
Delaware Register of Regulations

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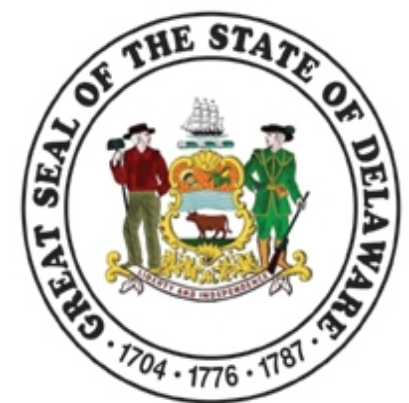
Volume 21 - Issue 7, Pages 510 - 592

IN THIS ISSUE:

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- Errata
- Emergency
- Proposed
- Final

Calendar of Events &
Hearing Notices



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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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

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700 BOARD OF CHIROPRACTIC

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) & (10) (24 **Del.C.** §706(a)(1) & (10))
24 **DE Admin. Code** 700

ERRATA

700 Board of Chiropractic

***Please Note:** The Final Regulation for 700 Board of Chiropractic that was published in the June 1, 2011 issue of the Delaware *Register of Regulations* (14 DE Reg. 1396) inadvertently contained a typographical error by failing to indicate a deletion. The affected Section is reprinted below showing the deletion. The effective date of the regulation remains the same.

700 Board of Chiropractic
(Break in Continuity of Sections)

7.0 Consulting

A Chiropractor licensed in another state, but not licensed in the State of Delaware may only practice chiropractic within the State of Delaware in consultation with a duly Delaware licensed Chiropractor for not more than ten (10) consultations in any twelve (12) month period. The ~~which~~ consultations shall be limited to examination, recommendation, or testimony in litigation. The Delaware licensed Chiropractor must inform the Board that a consulting Chiropractor is consulting with them and inform the Board of the terms of the consulting agreement.

***Please Note:** The full text of the final regulation is not being republished. Please see 14 DE Reg. 1396 for the final amendments to 700 Board of Chiropractic, as published in June 2011. The current 700 Board of Chiropractic is available at:

<http://regulations.delaware.gov/AdminCode/title24/700.shtml>

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 AGRICULTURE**DELAWARE FOREST SERVICE**

Statutory Authority: 3 Delaware Code, Section 101(3) & 1011 and 29 Delaware Code, Section 10119

(3 **Del.C.** §§101(3), 1011 and 29 **Del.C.** §10119)

3 **DE Admin. Code** 402

ORDER**402 State Forest Regulations****AUTHORITY**

Pursuant to 29 **Del.C.** §10119, the State of Delaware Department of Agriculture adopts the attached emergency amendments to the State Forest Regulations, 3 Delaware Administrative Code §402.

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for The Agriculture Secretary by 3 **Del.C.** §101(3), and by the specific authority to devise and promulgate regulations to protect State Forest lands conferred by 3 **Del.C.** §1011.

It should be noted that the emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act, within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations by 29 **Del.C.** §10119(3).

REASON FOR THE EMERGENCY ORDER

The portions of the Regulations referenced above relating to firearms were affected by the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC*, issued on December 7, 2017. The fifteen-day period for filing a motion for reargument passed on December 22, 2017. The decision will have binding effect upon

the issuance of a mandate by the Court. The Court found that the existing firearms regulations violated the State of Delaware Constitution, in that they were overly broad in their prohibitions. In the absence of interim regulations, firearms would essentially be unregulated on State Forest lands, including facilities such as education centers, lodges, and offices. A risk of harm from gunfire would be present in these and other areas where visitors gather, including families and children. Law enforcement authorities would lack the ability to screen and check for identification, permits, or credentials of armed visitors to these facilities. The Court recognized that restrictions on firearms are appropriate in limited public areas and facilities; but that licensed and qualified persons must be exempt from such prohibitions. The interim regulations are an effort to strike the balance the Court mandated.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect immediately upon issuance, and shall remain in effect for 120 days; however, at the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3). The Department intends to propose regulations that would supersede the interim regulations upon formal approval pursuant to the Administrative Procedures Act, pursuant to 29 **Del.C.** §10115.

PETITION FOR RECOMMENDATIONS

Consistent with the requirements of 29 **Del.C.** §10119(4) the Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Order. Petitions should be presented to the Office of the Secretary, Delaware Department of Agriculture, 2320 South Dupont Highway, Dover, Delaware, 19901.

ORDER

It is hereby ordered, this 26th day of December, 2017 that the attached amendments to the above-referenced Regulations are adopted pursuant to 29 **Del.C.** §10119 and effective immediately.

Michael T. Scuse, Secretary
December 26, 2017

DDA Emergency Regulations (Title 3 §402 DAC):

- 8.8 Target shooting is prohibited. Firearms are allowed for legal hunting ~~only~~ and are otherwise prohibited within designated safe areas on State Forest lands.
- 8.8.1 Designated areas shall include State Forest Offices, education centers, and lodges, and shall be identified by appropriate signage.
- 8.8.2 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Department, including designated areas, provided that proper and current credentials shall be produced to Departmental authorities upon request.
- 8.8.3 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Department, including designated areas, provided that the permit shall be produced upon request of Departmental authorities.
- 8.8.4 Firearms may be carried within areas administered by the Department, outside of designated areas, by any person not prohibited by 11 **Del.C.** §1448.
- 8.8.5 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Department, in order to protect public safety and preserve the peace.
- 8.8.6 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

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

402 State Forest Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE AND DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code, Section 4701(a)(4) and 29 Delaware Code, Sections 8003(7) & 10119 (7 **Del.C.** §4701(a)(4) and 29 **Del.C.** §§8003(7) & 10119)
7 **DE Admin. Code** 3900 and 7 **DE Admin. Code** 9201

Secretary's Order No. 2017-P-0030

3900 Wildlife

9201 Regulations Governing State Parks

AUTHORITY

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control adopts the attached emergency amendments to the Regulations Governing State Parks, 7 Delaware Administrative Code §9201, and the Regulations the General Rules and Regulations Governing Land and Waters Administered by the Division of Fish and Wildlife, 7 Delaware Administrative Code §3900.

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for DNREC to "[m]ake and enforce regulations relating to the protection, care and use of the areas it administers", 7 **Del.C.** §4701(a)(4), and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State". 29 **Del.C.** §8003(7).

It should be noted that the emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act, within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations.

REASON FOR THE EMERGENCY ORDER

The portions of the Regulations referenced above relating to firearms were affected by the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC*, issued on December 7, 2017. The fifteen-day period for filing a motion for reargument passed on December 22, 2017. The decision will have binding effect upon the issuance of a mandate by the Court. The Court found that the existing firearms regulations violated the State of Delaware Constitution, in that they were overly broad in their prohibitions. In the absence of interim regulations, firearms would essentially be unregulated within State Parks and on land and waters administered by the Division of Fish and Wildlife, including facilities such as visitor centers, educational facilities, and offices. A risk of harm from gunfire would be presented in these and other areas where large numbers of visitors gather, including families and children. Law enforcement authorities would lack the ability to screen and check for identification, permits, or credentials of armed visitors to these facilities. The Court recognized that restrictions on firearms are appropriate in limited public areas and facilities; but that licensed and qualified persons must be exempt from such prohibitions. The interim regulations are an effort to strike the balance the Court mandated.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect immediately upon issuance, and shall remain in effect for 120 days; however, at the expiration of 120 days, the Department may choose to renew this Emergency Order once for a

period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3). The Department intends to propose regulations that would supersede the interim regulations upon formal approval pursuant to the Administrative Procedures Act, pursuant to 29 **Del.C.** §10115.

PETITION FOR RECOMMENDATIONS

Consistent with the requirements of 29 **Del.C.** §10119(4) the Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Order. Petitions should be presented to the Office of the Secretary, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, Delaware, 19901.

ORDER

It is hereby ordered, this 26th day of December, 2017 that the attached amendments to the above-referenced Regulations are adopted pursuant to 29 **Del.C.** §10119 and effective immediately.

Shawn M. Garvin, Secretary
December 26, 2017

Fish & Wildlife Emergency Regulations (Title 7 DAC §3900):

- 8.3.4.1 It shall be unlawful for any person to possess a firearm ~~on lands or waters~~ within designated areas administered by the Division ~~from March 1 through August 31~~, except as authorized by the Director in writing.
- 8.3.4.6 Designated areas shall include Division offices, visitor centers, nature centers, educational facilities, and maintenance shops, and shall be identified by appropriate signage.
- 8.3.4.7 The Director may grant written approval on a daily basis for the possession of firearms within designated areas, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within the designated areas.
- 8.3.4.8 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Division, including designated areas, provided that proper and current credentials shall be produced upon request of Division authorities.
- 8.3.4.9 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including designated areas, provided that the permit shall be produced upon request of Parks authorities.
- 8.3.4.10 Firearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 **Del.C.** §1448.
- 8.3.4.11 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.
- 8.3.4.12 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

Parks Emergency Regulations (Title 7 DAC §9201):

- 21.1 It shall be unlawful to display, possess or discharge firearms of any description, air rifles, B.B. guns, sling shots, or archery equipment ~~upon lands or waters~~ within designated areas administered by the Division, except with prior written approval of the Director.
 - 21.1.1 Designated areas shall include park offices, visitor centers, nature centers, bathhouses, restaurants and snack bars, stadiums, museums, zoos, stables, educational facilities, dormitories, group camping areas, swimming pools, guarded beaches, and water parks, and shall be identified by appropriate signage.

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- 21.1.2 The Director may grant written approval on a daily basis for the possession of firearms within designated areas, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within the designated areas.
 - 21.1.3 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Division, including designated areas, upon showing proper and current credentials to Parks authorities.
 - 21.1.4 Delaware residents holding an active current license to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including designated areas, upon showing the license to Parks authorities.
 - 21.1.5 Firearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.
 - 21.1.6 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.
 - 21.1.7 Any person possessing a firearm shall display identification upon entry and upon request, sufficient to enable a law enforcement officer to undertake a background check.

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

3900 Wildlife and 9201 Regulations Governing State Parks

Symbol Key

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

Proposed Regulations

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

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE****Notice of Proposed Rulemaking and Public Hearing****Proposed Amendments to the Administrative Manual and Special Regulations Regarding Natural Gas Development Activities; Additional Clarifying Amendments**

Summary: The Commission will hold public hearings and accept written comment on a proposal to amend its *Special Regulations* by the addition of a section on hydraulic fracturing in shale and other rock formations, including: the prohibition of high volume hydraulic fracturing in such formations; provisions related to water use for hydraulic fracturing; and provisions related to the management of produced water from hydraulic fracturing. The Commission also proposes to amend its *Administrative Manual - Rules of Practice and Procedure* by the addition of project review classifications and fees related to the management of produced water from hydraulic fracturing of hydrocarbon bearing rock formations. Minor amendments to the project review classifications unrelated to hydraulic fracturing are also proposed.

DATES:

Written comments: Written comments will be accepted through 5 p.m. on February 28, 2018.

Public hearings:

1. January 23, 2018, 1 p.m. to 4:30 p.m., Waymart, Wayne County, PA
2. January 23, 2018, 6 p.m. to as late as 9:30 p.m., Waymart, Wayne County, PA
3. January 25, 2018, 1 p.m. to 4:30 p.m., Philadelphia, PA
4. January 25, 2018, 6 p.m. to as late as 9:30 p.m., Philadelphia, PA

On November 30, 2017, a notice including these public hearing dates, times and locations was posted on the DRBC website and circulated directly to DRBC notice subscribers interested in this subject matter. Members of the public may sign up through the Commission's website to receive direct notice via email of additional comment opportunities or changes to the information provided above.

ADDRESSES:

Written comments will be accepted through the Commission's on-line public comment collection system at: <http://dockets.drbc.commentinput.com>. Requests to submit comments by another method will be granted based on lack of access to the web-based comment system. Requests may be addressed to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

The hearing locations are:

1. Ladore Camp, Retreat and Conference Center, 287 Owego Turnpike, Waymart, PA 18472 (Jan. 23 hearings)
2. DoubleTree by Hilton Hotel Philadelphia Airport, 4509 Island Avenue, Philadelphia, PA 19153 (Jan. 25 hearings)

Additional opportunities for comment or changes to the public input process will be published on the Commission's website, drbc.net and through its Twitter account. To receive direct notice of such additions or changes, please subscribe through the Commission's website at: <http://www.nj.gov/drbc/contact/interest/>.

Public hearing registration procedures are set forth below.

Registration to Attend and Speak at a Public Hearing

To reduce uncertainty on the part of attendees about whether they will have a seat and an opportunity to speak at a public hearing, and to provide for a safe and orderly hearing process, the Commission is requiring on-line or on-site registration to attend each public hearing and is encouraging use of the on-line registration system, which will track and publish in real time the available capacity for each hearing. Advance registrants will be eligible to request speaking time and will be informed in advance if they have a reserved speaking slot. Those who register on site may sign up to speak if time allows or may be added to a waiting list. Key elements of the procedure are as follows:

- On-line or on-site registration is required to attend each public hearing.
- On-line registration will remain open until the beginning of each hearing.
- On-site registration will be available at the hearing venues.
- Available capacity for each hearing will be posted on the web-based registration system. When users access the system, they will see the number of seats still available or if the venue is at capacity.
- If capacity has been reached for a specific hearing, registrants will be placed on a waiting list.
- Those who do not register in advance are advised to check the availability of seats BEFORE planning travel to a hearing.
- **Those who pre-register on-line will be eligible to reserve an opportunity to speak at a hearing.**
- Prior to the hearing dates, the DRBC will contact all those who have pre-registered and provide them with an opportunity to request speaking time.
- If more people request to speak than time allows, those not assigned time will be placed on a waiting list.

Written and oral comment will receive equal consideration. See the "Public Process" subsection of **Supplementary Information** for additional details concerning the public hearings and submission of written comments.

Preamble

For background on the draft rule and a description of its contents, click here: http://regulations.delaware.gov/register/january2018/proposed/DRBC_preamble.pdf

Additional Information Regarding the Public Process

Substance of comments. The Commission expressly seeks comment on the effects the proposed rules may have within the basin on: water availability, the control and abatement of water pollution, economic development, the conservation and protection of drinking water supplies, the conservation and protection of aquatic life, the conservation and protection of water quality in Special Protection Waters, and the protection, maintenance and improvement of water quantity and quality basinwide. Comment is also requested on whether use of base fluids other than water for HVHF is practical within the basin and if so, how it should be addressed in these rules, and on

any alternatives to the proposed rules that the commenters would like the Commission to consider, as well as on draft guidance published simultaneously with the rules for determining background concentrations of certain pollutants. The Commission welcomes and will consider any other comments that concern the potential effects of the draft rules on the conservation, utilization, development, management and control of the water and related resources of the Delaware River Basin. Comments on matters not within this scope may not be considered.

Non-digitized voluminous materials such as books, journals or collected letters/petitions will not be accepted. Digital submissions of these, as well as articles and websites, must be accompanied by a statement containing citations to the specific findings or conclusions the commenter wishes to reference.

Submission of written comments. Written comments along with any attachments may be submitted through the Commission's web-based comment system (<http://dockets.drbc.commentinput.com>) until 5 P.M. on February 28, 2018. All materials should be provided in searchable formats, preferably in.pdf searchable text. Notably, a picture scan of a document may not result in searchable text. Comments received through a method other than the designated on-line method, including via email, fax, postal/delivery services or hand delivery, will be included in the rulemaking record if an express exception has been granted. Requests for exceptions to the submission of comments using the web-based system will be granted based on lack of access to the Internet and may be addressed to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

Public hearings. Details regarding registration to attend public hearings and to request speaking time are set forth in the fourth section of this notice, captioned "Registration to Attend and Speak at a Public Hearing". Additional procedures are described here. Notably, municipal, county, state, and federal elected officials (and staff speaking on behalf of elected officials) will be asked to identify themselves as such when registering. The number of speakers and the number of attendees will be limited by the space and time available. In order to provide as many individuals who wish to speak as possible with an opportunity to do so, each person will be limited to one time slot at one hearing location. Depending on the number who wish to be heard, speakers will be limited to two or three minutes.

The Commission appreciates the public's participation and input on this important matter. In order to ensure that scheduled public hearings are orderly and safe, it is essential that public hearing procedures be followed. The Commission's policies related to speaker conduct, audience conduct, safety, security, signs, placards and banners will be in effect at these public hearings. Participants are requested to review all DRBC public hearing procedures on DRBC's website at:

http://www.state.nj.us/drbc/library/documents/procedures_public-hearings050317.pdf.

The public is reminded that oral and written comments will receive the same consideration.

Supplementary Information:

The Delaware River Basin Commission (DRBC or "Commission") is a regional interstate and federal agency formed by concurrent compact legislation of the four basin states and the federal government in 1961 to manage the water resources of the Delaware River Basin without regard to political boundaries. Its members are, *ex officio*, the governors of the basin states (Delaware, New Jersey, New York, and Pennsylvania) and the commander of the U.S. Army Corps of Engineers North Atlantic Division, who represents the federal government. Most actions of the Commission, including the adoption of rules to effectuate, apply and enforce the compact, require a majority vote of the Commission's five members. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act.

Detailed and up-to-date information about the public process, including links to the proposed rules and guidance are available on the Commission's website, drbc.net, and specifically, at:

http://www.nj.gov/drbc/meetings/proposed/notice_hydraulic-fracturing.html.

Dated: December 15, 2017

Pamela M. Bush, J.D., M.R.P., Commission Secretary

Proposed Rule Text

The draft rule text may be viewed here: <http://regulations.delaware.gov/register/january2018/proposed/DRBC Rule Text.pdf>

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))
1 DE Admin. Code 710

PUBLIC NOTICE

710 Ambulance Service Regulations

The Delaware State Fire Prevention Commission, pursuant to 16 **Del.C.** §6604(1), proposes to revise regulation 710, Sections 14.2 and 14.3 by clarifying that Delaware certified EMTs are required to obtain and maintain National Registry of Emergency Medical Technicians certification and providing a path for recertification for out of state EMTs.

The Board will hold a public hearing on the proposed regulation change on February 20, 2018 at 10:00 a.m., in the Commission Chamber, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments should be sent to Sherry Lambertson, Executive Specialist for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments will be accepted until March 8, 2018 pursuant to 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/january2018/proposed/21 DE Reg 529RFA 01-01-18.pdf](http://regulations.delaware.gov/register/january2018/proposed/21%20DE%20Reg%20529RFA%2001-01-18.pdf)

710 Ambulance Service Regulations

(Break in Continuity of Sections)

BLS AMBULANCE SERVICE

4.0 BLS Ambulance Service License and Permits

- 4.1 Any person, firm, corporation or association either as owner, agent or otherwise who furnish, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of providing BLS Ambulance Service upon the streets, or highways, or waterways of this State shall hold a valid License and Permit(s) as either a Primary or Secondary BLS Ambulance Service Provider issued by the Commission. Application for the License and Permit(s) shall be upon forms provided by the Commission.

(Break in Continuity of Sections)

14.0 Training/Certification

All individuals who successfully complete initial EMT training may be eligible for and must successfully pass the NREMT examination to receive Delaware EMT Certification.

(Break in Continuity Within Section)

14.2 Delaware Certification

(Break in Continuity Within Section)

- 14.2.2 Individuals who take an EMT class from a state-approved provider other than the Delaware State Fire School are required to meet all Commission requirements for Certification.

(Break in Continuity Within Section)

- 14.2.2.2 It is the responsibility of the individual applying to provide all necessary documentation for certification which includes their course completion certificate, a copy of their current CPR/AED-Certification card, approved by the Commission, Delaware protocol training and current NREMT card.

PROPOSED REGULATIONS

14.3 Recertification as Delaware EMT

14.3.1 Individuals will be re-certified for a two-year period ~~or, if Nationally Registered, for a period to coincide with their NREMT card.~~

(Break in Continuity Within Section)

14.3.3 Requirements for re-Certification are:

14.3.3.1 Individuals must submit a request for re-Certification to the Commission documenting completion of the following requirements.

14.3.3.1.1 Successfully complete the National Continued Competency Program or an approved in-State Delaware EMT refresher that meets the National Highway Traffic Safety Administration's (NHTSA) National EMS Education Standards most current curriculum conducted by the Delaware State Fire School or an equivalent sanctioned by OEMS and approved by the Commission.

14.3.3.1.2 ~~Current CPR/AED certificate card, approved by the Commission.~~ Current National Registry of Emergency Medical Technicians (NREMT) certification; to coincide with the Delaware Certification cycle.

(Break in Continuity Within Section)

14.3.3.1.7 A Delaware EMT employed in another state may present a certificate of completion for training credit from an out-of-state refresher program that participates in the NHSTA NCCP program. The EMT will be required to complete the Delaware content under the local section of the NCCP curriculum to complete the required Delaware Refresher for recertification.

14.3.4 Re-registration as an NREMT: The registration requirements for a National Registered Emergency Medical Technician will be determined by the National Registry of Emergency Medical Technicians.

14.3.4.1 Continuing education classes to achieve re-registration through the NREMT ~~will be reviewed for approval by the Office of Emergency Medical Services~~ shall be approved in accordance with NREMT policy and procedures.

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

710 Ambulance Service Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) & 303(a) (14 **Del.C.** §§122(b) & 303(a))
14 **DE Admin. Code** 1008

PUBLIC NOTICE

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

1008 DIAA Junior High and Middle School Interscholastic Athletics

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with

the Department of Education, developed the amendments to 14 **DE Admin. Code** 1008. The amendments include adding subsection 8.1.2, which specifies that if the DIAA recognizes multiple officials associations for a particular sport, a conference or an individual school, in the absence of a conference affiliation, determines the officials association that officiates its home contests; clarifying, in subsection 8.2.9, that the DIAA Board of Directors considers an officials association's petition and the Evaluation Committee's recommendation in deciding whether to recognize and approve the association; adding subsection 8.1.10, which requires officials associations that have been approved by the DIAA to submit an annual written report to the DIAA Officials' Committee; adding subsection 8.1.11, which provides the DIAA Officials' Committee's standard and procedure for reviewing an officials association's annual report; and replacing the option of viewing a videotape of a DIAA clinic with completing an online course in subsection 8.3.5.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 3, 2018 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to interscholastic athletics and 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 is related to interscholastic athletics and does not help to ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation is intended, in part, to help ensure all students' health and safety are adequately protected.

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

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 will be placed in the same entity.

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with the 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/january2018/proposed/21 DE Reg 530RFA 01-01-18.pdf](http://regulations.delaware.gov/register/january2018/proposed/21%20DE%20Reg%20530RFA%2001-01-18.pdf)

**1008 DIAA Junior High and Middle School Interscholastic Athletics
(Break in Continuity of Sections)**

7.0 Certified and Emergency and Volunteer Coaches, Student Teaching and Coaching Out of Season

PROPOSED REGULATIONS

(Break in Continuity Within Section)

7.2 Emergency Coaches

- 7.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the school year or whose professional assignment is less than half of the school day. An individual who meets the requirements of a certified coach as specified in ~~24-4~~ subsection 7.1.1, but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DIAA.

(Break in Continuity Within Section)

8.0 Recognition of Officials' Associations, Required Use of Officials and Attendance at Rules Clinics

8.1 Required Use of Officials

- 8.1.1 Member Schools and tournament sponsors shall be required to use officials recognized and approved by DIAA for interscholastic contests. Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$100.00 fine per game per non-approved official.

- 8.1.1.1 In the case of emergencies, such as an act of God, refusal by an association to work games, or a shortage of qualified officials, Member Schools which desire to use other than approved officials must obtain permission from the Executive Director.

- 8.1.2 If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

~~8-18.2~~ Recognition of Officials' Associations

- ~~8-1-18.2.1~~ 8.1-18.2.1 The officiating of interscholastic contests in the state of Delaware which involve one or more ~~member schools~~ Member Schools shall be under the control of the DIAA and such control may include, but not be restricted to, giving examinations, evaluating officials, setting game fees, determining the number of officials per game, and assigning officials.

- ~~8-1-28.2.2~~ 8.1-28.2.2 An ~~official's~~ officials' association which desires to officiate middle school and high school contests and competitions shall request recognition and approval from DIAA by submitting the following documents to the DIAA Officials' Committee:

- ~~8-1-2-18.2.2.1~~ 8.1-2-18.2.2.1 A letter of request to be recognized by DIAA and indicating the association's willingness to abide by ~~DIAA~~ the Department's rules and regulations. The president of the requesting officials' association or ~~their~~ his or her designee shall petition the ~~DIAA Board of Directors~~ to render a decision.

- ~~8-1-2-28.2.2.2~~ 8.1-2-28.2.2.2 A brief history of the association including but not limited to the officiating experience (if any) of the members and if a new association is being formed, the purpose for which the association is being formed.

- ~~8-1-2-38.2.2.3~~ 8.1-2-38.2.2.3 A copy of the association's constitution and bylaws including a statement that it does not discriminate on the basis of age, gender, race, religion, etc.

- ~~8-1-2-48.2.2.4~~ 8.1-2-48.2.2.4 A description of the association's evaluation and rating system.

- ~~8-1-2-58.2.2.5~~ 8.1-2-58.2.2.5 A description of the association's recruiting and training programs for new members.

- ~~8-1-2-68.2.2.6~~ 8.1-2-68.2.2.6 A membership roster indicating the number of years of experience at the subvarsity, varsity, and state tournament levels for each member and also their most recent rating in a previous association. This information must be documented and is subject to verification.

- ~~8-1-2-78.2.2.7~~ 8.1-2-78.2.2.7 Letters of recommendation or names of references from leagues which the association has serviced during ~~their~~ its existence.

- ~~8-1-38.2.3~~ 8.1-38.2.3 The Officials' Committee shall review the aforementioned documents and meet with the officers of the association to discuss their petition.

- ~~8-1-48.2.4~~ 8.1-48.2.4 The Officials' Committee ~~shall reserve the right to~~ may consult with any other interested parties during the evaluation process.

- ~~8.1.58.2.5~~ The Officials' Committee shall report its findings to the DIAA Board of Directors and recommend that the officials' association be granted recognition, granted recognition with conditions, or denied recognition.
- ~~8.1.68.2.6~~ The Board of Directors shall consider the petition for recognition and the ~~Official's Committee~~ Officials' Committee's recommendation and make a decision to approve or deny the request. The petitioner may request an evidentiary hearing ~~be held~~ before the Board pursuant to the procedures in ~~1006.10.1.3.2~~ subsection 10.1.3.2 of 14 DE Admin. Code 1006. The Board shall decide if the petitioning officials association shall be granted recognition, granted recognition with conditions, or denied recognition.
- ~~8.1.78.2.7~~ An approved association shall serve a minimum two year probationary period during which time the association shall be evaluated. An association designated as probationary is ineligible to provide officials to work the applicable DIAA State Tournament.
- ~~8.1.7.48.2.7.1~~ Members of the Officials' Committee and the applicable Sport Committee shall comprise the Officials Association Evaluation Committee (Evaluation Committee). The new officials association shall be evaluated according to the following criteria:
- ~~8.1.7.4.48.2.7.1.1~~ Total number of games worked at the varsity level.
- ~~8.1.7.4.28.2.7.1.2~~ Total number of officials who worked games at the varsity level.
- ~~8.1.7.4.38.2.7.1.3~~ Total number of ~~member schools~~ Member Schools who contracted the services of the association.
- ~~8.1.7.4.48.2.7.1.4~~ A comparison of the percentage of games the association worked against the percentage of games worked by other DIAA recognized officials associations in that sport.
- ~~8.1.7.4.58.2.7.1.5~~ A comparison of the percentage of the association's registered officials against the number who worked varsity level games.
- ~~8.1.7.4.68.2.7.1.6~~ A comparison of the ratio from ~~8.1.7.4.5~~ subsection 8.2.7.1.5 against any existing association(s)' same ratio.
- ~~8.1.7.4.78.2.7.1.7~~ In addition, the evaluation may be based on any other available information which may include but is not limited to: the associations ability to work a minimum of 25 percent of all varsity contests played by DIAA ~~member schools~~ Member Schools in that sport; written complaints by contracted schools; evaluations by ~~Member schools~~ Member Schools; input from ~~Member schools~~ Schools; or any other relevant information.
- ~~8.1.7.28.2.7.2~~ The results of all evaluations shall be shared with the probationary association at the end of each season. The association shall have the opportunity to add comments to the final evaluation.
- ~~8.1.88.2.8~~ At the end of the minimum two-year probationary period the Evaluation Committee shall recommend to the Board one of the following options based on the evaluations and the ~~Probationary Association's~~ probationary association's ability to work varsity contests equal to or greater than twenty-five (25) percent of all varsity contests played by ~~member schools~~ Member Schools:
- ~~8.1.8.48.2.8.1~~ Re-approve conditionally for another year on probationary status.
- ~~8.1.8.28.2.8.2~~ Disapprove so as to no longer remain as an approved association.
- ~~8.1.8.38.2.8.3~~ Re-approve conditionally with state tournament consideration based upon the sport worked.
- ~~8.1.8.48.2.8.4~~ Completely approve the association with full state tournament consideration equal to any existing association(s).
- ~~8.1.98.2.9~~ The Board of Directors shall consider the petition for recognition and the ~~Official's Committee~~ Evaluation Committee's recommendation and make a decision. The probationary officials association may request an evidentiary hearing ~~be held~~ before the Board pursuant to the procedures in ~~1006.10.1.3.2~~ subsection 10.1.3.2 of 14 DE Admin. Code 1006. The Board shall decide if the petitioning officials association shall be:
- ~~8.1.9.48.2.9.1~~ Re-approved conditionally for another year on probationary status.

PROPOSED REGULATIONS

- ~~8.1.9.28.2.9.2~~ Disapproved so as to no longer remain as an approved association.
- ~~8.1.9.38.2.9.3~~ Re-approved conditionally with state tournament consideration based upon the sport worked.
- ~~8.1.9.48.2.9.4~~ Completely approved with full state tournament consideration equal to any existing association(s).

~~8.1.10~~ If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

8.2.10 Once an officials' association is completely approved, it is required to annually submit a written report on the appropriate form to the Officials' Committee. The report shall include information on the association's executive board, membership, and recruitment strategies.

8.2.11 The Officials' Committee shall review the submitted report to ensure that the association is meeting the goals of education-based athletics. If the Officials' Committee determines that the association is not meeting the goals of education-based athletics, the Officials' Committee shall notify the association of the goals it has not met, the association may be placed on an improvement plan, and the Officials' Committee shall decide whether to recommend revocation of the association's approval and recognition to the Board.

8.2 Required Use of Officials

~~8.2.1~~ Member schools and tournament sponsors shall be required to use officials approved by DIAA for interscholastic contests. Use of nonapproved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$100.00 fine per game per nonapproved official.

~~8.2.1.1~~ In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

8.3 Attendance at Rules Clinics

(Break in Continuity Within Section)

~~8.3.2~~ Failure on the part of an official to attend the DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose ~~their~~ his or her eligibility to officiate a state tournament contest during that season.

(Break in Continuity Within Section)

~~8.3.5~~ If, for a legitimate reason which is documented by the president of their association, an official is unable to attend the DIAA rules interpretation clinic, ~~they~~ the official may ~~view a videotape of the DIAA clinic~~ complete an online course or, in the absence of ~~a videotape~~ an online course, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

~~8.3.5.1~~ No later than the day of the DIAA rules interpretation clinic, the president of the association ~~notifies~~ shall notify the ~~Executive Director~~ DIAA office, in writing, of the ~~official's inability~~ any officials who are unable to attend the clinic.

~~8.3.5.2~~ The out of state clinic is ~~is~~ shall be conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

~~8.3.5.3~~ The official ~~arranges~~ shall arrange for a letter to be sent to the Executive Director from the state's athletic association office verifying ~~his/her~~ the official's attendance at the clinic.

8.4 Tournament Fees

8.4.1 The Officials' Committee shall work with the Executive Director to help determine the fee amount for officiating a state tournament contest.

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

1008 DIAA Junior High and Middle School Interscholastic Athletics

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) & 303(a) (14 **Del.C.** §§122(b) & 303(a))
14 **DE Admin. Code** 1009

PUBLIC NOTICE

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

1009 DIAA High School Interscholastic Athletics

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education, developed the amendments to 14 **DE Admin. Code** 1009. The amendments include revising the eligibility requirements for foreign exchange and international students in subsection 2.8; adding subsection 8.1.2, which specifies that if the DIAA recognizes multiple officials associations for a particular sport, a conference or an individual school, in the absence of a conference affiliation, determines the officials association that officiates its home contests; clarifying, in subsection 8.2.9, that the DIAA Board of Directors considers an officials association's petition and the Evaluation Committee's recommendation in deciding whether to recognize and approve the association; adding subsection 8.1.10, which requires officials associations that have been approved by the DIAA to submit an annual written report to the DIAA Officials' Committee; adding subsection 8.1.11, which provides the DIAA Officials' Committee's standard and procedure for reviewing an officials association's annual report; and replacing the option of viewing a videotape of a DIAA clinic with completing an online course in subsection 8.3.5.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 3, 2018 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to interscholastic athletics and 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 is related to interscholastic athletics and does not help to ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation is intended, in part, to help ensure all students' health and safety are adequately protected.

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

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 will be

placed in the same entity.

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with the 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/january2018/proposed/21 DE Reg 535RFA 01-01-18.pdf>

1009 DIAA High School Interscholastic Athletics

1.0 National Federation of State High Schools, Conferences, Contracts, Equivalency Rules, and Definitions

1.1 Definitions

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

(Break in Continuity Within Section)

“~~Member school~~ **School**” means a full or associate member school of the DIAA.

2.0 Eligibility: No Student Shall Represent a School in an Interscholastic Scrimmage or Contest if the Student Does Not Meet the Following Requirements

(Break in Continuity Within Section)

2.8 Eligibility of Foreign Exchange Students and International Students

~~2.8.1 Notwithstanding 2.2 and 2.4, foreign exchange students and international students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they meet the age requirements and are enrolled as participants in a recognized foreign exchange program, international student program or DIAA recognized international student academic program.~~

~~2.8.1.1 Foreign Exchange (J-1) Students—For purposes of these regulations a foreign exchange student shall possess a J-1 Student visa. The J-1 student visa is for students participating in study-based exchange and visitor programs in the U.S. These programs are sponsored by an educational or other nonprofit institution, which must be accredited through the Exchange Visitor Program designated by the U.S. State Department. All foreign exchange programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized. Students participating in a CSIET foreign exchange program are eligible to participate in interscholastic athletics for one school year provided they are otherwise eligible.~~

~~2.8.1.2 International (F-1) Students—For purposes of these regulations an international student shall possess an F-1 visa. An F-1 visa is issued to international non-resident alien students whose primary purpose for visiting the United States is to study fulltime at an approved institution in accordance with federal law.~~

~~2.8.1.2.1 CSIET Approved Programs—All international student programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) shall be considered as recognized. Students participating in a CSIET approved international student~~

program, are limited to the sub-varsity level and the student is not eligible for state tournament competition during the first year of attendance. For purposes of these regulations the student's first year shall be a period of 365 calendar days after the student's first day of attendance at the receiving school. Beginning with their second year of attendance international students are eligible to participate at the varsity level and in state tournaments.

2.8.1.2.2 ~~DIAA Recognized Academic Programs—International students participating in a DIAA recognized international student academic program who otherwise meet all other requirements may participate in interscholastic athletics to the extent specified in this section. During the international student's first year of attendance at the member school, participation is limited to the sub-varsity level and the student is not eligible for state tournament competition. For purposes of these regulations the student's first year shall be a period of 365 calendar days after the student's first day of attendance at the receiving school.~~

2.8.1.2.2.1 ~~In order to obtain approval as a DIAA recognized international student academic program, the Member school must at a minimum specifically incorporate and formally adopt the following requirements, policies, participation limits, and notification requirements in their program:~~

2.8.1.2.2.1.1 ~~A student may not be accepted in the school or program for athletic purposes, including recruiting by an outside party. The school must include a statement in their application and program material providing notice of the prohibitions on recruitment and athletic purposes and advising that based on their program requirements and DIAA regulations that recruitment based on athletics by anyone including an outside source will result in the student being permanently ineligible in interscholastic athletics at any DIAA member school. The school, student, and parent must all sign a statement verifying that the student was not athletically recruited in any way and attesting that the student did not enroll for athletic purposes and has enrolled in the school for educational purposes.~~

2.8.1.2.2.1.2 ~~With the exception of the requirement in 2.2 that a student must be living with their custodial parent, legal guardian, or relative caregiver in the attendance zone of the school, the program must require that students meet all other eligibility requirements including a pre-participation evaluation or physical including a parent's signature.~~

2.8.1.2.2.1.3 ~~The program must specify that the international student's participation is limited to the sub-varsity level for the first year of attendance at the school and that students will be ineligible for state tournament competition during the first year of attendance. If a school does not have a sub-varsity team, a student may practice at the varsity level during their first year of attendance. After one year of attendance at the school in an approved international student academic program, the international student may be eligible for varsity participation and state tournament competition.~~

2.8.1.2.2.1.4 ~~All of the specific requirements must be part of the school's international student academic program and must be communicated to the students in advance of registration.~~

2.8.1.2.2.2 ~~The Member school may obtain recognition of their school's international student academic program by submitting their program for approval to the DIAA Executive Director with adequate documentation. The member school must provide a copy of their policies and enrollment applications and agreements to the DIAA Executive Director for recognition. The burden on the Member school to establish their program meets all the requirements.~~

PROPOSED REGULATIONS

- ~~2.8.1.2.2.3 At least annually and prior to athletic participation, the school shall provide to the DIAA Executive Director a list of the international students enrolled in their programs and include signed copies of the required forms.~~
- ~~2.8.2 International students who are not participating in a CSIET recognized foreign exchange program, CSIET recognized international student program, or DIAA recognized international student academic program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DIAA eligibility requirements including 2.2.~~
- ~~2.8.3 Once enrolled, foreign exchange and other international students shall comply with all DIAA eligibility rules with the exception of 2.2.~~
- ~~2.8.4 Athletic recruitment of foreign exchange students or other international students by a member school or any other entity is prohibited, and any such students recruited shall be ineligible for the duration of their attendance at a DIAA member school.~~
- 2.8.1 For the purpose of subsection 2.8, a foreign exchange or international student is a high school student who:
- 2.8.1.1 Is in the United States on a J-1 (Exchange Visitors) or F-1 (Academic Student) Visa;
 - 2.8.1.2 Is enrolled at a DIAA Member School;
 - 2.8.1.3 Is participating in a program or placed at a school that is approved by the Student and Exchange Visitors Program and recognized by DIAA;
 - 2.8.1.4 Is randomly selected for or placed in the program or school and not on any basis relating to the student's athletic abilities or interests;
 - 2.8.1.5 If applicable, is randomly assigned to a host family by a method that ensures the assignment is not for an athletic purpose;
 - 2.8.1.6 Does not reside with any members of the coaching or athletic staff of the Member School; and
 - 2.8.1.7 Meets all of the eligibility requirements except for subsections 2.2 (Residence) and 2.4 (Transfers) of this regulation.
- 2.8.2 A foreign exchange or international student who participates in a DIAA-recognized program, as provided in subsection 2.8.3, is eligible to participate in interscholastic athletic contests and competitions.
- 2.8.3 For the purpose of subsection 2.8, a DIAA-recognized program is either a Council on Standards for International Educational Travel (CSIET)-approved program or a DIAA-recognized international student academic program.
- 2.8.3.1 CSIET Approved Programs - All international student programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the CSIET shall be considered recognized by DIAA.
 - 2.8.3.2 DIAA Recognized International Student Academic Programs - A Member School may obtain recognition of its international student academic program by submitting its program for approval to the DIAA Executive Director with adequate documentation. The Member School must provide a copy of its policies and enrollment applications and agreements to the DIAA Executive Director for recognition. The burden is on the Member School to establish its program meets all the requirements.
 - 2.8.3.2.1 In order to obtain approval as a DIAA recognized international student academic program, the Member School must, at a minimum, specifically incorporate and formally adopt the following requirements, policies, participation limits, and notification requirements in its program:
 - 2.8.3.2.1.1 A student may not be accepted in the school or program for athletic purposes, including recruiting by an outside party. The school must include a statement in its application and program materials providing notice of the prohibitions on recruitment and athletic purposes and advising that based on its program requirements and DIAA regulations that recruitment based on athletics by anyone including an outside source

will result in the student being permanently ineligible in interscholastic athletics at any DIAA Member School. The school, student, and parent must all sign a statement verifying that the student was not athletically recruited in any way and attesting that the student did not enroll for athletic purposes and has enrolled in the school for educational purposes.

2.8.3.2.1.2 With the exception of the requirement in subsection 2.2 that a student must be living with their custodial parent, legal guardian, or relative caregiver in the attendance zone of the school, the program must require that students meet all other eligibility requirements including a pre-participation evaluation or physical including a parent's signature.

2.8.3.2.1.3 The program must specify that the student's participation is limited to the sub-varsity level for the first year of attendance at the school and that students will be ineligible for state tournament competition during the first year of attendance. If a school does not have a sub-varsity team, a student may practice at the varsity level during his or her first year of attendance. After one year of attendance at the school in an approved international student academic program, the international student may be eligible for varsity participation and state tournament competition.

2.8.3.2.1.4 All of the specific requirements must be part of the school's international student academic program and must be communicated to the students in advance of registration.

2.8.3.1.2 At least annually and prior to athletic participation, the school shall provide to the DIAA Executive Director a list of the international students enrolled in its programs and include signed copies of the required forms.

2.8.3.1.3 If the Member School changes its program, the Member School shall notify the Executive Director who must approve the changes for the purpose of subsection 2.8.

2.8.4 International students who are not in the United States on a J-1 or F-1 Visa and are not participating in a CSJET-recognized program or DIAA recognized international student academic program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DIAA eligibility requirements including subsection 2.2.

2.8.5 Athletic recruitment of foreign exchange and international students by a Member School is prohibited. Any such students recruited shall be ineligible for the duration of their attendance at the Member School.

2.8.6 Effective Date

2.8.6.1 Subsection 2.8 of this regulation shall be effective on July 1, 2018.

(Break in Continuity of Sections)

8.0 Recognition of Officials' Associations, Required Use of Officials and Attendance at Rules Clinics

8.1 Required Use of Officials

8.1.1 Member Schools and tournament sponsors shall be required to use officials recognized and approved by DIAA for interscholastic contests. Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$100.00 fine per game per non-approved official.

8.1.1.1 In the case of emergencies, such as an act of God, refusal by an association to work games, or a shortage of qualified officials, Member Schools which desire to use other than approved officials must obtain permission from the Executive Director.

8.1.2 If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

8.18.2 Recognition of Officials' Associations

PROPOSED REGULATIONS

- ~~8.1.48.2.1~~ The officiating of interscholastic contests in the state of Delaware which involve one (1) or more ~~member schools~~ Member Schools shall be under the control of the DIAA and such control may include, but not be restricted to, giving examinations, evaluating officials, setting game fees, determining the number of officials per game, and assigning officials.
- ~~8.1.28.2.2~~ An ~~official's~~ officials' association which desires to officiate middle school and high school contests and competitions shall request recognition and approval from DIAA by submitting the following documents to the DIAA Officials' Committee:
- ~~8.1.2.18.2.2.1~~ A letter of request to be recognized by DIAA and indicating the association's willingness to abide by ~~DIAA~~ the Department's rules and regulations. The president of the requesting officials' association or ~~their~~ his or her designee shall petition the ~~DIAA~~ Board of ~~Directors~~ to render a decision.
- ~~8.1.2.28.2.2.2~~ A brief history of the association, including, but not limited to, the officiating experience (if any) of the members and if a new association is being formed, the purpose for which the ~~Association~~ association is being formed.
- ~~8.1.2.38.2.2.3~~ A copy of the association's constitution and bylaws including a statement that it does not discriminate on the basis of age, gender, race, religion, etc.
- ~~8.1.2.48.2.2.4~~ A description of the association's evaluation and rating system.
- ~~8.1.2.58.2.2.5~~ A description of the association's recruiting and training programs for new members.
- ~~8.1.2.68.2.2.6~~ A membership roster indicating the number of years of experience at the subvarsity, varsity, and state tournament levels for each member and also their most recent rating in a previous association. This information must be documented and is subject to verification.
- ~~8.1.2.78.2.2.7~~ Letters of recommendation or names of references from leagues which the association has serviced during ~~their~~ its existence.
- ~~8.1.38.2.3~~ The Officials' Committee shall review the aforementioned documents and meet with the officers of the association to discuss their petition.
- ~~8.1.48.2.4~~ The Officials' Committee ~~shall reserve the right to~~ may consult with any other interested parties during the evaluation process.
- ~~8.1.58.2.5~~ The Officials' Committee shall report its findings to the ~~DIAA~~ Board of ~~Directors~~ and recommend that the officials' association be granted recognition, granted recognition with conditions, or denied recognition.
- ~~8.1.68.2.6~~ The Board of ~~Directors~~ shall consider the petition for recognition and the ~~Official's~~ Officials' Committee recommendation and make a decision to approve or deny the request. The petitioner may request an evidentiary hearing ~~be held~~ before the Board pursuant to the procedures in ~~1006.10.1.3.2~~ subsection 10.1.3.2 of 14 DE Admin. Code 1006. The Board shall decide if the petitioning officials association shall be granted recognition, granted recognition with conditions, or denied recognition.
- ~~8.1.78.2.7~~ An approved association shall serve a minimum two year probationary period during which time the association shall be evaluated. An association designated as probationary is ineligible to provide officials to work the applicable DIAA State Tournament.
- ~~8.1.7.18.2.7.1~~ Members of the Officials' Committee and the applicable Sport Committee shall comprise the Officials Association Evaluation Committee (Evaluation Committee). The new officials association shall be evaluated according to the following criteria:
- ~~8.1.7.1.18.2.7.1.1~~ Total number of games worked at the varsity level.
- ~~8.1.7.1.28.2.7.1.2~~ Total number of officials who worked games at the varsity level.
- ~~8.1.7.1.38.2.7.1.3~~ Total number of ~~member schools~~ Member Schools who contracted the services of the association.
- ~~8.1.7.1.48.2.7.1.4~~ A comparison of the percentage of games the association worked against the percentage of games worked by other DIAA recognized officials associations in that sport.
- ~~8.1.7.1.58.2.7.1.5~~ A comparison of the percentage of the association's registered officials against the number who worked Varsity level games.

~~8.1.7.1.6~~8.2.7.1.6 A comparison of the ratio from ~~8.1.7.1.5~~ subsection 8.2.7.1.5 against any existing association(s)' same ratio.

~~8.1.7.1.7~~8.2.7.1.7 In addition, the evaluation may be based on any other available information which may include but is not limited to: the associations ability to work a minimum of 25 percent of all varsity contests played by DIAA ~~member schools~~ Member Schools in that sport; written complaints by contracted schools; evaluations by ~~member schools~~ Member Schools; input from ~~member schools~~ Member Schools; or any other relevant information.

~~8.1.7.2~~8.2.7.2 The results of all evaluations shall be shared with the probationary association at the end of each season. The association shall have the opportunity to add comments to the final evaluation.

~~8.1.8.2.8~~ At the end of the minimum two-year probationary period, the Evaluation Committee shall recommend to the Board one of the following options based on the evaluations and the ~~Probationary Association's probationary association's~~ ability to work varsity contests equal to or greater than twenty-five (25) percent of all varsity contests played by ~~Member schools~~ Schools:

~~8.1.8.18.2.8.1~~ Re-approve conditionally for another year on probationary status.

~~8.1.8.28.2.8.2~~ Disapprove so as to no longer remain as an approved association.

~~8.1.8.38.2.8.3~~ Re-approve conditionally with state tournament consideration based upon the sport worked.

~~8.1.8.48.2.8.4~~ Completely approve the ~~Association~~ association with full state tournament consideration equal to any existing ~~associations(s)~~ association(s).

~~8.1.98.2.9~~ The Board of ~~Directors~~ shall consider the petition for recognition and the ~~Official's Committee~~ Evaluation Committee's recommendation and make a decision. The probationary officials association may request an evidentiary hearing ~~be held~~ before the Board pursuant to the procedures in ~~4006.10.1.3.2~~ subsection 10.1.3.2 of 14 DE Admin. Code 1006. The Board shall decide if the petitioning officials association shall be:

~~8.1.9.18.2.9.1~~ Re-approved conditionally for another year on probationary status.

~~8.1.9.28.2.9.2~~ Disapproved so as to no longer remain as an approved ~~Association~~ association.

~~8.1.9.38.2.9.3~~ Re-approved conditionally with state tournament consideration based upon the ~~Sport~~ sport worked.

~~8.1.9.48.2.9.4~~ Completely approved with full state tournament consideration equal to any existing ~~associations(s)~~ association(s).

~~8.1.10~~ If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

~~8.2.10~~ Once an officials' association is completely approved, it is required to annually submit a written report on the appropriate form to the Officials' Committee. The report shall include information on the association's executive board, membership, and recruitment strategies.

~~8.2.11~~ The Officials' Committee shall review the submitted report to ensure that the association is meeting the goals of education-based athletics. If the Officials' Committee determines that the association is not meeting the goals of education-based athletics, the Officials' Committee shall notify the association of the goals it has not met, the association may be placed on an improvement plan, and the Officials' Committee shall decide whether to recommend revocation of the association's approval and recognition to the Board.

8.2 Required Use of Officials

~~8.2.1~~ Member schools and tournament sponsors shall be required to use officials approved by DIAA for interscholastic contests. Use of non approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$100.00 fine per game per non approved official.

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~~8.2.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.~~

8.3 Attendance at Rules Clinics

(Break in Continuity Within Section)

8.3.2 Failure on the part of an official to attend the DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose ~~their~~ his or her eligibility to officiate a state tournament contest during that season.

(Break in Continuity Within Section)

8.3.5 If, for a legitimate reason which is documented by the president of the association, an official is unable to attend the DIAA rules interpretation clinic, ~~they~~ the official may ~~view a videotape of the DIAA clinic~~ complete an online course or, in the absence of ~~a videotape~~ an online course, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

8.3.5.1 No later than the day of the DIAA rules interpretation clinic, the president of the association ~~notifies~~ shall notify the ~~Executive Director~~ DIAA office, in writing, of the ~~official's inability~~ any officials who are unable to attend the clinic.

8.3.5.2 The out of state clinic ~~is~~ shall be conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

8.3.5.3 The official ~~arranges~~ shall arrange for a letter to be sent to the Executive Director from the state's athletic association office verifying ~~their~~ the official's attendance at the clinic.

8.4 Tournament Fees

8.4.1 The Officials' Committee shall work with the Executive Director to help determine the fee amount for officiating a state tournament contest.

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

1009 DIAA High School Interscholastic Athletics

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11002.4 &11004

PUBLIC NOTICE

Child Care Assistance

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Child Care Assistance, specifically, *to clarify policy related to determination of eligibility*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on January 31, 2018. Please identify in the subject line: Child Care Assistance.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Child Care Assistance, specifically, *to clarify policy related to determination of eligibility.*

Statutory Authority

- Child Care Development Fund (CCDF)
- CFR 98.40 - Child Care Development Block Grant

Background

The policy has been amended to explain eligibility criteria for child care in text that will be understandable, and the focus is on eligibility of the child and the parent/caretaker. The amended policy removed information that referenced the Personal Responsibility and Work Opportunity Act of 1996 and the listing of the different child care categories, as this information is not relevant to determination of eligibility.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to clarify policy related to determination of eligibility.

Summary of Proposed Changes

Effective for services provided on and after March 11, 2018 Delaware Health and Social Services/Division of Social Services proposes to amend sections 11004 and 11002.4 of the Division of Social Services Manual to clarify policy related to determination of eligibility.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 31, 2018.

Fiscal Impact

This policy change is to clarify the text and formatting of the existing policy and to remove text that is no longer applicable. This policy is currently in place and there are no new financial responsibilities.

***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/january2018/proposed/21 DE Reg 542RFA 01-01-18.pdf>

POLICY – AMENDMENT

Delaware Department of Health and Social Services Division of Social Services Policy and Program Development Unit

11002.4 Determining Persons Eligible for Child Care Assistance

45 CFR 98.20

DSS provides child care services to eligible Delaware families with children who need child care and who are under the age of 13, or children 13 through 18 years of age who are physically or mentally incapable of caring for themselves or who are in need of protective services.

~~Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, asylee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction. For more detailed child care policy on citizenship, aliens and refugee's see DSSM 3024, these policies apply to the Child Care Subsidy Program.~~

~~The Division can provide Child Care services for **eligible** families where there is at least one U.S. citizen, legal alien or qualified refugee in the family. If one member of the family is a U.S. citizen, legal alien or qualified refugee and he/she meets both technical and financial eligibility criteria, Child Care services can be provided. The Division will evaluate non-US citizen cases on an individual basis.~~

~~Non-US citizens referred to the Child Care Subsidy Program through the Division of Family Services, due to a protective need, are eligible to receive services regardless of their citizenship status.~~

~~This policy must also be read in accordance with Section 11003, Eligibility Requirements. DSS provides a guarantee for certain forms of Child Care (Categories 11, 12, and 21). This guarantee means that eligible families will receive child care services under these programs. Eligibility for other child care services (Categories 31, 41 and 51) does not come with this same guarantee. Funding for child care services in these programs is capped. Though families may have an eligible child for whom they need care, and though families may meet other requirements of need and income, this does not guarantee that DSS will provide child care. DSS reserves the right for its capped programs to limit, where appropriate, its child care services based on available resources and funding.~~

~~Eligible families generally include:~~

- ~~A. TANF recipients who work, attend school or are participating in TANF Employment and Training activities.~~
- ~~B. Families with low incomes, who work.~~
- ~~C. Families with low incomes who attend a job training or education program as defined in section 11002.9.~~
- ~~D. Families who receive Food Stamps and who must participate in E&T.~~
- ~~E. Families who receive or need to receive protective services through the Division of Family Services.~~
- ~~F. Eligible families with a special need (either a child or parent).~~

1. Eligibility Criteria for Children

- A. To be determined eligible for child care services, children must be:
 - Under 13 years of age or 13 through 18 years of age and physically or mentally incapable of self-care as determined by a medical professional, and
 - U.S. citizens or qualified aliens or non-U.S. citizens referred through the Division of Family Services.
- B. Children are also eligible for child care services if they are:
 - In need of protective services,
 - Homeless, or
 - In foster care or awaiting foster care placement.

2. Eligibility Criteria for Parents and Caretakers

A. To be determined eligible for child care services, parents and caretakers must meet at least one of the

following requirements:

- Participate in a TANF or Food Benefit Employment and Training program.
- Receive wages from employment.
- Attend approved job training or educational programs.
- Receive protective services from the Division of Family Services.
- Report a special need.

Related policies:

11003 Determining Technical Eligibility for Child Care Assistance

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

11004 Application Processing Applying for Child Care Assistance

45 CFR 98.1 (b) (1)

~~Any parent/caretaker who expresses a desire for child care services may apply by contacting a DSS office. The process to actually obtain child care services starts when parents/caretakers contact a Case Manager. Consider this an informal inquiry unless or until it results in the completion of a written application.~~

~~An informal inquiry typically involves a parent/ caretaker's phone call or unannounced child care office visit to seek information about eligibility for child care services. Process all informal inquiries by doing a simple review of the parent/caretaker's need in the creation of a child care case in the DCIS II Child Care Sub system. Following this simple screening, parents/caretakers are told they either appear eligible or ineligible for service. For those applicants who appear to be eligible, proceed with the formal application process, schedule an appointment or send them the application and outline the necessary information to be returned with the signed application. Case Managers will inform those parents/caretakers who do not appear eligible of their right to file a formal application if they still so choose.~~

~~During the informal process, no obligation exists to provide parents/caretakers with a written decision of the eligibility finding nor are parents/caretakers able to appeal an informal decision. In either case, however, Case Managers will always conduct or schedule a formal interview for parents/caretakers who appear eligible or those who assert their right to make a formal request.~~

~~The formal application process is detailed below, including the requirements for authorizing child care services, the minimum requirements for verifying eligibility information, the standards for determining child care fees, and conditions for when and why a child care case should either continue or close.~~

Parents and caretakers who are interested in receiving child care assistance may inquire about services by contacting a DSS office.

1. Parents and caretakers may informally inquire about child care eligibility by contacting a DSS office by phone call or unannounced office visit.

2. Each informal inquiry for child care services will be reviewed by a DSS eligibility case worker at the time of inquiry. Parents and caretakers who appear to be eligible may complete the formal application process on the same day as the informal inquiry.

3. Eligibility case workers who are assessing informal child care inquiries shall:

- A. Review each applicant's need for child care based on the information that the applicant provides.
- B. Review current case information in ASSIST Worker Web (AWW), if applicable.
- C. Notify parents and caretakers whether they are potentially eligible for services. A written decision is not required for an informal inquiry.
- D. Inform all parents and caretakers of their right to file a formal application.
- E. Proceed with the formal application process for potentially eligible parents and caretakers on the same day as the informal inquiry.
- F. Provide the applicant with Form 105 "Appointment and Request for Verification" when additional information is needed to complete the eligibility process.

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Sections 311, 2501, 2304(15)(c), and 2312
(18 Del.C. §§311, 2501, 2304(15)(c), & 2312)
18 DE Admin. Code 906

PUBLIC NOTICE**906 Use of Credit Information****A. Type of Regulatory Action Required**

Proposed repeal of existing regulation

B. Synopsis of Subject Matter of the Regulation

The Department of Insurance (Department) hereby gives notice of the proposed repeal of existing Regulation 906, Use of Credit Information, effective on May 1, 2018.

HS1 for HB 80 replaced then existing Chapter 83 of the Delaware Insurance Code with a new chapter. The new chapter was signed into law on August 1, 2017, and it becomes effective on May 1, 2018. The new chapter sets forth the permissible uses of credit information in rating personal insurance, and prohibits insurance companies from increasing rates on current customers solely for having reached the age of 75 or above or for having a change in marital status due to the death of a spouse.

Regulation 906 is now outdated as it lacks many of the requirements in the new statute. Additionally, HS1 for HB 80 is sufficiently prescriptive to not warrant implementing regulations. Accordingly, the Department proposes to repeal existing Regulation 906. The repeal would be effective on May 1, 2018.

The Department does not plan to hold a public hearing on the proposed repeal. The text of the regulation to be repealed appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department's docket number is DOI Docket No. 3690-2017.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 31st day of January, 2018. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
DOI Docket No. 3690-2017
Delaware Department of Insurance
841 Silver Lake Drive
Dover, DE 19904

(302) 674-7379

Email: Leslie.Ledogar@state.de.us

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

[http://regulations.delaware.gov/register/january2018/proposed/21 DE Reg 546RFA 01-01-18.pdf](http://regulations.delaware.gov/register/january2018/proposed/21%20DE%20Reg%20546RFA%2001-01-18.pdf)

906 Use of Credit Information

1-0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by ~~18 Del.C. §§ 311, 2501, 2304(15)(c), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101.~~

2-0 Scope

~~This regulation shall apply to all insurers offering automobile, motorcycle, boat and personal watercraft, snowmobiles and other recreational vehicles, homeowners, mobile homeowners, manufactured homeowners and non-commercial dwelling fire insurance policies for personal or family protection. This regulation shall not apply to any line of commercial insurance.~~

3-0 Purpose

The purposes of this regulation are:

- 3.1 ~~To prohibit insurers from engaging in unfair discrimination in the offering or granting of insurance due to the grouping of risks based on criteria which are not actuarially supported and shown to be relevant to risk.~~
- 3.2 ~~To prohibit insurers from engaging in unfair discrimination in the cancellation or non-renewal of insurance coverage based on criteria which are not actuarially supported and shown to be relevant to risk or experience.~~
- 3.3 ~~To assure that applicants are given notice when consumer reports will be requested and reviewed in connection with their eligibility for insurance coverage and/or their tier or level of premium payment.~~
- 3.4 ~~To prohibit the practice of assigning an applicant to a premium level based solely on the applicant's credit rating or credit score.~~
- 3.5 ~~To prohibit the practice of using a policyholder's credit rating or credit score except as provided in 18 Del.C. §§8301 through 8304.~~
- 3.6 ~~To assure that the consumer has adequate relief from any adverse action taken by an insurer through the use of credit scoring.~~
- 3.7 ~~To establish a procedure for policyholders to request, on an annual basis, a recalculation of their insurance score based on a current credit report.~~

4-0 Definitions

~~“Adverse action” has the meaning given that term in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681 et seq. (referred to in this regulation as “the FCRA”). An adverse action includes but is not limited to the following:~~

- ~~• Cancellation, denial or nonrenewal of insurance coverage;~~
- ~~• Charging a higher insurance premium than would have been offered if the credit history or insurance score had been more favorable in the absence of a rate change occasioned by other applicable underwriting factors independent of credit related information, whether the charge is by:~~
 - ~~• application of a rating rule;~~

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- ~~assignment to a rating category within a single insurer, into which insureds with substantially like insuring, risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates; or~~
- ~~A reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score. A reduction or an adverse or unfavorable change in the terms of coverage occurs when:

 - ~~coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or~~
 - ~~the consumer is not eligible for benefits such as dividends that are available through affiliate insurers.~~~~
- ~~The placement of the consumer with an affiliated company shall not be considered an adverse action under this regulation.~~
- ~~Notwithstanding the foregoing, a decision to reject an insurance application, to deny renewal or to condition renewal, to assign an application or renewal to a tier, class or group, or to issue the policy based on or with restrictions that would not apply but for the consideration of the consumer report.~~
- ~~Notwithstanding the foregoing, if a consumer, upon renewal, is not assigned to a less favorable tier or if there is a change in premium not resulting from any use of credit information, such event shall not be deemed an adverse action.~~

~~"Applicant" shall mean an applicant for insurance coverage but shall not include persons receiving a quote for premium that would be due under a policy of insurance, provided however, that such insurance is not ultimately applied for and that the process for making and delivering such quotes is not used as a means for denying coverage on the basis of a credit score in violation of this regulation.~~

~~"Commissioner" shall mean the Insurance Commissioner of the State of Delaware, or any person designated by the Commissioner to enforce the provisions of this regulation or any related statute or regulation.~~

~~"Consumer" shall mean applicants or policyholders.~~

~~"Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency (as defined in the FCRA) bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for personal lines automobile or homeowner insurance to be used primarily for personal, family, or household purposes. Consumer report shall not include motor vehicle reports or claims history reports or any other report that is not credit related.~~

~~"Credit score" means any alpha, numeric and/or alpha-numeric rating or classification of any person based on information contained in said person's consumer report created by an insurer or any person, firm or entity for use by an insurer.~~

~~"Document" or "public record" shall have the same meaning as described in 29 Del.C. §10002(d) and 18 Del.C. §§320, 321.~~

~~"Insurance score" shall have the same meaning as "credit score."~~

~~"Policyholder" shall mean person or persons insured under a policy of insurance.~~

5.0 Prohibited Practices

- 5.1 ~~No credit score shall be valid if the age of the consumer report upon which it is based is greater than two years from the date of its first use for an individual application, or if the consumer report or credit score utilizes in any manner, factors which include any or all of race, color, creed, sex, religion, national origin, place of residency, marital status, nature of employment, physical disability, or any similar category prohibited by federal or state law.~~
- 5.2 ~~Each insurer proposing to use an insurance score as part of its rating or underwriting criteria shall file with the Commissioner, as part of its rate filings required pursuant to 18 Del.C. Ch. 25, such supporting models, algorithms, actuarial and statistical data and reports sufficient, in the discretion of the Commissioner, to permit the Commissioner to determine:~~

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- ~~5.2.1 That the use of such credit report or score shall not unfairly discriminate or assign a consumer to a class or tier based on criteria which are not actuarially supported and shown to be relevant to risk or experience, or~~
- ~~5.2.2 That the use of such credit report or score shall not be the sole basis upon which the insurer denies coverage or sets a premium or rate for insurance coverage for an applicant without consideration of other underwriting or rating factors, or~~
- ~~5.2.3 That, with respect to any policy currently in force, the insurer's insurance scoring methodology does not result in any adverse underwriting decision based in any way upon changes in a policyholder's credit information or consumer report.~~
- ~~5.3 No insurer shall be permitted to use the services of a third party to develop a consumer report or credit score unless the third party shall, without qualification, consent to provide any information, documents, reports (except for consumer reports which may not be disclosed), actuarial and/or statistical bases or models, or other such information required by the Commissioner as part of the insurer's rate approval process.~~
- ~~5.4 In rating a policy or assigning a consumer to a premium level or tier, no insurer shall be permitted to consider the consumer report or score of any person other than the named applicant or policyholder or person(s) who have an insurable interest to be covered under the policy. In the case of homeowner's coverage, no insurer shall be permitted to deny, penalize, impose a higher rate or take any action adverse or detrimental to an applicant based solely on the credit score of a spouse who has no title or ownership interest in the property to be insured and is not a named applicant.~~
- ~~5.5 No insurer, or entity from which the insurer may obtain credit scoring information, shall use credit or consumer reports in any manner prohibited by law.~~
- ~~5.6 No insurer shall be permitted to use obsolete information which shall be defined as follows:~~
- ~~5.6.1 Bankruptcies which, from date of the adjudication of the most recent bankruptcy, antedate the report by more than 10 years;~~
- ~~5.6.2 Suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;~~
- ~~5.6.3 Paid tax liens which, from date of payment, antedate the report by more than 7 years;~~
- ~~5.6.4 Accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;~~
- ~~5.6.5 Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years; and~~
- ~~5.6.6 Any other adverse item of information which antedates the report by more than 7 years.~~
- ~~5.7 The following factors shall not be used by an insurer or by any entity retained by the insurer for the purposes of generating a credit score for underwriting, tier placement or rating purposes:~~
- ~~5.7.1 Information that is disputed by the consumer and has been identified by the consumer reporting agency and coded as such, if the use of such disputed information would result in an adverse action;~~
- ~~5.7.2 Information that has been identified by the consumer reporting agency as related to insurance inquiries and/or non-consumer initiated inquiries and coded as such;~~
- ~~5.7.3 Information that has been identified by the consumer reporting agency as related to collection accounts with a medical industry code;~~
- ~~5.7.4 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered.~~
- ~~5.7.5 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered.~~
- ~~5.7.6 The total available line of credit, however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.~~

- 5.8 ~~If a consumer has no available credit history or has insufficient credit history to develop a credit score, the consumer must be underwritten and rated in accordance with the remaining actuarial principles and standards of practice set forth in the appropriate rate filing that are exclusive of the credit score. However, an insurer may consider insufficient credit history or no available credit history in setting a premium or rate, or underwriting an insurance policy for an applicant, to the extent such use is actuarially justified and consistent with the rate filing in the office of the Commissioner.~~
- 5.9 ~~No insurer shall, by underwriting standards or practices, use a consumer's credit score inconsistent with or in violation of this regulation.~~

6.0 Written Notice to Consumers

- 6.1 ~~If an insurer uses credit information in underwriting or rating a consumer, the insurer shall make the following disclosures to the consumer:~~
- 6.1.1 ~~Either on the insurance application or at the time the insurance application is taken, the insurer shall disclose to the applicant that it may obtain credit information on the applicant, other persons residing in the applicant's home, or other persons whose credit information may affect the underwriting or rating of the policy in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit based (credit) (insurance) score based on the information contained in that credit report. We may use a third party in connection with the development of your (credit) (insurance) score."~~
- 6.1.2 ~~Either on the insurance application or at the time the insurance application is taken, the insurer shall inform the applicant that, if the application is approved and the applicant becomes a policyholder, he or she has the right to an insurance score review on an annual basis based on a new consumer report, in accordance with the procedures set forth in section 8 of this Regulation. The notice shall state that the review will be conducted for the sole purpose of determining whether the consumer's credit information would lead to a reduction in insurance premiums and will not be used for any other purpose, including an increase in premiums. The use of the following example disclosure statement constitutes compliance with this section: "If we do use a credit based score, you will have the right on an annual basis to request that we obtain a current credit report for you and determine whether use of the new credit report would result in a decrease in your insurance premiums. If the new credit report that we receive would result in a decrease in your insurance premiums, we will make that reduction. If the new credit information would not reduce your insurance premiums, the credit report will not be used to impact your premiums in any way." This paragraph does not apply if an insurer's filed rating plan does not use any credit information for the purpose of rating renewals, including any residual effect from the use of credit at initial underwriting.~~
- 6.1.3 ~~On an annual basis, the insurer shall inform its policyholders of their right to have their credit information reviewed to determine whether the use of the current credit report would result in a lower premium, in accordance with the procedures set forth in section 8 of this Regulation. This notification shall be prominently included in at least 18 point type in the renewal notification. The notification shall be accompanied by a form that the policyholder must complete and send to the insured to request that the credit report be obtained and reviewed. The notification shall inform the policyholder that the policyholder must mail the request form within two weeks of the date of mailing of the renewal notification by the insurer in order for the re-rating to occur in time for a premium adjustment to be made for the upcoming policy period. The notification shall also inform the policyholder that they must comply with the renewal notice's requirements regarding the payment amount and due date regardless of whether they choose to request a review of their credit report, and that any decrease in premium as a result of the credit review will be effective as of the upcoming renewal date provided in the renewal notice. This subsection does not apply to any renewal for which the insurer's filed rating plan does not use any credit information, including residual effect from the use of credit information at initial underwriting. An insurer that is exempt~~

~~from this subsection shall inform its policyholder of the exemption and the reason for the exemption in the policyholder's renewal notification.~~

- 6.2 ~~A notice denying an application for insurance shall, to the extent that the insurer's action is based on information contained in a consumer report relating to the applicant and/or other named person, contain the following:~~
- 6.2.1 ~~The name, address and toll free number of the institutional source from whom the insurer obtained the credit information;~~
 - 6.2.2 ~~A summary of the most significant reasons for the adverse action that relate to the applicant's credit history or to the credit factors of the credit score. The reasons need not exceed four, shall be specific and shall identify the information associated with each reason. The notice shall be sufficiently clear and specific that an applicant of reasonable intelligence can identify the basis for the insurer's decision without making further inquiry. For the purpose of the summary, the use of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not meet the requirement of a sufficiently clear and specific summary, however standardized credit explanations provided by consumer reporting agencies or other third party vendors that satisfy the requirements of this section are deemed to comply with this section.~~
 - 6.2.3 ~~A statement advising the applicant that, if the applicant wishes to inquire further about the credit information on which the refusal is based and obtain a free copy of the "consumer report," the applicant may do so by mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no more than thirty days after the date on which the notice of refusal was mailed to the applicant.~~
 - 6.2.4 ~~A statement that the consumer reporting agency that provided the information upon which the credit score was based did not make the decision to take the adverse action and is unable to provide the applicant the specific reasons why the adverse action was taken.~~
- 6.3 ~~If the applicant submits the written notification required under section 6.2.3, the refusal shall not become effective until thirty days after the accuracy of the credit information, which the applicant has questioned and on which the refusal was based, has been verified and communicated to the applicant. Such verification shall be deemed to have been made upon completion of the investigation of the credit information which the applicant has questioned and on which the refusal was based. The applicant must cooperate in the investigation of the credit information, including responding to any communication submitted by, or on behalf of, the insurer or credit reporting agency no more than ten days after the date on which such communication subsequent to the notice required under section 6.2.3 was mailed to the applicant. If the applicant fails to cooperate in the investigation of the credit information, the insurer may, after providing a minimum of fifteen days' written notice to the applicant, terminate such investigation and may refuse to insure the applicant.~~
- 6.4 ~~If the applicant or insured, after receipt of a notice under this section, and pursuant to procedures established under the FCRA, obtains changes, modifications or corrections to his/her credit information maintained by one or more credit reporting agencies, the insured shall notify the insurer who shall recalculate or obtain a new credit score. In that case, the provisions of section 7.2 shall apply to any adjustments to be made to the insured's premium.~~

7.0 Corrections or Changes to a Consumer's Credit Score

- 7.1 ~~When an insurer uses credit histories or credit scores for the purpose of rating, if the insurer receives notice of corrected information affecting the credit history or the credit factors of the credit score of a consumer from the consumer reporting agency of the insurer, the insurer shall correct the consumer's credit score or obtain a corrected credit score or credit history, as appropriate, based on the corrected information.~~
- 7.2 ~~When an insurer has taken an adverse action against a consumer on the basis of the consumer's credit history or the credit factors of the consumer's credit score, if the insurer subsequently makes or obtains a correction or change under section 6.4 or 7.1, the insurer shall determine the difference between the premium paid by the consumer based on the prior credit history or credit score and the premium based on the current history or score. If the policy period is 12 months or more, the difference~~

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shall be determined for the most recent 12 months. If the policy period is less than 12 months, the difference shall be determined for the current period of the policy. If the difference is in favor of the consumer, the insurer shall credit or refund the difference to the consumer. If the difference is in favor of the insurer, the insurer may charge the difference to the consumer or collect the difference from the consumer.

- 7.3 ~~A consumer, upon written request to an insurer, shall have a right to seek review by the insurer of its use of a credit score in the event a consumer's credit report is adversely affected by extraordinary personal circumstances.~~
- 7.3.1 ~~Extraordinary personal circumstance is defined as serious illness or injury, involuntary unemployment, divorce, identity theft, and involuntary interruption of alimony or support payments. An insurer may elect to extend this definition to consider an extraordinary personal circumstance not listed in this section. In no event is an insurer required to review repeated events or events the insurer reviewed previously as an extraordinary personal circumstance.~~
- 7.3.2 ~~An insurer may require that a consumer provide sufficient documentation to establish the existence and duration of such extraordinary personal circumstance.~~
- 7.3.3 ~~An insurer may elect to eliminate the credit score from consideration in such instance and rely its other underwriting and rating guidelines, may assign a neutral credit score or may elect to establish such procedural guidelines as will allow the insurer to consider such requests in a consistent manner.~~
- 7.3.4 ~~An insurer will not be considered out of compliance with any law or rule relating to underwriting, rating or rate filing as a result of granting an exception under this section.~~

8.0 Requesting Re-rating Based on Current Credit Report

- 8.1 ~~Any policyholder whose credit report has been used by his/her insurer for the purpose of rating renewals or initial underwriting and who wishes to have a current credit report reviewed by his/her insurer to determine whether the current report will result in an improvement in the policyholder's insurance score must make the request to his/her insurer using the form provided pursuant to paragraph 6.1.3 of this Regulation. The policyholder must mail the completed request form within two weeks of the date the insurer mailed the notice and form required by paragraph 6.1.3.~~
- 8.2 ~~After receiving notice from a policyholder that he/she is requesting that the applicable credit reports be obtained and reviewed for the purpose of improving the insurance score applicable to the policy, the insurer shall obtain the current credit information and recalculate the insurance score for the policyholder to determine whether the credit information will lower the policyholder's premium. The policyholder's premium adjustment, if he or she is entitled to one, shall be effective as of the renewal date provided in the renewal offer that accompanies the policyholder's notification of the request for re-rating, as described in paragraph 6.1.3 of this Regulation.~~
- 8.3 ~~If the policyholder's premium is adjusted pursuant to Section 8.2, the insurer shall notify the policyholder of the premium adjustment within 90 days of the insurer's receipt of the policyholder's request for a new credit report.~~
- 8.4 ~~If the credit report would result in no change or an increase in the premium or in any adverse action, the insurer shall take no further action regarding the credit report except that the policyholder's next notice of insurance renewal shall inform the policyholder that the review was conducted and that it did not result in any changes to the premium or policy.~~
- 8.5 ~~Sections 8.1 through 8.4 do not apply to any renewal for which the insurer's filed rating plan does not use any credit information, including any residual effect from the use of credit information at initial underwriting.~~

9.0 General Business Practices

- 9.1 ~~Any insurer that elects to use credit scoring to determine, in whole or in part, the premium to be paid by the insured or the tier or class of risk to which the insured shall be assigned, shall be deemed to have done so under the provisions of 18 Del.C. Ch. 25.~~

- 9.2 ~~No insurer shall implement credit scoring for rate making or underwriting purposes without first having obtained the approval of the Commissioner as part of a rate filing under 18 Del.C. Ch. 25. Policies and renewal notices issued on or before September 1, 2003, in which credit information was used in the underwriting or rating of the policy shall be deemed valid for the term thereof but not for any renewal thereunder in the absence of compliance with this regulation.~~
- 9.3 ~~No insurer shall alter or modify the approved tier or classification structure or change the premiums applicable to any such tier or classification system without having first obtained the Commissioner's approval to do so under 18 Del.C. Ch. 25.~~
- 9.4 ~~When an insurer denies a policy, evidence of the notice of denial shall be retained by the insurer and a record of the insurance score, related notice and correspondence with the applicant shall be maintained by the insurer and/or by the appropriate vendor (source of the credit score) pursuant to the insurer's agreement with such vendor for a minimum of three years from the date of notice to the applicant.~~
- 9.5 ~~An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurer who obtains or uses credit information and/or credit scores from an independent source, provided that the agent follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.~~

40.0 Confidentiality

- 40.1 ~~Any document, report, model or other supporting information filed with the Commissioner, irrespective of the format or media in which it is contained, shall be considered proprietary or trade secret and subject to the confidentiality provisions of 18 Del.C. §321(g) and/or, upon the request of the insurer or owner of the document, 29 Del.C. §10002(d)(2). Where an insurer or third party is required to file proprietary or trade secret insurance scoring algorithms, models, documents or supporting information as part of its filed rates, the insurer or third party may elect to segregate such materials from the remainder of its rate filing by filing such materials separately in a sealed envelope or container. Materials filed in this manner shall remain segregated from the publicly accessible portions of the rate filing for so long as these materials are on file with the Department, or until the insurer or third party notifies the Department that such materials are no longer proprietary or trade secret. In the event there is a dispute with respect to the confidentiality of a document, the Commissioner shall make the final determination of whether any part or the whole of a disputed document shall be given confidential treatment.~~

41.0 Severability

~~If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.~~

42.0 Causes of Action and Defenses

~~This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an insurer or its representative based upon a violation of 18 Del.C. §2304(15)(c). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 Del.C. §2304(15)(c).~~

43.0 Effective Date

~~These regulations shall be effective on January 1, 2008, with the exception of subsections 6.1.2 and 6.1.3, which shall take effect on April 1, 2008.~~

PROPOSED REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 74B (7 Del.C. Ch. 74B)
7 DE Admin. Code 1353

REGISTER NOTICE SAN # 2017-13

1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear

1. TITLE OF THE REGULATIONS:

Administrative Code Section 1353, Boiler Safety Regulations For Boilers, Pressure Vessels, And Nuclear Installations

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

The proposed regulations reflect changes that will reduce the likelihood of an incident involving the loss of life and property from a boiler or pressure vessel due to an explosion, equipment failure, or harmful exposure to carbon monoxide. The proposed regulations require owners of boilers located in places accessible to the public such as commercial businesses, churches, hospitals, and schools, to conduct monthly inspections of their boiler systems and record any maintenance, testing, or service performed on the boiler. The proposed regulations also require owners to hire a licensed heating, ventilation, and air conditioning technician to perform an annual service check on the boiler system.

The proposed regulations also amend the inspection and testing requirements for pressure vessels associated with air cannons. The thickness of the wall of the pressure vessels must now be checked using ultrasonic testing technologies to ensure that the wall is thick enough to sustain the maximum allowable working pressure originally assigned to the pressure vessel when it was manufactured. There are also requirements for owners to conduct penetrant testing and necessary repairs on the pressure vessel when a commissioned inspector detects cracks or surface defects during an inspection.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

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

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

The statutory basis for these regulations is Title 7 Delaware Code Chapter 74B, Section 7403B(i)

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

None.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed amendments to 7 DE Admin Code 1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear Installations will be open January 1, 2018. 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 amendments will be held on January 25, 2018 beginning at 6:00 PM in the DNREC Richardson and Robbins Building Auditorium, 89 Kings Highway Dover, DE 19901. Comments will be accepted in accordance with 29 Del.C. §10118.

7. PREPARED BY:

Name/Phone: Alex Rittberg, 302-395-2500
Email: Alex.Rittberg@state.de.us

***Please Note:**

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

<http://regulations.delaware.gov/register/january2018/proposed/21 DE Reg 554RFA 01-01-18.pdf>

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

[1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear](#)

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
700 BOARD OF CHIROPRACTIC**

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10) (24 Del.C. §706(a)(1) and (10))
24 DE Admin. Code 700

PUBLIC NOTICE

700 Board of Chiropractic

The Delaware Board of Chiropractic, pursuant to 24 Del.C. §706(a)(1), proposes to revise its regulations. The proposed regulation increases the number of continuing education hours that can be taken in an asynchronous format from 6 to 12.

The Board will hold a public hearing on the rule change on February 1, 2018 at 8:30 a.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, DE 19904. Written public comments will be accepted until February 16, 2018.

***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/january2018/proposed/21 DE Reg 555RFA 01-01-18.pdf>

**700 Board of Chiropractic
(Break in Continuity of Sections)**

2.0 Continuing Education (CE) Requirements

2.1 Completion of the required continuing education (CE) hours is a prerequisite for renewing a license. Licensees shall complete 24 hours of approved CE during each biennial licensing period, except as otherwise provided in these regulations for new licensees.

(Break in Continuity Within Section)

2.1.6 The required CE can be taken online or by home study which includes video- or tele-conference, so long as the teaching is live, and the interaction between the instructor and the licensee is interactive and synchronous. Asynchronous education including video replay or on-line courses are limited to 6 12 hours per renewal period.

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

700 Board of Chiropractic

PROPOSED REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

2600 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 amend the requirements for physical therapist and physical therapist assistant applicants who were trained outside of the United States. Most such applicants will need to provide the Board with an evaluation of professional education and training prepared by a Board approved credentialing agency. For initial applicants, that is, applicants who are not applying by reciprocity, the evaluation must be based on the most recent Course Work Tool adopted by the Federation of State Boards of Physical Therapy. However, for applicants who are applying by reciprocity, the evaluation must be based on the Course Work Tool corresponding to the applicant's year of graduation. This change will facilitate licensure for applicants who were trained outside of the United States, but who have already been evaluated and licensed by another State. Where an applicant received a degree from a school accredited by an accrediting agency recognized by the Board, the school is considered equivalent to a domestic accredited school and the applicant is exempt from the requirement of evaluation by a credentialing agency. Finally, a new subsection 7.2 requires licensees to update addresses on a timely basis.

A public hearing will be held on January 23, 2018 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 7, 2018, 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: 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/january2018/proposed/21 DE Reg 556RFA 01-01-18.pdf>

2600 Examining Board of Physical Therapists and Athletic Trainers

(Break in Continuity of Sections)

4.0 Physical Therapist Assistants (24 Del.C. ~~§2602(7)~~2602(9))

(Break in Continuity of Sections)

6.0 Support Personnel (24 Del.C. ~~§2645~~2606(a))

(Break in Continuity Within Section)

7.0 Duty to Update Address; Licensure Procedures; Renewal of Licenses (24 Del.C. §2606)

7.1 Applications, the Rules and Regulations, and the Practice Act (24 Del.C. Ch. 26) are available on the Division of Professional Regulation's website.

7.2 Duty to Update Address

7.2.1 Licensees must provide the Division of Professional Regulation with any change of address from that registered with the Division. Any change in address must be reported to the Division within

thirty days of such change. All notifications and correspondence pertaining to a licensee's license that are sent through the mail will be sent only to the most recent address provided by the licensee. The failure to provide the Division with a current address will not operate to excuse any duty or responsibility of the licensee and confirmed delivery to the most recent address provided by the licensee will be considered proper notice.

7-27.3 Applicants for Physical Therapist or Physical Therapist Assistant licensure shall not be admitted to the examination without the submission of the following documents:

7-2-17.3.1 Professional Qualifications - proof of graduation (official transcript) from an educational program for the Physical Therapist or Physical Therapist Assistant which is accredited by the appropriate accrediting agency as set forth in the Practice Act.

7-2-27.3.2 Proof of current CPR certification by the American Red Cross, American Heart Association, National Safety Council or other agency approved by the Board and posted on the Division of Professional Regulation's website. CPR certification must be obtained through a course with a live lab component.

7-2-37.3.3 Proof of completion of a criminal background check, pursuant to application instructions.

7-2-47.3.4 A fee in check or money order payable to the State of Delaware.

7-2-57.3.5 A completed application form.

7-37.4 The Board shall use the Physical Therapist and Physical Therapist Assistant examination endorsed by the Federation of State Boards of Physical Therapy.

7-47.5 All applicants for licensure as a Physical Therapist or Physical Therapist Assistant must successfully pass the examination described in subsection 7-37.4 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

7-57.6 Applicants for licensure as an Athletic Trainer must submit to the Board the following:

7-5-17.6.1 Professional Qualifications - proof of graduation (official transcript) from an educational program described in 24 **Del.C.** §2606(a)(1), whether an accredited program or Board of Certification (BOC) internship.

7-5-27.6.2 Official letter of Athletic Trainer certification from BOC.

7-5-37.6.3 Proof of current CPR certification by the American Red Cross, American Heart Association, National Safety Council or other agency approved by the Board and posted on the Division of Professional Regulation's website. CPR certification must be obtained through a course with a live lab component.

7-5-47.6.4 Proof of completion of a criminal background check, pursuant to application instructions.

7-5-57.6.5 A check or money order made payable to the State of Delaware.

7-5-67.6.6 The completed application form.

7-67.7 Licenses shall expire biennially on every odd numbered year. License renewal shall be accomplished online at www.dpr.delaware.gov and shall include:

7-6-17.7.1 the applicable fee, and

7-6-27.7.2 attestation of completion of continuing education courses required by Section 13.0.

8.0 Admission to Practice, Licensure by Reciprocity (24 Del.C. §2610)

Definition - The granting of a license to an applicant who meets all the requirements set forth in this Section and 24 **Del.C.** §2610.

8.1 The reciprocity applicant shall submit the documentation listed in subsections 7-27.3 or 7-57.6.

(Break in Continuity Within Section)

9.0 Foreign Trained Applicant for Licensure (24 Del.C. §2606(b))

PROPOSED REGULATIONS

- 9.1 Applicants for licensure who are graduates of a Physical Therapist, Physical Therapist Assistant school or Athletic Trainer program located in a foreign country shall complete all of the following requirements before being admitted to the examination:
- 9.1.1 The applicant shall submit proof satisfactory to the Board of graduation from an education program appropriate to their profession in a foreign country. Each foreign applicant must demonstrate that they have met the minimum education requirements as presented by the Federation of State Boards in the Course Work Evaluation Tool for Persons Who Received Their Physical Therapy Education Outside the United States. The applicant shall arrange and pay for a credential evaluation of such foreign school's program to be completed by an agency approved by the Board.
 - 9.1.2 The applicant shall complete the requirements of subsection 7.2 or 7.5.
 - 9.1.3 The applicant shall pass the examination described in subsections 7.3 and 7.4.
- 9.2 The applicant shall show proof of completion of a criminal background check, pursuant to application instructions.
- 9.3 The applicant shall show proof of completion of a minimum two hours ethics class related to the practice of physical therapy and/or athletic training and proof of current CPR certification by the American Red Cross, American Heart Association, National Safety Council or other agency approved by the Board and posted on the Division of Professional Regulation's website. CPR certification must be obtained through a course with a live lab component.

9.0 Applicants Trained Outside of the United States (24 Del.C. §2606(b))

- 9.1 A physical therapist or physical therapist assistant applicant whose application is based on a diploma issued by a school located outside of the United States shall complete all of the following requirements:
- 9.1.1 Provide documentation that the institution at which the applicant received his or her education is recognized by the Ministry of Education or equivalent agency in that country.
 - 9.1.2 Provide an evaluation of professional education and training, prepared by a Board approved credentialing agency, and paid for by the applicant. The evaluation must provide evidence and documentation that the applicant's education is substantially equivalent to the education of a physical therapist or physical therapist assistant who graduated from a program approved for the educational preparation of physical therapists or physical therapist assistants by the appropriate accrediting agency recognized by the Board.
 - 9.1.2.1 For initial applicants: The evaluation shall be based on the most recent Course Work Tool ("CWT") adopted by the Federation of State Boards of Physical therapy.
 - 9.1.2.2 For reciprocity applicants: The evaluation shall be based on the retro CWT corresponding to the applicant's year of graduation. The applicant must provide proof of current licensure in another state.
 - 9.1.2.3 If an applicant received an entry-level degree from a school accredited by the appropriate accrediting agency recognized by the Board, the school is considered equivalent to a domestic accredited school and the applicant is exempt from the requirement of evaluation of the school by a credentialing agency.
 - 9.1.3 Pass the applicable licensing examination as set forth in subsections 7.4 and 7.5.
 - 9.1.4 Complete any additional education requirements requested by the Board.
- 9.2 An athletic trainer applicant whose application is based on a diploma issued by a school located outside of the United States shall be evaluated by the Board on a case-by-case basis.
- 9.3 All applicants who were educated outside of the United States shall also submit to the Board the following:
- 9.3.1 The completed application.
 - 9.3.2 A check or money order made payable to the State of Delaware.
 - 9.3.3 Proof of completion of a criminal background check, pursuant to application instructions.

- 9.3.4 Proof of current CPR certification by the American Red Cross, American Heart Association, National Safety Council or other agency approved by the Board and posted on the Division of Professional Regulation's website. CPR certification must be obtained through a course with a live lab component.
- 9.3.5 Proof of completion of a minimum two hours ethics class related to the practice of physical therapy and/or athletic training, as applicable.

10.0 Temporary Licensure (24 Del.C. §2611)

- 10.1 The Board may issue a temporary license to all applicants who have submitted to the Board the documents listed in subsection ~~7.27.3~~ and subsection ~~7.57.6~~, respectively, and who have been determined to be eligible to take the examination. The Board shall accept a letter signed by the Physical Therapist or Physical Therapist Assistant applicant's school official stating that the applicant has completed all requirements for graduation; provided, however, that the applicant shall submit to the Board an official transcript as soon as it becomes available. The Board will determine the Physical Therapist or Physical Therapist Assistant applicant's eligibility to take the examination. In the case of Athletic Trainer applicants for temporary license, a letter from BOC stating the applicant's eligibility to take the BOC examination will be required. Physical Therapist and Physical Therapist Assistant applicants may practice only under the direct supervision of a licensed Physical Therapist. Athletic Trainer applicants may practice only under the direct supervision of a licensed Athletic Trainer or Physical Therapist as that supervision is defined in subsection 1.2.1. A temporary license shall expire upon notice to the applicant of his/her failure to pass the license examination and may not be renewed. In all other cases, a temporary license may be renewed only once.

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

2600 Examining Board of Physical Therapists and Athletic Trainers

**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. Rules pertaining to cremation and crematoriums and inspection of funeral establishments are proposed to be added.

A public hearing will be held on January 23, 2018 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 at the above address in accordance with 29 **Del.C.** §10118(a). Written public comments will be accepted until February 7, 2018.

***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/january2018/proposed/21 DE Reg 559RFA 01-01-18.pdf](http://regulations.delaware.gov/register/january2018/proposed/21%20DE%20Reg%20559RFA%2001-01-18.pdf)

PROPOSED REGULATIONS

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

13.0 Cremation and Crematoriums

13.1 Definitions

"Certified Crematory Operator" means a natural person who has received official certification as a crematory operator from CANA, ICCFA or another officially recognized certification agency approved by the Board of Funeral Service.

"Cremated Human Remains/Cremains" means all particulate matter of a deceased human body following the cremation and subsequent mechanical pulverization of said remains.

"Cremation Process" means the procedure necessary to render a human remains to a particulate and ash consistency using extreme heat, cold, direct fire or any other type of thermal process.

"Cremator/Retort" means the mechanical combustion chamber in which cremation of a deceased human body takes place.

"Crematory/Crematorium" means a facility which houses the mechanical equipment and appurtenances used during the cremation of a deceased human body.

"Offsite crematory/crematorium" means a facility which houses the mechanical equipment and appurtenances used during the cremation of a deceased human body and is not located within the confines of a funeral establishment or adjacent to the funeral establishment.

"Onsite funeral home crematory/crematorium" means a facility which houses the mechanical equipment and appurtenances used in the cremation of a deceased human body when the facility is located within the confines of funeral establishment or adjacent to the funeral establishment.

13.2 Cremation

13.2.1 An identifying label, tag or other bracelet shall be used and placed on the decedent at the time of identification if one has not already been affixed at the time of transfer to the care of the funeral home. At the conclusion of cremation, a delivery receipt to the receiving party of the cremated remains shall be signed and maintained by the crematory/crematorium of record along with a copy of the formal identification of the decedent by the funeral home of record.

13.2.2 All portions of cremated remains shall have identification with the name of the decedent and name of the crematory performing cremation affixed to the outside of the vessel in some fashion as well as the inside of the vessel, with the exception of cremation jewelry. Labeling shall be present on the outside of the box or container holding the cremation jewelry.

13.2.3 A metal cremation identification disc shall be utilized in the cremation chamber and throughout the cremation process and shall be attached with the largest primary portion of cremated remains.

13.2.4 Unembalmed human remains may not be kept in a refrigerated state for more than seven calendar days unless medical/legal investigation requires further holding in such state or unless religious reasons demand further holding in such state.

13.2.5 No cremation of other than deceased human remains shall occur in any cremation chamber at any time nor shall any processing equipment be utilized for any other purposes other than for deceased human remains.

13.2.6 No cremation of more than one deceased human remains shall occur in any cremation chamber at any time.

13.2.7 Comingling of cremated remains shall only occur with formal written authorization by the legal next of kin.

13.2.8 Following cremation, the cremated human remains must be returned to the responsible party in a secure container or vessel of no less construction than that of a minimum metal material, ridged plastic material or heavy grade corrugated material. Any container, if used, or any type of cremation urn shall be clearly affixed with a label clearly identifying the contents, which shall include the name of decedent, date of passing, date of cremation, name of funeral home and name, address and phone number of the crematory of record.

- 13.2.9 All electronic and radio active devices or implants, including pacemakers, defibrillators or radioactive pain management seedings, shall be removed prior to cremation.
- 13.2.10 No funeral home licensed in this state shall publicize themselves as a crematorium or crematory unless they have said facility on premise or have a financial interest in a third party crematory.
- 13.2.11 All Authority to Cremate forms shall indicate the name and address of the cremation as well as the location of refrigeration of the decedent prior to cremation, if the time parameters require such refrigeration.
- 13.2.12 All crematories and crematoriums which are not part of a licensed funeral home operation must register with the Board of Professional Licensing for an official establishment permit. The establishment shall meet the requirements set forth by the Board of Funeral Services in their regulations. No viewing of decedents would be permitted at these types of crematories or crematoriums.
- 13.2.13 Crematories and Crematoriums which are part of a licensed funeral home operation and within its confines or on an adjacent property to the immediate funeral home facility would be considered an integral part of the operation and would not require separate registration with the Board. Such facility shall, however, be subject to inspection at the time of the funeral home inspection. The crematorium location shall be noted on the funeral home establishment permit at time of licensing or renewal.
- 13.2.14 Crematories and crematoriums shall have a certified crematory operator on the premises during the process of cremation.
- 13.2.15 Crematories and crematoriums shall abide by all regulations and rules put forth by any state or federal agency regarding emissions created from the act of cremation.
- 13.2.16 All individuals assisting in crematory or crematorium operations, and hired after the effective date of these regulations, must have a minimum of a GED.
- 13.2.17 Third party crematories and crematoriums shall not hold un-embalmed human remains after their delivery to their facility for a period longer than six hours prior to cremation unless the facility has the capability to storage in refrigeration on premises at a temperature not to exceed 38 degrees. Third party crematories and crematoriums may only hold in refrigeration those human remains which have been delivered to them along with all the necessary documentation for cremation for a period not to exceed 24 hours. Third party crematories and crematoriums are not a registered funeral home establishment; therefore, they shall not extend the services of being a depository for the process of refrigeration. The refrigeration system shall have its own secure locking system. The presence and location of refrigeration shall be noted on the Crematory Establishment License in the case of offsite crematory or the Funeral Home Establishment License in the case of onsite funeral home crematory.
- 13.2.18 No third party crematory may hold itself out to offer services direct to the public unless said facility meets all the requirements of a funeral establishment.
- 13.2.19 No members of the general public may permitted to witness the placement of a cremation container or casket into a cremation chamber unless the crematory of record has this procedure as a general company policy.

14.0 Inspections

- 14.1 Embalming areas shall include, at a minimum, the following:
 - 14.1.1 A secure working lock on all doors and windows. Doors and windows should be covered in some fashion so as to not permit the visibility from outside of any areas inside the preparation room and shall close tightly;
 - 14.1.2 An entrance door to the embalming room identified by a sign indicating that entry may be hazardous and only authorized personnel are permitted;
 - 14.1.3 Floors, walls, ceilings, counters, and cabinets covered in an impervious material such as tile or finished in a coating that may be easily cleaned and disinfected;
 - 14.1.4 Hot and cold running water along with drainage that meets all state and federal regulations;

PROPOSED REGULATIONS

- 14.1.5 Embalming and dressing tables in good, clean working order;
- 14.1.6 An area for storage of all embalming chemicals that is within the locked confines of the preparation area or, alternatively, a separate securely locked and identified closet;
- 14.1.7 Clearly labeled cabinets and drawers specifying their contents;
- 14.1.8 Ventilation according to OSHA standards in working order;
- 14.1.9 A copy of the most recent formaldehyde short and long term exposure rates;
- 14.1.10 A copy of the most recent hazardous waste disposal receipts shall be available for inspection;
- 14.1.11 A copy of the most recent Safety Data Sheets;
- 14.1.12 Hazardous waste containers and sharps containers with their locations noted;
- 14.1.13 A preparation room with a working embalming machine, embalming table, aspiration device, surgical instruments and embalming fluids customary for use during an embalming procedure;
- 14.1.14 Emergency eye wash and shower equipment must be present and in working order;
- 14.1.15 A minimum of 120 square feet;
- 14.1.16 If a refrigeration unit is on the premises, the refrigeration unit shall be in a clean and sanitary working condition secured with locks in order to prevent the entrance by anyone other than authorized personnel;
- 14.1.17 A first aid kit available near the embalming room.

***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

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 AGRICULTURE HARNESS RACING COMMISSION

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

ORDER

501 Harness Racing Rules and Regulations

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on November 20, 2017, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 6.2.2 in the October 1, 2017 *Register of Regulations*.
2. The Commission received no written comments. The Commission held the public comment period open until close of business on October 31, 2017. The Delaware Harness Racing Commission finalized the regulations at its regularly scheduled monthly meeting on November 20, 2017. Monthly meetings are noticed public meetings.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.
4. After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

5. The effective date of this Order will be ten (10) days from publication of this Order in the *Register of Regulations* on January 1, 2018.

IT IS SO ORDERED this 20th day of November 2017.

Beverly H. Steele, Chairman

Jack Berberian, Commissioner

Patt Wagner, Vice Chairman

Stephanie Liguori, Commissioner

George P. Staats, Commissioner

*Please note that no changes were made to the regulation as originally proposed and published in the October 2017 issue of the *Register* at page 261 (21 DE Reg. 261). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

501 Harness Racing Rules and Regulations

HARNES RACING COMMISSION

DELAWARE STANDARDBRED BREEDERS' FUND

Statutory Authority: 29 Delaware Code, Section 4815(b)(4)b.2 (29 Del.C. §4815(b)(4)b.2)
3 DE Admin. Code 502

ORDER

502 Delaware Standardbred Breeders' Fund Regulations

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 29 Del.C. §4815(b)(4)b.2 the State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") proposed to amend its regulations. Proposed amended regulation under 4.2 terminates the 4-year old bonus program. Proposed amended regulation 9.2 terminates the 4-year old bonus program and the bonuses on Consolation races. Proposed amended regulation 13.7 adjusts the qualifying time requirements to more reflect the times of racing today and present a more competitive race for wagering purposes. Proposed deletion of Regulation 14.5 covers the termination of the 4-year old bonus. All of these changes were proposed to address the fiduciary responsibility of "the Fund" to sustain the program into the future while maintaining the current status.

Notice of a public comment period of thirty (30) days on the Fund's proposed amended regulations was published in the Delaware *Register of Regulations* for September 1, 2017 in accordance with 29 Del.C. §4815(b)(4)b.2. This is the Fund's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

The Fund received no public comments in response to its notice of intention to adopt the proposed amended regulation.

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Fund's intention to adopt the proposed amended regulation and was given ample opportunity to provide the Fund with comments opposing the Fund's plan. Thus, the Fund concludes that its consideration of the proposed amended regulation was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt the proposed amended regulation.

IV. ORDER

AND NOW this 1st day of December, 2017, it is hereby ordered that:

1. The proposed amendments to the Fund's regulations are adopted;
2. The text of the final regulations shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations* in accordance with 29 **Del.C.** §10118(e); and
4. The Fund reserves to itself the authority to issue such other and further orders concerning its Regulations as it deems appropriate.

IT IS SO ORDERED.

Michael T. Scuse
Richard J. Geisenberger
Bruce C. Ennis
Linda MacDonald
Garrett Bell

Andrew D. Markano
John E. Hensley, Jr.
Wayne Givens
Garnet O'Marrow

*Please note that no changes were made to the regulation as originally proposed and published in the September 2017 issue of the *Register* at page 173 (21 DE Reg. 173). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

502 Delaware Standardbred Breeders' Fund Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 **Del.C.** §122)
14 **DE Admin. Code** 290

REGULATORY IMPLEMENTING ORDER

290 Approval of Educator Preparation Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs. This regulation is being amended to clarify the applications process for new alternative routes to teacher certification programs. In addition, minor formatting changes are made to comply with the Administrative Code drafting manual.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on October 1, 2017, in the form hereto attached as *Exhibit "A"*. No comments were received. A minor additional grammatical change was made.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs in order to clarify the applications process for new alternative routes to teacher certification programs.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 290 Approval of Educator Preparation 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** 290 Approval of Educator Preparation Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 290 Approval of Educator Preparation 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 14, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 14th day of December 2017.

Department of Education

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

Approved this 14th day of December 2017

**290 Approval of Educator Preparation Programs
(Break in Continuity of Sections)**

7.0 Renewal, Oversight, and Revocation

(Break in Continuity Within Section)

7.2 Probation

(Break in Continuity Within Section)

- 7.2.6 The Department will monitor Program progress towards meeting the goals for the Program cited ~~[in]~~ by the Department throughout the probationary period, including review of required data reports and monitoring visits as deemed necessary.

***Please note that no additional changes were made to the regulation as originally proposed and published in the October 2017 issue of the *Register* at page 262 (21 DE Reg. 262). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

290 Approval of Educator Preparation Programs

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

16 **DE Admin. Code** 20400

ORDER

Special Needs Trust

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Delaware Social Services Manual (DSSM) regarding Special Needs Trust, specifically, to *add the beneficiary to the list of people able to establish a trust on their behalf*. 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 2017 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 2017 at which time the Department

would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Delaware Social Services Manual (DSSM) regarding Special Needs Trust, specifically, *to add the beneficiary to the list of people able to establish a trust on their behalf.*

Statutory Authority

- Section 5007 of the 21st Century Cures Act

Background

Section 1917(d)(3) of the Social Security Act (the Act) prescribes the rules state Medicaid agencies must apply in evaluating funds in, contributions to, and distributions from, trusts that are funded with a Medicaid applicant's or beneficiary's own assets. For a trust to meet the definition of a "special needs trust" described in section 1917(d)(4)(A) of the Act, the trust must: contain the assets of an individual under age 65 who has a disability; be established for the benefit of such individual; and direct that the state will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid by the state on the individual's behalf. Prior to the Cures Act, a special needs trust also had to be established by a parent, grandparent, legal guardian of the individual, or a court.

The requirement that a third party establish a special needs trust, which is not imposed on the other section 1917(d)(4) trusts, was identified by many stakeholders as a barrier to maximizing the independence of people with disabilities. Section 5007(a) of the Cures Act addressed this criticism for special needs trusts established on or after the date of the law's enactment, December 13, 2016.

Summary of Proposal**Purpose**

The purpose of this proposed regulation is to add the individual with a disability under age 65 to the list of individuals able to establish a Special Need Trust.

Summary of Proposed Changes

Effective for services provided on and after December 13, 2016 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Delaware Social Services Manual (DSSM) to add the beneficiary to the list of people able to establish a trust on their behalf.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 1, 2017.

Provider Manuals Update

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

Fiscal Impact Statement

DMMA is proposing a policy change to expand the list of individuals able to establish a Special Need Trust. The Special Needs Trust is an excluded resource for Medicaid. There is no anticipated fiscal impact to the agency as a result of this proposed change in program policy.

Summary of Comments Received with Agency Response and Explanation of Changes

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

SCPD cited Section 5007 of the federal CURES Act which amended the special needs trust standards to allow a beneficiary to establish such a trust in addition to a parent, grandparent, guardian or court. The new authorization is effective for trusts established on or after December 13, 2016. SCPD commented that DMMA's should have the same effective date.

"Subject to correcting the date and making a grammatical change, the SCPD is endorsing the proposed regulation since the initiative benefits individuals with disabilities and implements federal law."

Agency Response: DMMA agrees with the suggested grammatical and effective date changes.

DMMA is appreciative of the comments from the State Council for Persons with Disabilities. 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 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Social Services Manual (DSSM) regarding Special Needs Trust, specifically, *to add the beneficiary to the list of people able to establish a trust on their behalf*, is adopted and shall be final effective January 11, 2018.

12/20/17

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

FINAL**20400.9.1 Special Needs Trusts*****(Break in Continuity Within Section)***

[For] Special Needs Trusts created on or after December 13, ~~2017~~ 2016] by an individual with a disability under age 65 for his or her own benefit can qualify as a special needs trust, conferring the same benefits as a special needs trust set up by a parent, grandparent, legal guardian or court.

*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 387 (21 DE Reg. 387). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

Special Needs Trust

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 5000 & 70000

ORDER**Medicaid Managed Care Final Rule****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual regarding Medicaid Managed Care Final Rule, specifically, *to align DMMA Medicaid Managed Care Policy with new Federal Requirements*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the November 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from

the public concerning the proposed regulations to be produced by December 1, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Division of Social Services Manual regarding Medicaid Managed Care Final Rule, specifically, *to align DMMA Medicaid Managed Care Policy with new Federal Requirements*.

Statutory Authority

- 42 CFR 438.400
- 42 CFR 438.402
- 42 CFR 438.410
- 42 CFR 438.208(f)
- 42 CFR 438.3
- 81 FR 27497 - 27901, May 6, 2016; Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability Final Rule

Background

The Center for Medicaid Services (CMS) has regulated Medicaid managed care since the 1970s. Recent Medicaid managed care regulatory changes have stemmed from intermittent changes in law, including: the Balanced Budget Act of 1997, the Deficit Reduction Act of 2005, and the Affordable Care Act of 2010. On May 6, 2016, CMS published the Medicaid Managed Care Final Rule to comprehensively modernize Medicaid managed care through delivery system reform, improvements to the quality of care, strengthening beneficiary experiences, improving accountability and transparency, and aligning Medicaid managed care with other health coverage programs.

Over the past year, Delaware has thoroughly analyzed the Final Rule and identified Medicaid managed care contract and state operational changes necessary to come into compliance with the provisions of the Final Rule. DMMA is moving forward with implementation of provisions of the Final Rule effective as of January 1, 2018. This requires changes to some of Delaware's internal policy, such as the Delaware Social Services Manual.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to amend sections of the Fair Hearing process and the Certification and Regulation of Medicaid Managed Care Organizations to reflect recent changes in the Federal Code of Regulations as a result of the Medicaid Managed Care Final Rule.

Summary of Proposed Changes

Effective for services provided on and after January 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Division of Social Services Manual sections 5000, 5305, 5307, and 7000 regarding Medicaid Managed Care Final Rule, specifically, to align DMMA Medicaid Managed Care Policy with new Federal Requirements.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 1, 2017.

Provider Manuals Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent

information regarding manual updates. DMAP provider manuals and official notices are available on the Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>.

Fiscal Impact Statement

There is no or minimal fiscal impact as the changes in regulation are only clarification of internal policy.

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, SCPD commented that a citation was incorrectly cited.

Agency Response: DMMA agreed and replaced 42 CFR 438.208(f)(2) with 42 CFR 438.408(f)(2).

Second, the SCPD noted that the guidance from the Centers for Medicare and Medicaid Services (CMS) included a federal regulation which authorizes a beneficiary to appeal an adverse benefit determination without an MCO notice of appeal if the MCO has failed to adhere to notice and timing requirements [42 CFR 438.408(f)(1)]. SCPD commented, "that the federal regulations create an interrelated system. If DMMA only adopts a few standards, and omits others, it will not have an integrated system.

The regulatory scheme is also unclear on "who" can request a fair hearing. The applicable CMS regulation [42 CFR 438.402] allows states to authorize providers to request a fair hearing with beneficiary consent. Current DHSS standards ostensibly authorize a provider to request an expedited MCO internal hearing/review but are unclear on whether a provider can request a fair hearing. See 16 DE Admin Code 5304.3.

The current DMMA regulation [16 DE Admin Code 5304.3] allows MCOs to conduct internal hearings and issue a decision within 45 days. This conflicts with the applicable CMS regulation [42 CFR 438.408] establishing a maximum 30-day time period for a decision.

The same DMMA regulation [16 DE Admin Code 5304.3] does not differentiate between grievances and appeals. The same CMS regulation [42 CFR 438.408] clearly differentiates between grievances and appeals.'

Agency Response: All of the requirements in 42 CFR Part 438, subpart F, Grievance and Appeal System, apply to Delaware effective January 1, 2018. DMMA's intends to amend the DSSM consistent with all of the applicable requirements of subpart F (per CMS guidance, because Delaware's MCO contracts and rates are on a calendar year basis, all requirements identified in the rule as effective "no later than the rating period for Medicaid managed care contracts starting on or after July 1, 2017" are effective as of January 1, 2018.)

DMMA did not include the provision in 42 CFR 438.408(f)(1) regarding deemed exhaustion of the appeals processes, but DMMA intends to comply with that requirement. Section 5305 and 5307 reflect the requirement in 42 CFR 438.408(f)(1) that if an MCO fails to adhere to the notice and timing requirements in 42 CFR 438.408, the member is deemed to have exhausted the MCO's appeal process and may initiate a State fair hearing.

Regarding "who" can request a fair hearing, the definition of "Request for a Fair Hearing" includes a request by an "authorized agent," and DHSS will interpret that requirement consistent with 42 CFR 438.402.

In response to comments regarding 5304, DMMA will be amending that section to address both the time frame for MCO internal appeals, and to clarify that MCOs are responsible for the initial level of appeal.

DMMA is appreciative of the comments from the State Council for Persons with Disabilities. 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 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding Medicaid Managed Care Final Rule, specifically, *to align DMMA Medicaid Managed Care Policy with new Federal Requirements*, is adopted and shall be final effective January 11, 2018.

12/20/17

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

(Break in Continuity of Sections)

FINAL

5305 Limiting the Amount of Time to Request a Hearing

7 CFR 273.15 (g), 42 CFR 431.221, 45 CFR 205.10, ~~42 CFR 438.208(f)(2)~~ 42 CFR 438.408(f)

This policy applies any time an applicant or recipient of any program managed or administered by DSS or DMMA requests a fair hearing.

1. Hearing Office Staff Determine Timely Requests

An appeal (hearing request) is filed when it is received and filed in the Division's hearing office, not at the moment it is placed in the mail. Staff taking oral requests will assure the appeal is filed within the time frames in this section. Timely requests are determined based on four time periods:

(Break in Continuity Within Section)

E. For recipients enrolled in a MCO, 120 days from the date of the MCO's notice of resolution of the appeal [or the MCO's failure to adhere to the notice and timing requirements in 42 CFR 438.408].

(Break in Continuity Within Section)

E. Recipients enrolled in a MCO

A hearing is granted if the request is received within 120 calendar days from the date of the MCO's notice of an appeal resolution upholding an adverse benefit determination. If the request is not received during the timely notice period, the adverse benefit determination is to take effect. [If the MCO fails to adhere to the notice and timing requirements in 42 CFR 438.408, the recipient is deemed to have exhausted the MCO's appeals process and may initiate a State fair hearing within 120 calendar days].

FINAL

5307 Dismissing a Hearing Request

7 CFR 273.15 (j), 42 CFR 431.223, 45 CFR 205.10 (a)(5)(v), 42 CFR 438.408(f)

This policy applies any time a request for a hearing is filed over which the DSS Hearing Office has jurisdiction.

The hearing officer of the Division will dismiss or deny a request for a fair hearing where:

(Break in Continuity Within Section)

C. The appellant has abandoned his or her request by failing without good cause, to appear by him/herself or by an authorized representative at a scheduled hearing.

(Break in Continuity Within Section)

3. For recipients enrolled in a MCO the request is not received within 120 calendar days from the date of the MCO's notice of an appeal resolution upholding an adverse benefit determination [or the MCO's failure to adhere to the notice and timing requirements in 42 CFR 438.408].

(Break in Continuity of Sections)

*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 389 (21 DE Reg. 389). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

Medicaid Managed Care Final Rule

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 16000

ORDER

Excluded Income

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Delaware Social Services Manual (DSSM) regarding the application of Modified Adjusted Gross Income (MAGI) methodology, specifically, to clarify excluded income. 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 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding the application of Modified Adjusted Gross Income (MAGI) methodology, specifically, to clarify excluded income.

Statutory Authority

- 42 CFR 435.603(e)
- 26 U.S.C. 36B(d)(2)(B)

Background

The Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended) created Section 36(B) of the Internal Revenue Code (IRC) to define household income, based on modified adjusted gross income (MAGI). MAGI is used to determine (1) penalty amounts owed if a person does not comply with the individual mandate or whether an individual is exempt from the individual mandate; (2) eligibility for and the amount of a premium credit to purchase coverage through a health insurance exchange; and (3) Medicaid income eligibility for certain populations.

Under the ACA, states were required to transition to a new income-counting rule based on MAGI to establish uniform standards for what income to include or disregard in determining Medicaid eligibility for most nonelderly and nondisabled individuals, children under the age of 18, and adults and pregnant women under the age of 65.

In 2013, the Centers for Medicare and Medicaid Services (CMS) developed a training manual to help states and eligibility workers understand and apply MAGI-based rules for Medicaid and CHIP. At that time Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) made modifications to the eligibility system, as well as eligibility policy, to meet those requirements. In September of 2016, CMS shared a companion to the 2013 training manual, providing specific language that can be used to make the income counting rules more clear for eligibility workers.

Summary of Proposal*Purpose*

The purpose of this proposed regulation is to amend the Delaware Social Services Manual to reflect current policy and provide more clarity to eligibility workers regarding excluded income.

Summary of Proposed Changes

Effective for services provided on and after October 11, 2017, the Delaware Health and Social Services/

Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend 16500.2 of the Delaware Social Services Manual (DSSM) to clarify excluded income.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 1, 2017.

Provider Manuals Update

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

Fiscal Impact Statement

The proposed regulation imposes no increase in costs on the General Fund.

Summary of Comments Received with Agency Response and Explanation of Changes

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

The regulation appears to be relatively straightforward and includes SSI, child support, Worker's Compensation, and TANF in the list of excluded income. There is no State fiscal impact as a result of adoption of the regulation.

The SCPD endorses the proposed regulation.

Agency Response: endorses the proposed regulation.

DMMA is appreciative of the comments from the State Council for Persons with Disabilities. 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 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Social Services Manual (DSSM) regarding the application of Modified Adjusted Gross Income (MAGI) methodology, specifically, to clarify excluded income, is adopted and shall be final effective January 11, 2018.

12/20/17

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

FINAL

16500.2 Excluded Income

Scholarships, awards, or fellowship grants used for education purposes and not for living expenses;

American Indian/Alaska Native income as defined in 42 CFR 435.603(e);

Child Support Received;

Gifts and loans;

Inheritance;

Supplemental Security Income (SSI);

Temporary Assistance to Needy Families (TANF) and other government cash assistance;

Veteran's benefits;

Worker's Compensation payments;

Other Non-Taxable Income.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 20700 & 20720

ORDER

Division of Developmental Disabilities Services (DDDS) Lifespan Waiver

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 the Developmental Disabilities Services (DDDS) Lifespan Waiver, specifically, to clarify internal policy and procedures. 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 October 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver, specifically, to clarify internal policy and procedures.

Statutory Authority

- Social Security Act §1915(c), Home and community-based services
- 42 CFR 440.167, Personal care services.

Background

On May 22, 2017 the Centers for Medicare & Medicaid Services (CMS) approved Delaware's request to amend the DDDS Lifespan Home and Community-Based Services (HCBS) Waiver effective July 1, 2017. The Waiver provides services and supports as an alternative to institutional placement for individuals with intellectual developmental disabilities (IDD) (including brain injury), autism spectrum disorder or Prader-Willi Syndrome. The description of the waivers target group allows for inclusion of individuals with IDD that are not in immediate need of a waiver residential setting. This allows individuals living in the family home who are receiving DDDS day services to be enrolled in the waiver.

Summary of Proposal*Purpose*

The purpose of this proposed regulation is to clarify internal policy and procedures regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver.

Summary of Proposed Changes

Effective for services provided on and after July 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Delaware Social Services Manual (DSSM) to clarify internal policy and procedures regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives

public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 31, 2017.

Provider Manuals Update

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

Fiscal Impact Statement

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.

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council For Exceptional Citizens offered the following summarized observations:

First, §20720.1 describes financial deductions from countable income. Countable income cannot exceed 250% of the Federal Benefit Rate (FBR). See Waiver, pp. 8-9 and 47-48. Deductions for a "maintenance needs allowance" are different for residential versus non-residential DDDS Waiver participants. See Waiver, p. 49. The daily living needs deductions in the Waiver are generally reflected in the proposed revisions to §20720.1. However, the following sentence has been omitted: "All earned income in the form of wages shall be allowed to be protected." See attached p. 49 from Waiver. DMMA may wish to include the sentence in §20720.1.

Second, §20720.1 authorizes the following deduction for residential Waiver participants:

Individuals receiving Medicaid under the Division of Developmentally Disabled Developmental Disabilities (DDDS) Lifespan Waiver who receive Residential Habilitation services are allowed a deduction equal to the current Adult Foster Care (AFC) rate. The AFC rate is based on the current SSI income level plus \$140.00.

In contrast, the Waiver document refers to the "State Supplement amount" rather than "\$140.00":

For those waiver participants that meet the criteria to receive residential habilitation services, the state will provide a maintenance needs allowance set at the adult Foster Care Rate, which is the SSI standard plus the Optional State Supplement amount.

DMMA may wish to substitute "the Optional State Supplement amount" for "\$140.00". Otherwise, if the State Supplement amount changes, the regulation would have to be immediately republished and corrected.

Third, §20720.1 describes the daily living needs deduction for non-residential participants as follows:

Individuals receiving Medicaid under the DDDS Lifespan Waiver who reside in the family home or in the Long Term Care Community Services (LTCCS) program are allowed an amount equal to their total income including income that is placed in a Miller Trust.

Agency Response: DMMA agrees with the suggestions provided and has revised the proposed language in §20720.1.

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 October 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Social Services Manual (DSSM) regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver, specifically, to clarify internal policy and procedures, is adopted and shall be final effective January 11, 2018.

12/20/17

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

Division of Developmental Disabilities Services (DDDS) Lifespan Waiver
(Break in Continuity of Sections)

FINAL

20720.1 Daily Living Needs

Individuals receiving Medicaid under the Division of ~~Developmentally Disabled~~ Developmental Disabilities Services (DDDS) Lifespan Waiver who receive Residential Habilitation services are allowed a deduction equal to the current Adult Foster Care (AFC) rate. The AFC rate is based on the current SSI income level plus ~~[\$140.00 the~~ Optional State Supplement amount].

(Break in Continuity Within Section)

Individuals receiving Medicaid under the DDDS Lifespan Waiver who ~~reside in the family home or in the Long Term Care Community Services (LTCCS) program~~ do not receive a residential habilitation service are allowed an amount equal to their total income including income that is placed in a Miller Trust. [All earned income in the form of wages shall be allowed to be protected.]

*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2017 issue of the *Register* at page 269 (21 DE Reg. 269). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

Division of Developmental Disabilities Services (DDDS) Lifespan Waiver

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11004

ORDER

Child Care Redetermination

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual regarding Child Care Redetermination, specifically, *to add a graduated phase-out*. 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 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Child Care Redetermination, specifically, *to add a graduated phase-out*.

Statutory Authority

- Child Care Development Fund (CCDF)
- CFR 98.21 (b) - Child Care Development Block Grant of 2014

Background

New law requires that child care will continue for an additional 12 months without interruption or increased parent fees as long as the family income is within 85% of the State Median Income guidelines for Delaware. This

new law is required so that families will have a transition period or "graduated phase-out" from the child care assistance program to leave the child care assistance program, rather than the assistance abruptly ending.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to provide families who exceed the child care income a "graduated phase-out" from the child care assistance program.

Summary of Proposed Changes

Effective for services provided on and after January 1, 2018 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual to provide a "graduated phase-out" from the child care assistance program.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 1, 2017.

Fiscal Impact

The following fiscal impact is projected:

	Federal Fiscal Year 2018	Federal Fiscal Year 2019
General (State) funds	\$2,000,000	\$2,250,000
Federal funds	\$6,000,000	\$6,250,000

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) offered the following summarized observations: SCPD commented that "The Department of Health & Social Services maintains a program covering the costs of child care for individuals meeting certain program and financial standards... The Division projects a State fiscal impact of \$2 million in FFY18 whose impact is partially offset by \$6 million in federal funds."

"Since the State is required to implement the federal regulation, and the revision benefits program participants (including "special needs" parents and children), the SCPD is endorsing the proposed regulation."

Agency Response: The Division of Social Services (DSS) thanks the Council for its support.

No change to the regulation was made as a result of these comments.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by the State Council for Persons with Disabilities.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding Child Care Redetermination, specifically, to add a graduated phase-out, is adopted and shall be final effective January 11, 2018.

12/20/17

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

*Please note that no changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 374 (21 DE Reg. 374). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

Child Care Redetermination

FINAL REGULATIONS

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 85 (18 **Del.C.** §311 & Ch. 85)

REGULATORY IMPLEMENTING ORDER

307 Corporate Governance Annual Disclosure Regulation

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Department of Insurance gave notice in the Delaware *Register of Regulations* at 21 DE Reg. 394 (11/01/17) of proposed new Regulation 307 relating to Corporate Governance and Annual Disclosure. The Department's internal docket number for this regulatory project is 3575- 2017.

The proposed new regulation sets forth the procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD) prescribed by the Corporate Governance Annual Disclosure Act (the CGAD Act). Through the CGAD Act, the Legislature amended Title 18 of the Delaware Code by adding a new Chapter 85 (see Senate Bill No. 40 as amended by Senate Amendment No. 1, approved on August 2, 2017, effective on January 1, 2018). The CGAD Act requires that the first filing of the CGAD be in 2018. The Department modeled its proposed new regulation on the NAIC model regulation, which may be viewed on the NAIC's website at <http://www.naic.org/store/free/MDL-306.pdf>.

The Department did not hold a public hearing on the proposed regulation. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment until the 4:30 p.m. EST, the 4th day, December, 2017, which was thirty days from the date of publication.

During the comment period, the American Council of Life Insurers (ACLI) pointed out that at subsection 4.3 of the proposed regulation does not exactly track the Model Regulation. A copy of the comments are available from the Department.

It is the Department's intention that the rule track the Model Regulation while also comports to Delaware's drafting norms. Revising the regulation to exactly track the Model Regulation is a technical error that can be addressed in this order without the need for re-proposal. See 29 **Del.C.** §10113(b)(4).

II. FINDINGS OF FACTS

The Commissioner finds that it is appropriate to adopt proposed new 18 **DE Admin. Code** 307 with a technical correction that will conform 18 **DE Admin. Code** 307 to the Model Regulation 306 as published by the NAIC, and as indicated in the attached version of the regulation.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 18 **DE Admin. Code** 307, with the correction of the technical error at subsection 4.3.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§311 and Chapter 85, and 29 **Del.C.** Ch. 101 on December 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED.

The 15th day of December, 2017
Trinidad Navarro, Commissioner

307 Corporate Governance Annual Disclosure Regulation (Break in Continuity of Sections)

4.0 Filing Procedures

(Break in Continuity Within Section)

4.3 ~~[The~~ For purposes of completing the CGAD, the] insurer or insurance group ~~[shall~~ may choose to] provide information on governance activities that conforms with the structure of the insurer's or insurance group's system of corporate governance, whether at the ultimate controlling parent level, an intermediate holding company level, or at the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance.

*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 394 (21 DE Reg. 394). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

307 Corporate Governance Annual Disclosure Regulation

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 23, and 21 Delaware Code, Sections 2118 and 2118B (18 Del.C. §311 & Ch. 23, & 21 Del.C. §§2118 and 2118B)
18 DE Admin. Code 901

REGULATORY IMPLEMENTING ORDER

901 Arbitration of Automobile and Homeowners' Insurance Claims

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Department of Insurance (the Department) gave notice in the *Delaware Register of Regulations* at 21 DE Reg. 398 (11/01/17) of proposed amendments to Regulation 901, Arbitration of Automobile and Homeowners' Insurance Claims.

The amendments as proposed raise the filing fees for Automobile Insurance and Homeowners' Insurance claims from \$30.00 to \$50.00. These fees have not been adjusted since the regulation was codified on March 1, 2002. The Department also proposed non-substantive amendments to correct style and subsection references. The Department's internal docket number for this regulatory project is 3647-2017.

The Department did not hold a public hearing on the proposed regulation. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment until the 4:30 p.m. EST, the 4th day, December, 2017, which was thirty days from the date of publication. No comments, suggestions, briefs, or compilations of data or other materials concerning the proposed amendments were submitted.

II. FINDINGS OF FACTS

The Commissioner finds that it is appropriate to adopt proposed amendments to 18 DE Admin. Code 901 as proposed. The Department received no comments on the proposed filing fee increases, and these fees have not been raised since 2002.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 18 DE Admin. Code 901 as proposed.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 Del.C. §311 and Chapter 23, and 21 Delaware Code, Sections 2118 and 2118B on December 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED.

The 15th day of December, 2017
Trinidad Navarro
Commissioner

*Please note that no changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 398 (21 DE Reg. 398). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

901 Arbitration of Automobile and Homeowners' Insurance Claims

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 332, 6408, 6416 and 6417 (18 **Del.C.** §§332, 6408, 6416 & 6417)
18 **DE Admin. Code** 1301

REGULATORY IMPLEMENTING ORDER

1301 Internal Review and Independent Utilization Review of Health Insurance Claims

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At 21 **DE Reg.** 192 (September 1, 2017), the Department published its first notice of intent to amend Regulation 1301 and solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a). The Department's docket number is DOI Docket No. 3571-2017.

In its first notice, the Department proposed to amend the definition of "Authorized Representative" and the content of the notice to be provided by insurance carriers to their insureds. These proposed amendments implement Section 3 of HB 100, which amended 18 **Del.C.** §332 to now require that an insurance carrier, when informing a covered person of its internal review process, must inform the covered person of the availability of assistance from the Delaware Department of Justice (DOJ) in the preparation of an appeal of an adverse determination involving treatment for substance abuse.

HB 100 was signed into law on May 30, 2017, became effective on September 27, 2017 and sunsets on January 1, 2020 unless expressly reauthorized prior to that date. The Department also proposed non-substantive amendments to correct punctuation at subsections 3.1.6 and 9.4.6, and to correct style throughout subsections 5.7, 7.1 and 11.1, and throughout Sections 9.0 and 10.0.

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities submitted an identical set of comments on the substance of the amendments proposed in September. Both organizations offered their support of the proposed amendments, and suggested that the Department more clearly ensure that the regulations clearly state that assistance from the DOJ is available at all stages of the appeals process for cases involving substance abuse.

In response to the comments received, the Department gave notice in the Delaware *Register of Regulations* at 21 **DE Reg.** 400 (11/01/17) of the re-proposal of amendments to Regulation 1301 with additional amendments that incorporate commenters' suggestions. The re-proposal of amendments to companion Regulation 1315 were published at 21 **DE Reg.** 406 (11/01/17).

The Department did not hold a public hearing on the re-proposal. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the re-proposal of amendments until the 4:30 p.m. EST, the 4th day, December, 2017, which was thirty days from the date of publication.

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities again submitted an identical set of comments on the substance of the amendments proposed in November, this time endorsing the amendments without qualification. A copy of those comments are available by contacting the Department.

II. FINDINGS OF FACTS

The Commissioner finds that it is appropriate to adopt proposed amendments to 18 **DE Admin. Code** 1301 as proposed. The Department received no adverse comments on the amendments as re-proposed and the amendments as re-proposed appropriately implement Section 3 of HB 100. See elsewhere in this issue of the Delaware *Register of Regulations* for the adoption of amendment to companion Regulation 1315.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 18 **DE Admin. Code** 1301 as re-proposed.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 Delaware Code, Sections 332, 6408, 6416 and 6417 on December 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED.

The 15th day of December, 2017
Trinidad Navarro, Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 400 (21 DE Reg. 400). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1301 Internal Review and Independent Utilization Review of Health Insurance Claims

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 332 (18 **Del.C.** §§311 & 332)
18 **DE Admin. Code** 1315

REGULATORY IMPLEMENTING ORDER

1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At 21 DE Reg. 196 (September 1, 2017), the Department published its first notice of intent to amend Regulation 1315 and solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a). The Department's docket number is DOI Docket No. 3572- 2017.

In the Department's September 1 notice, the Department proposed to amend the definition of "Authorized Representative" to implement Section 3 of HB 100. Section 3 of HB 100 amended 18 **Del.C.** §332 to now require that an insurance carrier, when informing a covered person of its right to appeal an adverse coverage decision, must inform the covered person of the availability of assistance from the Delaware Department of Justice in the preparation of an appeal of an adverse determination involving treatment for substance abuse. HB 100 was signed into law on May 30, 2017, became effective on September 27, 2017 and sunsets on January 1, 2020 unless expressly reauthorized prior to that date. The Department also proposed non-substantive amendments in punctuation and grammar throughout sections 3 and 4.

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities submitted an identical set of comments on the substance of the amendments proposed in September. Both organizations offered their support of the proposed amendments, and suggested that the Department more clearly ensure that the regulations clearly state that assistance from the DOJ is available at all stages of the appeals process for cases involving substance abuse.

In response to the comments received, the Department gave notice in the Delaware *Register of Regulations* at 21 DE Reg. 406 (11/01/17) of the re-proposal of amendments to Regulation 1301 with additional amendments that incorporate commenters' suggestions. The re-proposal of amendments to companion Regulation 1301 were published at 21 DE Reg. 400 (11/01/17).

The Department did not hold a public hearing on the re-proposal. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the re-proposal of amendments until the 4:30 p.m. EST, the 4th day, December, 2017, which was thirty days from the date of publication.

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities again submitted an identical set of comments on the substance of the amendments proposed in November, this time endorsing the amendments without qualification. A copy of those comments are available by contacting the

Department.

II. FINDINGS OF FACTS

The Commissioner finds that it is appropriate to adopt proposed amendments to 18 **DE Admin. Code** 1315 as proposed. The Department received no adverse comments on the amendments as re-proposed and the amendments as re-proposed appropriately implement Section 3 of HB 100. See elsewhere in this issue of the Delaware *Register of Regulations* for the adoption of amendment to companion Regulation 1301.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 18 **DE Admin. Code** 1315 as re-proposed.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 Delaware Code, Sections 332, 6408, 6416 and 6417 on December 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED.

The 15th day of December, 2017
Trinidad Navarro, Commissioner

*Please note that no changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 406 (21 DE Reg. 406). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
500 BOARD OF PODIATRY

Statutory Authority: 24 Delaware Code, Section 506(a)(1) (24 **Del.C.** §506(a)(1))
24 **DE Admin. Code** 500

ORDER

500 Board of Podiatry

The Delaware Board of Podiatry pursuant to 24 **Del.C.** §506(a)(1), proposed to revise its regulations. The proposed changes to Regulation nine eliminate several crimes that are listed as substantially related to the practice of podiatry.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on April 1, 2017, a public hearing was held on June 7, 2017, at a regularly scheduled meeting of the Delaware Board of Podiatry to receive verbal comments regarding the Board's proposed amendments to its regulations. No comments were submitted at that time.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on June 7, 2017. No written comments were

received by the Board during the initial thirty-day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board 's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §506(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes to regulation nine truncate the list of crimes substantially related to the practice of podiatry.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board 's rules and regulations.
6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §506(a)(1) and for the reasons set forth above, the Board of Podiatry does hereby ORDER that the regulations be, adopted and promulgated as set forth in the Delaware *Register of Regulations*. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g). The new regulations are attached hereto as Exhibit A.

SO ORDERED this 6th day of September, 2017.

BOARD OF PODIATRY

Harold Gruber, DPM, President

James Bray, DPM

Jason Kline, DPM, Vice President (absent)

Joseph Stormer, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 782 (20 DE Reg. 782). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

500 Board of Podiatry

DIVISION OF PROFESSIONAL REGULATION 1000 BOARD OF PILOT COMMISSIONERS

Statutory Authority: 23 Delaware Code, Section 102 (23 **Del.C.** §102)
24 **DE Admin. Code** 1000

ORDER

1000 Board of Pilot Commissioners

The Delaware Board of River Pilot Commissioners pursuant to 23 **Del.C.** §102(1), proposed to create Regulation 13. The proposed creation of Regulation 13 establishes the process to be followed for accepting applications for licensure.

Summary of the Evidence and Information Submitted

Following publication in the Delaware *Register of Regulations* on July 1, 2017 a public hearing was held on August 18, 2017. Written comment periods were held open for thirty days before the public hearing, and an

additional fifteen days following the public hearing pursuant to 29 **Del.C.** §10118(a). At the hearing, the Board accepted as evidence and marked as the Board's Exhibit 1 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. During the written public comment periods, no public comment was received. No public comment was received by the Board during the public hearing on August 18, 2017.

Summary of the Findings of Fact

Pursuant to discussions held at open public Board meetings, the Board proposed to create Regulation 13 to memorialize the process the Board will follow when accepting applications for licensure. This memorialization is needed as the call for applications for new licensees occurs infrequently, and the Board determined that the new Regulation 13 reflects the best practice for handling new applications in the future, based on its experience with the most recent application process. Because the proposed regulations clarify the documentation that will be required of new applications, the Board utilized the full notice and comment requirements of the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101, electing not to adopt these regulations as internal operating procedures only under Section 10113 of that Act.

Decision of the Board

Having found that the proposed changes to the regulations are necessary as outlined herein, and having received no public comment on the proposed regulations, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the *Delaware Register of Regulations* on January 1, 2018.

IT IS SO ORDERED this 17th day of November, 2017 by the Delaware Board of Pilot Commissioners.

Bradford Schell

Mark Reardon

Penelope Marshall (absent)

Carl T. Joseph, III

Stephen McGuinness

Maia Murphy (absent)

Laura Phillips

***Please note that no changes were made to the regulation as originally proposed and published in the July 2017 issue of the *Register* at page 34 (21 DE Reg. 34). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1000 Board of Pilot Commissioners

DIVISION OF PROFESSIONAL REGULATION

5200 BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Statutory Authority: 24 Delaware Code, Section 5206(1) (24 **Del.C.** §5206(1))
24 **DE Admin. Code** 5200

ORDER

5200 Board of Examiners of Nursing Home Administrators

On August 1, 2017 the Delaware Board of Nursing Home Administrators published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 21, Issue 2. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 12, 2017 at a regularly scheduled meeting of the Board of Nursing Home Administrators to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 24 **Del.C.** §5206(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having reviewed no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §5206(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on August 1, 2017. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 14th day of November, 2017.

DELAWARE BOARD OF NURSING HOME ADMINISTRATORS

Michael Salitsky, N.H.A., President (absent)

E. Ray Quillen, N.H.A., Vice President

Gwendolyn Benton

Jenifer Vaughn

Georgia Lane, R. N., B.S.

Howard Payne, Jr., N.H.A.

Eleanor Allione

Cecelia Jones

Timothy Bane (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the August 2017 issue of the *Register* at page 138 (21 DE Reg. 138). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5200 Board of Examiners of Nursing Home Administrators

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4504 (21 **Del.C.** §4504)
2 DE Admin. Code 2405

ORDER

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual

Pursuant to the authority provided by 21 **Del.C.** §4504, the Delaware Department of Transportation proposed to adopt changes to its regulation entitled the Oversize/Overweight Hauling Permit Policy and Procedures Manual. The Department, through its Division of Transportation Solutions, published proposed revisions to the existing

regulation, the Oversize/Overweight Hauling Permit Policy and Procedures Manual, seeking public comment through the public notice appearing in 21 DE Reg. 418 (11/01/17).

The Department indicated in its November 1, 2017 notice that it would accept written public comments on the proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual from November 1, 2017 through December 1, 2017.

No comments were received.

Summary of the Evidence and Information Submitted.

The proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual are procedural changes, administrative in nature and serve to clarify the intent of the Department.

Findings of Fact

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

1. The proposed amendments to the Oversize/Overweight Hauling Permit Policy and Procedures Manual are useful and proper. The public comment period was appropriately held open for thirty days and no public comment was received.

2. The adoption of these proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual is in the best interests of the State of Delaware. Having received no public comment, there is no basis upon which to further amend the regulation and it is adopted as amended.

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Oversize/Overweight Hauling Permit Policy and Procedures Manual, as set forth in the version attached hereto, to be effective on January 11, 2018.

IT IS SO ORDERED this 20th day of December, 2017.

Jennifer Cohan, Secretary
Delaware Department of Transportation

***Please note that no changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 418 (21 DE Reg. 418). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual](#)

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE****Notice of Proposed Rulemaking and Public Hearing****Proposed Amendments to the Administrative Manual and Special Regulations Regarding Natural Gas Development Activities; Additional Clarifying Amendments**

Summary: The Commission will hold public hearings and accept written comment on a proposal to amend its *Special Regulations* by the addition of a section on hydraulic fracturing in shale and other rock formations, including: the prohibition of high volume hydraulic fracturing in such formations; provisions related to water use for hydraulic fracturing; and provisions related to the management of produced water from hydraulic fracturing. The Commission also proposes to amend its *Administrative Manual - Rules of Practice and Procedure* by the addition of project review classifications and fees related to the management of produced water from hydraulic fracturing of hydrocarbon bearing rock formations. Minor amendments to the project review classifications unrelated to hydraulic fracturing are also proposed.

DATES:

Written comments: Written comments will be accepted through 5 p.m. on February 28, 2018.

Public hearings:

1. January 23, 2018, 1 p.m. to 4:30 p.m., Waymart, Wayne County, PA
2. January 23, 2018, 6 p.m. to as late as 9:30 p.m., Waymart, Wayne County, PA
3. January 25, 2018, 1 p.m. to 4:30 p.m., Philadelphia, PA
4. January 25, 2018, 6 p.m. to as late as 9:30 p.m., Philadelphia, PA

On November 30, 2017, a notice including these public hearing dates, times and locations was posted on the DRBC website and circulated directly to DRBC notice subscribers interested in this subject matter. Members of the public may sign up through the Commission's website to receive direct notice via email of additional comment opportunities or changes to the information provided above.

ADDRESSES:

Written comments will be accepted through the Commission's on-line public comment collection system at: <http://dockets.drbc.commentinput.com>. Requests to submit comments by another method will be granted based on lack of access to the web-based comment system. Requests may be addressed to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

The hearing locations are:

1. Ladore Camp, Retreat and Conference Center, 287 Owego Turnpike, Waymart, PA 18472 (Jan. 23 hearings)
2. DoubleTree by Hilton Hotel Philadelphia Airport, 4509 Island Avenue, Philadelphia, PA 19153 (Jan. 25 hearings)

Additional opportunities for comment or changes to the public input process will be published on the Commission's website, drbc.net and through its Twitter account. To receive direct notice of such additions or changes, please subscribe through the Commission's website at: <http://www.nj.gov/drbc/contact/interest/>.

Public hearing registration procedures are set forth below.

Registration to Attend and Speak at a Public Hearing

To reduce uncertainty on the part of attendees about whether they will have a seat and an opportunity to speak at a public hearing, and to provide for a safe and orderly hearing process, the Commission is requiring on-line or on-site

registration to attend each public hearing and is encouraging use of the on-line registration system, which will track and publish in real time the available capacity for each hearing. Advance registrants will be eligible to request speaking time and will be informed in advance if they have a reserved speaking slot. Those who register on site may sign up to speak if time allows or may be added to a waiting list. Key elements of the procedure are as follows:

- On-line or on-site registration is required to attend each public hearing.
- On-line registration will remain open until the beginning of each hearing.
- On-site registration will be available at the hearing venues.
- Available capacity for each hearing will be posted on the web-based registration system. When users access the system, they will see the number of seats still available or if the venue is at capacity.
- If capacity has been reached for a specific hearing, registrants will be placed on a waiting list.
- Those who do not register in advance are advised to check the availability of seats BEFORE planning travel to a hearing.
- **Those who pre-register on-line will be eligible to reserve an opportunity to speak at a hearing.**
- Prior to the hearing dates, the DRBC will contact all those who have pre-registered and provide them with an opportunity to request speaking time.
- If more people request to speak than time allows, those not assigned time will be placed on a waiting list.

Written and oral comment will receive equal consideration. See the "Public Process" subsection of **Supplementary Information** for additional details concerning the public hearings and submission of written comments.

Preamble

For background on the draft rule and a description of its contents, click here: http://regulations.delaware.gov/register/january2018/proposed/DRBC_preamble.pdf

Additional Information Regarding the Public Process

Substance of comments. The Commission expressly seeks comment on the effects the proposed rules may have within the basin on: water availability, the control and abatement of water pollution, economic development, the conservation and protection of drinking water supplies, the conservation and protection of aquatic life, the conservation and protection of water quality in Special Protection Waters, and the protection, maintenance and improvement of water quantity and quality basinwide. Comment is also requested on whether use of base fluids other than water for HVHF is practical within the basin and if so, how it should be addressed in these rules, and on any alternatives to the proposed rules that the commenters would like the Commission to consider, as well as on draft guidance published simultaneously with the rules for determining background concentrations of certain pollutants. The Commission welcomes and will consider any other comments that concern the potential effects of the draft rules on the conservation, utilization, development, management and control of the water and related resources of the Delaware River Basin. Comments on matters not within this scope may not be considered.

Non-digitized voluminous materials such as books, journals or collected letters/petitions will not be accepted. Digital submissions of these, as well as articles and websites, must be accompanied by a statement containing citations to the specific findings or conclusions the commenter wishes to reference.

Submission of written comments. Written comments along with any attachments may be submitted through the Commission's web-based comment system (<http://dockets.drbc.commentinput.com>) until 5 P.M. on February 28, 2018. All materials should be provided in searchable formats, preferably in.pdf searchable text. Notably, a picture scan of a document may not result in searchable text. Comments received through a method other than the designated on-line method, including via email, fax, postal/delivery services or hand delivery, will be included in the rulemaking record if an express exception has been granted. Requests for exceptions to the submission of comments using the web-based system will be granted based on lack of access to the Internet and may be addressed to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

Public hearings. Details regarding registration to attend public hearings and to request speaking time are set forth in the fourth section of this notice, captioned "Registration to Attend and Speak at a Public Hearing". Additional procedures are described here. Notably, municipal, county, state, and federal elected officials (and staff speaking on behalf of elected officials) will be asked to identify themselves as such when registering. The number

of speakers and the number of attendees will be limited by the space and time available. In order to provide as many individuals who wish to speak as possible with an opportunity to do so, each person will be limited to one time slot at one hearing location. Depending on the number who wish to be heard, speakers will be limited to two or three minutes.

The Commission appreciates the public's participation and input on this important matter. In order to ensure that scheduled public hearings are orderly and safe, it is essential that public hearing procedures be followed. The Commission's policies related to speaker conduct, audience conduct, safety, security, signs, placards and banners will be in effect at these public hearings. Participants are requested to review all DRBC public hearing procedures on DRBC's website at:

http://www.state.nj.us/drbc/library/documents/procedures_public-hearings050317.pdf.

The public is reminded that oral and written comments will receive the same consideration.

Supplementary Information:

The Delaware River Basin Commission (DRBC or "Commission") is a regional interstate and federal agency formed by concurrent compact legislation of the four basin states and the federal government in 1961 to manage the water resources of the Delaware River Basin without regard to political boundaries. Its members are, *ex officio*, the governors of the basin states (Delaware, New Jersey, New York, and Pennsylvania) and the commander of the U.S. Army Corps of Engineers North Atlantic Division, who represents the federal government. Most actions of the Commission, including the adoption of rules to effectuate, apply and enforce the compact, require a majority vote of the Commission's five members. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act.

Detailed and up-to-date information about the public process, including links to the proposed rules and guidance are available on the Commission's website, drbc.net, and specifically, at:

http://www.nj.gov/drbc/meetings/proposed/notice_hydraulic-fracturing.html.

Proposed Rule Text

The draft rule text may be viewed here: <http://regulations.delaware.gov/register/january2018/proposed/DRBC Rule Text.pdf>

DELAWARE STATE FIRE PREVENTION COMMISSION**PUBLIC NOTICE****710 Ambulance Service Regulations**

The Delaware State Fire Prevention Commission, pursuant to 16 **Del.C.** §6604(1), proposes to revise regulation 710, Sections 14.2 and 14.3 by clarifying that Delaware certified EMTs are required to obtain and maintain National Registry of Emergency Medical Technicians certification and providing a path for recertification for out of state EMTs.

The Board will hold a public hearing on the proposed regulation change on February 20, 2018 at 10:00 a.m., in the Commission Chamber, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments should be sent to Sherry Lambertson, Executive Specialist for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments will be accepted until March 8, 2018 pursuant to 29 **Del.C.** §10118(a).

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, January 18, 2018 at 5:00 p.m. in the Townsend Building, Dover, Delaware.

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****Child Care Assistance**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Child Care Assistance, specifically, *to clarify policy related to determination of eligibility*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on January 31, 2018. Please identify in the subject line: Child Care Assistance.

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

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****906 Use of Credit Information**

The Department of Insurance (Department) hereby gives notice of the proposed repeal of existing Regulation 906, Use of Credit Information, effective on May 1, 2018.

HS1 for HB 80 replaced then existing Chapter 83 of the Delaware Insurance Code with a new chapter. The new chapter was signed into law on August 1, 2017, and it becomes effective on May 1, 2018. The new chapter sets forth the permissible uses of credit information in rating personal insurance, and prohibits insurance companies from increasing rates on current customers solely for having reached the age of 75 or above or for having a change in marital status due to the death of a spouse.

Regulation 906 is now outdated as it lacks many of the requirements in the new statute. Additionally, HS1 for HB 80 is sufficiently prescriptive to not warrant implementing regulations. Accordingly, the Department proposes to repeal existing Regulation 906. The repeal would be effective on May 1, 2018.

The Department does not plan to hold a public hearing on the proposed repeal. The text of the regulation to be repealed appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department's docket number is DOI Docket No. 3690-2017.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 31st day of January, 2018. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist

DOI Docket No. 3690-2017

Delaware Department of Insurance

841 Silver Lake Drive

Dover, DE 19904

(302) 674-7379

Email: Leslie.Ledogar@state.de.us

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES****PUBLIC NOTICE****1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear**

The proposed regulations reflect changes that will reduce the likelihood of an incident involving the loss of life and property from a boiler or pressure vessel due to an explosion, equipment failure, or harmful exposure to carbon monoxide. The proposed regulations require owners of boilers located in places accessible to the public such as commercial businesses, churches, hospitals, and schools, to conduct monthly inspections of their boiler systems and record any maintenance, testing, or service performed on the boiler. The proposed regulations also require owners to hire a licensed heating, ventilation, and air conditioning technician to perform an annual service check on the boiler system.

The proposed regulations also amend the inspection and testing requirements for pressure vessels associated with air cannons. The thickness of the wall of the pressure vessels must now be checked using ultrasonic testing technologies to ensure that the wall is thick enough to sustain the maximum allowable working pressure originally assigned to the pressure vessel when it was manufactured. There are also requirements for owners to conduct penetrant testing and necessary repairs on the pressure vessel when a commissioned inspector detects cracks or surface defects during an inspection.

The hearing record on the proposed amendments to 7 **DE Admin Code** 1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear Installations will be open January 1, 2018. 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 amendments will be held on January 25, 2018 beginning at 6:00 PM in the DNREC Richardson and Robbins Building Auditorium, 89 Kings Highway Dover, DE 19901. Comments will be accepted in accordance with 29 **Del.C.** §10118.

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION****700 BOARD OF CHIROPRACTIC****PUBLIC NOTICE**

The Delaware Board of Chiropractic, pursuant to 24 **Del.C.** §706(a)(1), proposes to revise its regulations. The proposed regulation increases the number of continuing education hours that can be taken in an asynchronous format from 6 to 12.

The Board will hold a public hearing on the rule change on February 1, 2018 at 8:30 a.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, DE 19904. Written public comments will be accepted until February 16, 2018.

DIVISION OF PROFESSIONAL REGULATION**2600 EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS****PUBLIC NOTICE**

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 amend the requirements for physical therapist and physical therapist assistant applicants who were trained outside of the United States. Most such applicants will need to provide the Board with an evaluation of professional education and training prepared by a Board approved credentialing agency. For initial applicants, that is, applicants who are not applying by reciprocity, the evaluation must be based on the most recent

Course Work Tool adopted by the Federation of State Boards of Physical Therapy. However, for applicants who are applying by reciprocity, the evaluation must be based on the Course Work Tool corresponding to the applicant's year of graduation. This change will facilitate licensure for applicants who were trained outside of the United States, but who have already been evaluated and licensed by another State. Where an applicant received a degree from a school accredited by an accrediting agency recognized by the Board, the school is considered equivalent to a domestic accredited school and the applicant is exempt from the requirement of evaluation by a credentialing agency. Finally, a new subsection 7.2 requires licensees to update addresses on a timely basis.

A public hearing will be held on January 23, 2018 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 7, 2018, 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
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. Rules pertaining to cremation and crematoriums and inspection of funeral establishments are proposed to be added.

A public hearing will be held on January 23, 2018 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 at the above address in accordance with 29 **Del.C.** §10118(a). Written public comments will be accepted until February 7, 2018.
