardship. An applicant for license renewal may be granted an extension of time in which to complete CE hours or a total or partial waiver of CE requirements upon a showing of hardship. Hardship may include, but is not limited to, disability, illness, extended absence from the country and exceptional family responsibilities. No extension of time or waiver shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.
- 8.2.3 CE courses must focus on the enhancement of clinical skills and professional growth as defined below.

- 8.2.3.1 Clinical Skills: conferences, workshops, courses, etc., that expand a licensee's scope of practice by enhancing skills in the areas of prevention, assessment, diagnosis, and treatment of the client (minimum of 20 CEs per licensure renewal period).
 - 8.2.3.2 Professional Growth: conferences, workshops, courses, etc., that may not directly impact on clinical services to the population being served but are of interest to the licensee and will allow the licensee the opportunity to stay abreast of current trends in the profession or related fields of interest (maximum of 10 CEs per licensure renewal period).
 - 8.2.4 All CE activities must be approved by the Board. A licensee or CE course sponsor may request advance approval from the Board by submitting a completed Board Approval form. Approval may be requested after the conclusion of a course, but there is no guarantee the course will be approved.
 - 8.2.5 CE is required for license renewal and shall be completed by July 31 of odd-numbered years.
 - 8.2.5.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule Section 8.0
 - 8.2.5.2 Attestation may be completed online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted.
 - 8.2.6 Random audits will be performed by the Board to ensure compliance with the CE requirements. The Board will determine the percentage of licensees to be audited.
 - 8.2.6.1 The Board will notify licensees within sixty (60) days after July 31 of each biennial renewal period that they have been selected for audit.
 - 8.2.6.2 Licensees selected for random audit shall be required to submit verification within twenty (20) days of receipt of notification of selection for audit.
 - 8.2.7 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Section 8.0. While course brochures may be used to verify CE hours, they are not considered to be acceptable proof for use of verification of course attendance. Verification must include, but is not limited to, the following information:
 - 8.2.7.1 Date of CE course;
 - 8.2.7.2 Instructor of CE course;
 - 8.2.7.3 Sponsor of CE course;
 - 8.2.7.4 Title of CE course; and
 - 8.2.7.5 Number of hours of CE course.
 - 8.2.7.6 Certificate of completion and/or ASHA or American Academy of Audiology (AAA) continuing education registry documenting course completion.
 - 8.2.8 In response to the audit, audiologists and hearing aid dispensers shall submit documentation of calibration of electronic equipment used to assess hearing, as set forth in Rule Section 7.0.
 - 8.2.9 Licensees who are not audited shall retain their CE documentation for three (3) years after renewal.
 - 8.2.10 Licensees who renew their license under the late renewal provision shall be audited for CE completion (and equipment calibration, if applicable). These licensees shall submit documents that evidence satisfactory completion of their CE requirements (and annual equipment calibration pursuant to ~~regulation~~ Section 7.0, if applicable) for the prior licensure period.
 - 8.2.11 The Board shall review all documentation submitted by licensees pursuant to the CE audit. If the Board determines that the licensee has met the CE requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the CE requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the CE requirements. Unjustified noncompliance with the CE requirements set forth in these rules and regulations shall constitute a violation of 24 **Del.C.** §3715(a)(7) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §3716.
- 8.3 Acceptable CE Courses/Activities

- 8.3.1 CE activities sponsored by accredited professional organizations, such as ASHA or AAA, are acceptable, provided the topics are relevant to the improvement of the licensee's clinical skills or professional growth as defined in ~~Rule~~ subsection 8.2.3.
- 8.3.2 A licensee may receive up to three (3) CE's for training obtained from a colleague who, after attending a professional conference, gives a formal presentation of the information from the conference after developing an agenda and outline.
- 8.3.3 University/College coursework for academic credit in the field of Speech/ Language Pathology, Audiology, or Hearing Aid Dispensing. A course description must be submitted to the Board for approval. (1 undergraduate credit = minimum of 3 CE's; 1 graduate credit = minimum of 5 CE's)
- 8.3.4 Professional presentations. A presentation summary must be submitted to the Board for approval. Credit may be given for a presentation only once during a licensure period. (1 hour of presentation = 3 CE's)
- 8.3.5 Professional publication in related specialty journals. A reprint of the publication must be submitted to the Board for approval.
- 8.3.6 Other continuing education may be approved by the Board with documentation of content.
- 8.3.7 Excluded are any job related duties in the workplace such as staff meetings, CPR, etc.

9.0 Code of Ethics for Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers

- 9.1 PREAMBLE. The preservation of the highest standards of conduct and integrity is vital to achieving the statutory declaration of objectives in 24 **Del.C.** §3701. Adopting a code of ethics by regulation puts licensees on notice of the kinds of activity that violate the level of care and protection to which the clients are entitled. The provisions are not intended to be all-inclusive but rather they should serve as examples of obligations that must be satisfied to maintain minimum standards.
- 9.2 Standards of Professional Conduct
 - 9.2.1 A licensee who violates the following Standards of Professional Conduct may be guilty of illegal, negligent, or incompetent practice and disciplined pursuant to 24 **Del.C.** §3715(a)(2).
 - 9.2.1.1 Licensees shall provide all services competently. Competent service refers to the use of reasonable care and diligence ordinarily employed by similarly licensed individuals.
 - 9.2.1.2 Licensees shall use every resource, including referral, to provide quality service.
 - 9.2.1.3 Licensees shall maintain reasonable documentation of professional services rendered.
 - 9.2.1.4 ~~Licensees shall not evaluate or treat a client with speech, language, or hearing disorders solely by correspondence. Correspondence includes telecommunication.~~
 - 9.2.1.5 Licensees shall delegate responsibility only to qualified individuals as permitted by law with appropriate supervision.
 - 9.2.1.6~~5~~ Licensees who have evidence that a practitioner has violated the Code of Ethics or other law or regulation shall present that information by complaint to the Division of Professional Regulation for investigation.
- 9.3 Standards of Professional Integrity.
 - 9.3.1 A licensee who violates the following Standards of Professional Integrity may be guilty of consumer fraud, deception, restraint of competition, or price-fixing and disciplined pursuant to 24 **Del.C.** §3715(a)(6).
 - 9.3.1.1 Licensees shall not charge for services not rendered nor misrepresent the services or products dispensed.
 - 9.3.1.2 Licensees shall inform clients of the nature and possible effects of services. Care must be taken to speak to a client in lay terms that he or she can understand.
 - 9.3.1.3 Licensees may use clients in research or as subjects of teaching demonstrations only with their informed consent. An informed consent must be explained and written in lay terms.
 - 9.3.1.4 Licensees shall inform clients in any matter where there is or may be a conflict of interest. Conflicts of interest may be found when a client is steered to a particular provider by one with an expectation of financial gain (kickbacks) or a provider is involved in double dipping

- by providing services in a private practice that he or she is obligated to provide through public employment (double-dipping).
- 9.3.1.5 Licensees shall make no guarantees of the results of any product or procedure but may make a reasonable statement of prognosis.
 - 9.3.1.6 Licensees shall provide services or dispense products only when benefits can reasonably be expected.
 - 9.3.1.7 Licensees shall not engage in misrepresentation, dishonesty, fraud, or deceit. Misrepresentation includes statements likely to mislead or an omission of material information.
 - 9.3.1.8 Licensees who advertise shall provide information in a truthful manner that is direct and not likely to mislead the public. Any written disclaimer or condition that limits or modifies an offer of services or merchandise must be provided in a clear and conspicuous manner in a type size that is at least one-half the size of the type used in making the offer of services or merchandise.
- 9.3.2 A licensee who violates the following Standards of Professional Integrity may be guilty of misrepresentation, impersonation, or facilitating unlawful practice and disciplined pursuant to 24 **Del.C.** §3715(a)(1).
- 9.3.2.1 Licensees shall accurately represent any credentials, education, and experience to the public.
 - 9.3.2.2 A licensee who has evidence that an individual is practicing the profession without a license in violation of 24 **Del.C.** §3707 has a duty to report that information to the Division of Professional Regulation.
- 9.4 Miscellaneous Professional Standards
- 9.4.1 A licensee who violates the following Professional Standards may be subject to disciplinary action under 24 **Del.C.** §3715(a)(7)
- 9.4.1.1 Licensees shall respect the privacy of clients and not reveal, without written authorization, any professional or personal information unless required by law.
 - 9.4.1.2 Licensees shall not discriminate on the basis of race, sex, age, religion, national origin, sexual orientation, or disability.
 - 9.4.1.3 Licensees shall offer services and products on their merits and should refrain from making disparaging comments about competing practitioners or their services and products.

10.0 Telepractice

- 10.1 Telepractice is the application of telecommunications technology to the delivery of speech/language pathology, audiology and hearing aid dispensing professional services at a distance by linking clinician to client or clinician to clinician for intervention and/or consultation, subject to subsection 10.2.4.5, intervention and/or consultation.
- 10.2 The Speech/Language Pathologist, Audiologist, or Hearing Aid Dispenser (referred to as "licensee" for the purpose of this section) who provides treatment through telepractice shall meet the following requirements:
- 10.2.1 Location of client during treatment through telepractice.
 - 10.2.1.1 The licensee shall have an active Delaware license in good standing to provide services through telepractice in the state of Delaware.
 - 10.2.1.2 During the telepractice treatment session, the client shall be located within the borders of the State of Delaware.
 - 10.2.2 Informed consent.
 - 10.2.2.1 Before services are provided through telepractice, the licensee shall obtain written, informed consent from the client, or other appropriate person with authority to make health care treatment decisions for the client. At minimum, the informed consent shall inform the client and document acknowledgement of the risk and limitations of:

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- 10.2.2.1.1 The use of electronic communications in the provision of care:
- 10.2.2.1.2 The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of care; and
- 10.2.2.1.3 The potential disruption of electronic communication in the use of telepractice.
- 10.2.3 Confidentiality: The licensee shall ensure that the electronic communication is secure to maintain confidentiality of the client's health and/or educational information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices and technology, including disposal of electronic equipment and data.
- 10.2.4 Competence and scope of practice.
 - 10.2.4.1 The licensee shall be responsible for determining and documenting that telepractice is an appropriate level of care for the client only after an initial face to face evaluation.
 - 10.2.4.2 Initial evaluations shall be performed face to face and not through telepractice.
 - 10.2.4.3 The licensee shall comply with the Board's law and rules and regulations and all current standards of care requirements applicable to onsite care.
 - 10.2.4.4 The licensee shall limit the practice of telepractice to the area of competence in which proficiency has been gained through education, training and experience.
 - 10.2.4.5 Licensees who deliver telepractice services must possess specialized knowledge and skills in selecting interventions that are appropriate to the technology and that take into consideration client and disorder variables.
 - 10.2.4.6 The licensee shall document in the file or record which services were provided by telepractice.

101.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 101.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 101.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 101.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 101.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 101.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the

participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection ~~101.8 of this section~~.

- 101.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 101.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
 - 101.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
 - 101.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
 - 101.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
 - 101.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
 - 101.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 101.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 101.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 101.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 101.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 101.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 101.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's

rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

142.0 Crimes substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing.

142.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing in the State of Delaware without regard to the place of conviction:

- 142.1.1 Assault in the second degree. 11 **Del.C.** §612.
- 142.1.2 Assault in the first degree. 11 **Del.C.** §613.
- 142.1.3 Assault by abuse or neglect. 11 **Del.C.** §615.
- 142.1.4 Terroristic threatening; felony. 11 **Del.C.** §621
- 142.1.5 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.
- 142.1.6 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
- 142.1.7 Murder in the second degree. 11 **Del.C.** §635.
- 142.1.8 Murder in the first degree. 11 **Del.C.** §636.
- 142.1.9 Unlawful Sexual Contact in the first degree. 11 **Del.C.** 769
- 142.1.10 Rape in the fourth degree. 11 **Del.C.** §770
- 142.1.11 Rape in the third degree. 11 **Del.C.** §771
- 142.1.12 Rape in the second degree. 11 **Del.C.** §772
- 142.1.13 Rape in the first degree. 11 **Del.C.** §773
- 142.1.14 Sexual extortion. 11 **Del.C.** §776
- 142.1.15 Continuous sexual abuse of a child. 11 **Del.C.** §778
- 142.1.16 Dangerous crime against a child. 11 **Del.C.** §777
- 142.1.17 Sex offender unlawful sexual conduct against a child. 11 **Del.C.** §777A
- 142.1.18 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree. 11 **Del.C.** §778
- 142.1.19 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree. 11 **Del.C.** §778A
- 142.1.20 Kidnapping in the second degree. 11 **Del.C.** §783
- 142.1.21 Kidnapping in the first degree. 11 **Del.C.** §783A
- 142.1.22 Identity theft. 11 **Del.C.** §854
- 142.1.23 Forgery. 11 **Del.C.** §861
- 142.1.24 Insurance fraud. 11 **Del.C.** §913
- 142.1.25 Health care fraud. 11 **Del.C.** §913A
- 142.1.26 Dealing in children. 11 **Del.C.** §1100
- 142.1.27 Endangering the welfare of a child. 11 **Del.C.** §1102
- 142.1.28 Crime against vulnerable adult. 11 **Del.C.** §1105
- 142.1.29 Sexual exploitation of a child. 11 **Del.C.** §1108
- 142.1.30 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- 142.1.31 Possession of child pornography. 11 **Del.C.** §1111
- 142.1.32 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
- 142.1.33 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 142.1.34 Perjury in the first degree. 11 **Del.C.** §1223
- 142.1.35 Hate crimes (felony). 11 **Del.C.** §1304(a)
- 142.1.36 Stalking; felony. 11 **Del.C.** §1312A

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- 142.1.37 Duty to report child abuse or neglect. 16 **Del.C.** §903
 - 142.1.38 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136.
 - 142.1.39 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 **Del.C.** §4753A
 - 142.1.40 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767
 - 142.1.41 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768
 - 142.1.42 Abuse, neglect, mistreatment or financial exploitation of an infirm adult. 31 **Del.C.** §3913
 - 142.2 Crimes substantially related to the practice speech/language pathology, audiology, and hearing aid dispensing 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 section.
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CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, January 19, 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****Federally Qualified Health Centers - Long-Acting Reversible Contraceptives**

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 proposing to amend the Title XIX Medicaid State Plan regarding Federally Qualified Health Care Centers, specifically, *to increase access to Long-Acting Reversible Contraceptives*.

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 January 31, 2017. Please identify in the subject line: FQHC - LARC.

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****Nondiscrimination**

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 proposing to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding nondiscrimination, specifically, *to modify language to be more inclusive and to ensure compliance with Federal Regulation*.

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 January 31, 2017. Please identify in the subject line: Nondiscrimination.

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

DIVISION OF PUBLIC HEALTH**PUBLIC NOTICE****4102 School-Based Health Centers**

The Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing School-Based Health Centers (4102). The purpose of the amendments is to make technical corrections to bring the regulations in line with recently revised statutes. On January 1, 2017, DPH plans to publish

as proposed the amended regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the January 1, 2017 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the DPH at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, February 10, 2017, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE

4463 Licensing and Registration of Operators of Public Water Supply Systems

On January 1, 2017, the Department of Health and Social Services, Division of Public Health, Office of Drinking Water, plans to publish revised Licensing and Registration of Operators of Public Water Supply Systems and hold them out for public comment per Delaware law.

The regulations have been revised to include changes necessary to update requirements for public water system operators to ensure that requirements for training, certification and licensure are in line with federal requirements and industry standards.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Friday, February 10, 2017 to:

Jamie Mack, Executive Assistant
Office of the Director
Delaware Division of Public Health
Jesse Cooper Building
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Fax: 302-739-3984

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP
PUBLIC NOTICE

7401 Surface Water Quality Standards

Update to table in section 4.5.7.1 to comply with USC Title 33 Chapter 26 Subchapter III Section 1313(i)(1)(B) in Federal Law. This update will modify bacteria water quality standards for the Atlantic Ocean from Cape Henlopen to the Delaware/Maryland state line.

The hearing record on the proposed changes to 7401 Surface Water Quality Standards Section 4.5.7.1 will be open January 2, 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. A public hearing on the proposed amendment will be held on February 23, 2017 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS
PUBLIC NOTICE
2600 Examining Board of Physical Therapists and Athletic Trainers

Pursuant to 24 **Del.C.** §2604(a)(1), the Delaware Examining Board of Physical Therapists and Athletic Trainers ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on January 24, 2017 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments 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 Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be February 8, 2017 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

DIVISION OF PROFESSIONAL REGULATION
2700 BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS
PUBLIC NOTICE

The Delaware Board of Professional Land Surveyors, in accordance with 24 **Del.C.** §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to eliminate references to the continuing education ethics requirement and revise the list of crimes substantially related to the practice of land surveying. The Board will hold a public hearing on the proposed rule changes on February 16, 2017 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meredith Hurley, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION
3100 BOARD OF FUNERAL SERVICES
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3105(a)(1), the Delaware Board of Funeral Services has proposed revisions to its rules and regulations. The rules pertaining to funeral establishment requirements and crimes substantially related to the practice of funeral services are amended.

A public hearing will be held on March 28, 2017 at 10 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 Funeral Services, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board, c/o Meredith Hurley, at the above address in accordance with 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
3600 BOARD OF GEOLOGISTS
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3606(a)(1), the Board of Geologists has proposed revisions to its rules and regulations.

A public hearing will be held on February 10, 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Geologists, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be February 27, 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 Board's proposed revisions include a new Section 7.1.1.1 which will allow an applicant to take the Fundamentals of Geology ("FG") examination during that applicant's final semester in an accredited geosciences program leading to a degree. The examination is given just twice a year, in March and October. This change will enable the applicant to take the FG examination in March rather than waiting until October. The applicant will still be required to meet all other requirements for licensure, including passing the Practice of Geology examination. The results of the FG examination will be disclosed to the applicant after the final transcript is received. In addition, the list of automatically approved continuing education course providers, in Section 6.10, is amended to add the Pennsylvania Council of Professional Geologists. Finally, Section 6.10.54 is stricken to eliminate Board discretion to add providers to that list. Licensees will still have the option of seeking specific course approval from the Board.

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

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

A public hearing will be held on February 16, 2017 at 1:30 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Massage and Bodywork, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** § 10118(a), the final date to receive written comments will be March 3, 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 Board has proposed the addition of a definition of "school or approved program" of massage and bodywork and has included specific requirements for documentation of education. These proposed changes will address the widespread problem of applicants presenting invalid and falsified diplomas and school records. The continuing education requirements have been clarified and language has been added to state that a licensee's failure to provide an updated address to the Division of Professional Regulation will not excuse that licensee from discipline for continuing education violations. The new Section 13.0 has been amended to remove crimes not related to the practice of massage and bodywork and thereby eliminate unjustified obstacles to licensure. Finally, various rules and regulations have been modified for clarity and consistency.

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

PUBLIC NOTICE

2217 Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents

The Delaware Department of Transportation, Division of Motor Vehicles (the "DMV") hereby gives notice of intent to update the Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents regulation to meet Delaware State Law and Federal Regulation changes.

This proposal adds the use of the State Pointer Exchange System (SPEXS) electronic verification system definition and procedures into the regulation.

The DMV will take written comments on these proposed revisions to Section 2217 of title 2, Delaware Administrative Code, from January 3, 2017 through February 3, 2017.

The public may submit their comments to Kami Beers, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-4750 Attn: Kami Beers.
