
Delaware Register of Regulations

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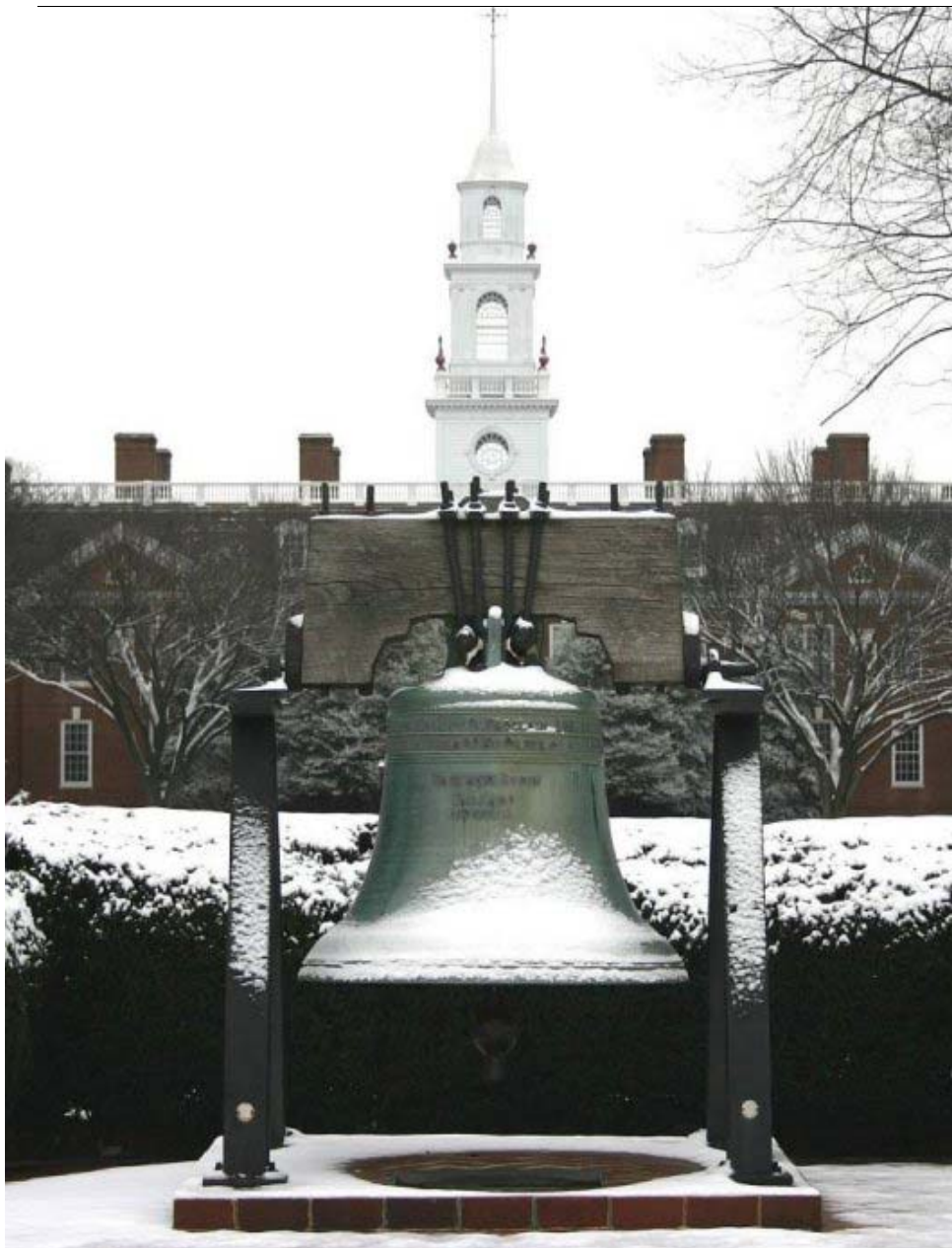
Volume 22 - Issue 7, Pages 552 - 634

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Regulations:
Proposed
Final

General Notices

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before December 15, 2018.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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 15	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.

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Symbol Key

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

Proposed Regulations

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 103(b) and 122(a) (14 **Del.C.** §§103(b) and 122(a))

PUBLIC NOTICE**Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****507 Student Success Planning****A. Type of Regulatory Action Required**

New Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 **Del.C.** §§103(b) and 122(a), the Secretary of Education intends to create 14 **DE Admin. Code** 507 Student Success Planning. This new regulation is needed to provide guidance for districts and charters in their role to support students in establishing goals that lead to post-secondary plans for the student's desired career.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 5, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the regulation help improve student achievement as measured against state achievement standards? The regulation is intended to improve student achievement as measured against state achievement standards by creating a plan for student's future success.

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

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The

regulation does not address students' health and safety.

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

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

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this 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/january2019/proposed/22 DE Reg 562RFA 01-01-19.pdf>

507 Student Success Planning

1.0 Purpose

The purpose of this regulation is to: (1) provide guidance to district and charter schools in establishing their Post-Secondary Advisement Plans (PSAP); and (2) to provide guidance as they support students in establishing goals that lead to the creation and revision of the student's Student Success Plan.

2.0 Definitions

"Advisement" means a documented process that engages students in ongoing discussion and planning with school staff to identify their personal talents and interests and plan their career goals.

"Core Course Credit" means a credit in an English Language Arts, Mathematics, Science or Social Studies course.

"Department" means the Delaware Department of Education.

"Post-secondary" means education, training and career experiences that occur after high school graduation.

"Post-secondary Advisement Plan" or "PSAP" means a written comprehensive document that identifies the activities, supports and resources to enable a student to create and revise a Student Success Plan.

"Progress Report" means a written document provided annually by districts and charters to the Department to update their current status in meeting their established benchmarks included in the Post-Secondary Advisement Plan.

"Student Success Plan" or "SSP" means a written plan which sets post-secondary goals based on a student's career interest.

3.0 Student Success Plans (SSP)

3.1 Every Delaware student in grades 8-12 shall have a SSP based on exposure to the following:

PROPOSED REGULATIONS

- 3.1.1 Opportunities to learn about career and industry trends and earning potential, such as career speakers, work-based learning opportunities, career and technical student organization activities and career compass activities.
- 3.1.2 Opportunities to identify their strengths and interests connected to careers, such as Armed Services Vocational Attitude Battery and career interest surveys, as well as meetings with counselors, teachers, parents, guardians, care-givers at regular intervals to discuss student interests regarding careers.
- 3.1.3 Opportunities to identify educational and financial requirements related to potential career interests, such as college representative presentations, college visits, financial aid presentations and financial literacy classes.
- 3.2 SSPs shall be created in 8th grade or upon entry to a Delaware district or charter school in grades 8-12 and revised annually as necessary.
- 3.3 By the student's final year of high school, the SSP shall identify the necessary steps to transition to the next phase of the student's career plan.

4.0 Post-Secondary Advisement Plans (PSAP)

- 4.1 Every district and charter school shall create and implement a PSAP to enable students to have the opportunities as identified in Section 3.0.
 - 4.1.1 The PSAP shall use the template provided by the Department.
 - 4.1.2 Every PSAP shall include a process for all of the following:
 - 4.1.2.1 Opportunities for students to establish secondary and Post-secondary goals aligned to their career interests.
 - 4.1.2.2 Activities, supports and resources to enable students to fulfill the opportunities as identified in Section 3.0, such as but not limited to: small and large group activities, in-school and out-of-school supports, and one-on-one Advisement.
 - 4.1.2.3 Alignment of PSAPs to enable students to identify the necessary steps to transition to the next phase of the student's career plan.
 - 4.1.2.4 Opportunities to engage parent(s), guardian(s) or relative caregiver(s) in the creation and revision of SSPs.
 - 4.1.2.5 Measurable outcomes to demonstrate the impact of the PSAP in identifying the necessary steps to transition to the next phase of their career plan.
- 4.2 Every district and charter school shall align activities, supports and resources across grades 8-12 as applicable.

5.0 Reporting Requirements and Timelines

- 5.1 Annually, by June 30th, every district and charter school shall electronically submit a Progress Report to the Department.
 - 5.1.1 The Progress Report shall include annual progress towards meeting the established benchmarks included in the PSAP, any measures being taken to address benchmarks that will not be met, and any new measures that will be measured to demonstrate the impact of the PSAP.
 - 5.2 Plans shall be updated annually to reflect necessary improvements as informed by national best practices, review of Post-secondary data and feedback provided by the Department.
 - 5.3 Newly authorized charter schools with any grade 8-12 shall create and implement a PSAP to enable students to have the opportunities as identified in Section 3.0.
-

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

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

PUBLIC NOTICE

Regulations Governing Dialysis Centers

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 1, Section 122(3)(aa), Delaware Health and Social Services (DHSS) | Division of Health Care Quality (DHCQ) is proposing regulations governing Dialysis Centers.

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, the Office of Health Facilities Licensing and Certification, Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to Corinna.Getchell@state.de.us or by fax to 302-292-3931 by 4:30 p.m. on January 31, 2019. Please identify in the subject line: Regulations Governing Dialysis Centers

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing Regulations Governing Dialysis Centers.

Statutory Authority

16 Del.C. §122(3)(aa)

Background

On September 2, 2014, House Bill (HB) 360 with House Amendment 2 became law. HB 360 amended 16 Del.C. §122 to require the DHSS to establish and enforce dialysis center quality assurance standards, which includes a standard requirement for an appropriate emergency energy source capable of use for at least 48 hours and at least a monthly test of those emergency sources.

Subsequently, Senate Bill (SB) 131 with Senate Amendment 1 (signed into law June 30, 2015) amended 16 Del.C. §122 to define a dialysis center as an independent or hospital-based unit approved to furnish outpatient dialysis services (maintenance dialysis services or home dialysis training and support, or both) directly to end stage renal disease patients. In addition, SB 131 includes a standard requirement for all dialysis machines to be connected to an emergency power source so that all dialysis machines will operate for at least four (4) hours following a power shutdown or outage. The emergency power source must be in working condition at all times and the dialysis center must conduct and document at least a monthly test of those emergency power sources.

Summary of Proposal

Summary of Proposed Regulations

The Division of Health Care Quality plans to publish "proposed" regulations governing Dialysis Centers and hold them out for public comment per Delaware law. These regulations establish standards for public health quality assurance in the operation of dialysis centers and regulate the public health practice of such programs, which shall include but not be limited to a standard requirement for all dialysis machines to be connected to an emergency power source so that all dialysis machines will operate for at least 4 hours following a power shutdown or outage. In addition, the emergency power source must be in working condition at all times and the dialysis center must conduct and document at least a monthly test of those emergency power sources. For purposes of this section, a "dialysis center" means an independent or hospital-based unit approved to furnish outpatient dialysis services, including maintenance dialysis services, or home dialysis training and support services, or both to end stage renal

disease patients.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) 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, 2019.

Fiscal Impact

16 Del.C. §122(3)(aa) gives the DHSS authority to impose licensure fees. The amount charged for each fee imposed shall approximate and reasonably reflect all costs necessary to defray the expenses incurred by the DHSS. There shall be a separate fee charged for each service or activity.

Proposed Initial Fee

Proposed Renewal Fee

\$1000 + \$500 for each additional service above 1

\$600 + \$300 for each additional service above 1

During the first year the regulations are implemented, it is estimated that \$42,000 will be collected in licensure fees. Thereafter, approximately \$18,600 will be collected in licensure renewal fees.

*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/january2019/proposed/22 DE Reg 565RFA 01-01-19.pdf>

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

[Regulations Governing Dialysis Centers](#)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Chiropractic Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and the DMMA Provider Policy Specific Manual regarding chiropractic services, specifically, to remove annual numerical limitations placed on chiropractic care visits for the purpose of treating back pain.

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, 2019. Please identify in the subject line: Chiropractic Services.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and the DMMA Provider Policy Specific Manual regarding chiropractic services, specifically, *to remove annual numerical limitations placed on chiropractic care visits for the purpose of treating back pain.*

Statutory Authority

- Senate Bill 225

Background

Senate Bill 225, an Act to Amend Title 16, Title 24, Title 29, and Title 31 of the Delaware Code Relating to Insurance Coverage for the Treatment of Back Pain, was enacted by the General Assembly of the State of Delaware, and signed into law on September 10, 2018, with an effective date of March 9, 2019. This Act encourages prescribers and patients to use proven non-opioid methods of treating back pain by prohibiting numerical limits on physical therapy and chiropractic care, which might deter prescribers or patients from using those treatments rather than opioids. As a result, DMMA is proposing to amend policy by removing annual limits associated with chiropractic treatment services.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to remove annual numerical limitations placed on chiropractic care visits for the purpose of treating back pain.

Summary of Proposed Changes

Effective for services provided on and after January 11, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1-A Page 3 Addendum of Title XIX Medicaid State Plan and the Practitioner Provider Specific Manual, of the DMMA Provider Policy Specific Manuals sections 13.2.2 - 13.2.3.2 regarding chiropractic services.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 31, 2019.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

The following fiscal impact is projected:

PROPOSED REGULATIONS

	Federal Fiscal Year 2019	Federal Fiscal Year 2020
General (State) Funds	212,250	215,968
Federal Funds	287,750	296,533

***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/january2019/proposed/22 DE Reg 566RFA 01-01-19.pdf>

Attachment 3.1-A
Page 3.Addendum

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

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

6. Medical Care and other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law (continued).

6.b. Optometrists' Services

These services are reimbursed:

1. For Medicaid-eligible Individuals under age 21, as an EPSDT service (routine eye exams including refraction and provision of eyeglasses); or
2. For Medicaid-eligible individuals over age 21, medically necessary diagnostic and treatment services provided under the scope of optometric practice in State law for symptomatic Medicaid recipients (i.e. disease, injury, illness, or other medical disorder of the eyes), excluding routine eye exams or refractions related to the provision of eyeglasses and excluding coverage of eyeglasses.

6.c. Chiropractors' Services

Chiropractic services are furnished in accordance with 42 CFR 440.60(b) and include only services that are provided by a chiropractor who is licensed by the State, and consists of treatment by means of manual manipulation of the spine that the chiropractor is legally authorized by the State to perform. Services may be subject to prior authorization and/or medical review, and include:

1. Evaluation and management services;
2. Diagnostic x-rays; and
3. Chiropractic manipulative treatment.

Services are provided as follows:

1. ~~For Medicaid-eligible Individuals under age 21, as an EPSDT service, per 42 CFR §441 Subpart B, furnished upon medical necessity; or~~
2. ~~For Medicaid-eligible individuals over age 21, furnished upon medical necessity and following the service utilization criteria below:~~
 - a. ~~One (1) office visit per year;~~
 - b. ~~One (1) set of X-rays per year; and~~
 - c. ~~Twenty (20) manipulations per year.~~

Provider Qualifications: Qualified chiropractors must be licensed per Delaware licensure requirements codified in Chapter 7, Title 24 of the Delaware Administrative Code, Professions and Occupations.

6.d. Other Practitioners' Services

1. Licensed Midwife services are services permitted under scope of practice authorized by state law for the licensed midwife.
2. Licensed Behavioral Health Practitioner: A licensed behavioral health practitioner (LBHP) is a professional who is licensed in the State of Delaware to diagnose and treat mental illness or substance abuse acting within the scope of all applicable state laws and their professional license. A LBHP includes professionals licensed to practice independently:
 - Licensed Psychologists
 - Licensed Clinical Social Workers (LCSWs)
 - Licensed Professional Counselors of Mental Health (LPCMHe)
 - Licensed Marriage and Family Therapists (LMFTs)

TN No. SPA # _____	Approval Date _____
Supersedes TN No. SPA #17-001	Effective Date <u>March 11, 2019</u>

Practitioner

www.dmap.state.de.us

Provider Policy Manual

13.0 Specific Criteria for Chiropractic Services

13.1 Member Eligibility

- 13.1.1 Providers must verify member eligibility by logging into the Delaware Medical Assistance Portal for Providers at <https://Medicaid.dhss.delaware.gov/> or by using the Voice Response System (VRS) by calling 1-800-999-3371.
- 13.1.2 The DMAP will not cover eligible members for chiropractic services prior to October 1, 2014.
- 13.1.3 Effective January 1, 2018 chiropractic services was added as a Managed Care Organization (MCO) covered benefit.

13.2 Covered Services

- 13.2.1 Covered Services & Limitations
- 13.2.2 ~~“Manual” manipulation of spine for treatment of spinal subluxation one manipulation per member per day and a maximum of twenty (20) manipulations during a rolling twelve month period.~~
Chiropractic services are furnished in accordance with 42 CFR 440.60(b) and include only services that are provided by a chiropractor who is licensed by the State, and consists of treatment by means of manual manipulation of the spine that the chiropractor is legally authorized by the State to perform.
 - 13.2.2.1 Manipulation associated with the treatment of neck, back, and pelvic/sacral pain.
- 13.2.3 Necessity for Treatment
The patient must have a significant health problem in the form of a neuromusculoskeletal condition necessitating treatment, and the manipulative services rendered must have a direct therapeutic relationship to the patient’s condition and provide reasonable expectation of recovery or improvement of function. The patient must have a subluxation of the spine as demonstrated by x-ray or back pain necessitating treatment as demonstrated by physical examination, as described below.
 - 13.2.3.1 ~~X-ray of complete spine only to document medical necessity for spinal subluxation; the x-ray must be taken within twelve (12) months of the date of service~~
X-ray may be used to diagnose spinal subluxation. If x-ray is used for this purpose, it must have been taken reasonably close to (within 12 months prior or 3 months following) the beginning of treatment. Coverage of spinal x-rays is limited to one set of spinal x-rays for a member in a rolling twelve-month period.
Additional X-rays may be taken within the same calendar year in order to document a new condition or an exacerbation/re-injury.

PROPOSED REGULATIONS

X-rays used to determine progress are limited to one study per calendar year. Progress X-ray studies, beyond the first in a calendar year, may be pre-authorized.

- 13.2.3.2 Physical exam to document spinal subluxation, back pain, or to determine progress; ~~one in a rolling twelve-month period~~; evaluation must be demonstrated by meeting two of the following four criteria, one of which must be "13.2.3.4" below;
- 13.2.3.3 Pain/tenderness evaluated in terms of location, quality and intensity;
- 13.2.3.4 Asymmetry/misalignment identified on a sectional or segmental level;
- 13.2.3.5 Range of motion abnormality (changes in active, passive, and accessory joint movements resulting in an increase or a decrease of sectional or segmental mobility);
- 13.2.3.6 Tissue, tone changes in the characteristics of contiguous, or associated soft tissues, including skin, fascia, muscle, and ligament.

13.3 Non-Covered Services

13.3.1 Non-covered chiropractic services include the following:

- Acupuncture;
- Vitamins;
- Minerals;
- Supplements;
- Or any other chiropractic service not defined in this benefit.
- Chiropractic maintenance therapy is not considered to be medically necessary and is not covered.
- Orthopedic devices prescribed by chiropractor.
- Physiotherapy modalities including diathermy and ultrasound provided by chiropractor.
- Treatment for any condition not related to a diagnosis of subluxation or ~~low~~ back pain.
- X-rays other than those needed to support a diagnosis of subluxation.
- Any services outside of scope of state licensure.
- Room and Ward fees are not covered.
- Hand-held and other devices may be used in treatment but are not eligible to be reimbursed.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 17000

PUBLIC NOTICE

Eligibility Determination

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding Eligibility Determination, specifically, *to align state and federal policy*.

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, 2019. Please identify in the subject line: Eligibility Determination.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding Eligibility Determination, specifically, *to align state and federal policy*.

Statutory Authority

- Section 1634(c) of the Social Security Act

Background

A review of DMMA policy identified the need for provisions of 16 Del. Admin. C. §17160.1 to more closely track the federal language which is set forth more fully in the section directly preceding it in 16 Del. Admin. C. 17160. More specifically, the second eligibility criterion “have been receiving SSI prior to age 22 because of disability or blindness” sets forth a different parameter than what the federal statute contemplates. It is the disability or blindness itself which must have begun prior to reaching 22 years of age, rather than the receipt of SSI benefits prior to 22 years of age.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to align state and federal policy.

Summary of Proposed Changes

Effective for services provided on and after March 11, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 17160.1 of Delaware Social Services Manual (DSSM) regarding Eligibility Determination, specifically, *to align state and federal policy*.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 31, 2019.

Provider Manuals and Communications Update

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

Fiscal Impact

No fiscal impact is projected as a result of this policy update.

***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/january2019/proposed/22 DE Reg 570RFA 01-01-19.pdf>

17160.1 Eligibility Determination

To be eligible the individual must meet all the following criteria:

- be age 18 or older,
- have been receiving SSI ~~prior to age 22~~ because of disability or ~~blindness~~, blindness which began before he or she attained the age of 22,
- lost their SSI benefit because they started to receive Child's Insurance Benefits after 7/1/87 or
- received an increase in Child's Insurance Benefit after 7/1/87.

Child's Insurance Benefit is a type of Title II Social Security benefit as defined below:

PROPOSED REGULATIONS

A child is entitled to Child's Insurance Benefits on the Social Security record of a parent if:

1. an application for Child's Insurance Benefit is filed, and
2. the child is (or was) dependent upon the parent, and
3. the child is unmarried, and
4. the child is:
 - under age 18, or
 - under age 19 and a full-time elementary or secondary school student, or
 - age 18 or over and under a disability (which must have begun before age 22) and
5. the parent:
 - is entitled to disability insurance benefits, or
 - is entitled to retirement insurance benefits, or
 - died and was either fully or currently insured at the time of death.

Determine eligibility using SSI income and resource standards and methodologies. The Child's Insurance Benefit is excluded from income. Complete redeterminations annually.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 103(a) and (b) (7 **Del.C.** §103(a) & (b))
7 **DE Admin. Code** 3300

REGISTER NOTICE SAN #2018-14

3300 Non-Tidal Finfish 3301 Definitions 3304 Creel Limits, Size Limits and Seasons

1. TITLE OF THE REGULATIONS:

7 **DE Admin. Code** 3300 Non-Tidal Finfish - 3301 Definitions and 3304 Creel Limits, Size Limits and Seasons.

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

The Department proposes to adjust the start time for the opening day of freshwater trout season on designated trout streams. Opening day of the freshwater trout season is an event that draws large crowds of anglers to New Castle County's designated trout streams. Opening day of trout seasons often have a specified start time to help manage angler competition for fishing locations, but the current 7:30 a.m. opening day start time serves no current resource management purpose, is not meaningful for managing angler competition for fishing locations and unnecessarily limits angler access and participation. At the suggestion of a member of the public, Delaware's Advisory Council on Wildlife and Freshwater Fish recommended that the start time of Delaware's opening freshwater trout season be changed from 7:30 a.m. to 7 a.m., which is consistent with the 7:00 a.m. opening day start time established for designated trout ponds in Kent and Sussex Counties and provides expanded angler opportunity and participation. Angling hours for the remainder of the trout season (one-half hour before sunrise to one-half hour after sunset) are not affected by this action.

The Department also proposes two technical corrections to the Non-Tidal Finfish regulations. The Department proposes to clarify the definition for that portion of Pike Creek that is designated as a trout stream to reflect contemporary landmark and roadway naming. The Department also proposes to clarify that the upper bound of the smallmouth bass protected slot limit includes those fish measuring 17 inches in total length.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

Not applicable.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §103 (a & b)

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

Not applicable.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3300 Non-Tidal Finfish - 3301 Definitions and 3304 Creel Limits, Size Limits and Seasons opens January 1, 2019. Individuals may submit written comments regarding the proposed changes via e-mail to Bethany.Fiske@state.de.us or via the USPS to Bethany Fiske, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901. A public hearing on the proposed amendment will be held on Wednesday, January 23, 2019 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, February 7, 2019.

7. PREPARED BY:

Stewart Michels

Stewart.Michels@state.de.us

(302) 739-9914

***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/january2019/proposed/22 DE Reg 572RFA 01-01-19.pdf>

3300 Non-Tidal Finfish**3301 Definitions**

- 1.0 For purposes of Regulations 3301 through 3311, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

(Break in Continuity Within Section)

“Pike Creek”, from Route 72 to Henderson the bridge at Pike Creek Road;

(Break in Continuity of Sections)

3304 Creel Limits, Size Limits and Seasons

(Penalty Section 7 Del.C. §1304)

(Break in Continuity of Sections)

- 2.0 Bass.

- 2.1 Statewide limits.

(Break in Continuity Within Section)

- 2.1.3 It is unlawful for any person to possess any smallmouth bass measuring from twelve (12) inches to and including (17) inches in total length. Any smallmouth bass taken which is equal to or greater than twelve (12) inches and less than or equal to seventeen (17) inches must be immediately returned to the water with the least possible injury.

(Break in Continuity Within Section)

- 3.0 Trout.

(Break in Continuity Within Section)

- 3.2 Hours of Fishing.

PROPOSED REGULATIONS

- 3.2.1 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout streams on the opening day of the trout season before ~~7:30~~ 7:00 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.

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

3300 Non-Tidal Finfish

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code, Section 343 (31 **Del.C.** §343)
9 DE Admin. Code 101

PUBLIC NOTICE

101 DELACARE: Regulations for Early Care and Education and School-Age Centers

SUMMARY

The Office of Child Care Licensing (OCCL) proposes to amend DELACARE: Regulations for Early Care and Education and School-Age Centers in accordance with 31 **Del.C.** §343. This proposal includes the following changes from the current regulations:

- Using plain language throughout the regulation;
- Clarification regarding the requirements for lead-paint risk assessments for centers that were built before 1978, including abatement for lead-paint hazards;
- Radon testing, including mitigation if necessary;
- Air quality testing for centers located in a building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Fingerprinting conducted before a staff member begins employment at the center;
- Comprehensive background checks for applicants, licensees, staff members, and volunteers before being alone with children;
- Broadening the education requirements for school-age site coordinators and reducing the experience requirements;
- Allowing early childhood interns to be alone with children during naptime;
- Certified staff at all times to administer medications, as needed;
- The allowance for licensees to be able to administer non-intravenous medication to comply with the Americans with Disabilities Act when requested by the parent;
- Adding the Administration of Medication Self-Training Guide to the appendices;
- Aligning the meals pattern requirements with the Child and Adult Care Food Program,
- Aligning the physical activity standards with national standards, and
- Requiring suspension and expulsion policies.

These amendments would require centers to be free of lead-paint and radon hazards and the additional requirement for centers located in a building/structure that contains or contained a business that may result in unacceptable air quality to have the air quality tested protects children's health. Comprehensive background checks and suspension and expulsion policies are required to comply with the Child Development Block Grant Act of 2014. Lastly, by amending these regulations, the needs of children requiring medication (with parent/guardian permission) while in child care will be met, consistent with the principles of the Americans with Disabilities Act. In addition, the application forms, the specific requirements to obtain a license, and due process provisions have been added to the regulation.

This proposal is very similar to the regulations that were proposed in November 2018; however changes were made based on stakeholder and providers' comments that OCCL received and the Administration of Medication Self-Training Guide was included as an appendix. Since the November proposal, the following sections, subsections, and appendices were changed:

- Definition of conference;
- Definition of toddler;
- Definition of early childhood teacher;
- Definition of group size;
- Youth camp was added to the definitions;
- Subsection 7.3;
- Subsection 4.3.1;
- Subsection 12.5;
- Subsection 13.4.6.3;
- Subsection 14.1.1;
- Subsection 15.2;
- Subsection 23.1.2;
- Subsection 23.1.6;
- Subsection 26.6 added and the previous 26.6 was renumbered to 26.7;
- Subsection 30.1.19;
- Subsection 32.1.20;
- Subsection 45.2.2;
- Subsection 45.2.2.3;
- Subsection 45.2.3.2;
- Subsection 53.8.4;
- Subsection 62.1.24;
- Subsection 63.1;
- Subsection 63.1.1;
- Subsection 63.6;
- Subsection 63.8 was added;
- Subsection 64.1.1.1
- Subsection 65.3.3;
- Subsection 71.6.1;
- Subsections 71.9.1-71.9.3;
- Subsections 72.1-72.3;
- Subsection 76.3.1;
- Subsection 76.4;
- Subsection 88.7;
- Subsection 90.1;
- Appendix IV was added and the designation of the previously IV and V were changed to V and VI;
- Appendix V; and
- Appendix VI.

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them to the Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families, 3411 Silverside Road, Hagley Building, Wilmington, Delaware, 19810, Attention: Kelly McDowell or email them to Kelly McDowell at Kelly.McDowell@state.de.us by the close of business on January 31, 2019.

***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/january2019/proposed/22 DE Reg 574RFA 01-01-19.pdf>

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

101 DELACARE: Regulations for Early Care and Education and School-Age Centers

PROPOSED REGULATIONS

DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345 (29 **Del.C.** §9003(7) & 31 **Del.C.** §§341-345)
9 DE Admin. Code 103

PUBLIC NOTICE

103 Regulations for Family and Large Family Child Care Homes

SUMMARY

The Office of Child Care Licensing (OCCL) proposes to amend DELACARE: Regulations for Family and Large Family Child Care Homes in accordance with 31 **Del.C.** §343. This proposal includes the following changes:

- Lead-paint risk assessments for family child care homes that were built before 1978, including abatement for lead-paint hazards;
- Radon testing for family and large family homes, including mitigation if necessary;
- Air quality testing for large family homes located in a commercially-zoned building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Fingerprinting conducted before a staff member begins employment and before a new adult household member moves into the home;
- Comprehensive background checks for applicants, licensees, adult household members, staff members, and adult volunteers;
- Qualified staff at all times to administer medications, as needed;
- The allowance for licensees to be able to administer non-intravenous medication to comply with the Americans with Disabilities Act when requested by the parent;
- Administration of Medication Self-Training Guide was added to the appendices;
- Meals pattern requirements align with the Child and Adult Care Food Program,
- Physical activity standards align with national standards, and
- Suspension and expulsion policies.

These amendments would require family and large family homes to be free of lead-paint and radon hazards, and the additional requirement for large family homes located in commercially located buildings that contain or contained a business that may result in unacceptable air quality to have the air quality tested protects children's health. Lastly, by amending these regulations, the needs of children requiring medication (with parent/guardian permission) while in child care will be met, consistent with the principles of the Americans with Disabilities Act. In addition, the application forms, the specific requirements to obtain a license, and due process provisions have been added to the regulation.

This proposal is very similar to the regulations that were proposed in November 2018; however changes were made based on stakeholder and providers' comments that OCCL received and the Administration of Medication Self-Training Guide was included as an appendix. Since the November proposal, the following sections, subsections, and appendices were changed:

- Definition of conference;
- Definition of toddler;
- Subsection 7.1.2.6.1;
- Subsection 7.1.3.3;
- Subsection 43.1.1.1;
- Subsection 44.2.3;
- Subsection 50.4.1;
- Subsection 50.7.2;

- Subsection 7.1.3.3.3;
- Subsection 7.1.3.4.2;
- Subsection 7.3;
- Subsection 11.5;
- Subsection 12.4.6.3;
- Subsection 12.4.7;
- Subsection 13.12;
- Subsection 20.1.2 was stricken and the rest of this section was renumbered;
- Subsection 20.2.12 was added;
- Subsection 22.1.9;
- Subsection 41.1.24;
- Subsection 42.1;
- Subsection 42.1.1;
- Subsection 42.8 was added;
- Subsection 50.7.3;
- Subsection 50.7.4;
- Subsection 51.18;
- Subsection 51.19;
- Subsection 51.20;
- Subsection 52.6;
- Subsection 52.10;
- Subsection 63.1;
- Subsection 66.3;
- Subsection 69.1.17;
- Appendix VIII was added and the designation of the previously VIII and IX were changed to IX and X;
- Appendix IX; and
- Appendix X.

COMMENTS

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them to the Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families, 3411 Silverside Road, Hagley Building, Wilmington, Delaware, 19810, Attention: Kelly McDowell or email them to Kelly McDowell at Kelly.McDowell@state.de.us by the close of business on January 31, 2019.

*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/january2019/proposed/22 DE Reg 576RFA 01-01-19.pdf](http://regulations.delaware.gov/register/january2019/proposed/22%20DE%20Reg%20576RFA%2001-01-19.pdf)

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

[103 Regulations for Family and Large Family Child Care Homes](#)

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING AND POLICY

Statutory Authority: 29 Delaware Code, Section 8404(8) (29 Del.C. §8404(8))
2 DE Admin. Code 2306

PUBLIC NOTICE

2306 Crash Data Release

Pursuant to the authority provided by 29 Del.C. §8404(8), the Delaware Department of Transportation (DelDOT), adopted 2306 Policy and Procedures for Crash Data Release.

The Department, through its Division of Planning and Policy ("DelDOT"), seeks to repeal 2 DE Admin. Code 2306. The regulation covers the release of crash data by the Department of Transportation to any entities or personnel outside of DelDOT. The Delaware Department of Safety and Homeland Security ("DSHS") are the owners of all crash data received by DelDOT. Based on current operating procedures between the two agencies, this regulation is no longer necessary and can be repealed.

Public Comment Period

DelDOT will take written comments on these proposed general revisions to 2 DE Admin. Code 2306 from January 1, 2019 through January 31, 2019. The public may submit their comments to:

Scott Neidert, Design Resource Engineer, Traffic Section (Scott.Neidert@state.de.us) or in writing to his attention,

Delaware Department of Transportation
169 Brick Store Landing Road
Smyrna, DE 19977

***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/january2019/proposed/22 DE Reg 577RFA 01-01-19.pdf>

2306 Crash Data Release

Authority

~~29 Del.C. §10002(g)(6) states that any records that are specifically exempted from public disclosure by statute or common law shall not be deemed public in accordance with the Freedom of Information Act.~~

~~21 Del.C. §313(b) of the Delaware Code, states that accident reports shall not be open to public inspection.~~

~~23 USC§409 states, "Notwithstanding any other provision of law, reports, surveys, schedules, lists or data compiled or collected for the purpose of identifying, evaluating or planning the safety enhancement of potential accident sites, hazardous roadway conditions or railway-highway crossings, pursuant to sections 130, 144 and 148 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists or data."~~

~~29 Del.C. §8404(8) states, "The Secretary [of the Department of Transportation] shall have the following powers, duties and functions: to establish and to 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. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof;"~~

4.0 Purpose

~~This regulation describes the requirements and procedures to be followed by all DelDOT employees with respect to releasing, to any entity or personnel outside of DelDOT, crash data and/or information related to sites identified under the Highway Safety Improvement Program (HSIP). For purposes of this regulation, the HSIP includes the Hazard Elimination Program (HEP), High Risk Rural Roads Program (HRRRP), the Highway Rail Grade Crossing Safety Program (HRGX) and the Transparency Report~~

2.0 Definitions

~~"Crash (Accident) Rates" – A distribution of the numerical data of the number of crash occurrences per year.~~

~~"Crash (Accident) Report" – The State of Delaware Uniform Traffic Collision Report supplied by the Delaware Department of Safety and Homeland Security and the Delaware Criminal Justice Information System (DELJIS) via the E-Crash program, on which all reported crashes involving an impaired driver, apparent property damage to the extent of \$1,500 or more or personal injury or death to a person, when such crashes occur within that agency's jurisdiction.~~

~~"Crash (Accident) Summaries" – A summary of the numerical data classified by several crash criteria such as Manner of Impact, Surface Conditions, Lighting Conditions, Weather Conditions, Time of Day, Day of Week etc. that pertains to the crash events.~~

~~“GIS (Geographical Information System) Crash Data”~~—The geographic location of a crash as well as the attributes that are related to the crash. This data can be used to conduct analyses and produce maps of the crash data.

~~“Highway Safety Improvement Program (HSIP)”~~—The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established 23 USC §148 to create the Highway Safety Improvement Program (HSIP) as a core Federal Highway Administration (FHWA) program. The overall purpose of the program is to achieve a significant reduction in traffic fatalities and incapacitating injuries through the implementation of infrastructure-related highway safety improvements on all state-maintained roadways. Components of Delaware’s HSIP include the Strategic Highway Safety Plan (SHSP), the Hazard Elimination Program (HEP), the High Risk Rural Roads Program (HRRRP), the Highway Rail Grade Crossing Safety Program (HRGX), and the Transparency Report.

~~“Requestor”~~—Any person, employee, consultant, or other state agency, who requests crash data for analytical purposes.

~~“State Agency”~~—Any department of State Government that is recognized under the applicable sections of Delaware Code. This includes the Federal Highway Administration, Office of Highway Safety, Wilmington Area Planning Council and the Dover/Kent County Metropolitan Planning Organization for the purposes of this regulation.

3.0 Regulation

The Delaware Department of Safety and Homeland Security are the owners of all crash data received by DelDOT. Given the responsibilities of DelDOT, crash data is transferred from the Department of Safety and Homeland Security databases to DelDOT databases and the use of this data by DelDOT is solely for the purposes of reviewing crash data to make engineering decisions to improve safety on the roadways under the jurisdiction of the Department. Given the sensitive personal nature of this data, it is important that this data and all HSIP-related information be handled with the utmost responsibility and not released outside of the Department except for Department business purposes. DelDOT personnel must ensure that all released crash data, associated police reports, and HSIP-related information be used for official purposes only and shall not be transmitted, copied, distributed or provided to any other entity or personnel unless written approval is received from the Delaware Department of Transportation Traffic Safety Programs Section or the Statistics and Research Section in the Division of Planning.

The purpose of this regulation is to outline a list of personnel or entities that request such privileged information on a regular basis as well as define the level of disclosure or exemption that should be followed based on the requestor (see Table 1: Crash Data Release Guideline Matrix).

When data is approved to be released to any requestor outside of DelDOT, a concurrence letter shall be prepared by the DelDOT section that is releasing the data, and this letter shall be signed by the requestor and returned to DelDOT prior to the data being released. This concurrence letter shall be a binding agreement between DelDOT and the requestor and shall require the requestor to seek approval from DelDOT to release the data to a third party individual or agency. A copy of the concurrence letter shall be provided electronically to the Deputy Attorney General assigned to DelDOT, the DelDOT Safety Programs Manager in the Traffic Section and the Manager of the Statistics and Research Section in Planning. An example of a concurrence letter is provided at the end of this regulation.

4.0 Responsibility

The Division of Planning shall have primary responsibility for implementation of this regulation since they are the distributors of crash data.

5.0 Effective Date

This regulation shall become effective ten (10) days after it is published in its final adopted form in the Register of Regulations in accordance with 29 Del.C. §10118(c).

Table 1: Crash Data Release Guideline Matrix

Requestor	Raw Crash Data (Number of Crashes Only)	Crash Rates	Crash Summaries	Crash Reports	GIS Crash Layers	HSIP Site Listing
Citizen	Yes	Yes	Yes	No	No	No
Legislator	Yes	Yes	Yes	No	No	Yes
DelDOT (internal operations)	Yes	Yes	Yes	Yes	Yes	Yes
DelDOT Consultant	Yes	Yes	Yes	Yes	Yes	Yes
Non-DelDOT Consultant ¹	Yes	Yes	Yes	Yes	No	No
Other State Agency	Yes	See Note 2	Yes	No	See Note 2	See Note 2
Media	Yes	No	Yes	No	No	No

NOTES:

1. Non-DelDOT Consultant must provide proof that the work they are doing involves state maintained roadways (i.e., developer's consultant)

2. This data may be released to FHWA, Office of Highway Safety, WILMAPCO or Dover/Kent County MPO. Release of data to other state agencies requires the approval of the Safety Programs Manager.

Example Concurrence Letter

September 7, 2011

Mr. John Smith
Sample Area Planning Council (SAPCO)
123 Main Avenue
Newark, Delaware 19714

Dear Mr. Smith:

The Delaware Department of Transportation (DelDOT) has received your request for crash data. As you might be aware, the Delaware Department of Safety and Homeland Security are the sole owners of the crash data and DelDOT is strictly the end user of the data. Hence, any information contained within the requested crash data are privileged, confidential and/or exempt from disclosure under applicable law. As such, any crash data that will be provided is for SAPCO business use only and shall not be transmitted, copied, distributed or provided to any other entity unless written approval is received from the Delaware Department of Transportation.

DelDOT will release the requested crash data on the terms and conditions set forth herein. By your signature below, SAPCO acknowledges that this letter has been read and understood and agrees to terms and conditions stated in this letter.

The requested crash data will be released as soon as the letter is signed and sent back at your earliest convenience. Future requests for crash data should be sent to my office for review, and the request should be in the form of a letter and on SAPCO letterhead. Should you have any questions regarding this information, please contact me at (302) 659-4073 or by e-mail at Adam.Weiser@state.de.us.

Sincerely,

Donna Robinson
Statistics, Planning & Research
Division of Planning

Ge: Tyrone Crittenden, Planning Supervisor
Frederick Schranck, Deputy Attorney General
Adam Weiser, Safety Programs Manager

Concurrence Date

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(22), 1266, and 1280(a) (14 Del.C. §§122(b)(22), 1266, & 1280(a))
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 align with changes made by House Bill 433 of the 149th General Assembly regarding the criteria for the alternative routes for teacher licensure and certification program.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on November 1, 2018 in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Comments noted were: (1) regarding the fact that 14 DE Admin. Code 1507.4.0 - 7.0 contains additional substantive alternate routes to certification program requirements that were not including in this proposed regulation. The Department notes that the Professional Standards Board has repealed 1507, and except for the elimination of TFA from subsection 4.0 because it no longer appears in the statute and the removal of the mentoring from subsection 5.0 because it is addressed in regulation 1503, the requirements remain the same in this regulation; (2) regarding the need to include the 200-hour professional development requirement for the alternate routes to certification program. The Department notes that 8.1 refers to 14 Del.C. §1260(a) which includes the 200 hour requirement therefore it does not need to specifically be noted in the regulation.

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 align the regulation with criteria for the alternative routes for teacher licensure and certification program.

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 17, 2018. 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 17th day of December 2018.

Department of Education

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

Approved this 17th day of December 2018

***Please note that no changes were made to the regulation as originally proposed and published in the November 2018 issue of the Register at page 333 (22 DE Reg. 333). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

290 Approval of Educator Preparation Programs

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 4130 and 122(b) (14 **Del.C.** §§4130 & 122(b))
14 **DE Admin. Code** 616

REGULATORY IMPLEMENTING ORDER

616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§4130 and 122(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings. This regulation is being amended to align with changes made by House Bill 402 of the 149th General Assembly which eliminated

the requirement for a school superintendent to notify the Division of Motor Vehicles when a student was expelled from a public school for the purposes of suspending or refusing to issue or renew an expelled student's driver's license.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on November 1, 2018, in the form hereto attached as *Exhibit "A"*. Comments, endorsing the proposed regulation, were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings in order to align with changes made by House Bill 402 of the 149th General Assembly which eliminated the requirement for a school superintendent to notify the Division of Motor Vehicles when a student was expelled from a public school for the purposes of suspending or refusing to issue or renew an expelled student's driver's license.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings 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** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings 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 17, 2018. 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 17th day of December 2018.

Department of Education

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

Approved this 17th day of December 2018

*Please note that no changes were made to the regulation as originally proposed and published in the November 2018 issue of the *Register* at page 337 (22 DE Reg. 337). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1309 (14 **Del.C.** §1309)
14 **DE Admin. Code** 750

REGULATORY IMPLEMENTING ORDER

750 Support Personnel Salary Supplements for Additional Training

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §1309, the Secretary of Education intends to amend 14 **DE Admin. Code** 750 Support Personnel Salary Supplements for Additional Training. This amendment is needed to clarify the requirements for support personnel salary supplements and to bring the regulation into compliance with 14 **Del.C.** §1309.

The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §10113(b)(2).

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 750 Support Personnel Salary Supplements for Additional Training in order to clarify the requirements for support personnel salary supplements and to bring the regulation into compliance with 14 **Del.C.** §1309.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 750 Support Personnel Salary Supplements for Additional Training. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 750 Support Personnel Salary Supplements for Additional Training attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 750 Support Personnel Salary Supplements for Additional Training 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** 750 Support Personnel Salary Supplements for Additional Training amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 750 Support Personnel Salary Supplements for Additional Training 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 17, 2018. 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 17th day of December 2018.

Department of Education

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

Approved this 17th day of December 2018

750 Support Personnel Salary Supplements for Additional Training

1.0 Definitions:

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

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

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

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

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

2.0 Supplements for Additional Training

- 2.1 An administrative secretary, financial secretary, senior secretary, secretary or clerk shall receive as salary the amount that the employee qualifies for under 14 **Del.C.** §1308 plus an annual amount for additional training as defined in 14 **Del.C.** §1309(b). The following shall be the requirements for the salary supplements defined in 14 **Del.C.** §1309(b):
- 2.2 Professional Secretary Certificate, ~~Level I~~ Salary Supplement Qualifications
- 2.2.1 Hold a high school diploma or certificate of equivalency; and
- 2.2.1.1 Complete ~~sixty (60) semester hours of course work~~ two years of college, to equate to a minimum of forty-eight (48) semester hours of course work from a regionally accredited post-secondary institution in business, professional office training, accounting or other related areas; or
- 2.2.1.2 Pass the Certified Administrative Professional (CAP) examination administered by the International Association of Administrative Professionals (IAAP); or
- 2.2.1.3 Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option I or Option II, BASIC or above; or
- 2.3 Certified Secretary Certificate, ~~Level II~~ Salary Supplement Qualifications
- 2.3.1 Hold a high school diploma or certificate of equivalency; and
- 2.3.1.1 ~~Complete an associate degree in business, professional office training or, accounting~~ Meet the eligibility requirements for Professional Secretary Certificate and complete twelve (12) semester hours of course work from a regionally accredited post-secondary institution in business, professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional; or
- 2.3.1.2 Pass the Certified Administrative Professional (CAP) examination administered by the International Association of Administrative Professionals (IAAP); complete twelve (12) semester hours of course work from a regionally accredited post-secondary institution in business, professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional; or
- 2.3.1.3 Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option I; complete twelve (12) semester hours of course work from a regionally accredited post-secondary institution in business, professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional; or
- 2.3.1.4 Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option II which includes the completion of at least twelve (12) semester hours of course work from a regionally accredited post-secondary institution in professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional;
- 2.4 Bachelor's Degree Certificate, ~~Level III~~ Salary Supplement Qualifications

2.4.1 Hold a Bachelor's degree from a regionally accredited ~~College~~ college.

3.0 Requirements for a Certificate

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

4.0 Application Procedures

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

5.0 Denial of Certificate

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 4139 and 122(b) (14 **Del.C.** §§4139 & 122(b))
14 **DE Admin. Code** 915

REGULATORY IMPLEMENTING ORDER

915 James H. Groves High School

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.**, §§4139 and 122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 915 James H. Groves High School. This regulation is being amended to align with changes made to House Bill 15 with Senate Amendment 1 of the 149th General Assembly related to computer science standards. It is also being amended to reflect the current grading system being used. Other minor changes are being made to clarify the regulation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on November 1, 2018, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School in order to align the regulation with changes made to House Bill 15 with Senate Amendment 1 of the 149th General Assembly related to computer science standards. It is also being amended to reflect the current grading system being used.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 915 James H. Groves High School attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 915 James H. Groves High School hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 915 James H. Groves High School amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 915 James H. Groves High School in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 20, 2018. 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 20th day of December 2018.

Department of Education

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

Approved this 20th day of December 2018

State Board of Education

Whitney Townsend Sweeney, President

Audrey J. Noble, Ph.D., Vice President

Candace Fifer

Vincent Lofink

Nina Lou Bunting

Wali W. Rushdan, II

Terry M. Whittaker, Ed.D.

915 James H. Groves High School

1.0 Definitions

(Break in Continuity Within Section)

"**Groves Leadership Team**" means an advisory group composed of the Groves Center administrators, the State Director of Adult Education, a representative from the Groves student association and prison education teacher supervisor(s). The Associate Secretary, ~~Adult Education and Work Force Development~~ **[Adult and Prison Education Resources Student Supports]** shall be an ex officio member of the leadership team.

*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2018 issue of the *Register* at page 338 (22 DE Reg. 338). Therefore, the final regulation is

not being republished here in its entirety. A copy of the final regulation is available at:
915 James H. Groves High School

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 3423 and 122(a) (14 **Del.C.** §§3423 & 122(a))

REGULATORY IMPLEMENTING ORDER

1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§3423 and 122(a), the Secretary of Education intends to create 14 **DE Admin. Code** 1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program. The regulation is being created to provide eligibility criteria per House Bill 34 of the 149th General Assembly and to delineate the process for applying for the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on November 1, 2018, in the form hereto attached as *Exhibit "A"*. In addition, the proposed regulation was published in the *Register of Regulations* on November 1, 2018 in the form attached hereto as *Exhibit "B."* The Department did not receive any written submittals.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program in order to provide eligibility criteria and to delineate the process for applying for the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program attached hereto as *Exhibit "B"* is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program hereby created 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** 1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program created hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 17, 2018. 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 17th day of December 2018.

Department of Education

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

Approved this 17th day of December 2018

*Please note that no changes were made to the regulation as originally proposed and published in the November 2018 issue of the *Register* at page 344 (22 DE Reg. 344). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1517

REGULATORY IMPLEMENTING ORDER**1517 Paraeducator Permit****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1517 Paraeducator Permit. The regulation applies to the issuance of a paraeducator permit pursuant to 14 **Del.C.** §1205(b). On August 1, 2018, the Professional Standards Board published proposed changes. The Professional Standards Board did not receive any written submittals concerning the changes that were published on August 1, 2018. However, the Professional Standards Board, in consultation and cooperation with the Department, made additional substantive changes, including adding definitions of the terms "DEEDS" and "PDMS" to Section 2.0; adding subsections 3.1.3.1, 4.1.3.1, and 5.1.3.1 concerning the requirements for paraeducators whose permits have expired more than one time; clarifying the requirements for renewal in Section 7.0; and clarifying the language concerning professional development transcripts in subsection 8.2. This regulation includes the changes that were published on August 1, 2018 and the additional changes.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2018. The Professional Standards Board received written submittals from Ann C. Fisher, the Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), and Nicholas J. Fina, Ed.D., the Chairperson of the State Council for Persons with Disabilities ("SCPD").

GACEC commented that the last sentence in subsection 3.2.1.2 "seems to imply that the standards are fluid and may be different from one applicant to the next." Both GACEC and SCPD commented that the language "engaged in misconduct" in subsections 3.1.1, 4.1.1, and 5.1.1 is not defined. SCPD commented that the proposed regulation "may prevent people with petty criminal backgrounds[, such as marijuana possession,] from obtaining permits." GACEC and SCPD each commented that the proposed regulation eliminates when permit applications will be denied or revoked and the hearing rights for an individual whose permit application has been denied or whose permit has been revoked.

On November 1, 2018, the Professional Standards Board considered GACEC's and SCPD's written submittals. The Professional Standards Board found that the language in subsection 3.2.1.2, which is existing language, is in place to help ensure that an applicant's ParaPro Assessment score is sent from a legitimate source, *i.e.*, the test provider, ETS, and that the language provides that the Department with the discretion to accept documentation of an applicant's score if it is in an unopened, unaltered envelope. In addition, the Professional Standards Board found that misconduct is defined in a statute (14 **Del.C.** §1218), it includes pleading guilty or nolo contendere with respect to, or being convicted of, a controlled substance or counterfeit controlled substance classified as such in Schedule I, II, III, IV, or V of 16 Del.C. Ch. 47, and marijuana is classified as a Schedule I controlled substance under Title 16. The Professional Standards Board is charged with working in conjunction with

the Department to develop a system of professional development, professional standards, licensure, and certification that serves to continually improve the quality of instruction for Delaware's children. The Professional Standards Board also found that denial of an application; suspension, limitation, and revocation of a permit; and hearings are addressed in other regulations in 14 **DE Admin. Code** Ch. 1500 Professional Standards Board.

On November 1, 2018, the Professional Standards Board found that further changes in response to the written submittals were not necessary and voted to propose 14 **DE Admin. Code** 1517 Paraeducator Permit, in the form that was published, for adoption by the Department subject to the State Board of Education's approval.

II. FINDINGS OF FACTS

The Department finds that the language in subsection 3.2.1.2 is existing language that provides the Department with the discretion to accept documentation of an applicant's ParaPro Assessment score if it is in an unopened, unaltered envelope. Additionally, the Department finds that misconduct is defined in 14 **Del.C.** §1218, it includes pleading guilty or nolo contendere with respect to, or being convicted of, a controlled substance or counterfeit controlled substance classified as such in Schedule I, II, III, IV, or V of 16 Del.C. Ch. 47, and marijuana is classified as a Title 16 Schedule I controlled substance. Also, the Department finds that denial of an application; suspension, limitation, and revocation of a permit; and hearings are addressed in other regulations in 14 **DE Admin. Code** Ch. 1500 Professional Standards Board.

The Department finds that further changes in response to the written submittals are not necessary. Additionally, the Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is designed to improve the quality of the Delaware paraeducator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1517 Paraeducator Permit.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1517 Paraeducator Permit subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1517 Paraeducator Permit attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1517 Paraeducator Permit adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1517 Paraeducator Permit 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 Department pursuant to 14 **Del.C.** §§1203 and 1205(b) on December 20, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 20th day of December, 2018.

Department of Education

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

Approved this 20th day of December, 2018.

State Board of Education

Whitney Townsend Sweeney, President

Audrey J. Noble, Ph.D., Vice President

Nina Lou Bunting

Candace Fifer

Vincent Lofink

Wali W. Rushdan, II

Terry M. Whittaker, Ed.D.

*Please note that no changes were made to the regulation as originally proposed and published in the October 2018 issue of the *Register* at page 259 (22 DE Reg. 259). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1517 Paraeducator Permit

**DEPARTMENT OF FINANCE
OFFICE OF THE STATE LOTTERY**

Statutory Authority: 29 Delaware Code, Sections 4805(a) and 4825(a) (29 **Del.C.** §§4805(a) & 4825(a))
10 **DE Admin. Code** 204

ORDER

204 Delaware Sports Lottery Rules and Regulations

The Director of the Office of the State Lottery (Director) hereby gives notice of amendments to 10 **DE Admin. Code** 204, the Delaware Sports Lottery Rules and Regulations. These amendments correct minor wording errors and in one case are necessary to make the regulations consistent with changes in basic law but which do not otherwise alter the substance of the regulations. Pursuant to 29 **Del.C.** §10113(b)(5), such amendments are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101. The Delaware Code authority for these revisions is 29 **Del.C.** §§4805(a) and 4825(a).

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Office of the State Lottery does hereby ORDER that the regulations be, and that they hereby are, amended as set forth below. 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(g).

Vernon A. Kirk, Director
Office of the State Lottery

13 Dec. 2018
Date

**204 Delaware Sports Lottery Rules and Regulations
(Break in Continuity of Sections)**

2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise. Words importing the masculine gender include the feminine as well, except as otherwise clearly indicated by the context.

"**Agency**" or "**Delaware Lottery**" means the Delaware State Lottery Office created pursuant to 29 **Del.C.** Ch. 48.

"**Agent**" or "**licensed agent**" or "**licensed sports lottery agent**" means any person licensed by the Director of the agency to conduct sports lottery operations.

"**Applicant**" means any person who applies for a license to be an Agent as authorized under Delaware law and these regulations.

"**Background investigation**" means the security, fitness and background checks conducted of an applicant.

"**Business plan**" means a document containing information regarding lottery operations as may be required by the Director.

"**Central system**" means the hardware, software and network ~~components,~~ components which link and support all required sports lottery machines and the central site.

~~"Central system provider" means a person with whom the agency has contracted for the purpose of providing and maintaining a central communication system and the related management facilities with respect to operating and servicing the sports lottery machines.~~

"**Central site**" means the location where the central sports lottery communications control systems shall be located.

"**Certification**" means the authorization by the lottery in accordance with its inspection and approval process of sports lottery machines, such certification to relate to either hardware or software.

"**Credit**" means the opportunity provided to a player to play a sports lottery game or redeem the credit for cash.

"**Credit slip**" means the ticket (receipt) resulting from a sports lottery game.

"**Director**" means the Director of the Delaware State Lottery Office as established by Title 29, Ch. 48 of the Delaware Code.

"**Division of Gaming Enforcement**" or "**DGE**" means the Division established within the Department of Safety and Homeland Security under 29 **Del.C.** §8236 to (i) exercise exclusive jurisdiction for the criminal offenses which relate to gaming that occurs in a licensed video lottery facility or which relate the operation of the Lottery, and (ii) investigate the background, qualifications, and suitability of each applicant or licensee before any license is issued or re-issued by the Director.

"**Key employee**" means an individual employee, person or agent of an applicant or licensee who has the power to exercise significant influence over significant decisions concerning the applicant's or licensee's business.

~~"Kind, type and number" means the generic varieties of sports lottery machines that may be selected for installation, and the quantities in which they may be installed.~~

"**License**" means (i) the authorization granted by the agency which permits an applicant to engage in defined sports lottery activities as an agent or technology provider; and (ii) the authorization granted by the agency which permits an applicant to perform employment duties as a key employee or sports lottery operations employee.

"**License application**" means the process by which a person requests licensing for participation in the sports lottery operations.

"**Licensed video lottery agent**" means any person licensed by the Director to conduct table games and/or video lottery operations in a video lottery facility and that has a sportsbook.

"**Licensee**" means any person authorized by the Director to participate in sports lottery operations.

"**Lottery**" means the public gaming system or games established and operated by the Delaware State Lottery Office.

"**Maximum wager limit**" means the maximum amount that can be wagered on a single sports lottery wager be it head-to-head or parlay, as determined by the Lottery Director from time to time.

"**Net proceeds**" means all proceeds net of proceeds returned to players.

"**Owner**" means a person who owns, directly or indirectly, any portion of an applicant or licensee.

"**Person**" means an individual, general partnership, limited partnership, corporation or any other type of legal entity or legal organization.

"**Player**" means an individual who plays a sports lottery game.

"**Premises**" means the building and grounds occupied by a licensed agent where the agent's sports lottery operations occur or support facilities for such operations exist, such as facilities for the service of food or drink, including those areas not normally open to the public, such as areas where records related to sports lottery operations are kept.

"**Request for proposals and qualifications**" means a document developed under the direction of the Delaware State Lottery Office for the purpose of soliciting responses from potential technology providers as a means of acquiring bids for goods or services.

"**Service technician**" means any person who performs service, maintenance and repair operations on sports lottery machines.

"**Sports lottery**" means a lottery in which the winners are determined based on ~~parlay wagering on the outcome of any National Football League games and does not include wagering on any other football games in any other league, professional or otherwise, or any other sport or sporting event played in any league, professional or otherwise~~ professional or collegiate sport or sporting event, including racing, held within or without the State, but excluding collegiate sporting events that involve a Delaware college or university and amateur or professional sporting events that involve a Delaware team.

"**Sports lottery machine**" or "**terminal**" means any machine in which bills, coins or tokens are deposited in order to play a sports lottery game. A machine shall be considered a sports lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

"**Sports lottery operations employee**" means an individual employee, person or agent of an applicant or licensee who is responsible for the security of sports lottery operations or proceeds.

"**Sports lottery systems**" means systems provided by a technology provider that consist of sports wagering products, risk management (bookmaking), operations and support services.

"**Technology provider**" means any person or entity who proposes to contract with a sports lottery agent or the agency for the provision of goods or services related to a sports lottery, the provision of which requires a license pursuant to 29 Del.C. Ch. 48.

(Break in Continuity of Sections)

5.0 Technology Providers: Contracts; Requirements; Duties

- 5.1 The Director shall, pursuant to the procedures set forth in Chapter 69 of Title 29 of the **Delaware Code**, enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish to the ~~State, State~~ State a sports lottery system that results in the efficient and economical operation of the lottery, convenience of the players, and is in accordance with the agents' business plans as approved and amended by the Director.

(Break in Continuity Within Section)

6.0 Agents: Duties

- 6.1 The following duties are required of all agents:
- 6.1.1 Provide a secure location for the placement, operation, and play of all sports lottery machines located on the agent's premises.
- 6.1.2 Permit no person to tamper with or interfere with the approved operation of any sports lottery machine without prior written approval of the agency unless otherwise directed by the Director.
- 6.1.3 Assure that telephone lines from the central ~~computer~~ system to the sports lottery machines located on the agent's premises are at all times connected, and prevent any person from tampering or interfering with the continuous operation of the lines.

(Break in Continuity Within Section)

7.0 Sports lottery

(Break in Continuity Within Section)

- 7.12 The Director will determine:
- 7.12.1 ~~the~~ The types of sports wagers that will be offered for sale at sportsbooks and at agents' premises; ~~and;~~
- 7.12.2 ~~at~~ At which locations players may cash winning sports lottery tickets; ~~and~~
- 7.12.3 The maximum wager limit amount that can be wagered on a single sports lottery wager, whether it is head-to-head or parlay betting.

- 7.13 The Director has the authority to develop and implement a sports lottery mobile application that will allow the sale of sports lottery tickets to players who wish to use cellular phones or other types of computerized mobile devices or computers to purchase such tickets.
- 7.14 The Director will determine and post online on the lottery's website (www.delottery.com) the "Delaware Lottery Sportsbook Wagering Rules" and the "Delaware Lottery Sports Retailer Wagering Rules," which may be updated from time to time. These wagering rules will control the type and amount of sports wagers that will be accepted at sportsbooks and at agents' premises.

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

204 Delaware Sports Lottery Rules and Regulations

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

ORDER

Prescription Assistance

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 Prescription Assistance, specifically, to restore the Delaware Prescription Drug Payment Assistance Program. 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 1, 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 3, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after January 1, 2019 Delaware Health and Social Services/ Division of Medicaid and Medical Assistance proposes to amend Delaware Social Services Manual (DSSM) section 3000 regarding Prescription Assistance.

Background

The Delaware Prescription Assistance Program (DPAP) was established by the Delaware General Assembly on January 14, 2000, when Senate Bill 6 was passed during the 1999 Legislative Session. DPAP was funded by the Delaware Health Fund and provided prescription and over-the-counter drug coverage to qualified Delaware citizens. In 2007 the Bill was amended to allow the program to pay for the members' Medicare Part D premium. By paying for the premium, clients had access to all of the Medicare drug benefits.

The program was eliminated by the Fiscal Year 2018 Annual Appropriations Act and in July 2018, Senate Bill 228 restored the Delaware Prescription Drug Payment Assistance Program.

Statutory Authority

29 Del.C. §6502 Annual estimates of expenditures

Purpose

The purpose of this proposed regulation is to restore the Delaware Prescription Drug Payment 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 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 3, 2018.

Provider Manuals and Communications Update

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

Fiscal Impact

	State Fiscal Year 2019	State Fiscal Year 2020
General (State) funds	\$2,000,000	\$2,000,000
Federal funds	\$-0-	\$-0-

Summary of Comments Received with Agency Response and Explanation of Changes

One commenter offered the following summarized observation:

The commenter encouraged DMMA to reach out to “various audiences in the state” to ensure a wide distribution when announcing the programs reinstatement.

Agency Response: DMMA has mailed letters to all previous DPPAP members. Communicated with our partners at the Department of Insurance and Senior Centers throughout Delaware.

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 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding Prescription Assistance, specifically, to restore the Delaware Prescription Drug Payment Assistance Program, is adopted and shall be final effective January 11, 2019.

12/13/18

Date of Signature

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

***Please note that no changes were made to the regulation as originally proposed and published in the November 2018 issue of the *Register* at page 354 (22 DE Reg. 354). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Prescription Assistance

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Physician Assistants

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Physician Assistant (PA), specifically, to update current policy. 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 1, 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 3, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after January 11, 2019 Delaware Health and Social Services/ Division of Medicaid and Medical Assistance proposes to amend Attachments 3.1-A Page 3.1 Addendum and 3.1 Pages 4b Addendum, 6m, 6o, 6r and 6w of Title XIX Medicaid State Plan regarding Physician Assistants (PA), specifically, to update current policy.

Background

PAs deliver medical and surgical care in teams with physicians, who provide medical supervision and delegate tasks to the PA. DMMA would like to evaluate the services provided by PAs, under the supervision of licensed physicians enrolled in DMAP. To gather that data, it is necessary first step, to facilitate, where appropriate, the inclusion of the Physician Assistant’s name on claims as the rendering provider. In preparation, DMMA policy will need to be updated to bring the PAs in line with those who provide similar services.

Statutory Authority

- 42 CFR 440.60

Purpose

The purpose of this proposed regulation is to update policy and add the Physician Assistant (PA) as a licensed practitioner where omitted.

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 3, 2018.

Provider Manuals and Communications Update

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

Fiscal Impact Statement

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

Summary of Comments Received with Agency Response and Explanation of Changes

One commenter offered the following summarized observation:

The commenter suggested that in addition to adding the PA name to the claim form that PAs be listed in the provider directory.

Agency Response: Once any provider, including PA's enroll with DMMA and/or the Managed Care Organizations, they would be added to the associated provider directory/directories.

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 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Physician Assistant (PA), specifically, *to update current policy*, is adopted and shall be final effective January 11, 2019.

12/13/18

Date of Signature

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

FINAL

Attachment 3.1-A
Page 3.1 Addendum

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

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

6.d. 2. Licensed Behavioral Health Practitioner Continued:

Services which exceed the initial pass-through authorization must be approved for re-authorization prior to service delivery. In addition to individual provider licensure, *service* providers employed by addiction treatment services and co-occurring treatment services agencies must work in a program licensed by the Delaware Division of Substance Abuse and Mental Health (DSAMH) and comply with all relevant licensing regulations. Licensed Psychologists may supervise up to seven (7) unlicensed assistants or post-doctoral professionals in supervision for the purpose of those individuals obtaining licensure and billing for services rendered. Services by unlicensed assistants or post- doctoral professionals under supervision may not be billed under this section of the State Plan. Instead, those unlicensed professionals must qualify under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program or rehabilitation sections of the State Plan or provide services under Home and Community-based authorities.

Inpatient hospital visits are limited to those ordered by the beneficiary's physician. Visits to a nursing facility are allowed for LBHPs if a Preadmission Screening and Resident Review (PASRR) indicates it is a medically necessary specialized service in accordance with PASRR requirements. Visits to Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) are non-covered. All LBHP services provided while a person is a resident of an Institute for Mental Disease (IMD) such as a free standing psychiatric hospital or psychiatric residential treatment facility are part of the institutional service and not otherwise reimbursable by Medicaid.

Evidence-based Practices require prior approval and fidelity reviews on an ongoing basis as determined necessary by Delaware Health and Social Services (DHSS) and/or its designee. A unit of service is defined according to the

Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) approved code set consistent with the National Correct Coding Initiative unless otherwise specified.

6.d. Other Practitioners' Services

3. Physician assistants must be licensed under state law and provide services under the supervision, control, and direction of one or more physicians. The scope of physician assistants' services is defined by state law. Physician assistants' services must be authorized by state law (or otherwise approved by the state medical board) and within the scope of practice of the physician assistant's supervising physician.

TN No. SPA #[13-0018] #19-001	Approval Date [September 18, 2014]
Supersedes	
TN No. SPA [NEW #13-0018]	Effective Date [July 1, 2014] January 11, 2019

FINAL

Attachment 3.1-A
Page 4b Addendum

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

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

Health care professionals that provide the above services at the SBWCs include: physicians, nurse practitioners, licensed clinical social workers, certified and licensed drug and alcohol counselors, certified sexual assault counselors, ~~and~~ registered dietitians and Physician Assistants. Licensure requirements for each practitioner type are specified in the Title 24 of the Delaware Code, Professions and Occupations and in the Delaware Administrative Code.

10. Dental Clinic Services are only available as ESPDT services to children under age 21.

TN No. SPA #[18-003] #19-001	Approval Date
Supersedes	
TN No. SPA #10-004	Effective Date [July 1, 2018] January 11, 2019

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

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

13.d. Rehabilitative Services: 42 CFR 440.130(d) Continued:

3. Crisis Intervention (CI) Services for Adults with Mental Illness, Alcoholism Or Drug Dependence Continued:

A beneficiary in crisis may be represented by a family member or other collateral contact who has knowledge of the

beneficiary's capabilities functioning. Beneficiaries in crisis who require this service may be using substance during the crisis. Substance use should be recognized and addressed in an integrated fashion as it may be add to the risk increasing the need for engagement in care. The assessment of risk, mental status, and medical stability must be completed by a credentialed mental health screener, Licensed Behavioral Health Practitioner (LBHP), advanced practice nurse (APN), nurse practitioner (NP), Physician Assistant (PA), or physician with experience regarding this specialized mental health service, practicing within the scope of their professional license or certification. The crisis plan developed from this assessment and all services delivered during a crisis must be by qualified staff provided under a certified program. Crisis services cannot be denied based upon substance use. The CI specialist must receive regularly scheduled clinical supervision from a person meeting the qualifications of a LBHP, APN, NP, or physician with experience regarding this specialized mental health service. The beneficiary's chart must reflect resolution of the crisis which marks the end of the current episode. If the beneficiary has another crisis within twenty-four (24) hours of a previous episode, it shall be considered part of the previous episode and a new episode will not be allowed.

A unit of service is defined according to the Healthcare Common Procedure Coding System (HCPCS) approved code set unless otherwise specified.

TN No. SPA #[18-003] #[19-001]	Approval Date
Supersedes	
TN No. SPA #[13-0018] #[10-004]	Effective Date [July 1, 2018] [January 11, 2019]

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

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

13.d. Rehabilitative Services: 42 CFR 440.130(d) Continued:

3. Crisis Intervention (CI) Services for Adults with Mental Illness, Alcoholism Or Drug Dependence Continued:

- A Certified Peer on a CI team is an individual who has self-identified as a beneficiary or survivor of mental health and/or substance use disorder (SUD) services, is at least 21 years of age, and meets the qualifications set by the state including specialized peer specialist training, certification and registration. The training provided/contracted by the Delaware Division of Substance Abuse and Mental Health (DSAMH) shall be focused on the principles and concepts of peer support and how it differs from clinical support. The training will also provide practical tools for promoting wellness and recovery, knowledge about beneficiary rights and advocacy, as well as approaches to care that incorporate creativity. A Certified Peer must have at minimum a high school education or GED, (preferably with some college background) and be currently employed as a peer supporter in Delaware. Delaware state-approved standardized peer specialist training includes academic information as well as practical knowledge and creative activities. Each crisis program including certified peer staff is supervised by a licensed practitioner of the healing arts who is acting within the scope of his/her professional license and applicable state law.

A Crisis Intervention Specialist is an unlicensed mental health professional with a bachelors or master's degree in a mental health related field. The CI specialist must receive training and regularly scheduled clinical supervision from a person meeting the qualifications of a LBHP, APN, NP, or physician with experience regarding this

specialized mental health service.

Provider Qualifications Continued:

Programs shall be certified by Medicaid and/or its designee. Each crisis program, is supervised by licensed practitioner of the healing arts who is acting within the scope of his/her professional license and applicable state law. A licensed practitioner of the healing arts who is acting within the scope of his/her professional license and applicable state law (e.g., Licensed Behavioral Health Practitioner (LBHP), physician, nurse practitioner (NP), or advanced practice nurse (APN), or a Physician Assistant (PA) is available for consultation and able to recommend treatment twenty-four (24) hours a day, seven (7) days a week to the CI program.

TN No. SPA 18-003 #19-001	Approval Date
Supersedes	
TN No. SPA #13-0018	Effective Date July 1, 2018 January 11, 2019

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

13.d Rehabilitative Services: 42 CFR 440.130(d) Continued:

1. Substance Use Disorder (SUD) Treatment Services

4A. Outpatient Addiction Services Continued

Outpatient activities are delivered on an individual or group basis in a wide variety of settings including site-based facility, in the community or in the beneficiary's place of residence. These services may be provided on site or on a mobile basis as defined by Delaware Health and Social Services (DHSS) or its designee. The setting will be determined by the goal which is identified to be achieved in the beneficiary's written treatment plan.

Outpatient services may be indicated as an initial modality of care for a beneficiary whose severity of illness warrants this level of treatment, or when a beneficiary's progress warrants a less intensive modality of service than they are currently receiving. The intensity of the services will be driven by medical necessity. Medication Assisted Therapies (MAT) should only be utilized when a beneficiary has an established SUD (e.g., opiate or alcohol dependence condition) that is clinically appropriate for MAT.

Provider qualifications: Outpatient addiction services are provided by licensed and unlicensed professional staff, who are at least eighteen (18) years of age with a high school or equivalent diploma, according to their areas of competence as determined by degree, required levels of experience as defined by state law and regulations and approved program guidelines and certifications approved by DHSS or its designee. All outpatient substance use disorder (SUD) programs are licensed or certified under state law. Licensed practitioners under Delaware state regulation are licensed by Delaware and include Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), nurse practitioners (NPs),

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advanced practice nurses (APNs), Physician Assistants (PAs), medical doctors (MD and DO), Licensed Chemical Dependency Professionals (LCDPs), and psychologists.

TN No. SPA 18-003 19-001	Approval Date
Supersedes	
TN No. SPA 16-005	Effective Date July 1, 2018 January 11, 2019

Attachment 3.1-A
Page 6w

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

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

13.d Rehabilitative Services: 42 CFR 440.130(d) Continued:

4. Substance Use Disorder (SUD) Treatment Services

4B. Residential Addiction Services Continued

Provider qualifications: Services are provided by licensed and unlicensed professional staff, who are at least eighteen (18) years of age with a high school or equivalent diploma, according to their areas of competence as determined by degree, required levels of experience as defined by state law and regulations and departmentally approved program guidelines and certifications. All residential programs are licensed or certified under state law per Delaware Administrative Code Title 16.6001. The licensure applies to all programs providing services to beneficiaries in need of programs and services for diagnosed substance use and/or mental disorders. The licensure at a minimum requires: documentation of all insurance coverage required in regulation; the maximum client capacity requested; and a copy of the agency's Delaware business license and home state license, when applicable. The licensure or certification also requires a description of the services to be provided by the program, including a statement of the program philosophy, goals and objectives, and a description of the methodology for each service element; and organization charts of showing incumbent names, positions, degrees and credentials (e.g., license, certification); all vacant positions; and illustrating direct and indirect reporting and supervisory relationships.

Licensed practitioners under Delaware State regulation are licensed by Delaware and include Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), nurse practitioners (NPs); advanced practice nurses (APNs), Physician Assistants (PAs), medical doctors (MD and DO), Licensed Chemical Dependency Professionals (LCDPs), and psychologists. Any staff who is unlicensed and providing addiction services must be credentialed by DHSS or its designee and/or the credentialing board or, if a Recovery Coach or Credentialed Behavioral Health Technician, be under the supervision of a qualified health professional (QHP) or Clinical Supervisor.

TN No. SPA ~~18-003~~ #19-001

Approval Date

Supersedes

TN No. SPA #16-005

Effective Date ~~July 1, 2018~~ January 11, 2019

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 314 and 2501 (18 **Del.C.** §§314 & 2501)
18 **DE Admin. Code** 610

REGULATORY IMPLEMENTING ORDER

610 Automobile Premium Consumer Comparison

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the November 1, 2018 edition of the *Register of Regulations* at 22 **DE Reg.** 364, the Commissioner of the Delaware Department of Insurance (Commissioner) published a notice of intent to repeal existing Regulation 610, and solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 **Del.C.** §10118(a).

As discussed in the introductory paragraphs of the proposal to repeal, Regulation 610 provides the framework for the Department's on-line auto insurance policy rate comparison tool. This tool has become obsolete since its original inception in 2006. Unlike the Regulation 610 rate calculator, contemporary on-line rate calculators provided by insurers are precisely tailored to fit an exact consumer profile. Accordingly, the Department's on-line auto rate comparison tool is no longer useful.

In addition to publishing the proposal in the *Register of Regulations*, the Department also published the proposal on its website. The Department did not hold a public hearing on the proposed new regulation.

The Department received no public comments on the proposal.

II. FINDINGS OF FACTS

1. Regulation 610, Automobile Premium Consumer Comparison, should be repealed.
2. The Department met the public notice requirements of the Administrative Procedures Act.
3. The Department received no public comments on the proposed repeal.

III. DECISION TO REPEAL REGULATION 610

For the foregoing reasons, the Commissioner concludes that it is appropriate to repeal 18 **DE Admin. Code** 610, as discussed in the above Findings of Fact for the reasons set forth above and in the proposal to repeal.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§314 and 2501 on the date indicated below. 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 10th day of December, 2018.
Trinidad Navarro
Commissioner
Delaware Department of Insurance

~~610-Automobile Premium Consumer Comparison~~

4.0 Authority

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

2.0 Definitions

~~"Insurer"~~ shall mean every insurer licensed to offer and sell non-fleet private passenger automobile insurance coverage in the State of Delaware.

~~"Private passenger auto market share"~~ shall be determined by data from the National Association of Insurance Commissioners for the prior calendar year for line numbers 19.1, 19.2 and 21.1 for the State of Delaware

~~"Rate estimates"~~ shall mean the estimated annual insurance premiums produced for the Department's rate survey.

~~"Rate survey"~~ shall mean a request by the Department that insurers calculate estimated annual insurance premiums based on hypothetical consumer profiles, and to include variations in driving record, vehicle and other factors identified by the Department. The rate survey shall include estimated premiums for each zip code or other geographic area identified by the Department.

3.0 Scope

- 3.1 Insurers with 1 percent or more of the Delaware private passenger automobile insurance market share shall be required to complete the full rate survey required by this regulation.
- 3.2 Insurers with .01 to .99 percent of private passenger automobile insurance market share shall be required to complete a limited rate survey consisting of a lesser number of hypothetical consumer profiles identified by the Department.
- 3.3 Insurers with less than .01 percent of private passenger automobile insurance market share shall not be required to complete a rate survey pursuant to this regulation.

4.0 Insurer Information

- 4.1 Each insurer will be provided with an account on the Department's website to provide basic company information and to administer the submission of rate survey data.

5.0 Survey Completion Deadline

- 5.1 The Department of Insurance shall make available the rate survey request format with hypothetical consumer profiles, coverage levels, vehicle models and other information necessary for calculating rate estimates on the Department's website no later than September 15th of each year.
- 5.2 In 2006, all required rate survey data from insurers must be submitted to the Department on or before November 1st, 2006. In all subsequent years, all required rate survey data from insurers must be submitted to the Department on or before October 15th of each year.
- 5.3 Rate survey data that is incomplete or not reported according to the Department's instructions will be returned to the insurer for correction and must be resubmitted within 10 business days.

~~6.0 Survey Format~~

- ~~6.1 Insurers shall provide rate estimates based on rates in effect as of October 1st of the year when the rate survey is being completed.~~
- ~~6.2 All rate estimates shall be rounded to the nearest dollar.~~
- ~~6.3 Insurers shall submit rate data utilizing an electronic spreadsheet provided by the Department or by other means specified by the Department. Insurers shall be required to upload the data to the Department via the internet.~~

~~7.0 Responsibility for Information and Data~~

- ~~7.1 Insurers shall be responsible for the accuracy of company information and rate data submitted to the Department for publication. As part of the submission process, insurers will be subject to examination to verify the accuracy of the data being submitted.~~

~~8.0 Consumer Quote Requests~~

- ~~8.1 Insurers shall provide a single electronic mail address to the Department for the purpose of allowing consumers to request a personalized automobile insurance premium quote as part of the rate comparison process.~~
- ~~8.2 The insurer shall be required to provide a direct email response to the consumer, confirming receipt of the quote request.~~
- ~~8.3 The insurer shall be required to maintain an electronic log of all email responses to consumer requests for rate quotes for a period of one year after the request. The electronic log shall be capable of being transferred to the Department upon request.~~

~~9.0 Penalties~~

- ~~9.1 Insurers that do not comply with this regulation are subject to the provisions of 18 Del.C. §329.~~

~~10.0 Severability~~

- ~~10.1 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.~~

~~11.0 Effective Date~~

- ~~11.1 This Regulation shall become effective September 11, 2006.~~

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 3342B and 3556A (18 Del.C. §§311, 3342B & 3556A)

REGULATORY IMPLEMENTING ORDER

1319 Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the November 1, 2018 edition of the *Register of Regulations* at 22 DE Reg. 366, the Commissioner of the Delaware Department of Insurance (Commissioner) published a notice of intent to codify proposed new Regulation 1319, and solicited written comments from the public for thirty (30) days as mandated by the Administrative

Procedures Act at 29 **Del.C.** §10118(a). The Delaware Code authority for the new regulation is 18 **Del.C.** §§311, 3342B, and 3556A and 29 **Del.C.** Ch. 101.

As discussed in the introductory paragraphs of the proposal, Senate Bill 227 (as amended by Senate Amendment No. 1 and House Amendment No. 1 as amended by House Amendment No. 1 to House Amendment No. 1 (collectively SB 227)) was signed into law on August 29, 2018. Section 5 of SB 227 adds new 18 **Del.C.** §3342B to the Uniform Health Policy Provisions Law codified at 18 **Del.C.** Chapter 33, Subchapter 1. Section 6 of the Act adds new 18 **Del.C.** §3556A to Chapter 35 of the Delaware Insurance Code, which concerns group and blanket health insurance.

Both new provisions require, *inter alia*, that insurance carriers "provide coverage for chronic care management and primary care at a reimbursement rate that is not less than the Medicare reimbursement for comparable physician services." The Act also requires the Delaware Department of Insurance (the Department) to "arbitrate disagreements regarding rates under this section" for which the parties involved in the dispute must pay, and to "adopt regulations to implement the requirements of this section no later than 90 days after the effective date of this Act."

In addition to publishing the proposal in the *Register of Regulations*, the Department also published the proposal on its website. The Department did not hold a public hearing on the proposed new regulation.

The Department received public comments from Highmark, Inc., submitted on behalf of Highmark Delaware. A copy of those comments are on file with the Department.

II. FINDINGS OF FACTS

1. Proposed new 18 **DE Admin. Code** 1319, Arbitration of Disputes between Carriers and Primary Care and Chronic Care Management Providers, implements the requirements of 18 **Del.C.** §§3342B and 3556A.
2. The Department met the public notice requirements of the Administrative Procedures Act.
3. The Commissioner finds that it is appropriate to adopt 18 **DE Admin. Code** 1319 as proposed in the November 1, 2018 *Register of Regulations*, for the reasons set forth above and in the proposal, with the following commenter-suggested amendments that the Commissioner has determined do not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c):
 - a. Add the phrase "final reimbursement decision" to subsection 1.1 to clarify the exact point in the claims process that triggers the right to arbitration;
 - b. Add the phrase "pursuant to 18 **Del.C.** §§3342 and 3556 to the definition of "primary care provider" to avoid any confusion as to the mechanism by which an obstetrician/gynecologist may serve as a primary care provider; and
 - c. Substitute the phrase "in accordance with 18 **Del.C.** §§3342B and 3556A" for "in its entirety" at subsection 3.1 to ensure that the denial of payment that triggers arbitration was in accordance with the underlying statutory provisions.

III. DECISION TO ADOPT THE NEW REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt 18 **DE Admin. Code** 1319, as discussed in the above Findings of Fact for the reasons set forth above and in the proposal.

IV. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§311, 3342B, and 3556A on the date indicated below. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*. The effective date of the Regulation shall be as stated in the text of the Regulation.

IT IS SO ORDERED.

The 10th day of December, 2018.
Trinidad Navarro

Commissioner
Delaware Department of Insurance

1319 Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers

1.0 Purpose and Statutory Authority

- 1.1 The purpose of this regulation is to implement 18 Del.C. §§3342B and 3556A, which require health insurance carriers to submit to arbitration any dispute with a provider regarding [claims for a carrier's final] reimbursement [decision] for primary care and chronic care management services.

(Break in Continuity Within Section)

2.0 Definitions

(Break in Continuity Within Section)

"Primary care provider" means any physician or individual licensed under Title 24 of the Delaware Code to provide health care, with whom the patient has initial contact and by whom the patient may be referred to a specialist. Examples of a primary care provider include primary care physicians (including an obstetrician - gynecologist [pursuant to 18 Del.C. §§3342 and 3556], to the extent that provider is serving in the role as a primary care provider), certified nurse practitioners, physician assistants, and other front-line practitioners for chronic care management and primary care who provide primary care in a family, pediatrics, internal medicine, or a geriatrics practice.

"Provider" means a provider of chronic care management or a primary care provider.

3.0 Notice of Final Reimbursement Decision

- 3.1 A carrier shall notify a provider, in writing, of a carrier's final decision regarding reimbursement for an individual claim, procedure or service, if the decision does not authorize reimbursement of the provider's charge in [its entirety] accordance with 18 Del.C. §§3342B and 3556A]. Such notice may be separate from or a part of the written notice of the carrier's decision.

***Please note that no additional changes were made to the regulation as originally proposed and published in the November 2018 issue of the *Register* at page 366 (22 DE Reg. 366). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

1319 Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 1720; 18 Delaware Code Chapters 33, 35 and 36; 29 Delaware Code, Chapter 101, and in response to 26 CFR 54.9833-1, 29 CFR 2590.736, 45 CFR 146.125 and 45 CFR 148.120 (18 Del.C. §§311 & 1720; 18 Del.C. Chs. 33, 35 & 36; 29 Del.C. Ch. 101 & in response to 26 CFR 54.9833-1, 29 CFR 2590.736, 45 CFR 146.125 and 45 CFR 148.120)

REGULATORY IMPLEMENTING ORDER

1320 Minimum Standards for Short-Term, Limited Duration Health Insurance Plans

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the November 1, 2018 edition of the Delaware *Register of Regulations* at 22 DE Reg. 326 (November 1, 2018), the Commissioner of the Delaware Department of Insurance (Commissioner) published an order making Emergency Regulation 1320, Minimum Standards for Short-Term, Limited Duration Health Insurance Plans, immediately effective. Emergency Regulation 1320 became effective on publication and remains in effect for 120

days unless the Commissioner orders a one-time 60-day extension of the effective time period or the Commissioner repeals it.

Elsewhere in the November 1, 2018 edition of the *Register of Regulations* (see 22 **DE Reg.** 371 (November 1, 2018)), the Commissioner published a concurrent proposal which included a notice of intent to codify proposed new Regulation 1320, the text of which is identical to the text of Emergency Regulation 1320, and solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

Both the Emergency Order and the concurrent proposal ensure that carriers offering short term, limited duration (STLD) health insurance plans comply with minimum consumer protection and notification standards so as to partially prevent the erosion of the stability of Delaware's Health Insurance Marketplace and to protect Delaware consumers from being potentially misled into purchasing a STLD health insurance plan without being fully informed of its coverage limits or applicability.

The Department received comments from six commenters, copies of which are on file with the Department. The Department did not hold a public hearing on the proposal.

II. FINDINGS OF FACTS

The Commissioner finds that it is appropriate to adopt 18 **DE Admin. Code** 1320 as proposed in the November 1, 2018 *Register of Regulations*, for the reasons set forth in the proposal.

III. DECISION TO REPEAL THE EMERGENCY REGULATION AND ADOPT THE NEW REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt 18 **DE Admin. Code** 1320 as proposed, and to repeal Emergency Regulation 1320 as of the effective date of the adoption of Regulation 1320.

IV. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §311 and 18 **Del.C.** §1720, 18 **Del.C.** Chs. 33, 35 and 36, 29 **Del.C.** §10119 and in response to 26 CFR 54.9833-1, 29 CFR 2590.736, 45 CFR 146.125 and 45 CFR 148.120. This Order shall be effective on the date signed. The effective date of the Regulation shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118 and 29 **DE Admin. Code** 101 - 5.1.

IT IS SO ORDERED.

The 17th day of December, 2018.

Trinidad Navarro
Commissioner
Delaware Department of Insurance

*Please note that no changes were made to the regulation as originally proposed and published in the November 2018 issue of the *Register* at page 371 (22 DE Reg. 371). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1320 Minimum Standards for Short-Term, Limited Duration Health Insurance Plans

**DEPARTMENT OF JUSTICE
FRAUD AND CONSUMER PROTECTION DIVISION
INVESTOR PROTECTION UNIT**

Statutory Authority: 6 Delaware Code, Section 73-102(b) (6 **Del.C.** §73-102(b))

ORDER

Rules Pursuant to the Delaware Securities Act

Pursuant to 29 **Del.C.** §10118 and 6 **Del.C.** §73-102(b), the Director of the Investor Protection Unit of the Delaware Department of Justice issues this Order adopting proposed amendments to the Rules and Regulations Pursuant to the Delaware Securities Act. Following notice and the opportunity to comment, the Investor Protection Director makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Investor Protection Unit posted public notice of the proposed amendments to Rules 610 and 710 of the Rules and Regulations Pursuant to the Delaware Securities Act in the November 1, 2018 *Register of Regulations*.
2. The Investor Protection Director received no written comments. The Investor Protection Director held the public comment period open until close of business on December 3, 2018.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Investor Protection Director with comments in writing on the proposed amendments to the Rules and Regulations Pursuant to the Delaware Securities Act.
4. After considering the rule changes as proposed, the Investor Protection Director hereby adopts the rule changes as proposed. The Investor Protection Director believes that these rule changes will allow the Investor Protection Unit to act in accordance with rule changes at the federal level pertaining to the examination requirements of investment advisers and broker-dealers.
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, 2019.

IT IS SO ORDERED this 5th day of December, 2018.

Jillian Lazar
Investor Protection Director

***Please note that no changes were made to the regulation as originally proposed and published in the November 2018 issue of the *Register* at page 377 (22 DE Reg. 377). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Rules Pursuant to the Delaware Securities Act

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR QUALITY**

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

Secretary's Order No.: 2018-A-0071

1101 Definitions and Administrative Principles

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1101, Section 2.0, *Definitions and Administrative Principles*; 7 DE Admin. Code 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and a proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*

Date of Issuance: December 17, 2018

Effective Date of the Amendment: January 11, 2019

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

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 1101, Section 2.0, *Definitions and Administrative Principles*; 7 **DE Admin. Code** 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and a proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting* ("Permit").

The Amendments proposed for Appendix A, Section 15.0 of 7 **DE Admin. Code** 1102 will qualify that outdoor dry abrasive blasting of water tanks with lead-containing coatings are no longer exempt from obtaining a permit from the Department. In further support of these proposed Amendments and Permit, the Department is adding three definitions to Section 2.0 of 7 **DE Admin. Code** 1102 for "dry abrasive blasting," "lead-containing coating," and "water tank."

As set forth in 7 **DE Admin. Code** 1102, *Permits*, Appendix A contains a list of equipment for which an air permit for installation, alteration, or operation is not required. Section 15.0 of that Appendix relates to outdoor painting and sand blasting equipment. Water tanks, such as those containing potable drinking water, are often coated with lead-containing coatings. Removal of these coatings must be accomplished under conditions that protect people and nearby properties from the known harmful impacts of lead. Although dry abrasive blasting cleans the tank surface well in preparation for subsequent successful recoating, it is a difficult process to control, as it tends to disperse blasting residue with lead-containing particles over a broad area. Using a containment system to contain blasting residue and allow subsequent collection and safe disposal, will provide the necessary protection of people and property.

Many tank owners, both in Delaware and in other locations across the United States, use the aforementioned containment approach. However, as is the case in Delaware, this approach is made without regulatory supervision. To ensure all such projects will have DNREC's regulatory oversight, the Department proposes to establish a new Source Category for outdoor water tanks with lead-containing coatings to be removed by dry abrasive blasting, and to issue a new Source Category Permit to the tank owner for a tank refurbishment project prior to the project commencing. Such Permits would be applicable to a specific project, and would be canceled upon completion of the project.

To further support this action, the Department has proposed a new Source Category for projects that perform dry abrasive blasting of water tanks that have lead-containing coatings. A Source Category, as set forth in Section 2.0 of 7 **DE Admin. Code** 1130, *Title V State Operating Permit Program*, is defined as follows:

“Source Category” means sources which may have the same or similar operations, emissions, activities; which may emit the same type of regulated air pollutants; which are subject to the same or similar standards, limitations and operating requirements; or which may be subject to the same or similar monitoring requirements.

The proposed new Permit is not a regulation, however, for transparency purposes, the Department published the same in the General Notices Section of the June 1, 2018 edition of the State of Delaware *Register of Regulations*, along with the aforementioned proposed Amendments. Additionally, the proposed new Permit language incorporates tank containment practices generally accepted by tank owners, and includes specific requirements as set forth in the Society of Protective Coatings (“SSPC”), Guide No. 6, “Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations,” a copyrighted document.

The proposed new Permit was also reviewed in consultation with the State of Delaware Department of Public Health. As a result of that review, the Department is revising the proposed new Permit, to add under Section 7.0, *Public Notification and Reporting Requirements*, a requirement that a lead fact sheet would be made available to the public.

Subsequent to finalizing this Permit, the Department will prepare and make available to tank owners permit application forms for water tank refurbishing projects. As is the case for all projects that require a permit, the Department’s proposal to issue a permit must be advertised to afford public review and comment.

The Department has the statutory basis and legal authority to act with regard to promulgation of the above proposed Amendments and the proposed new Permit, pursuant to 7 **Del.C.** Ch. 60 and 7 **DE Admin. Code** 1130, *Title V State Operating Permit Program*. As noted previously, the Department published its initial proposed regulatory Amendments and Permit in the June 1, 2018 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on July 12, 2018. Members of the public attended the aforementioned public hearing, with comment being received by the Department at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed for comment in this matter at the close of business on July 27, 2018, with the Department having received comment from the public prior to, during, and subsequent to the hearing on July 12, 2018.

After the comment period formally closed on July 27, 2018, the Department performed a thorough review of the record, including all of the comments received on the proposed Amendments. The full range of comments contained in the formal hearing record includes not only those from members of the public, but from other contributors as well, such as Artesian Water Company, Tidewater Utilities, and the Sierra Club. It should be noted that all noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Written comment was submitted to the Department prior to, during, and subsequent to the hearing by the following persons: (1) Dr. Amy Roe and Sarah Bucic, R.N., jointly; (2) Sarah Bucic, R.N.; (3) Dr. Frank Malone, a citizen residing in the community of Ardentown, Delaware; (4) Alan Muller, Executive Director, Green Delaware; and (5) Tom Coleman, P.E., Acting City Manager, City of Newark. Additionally, the following persons offered verbal comment at the time of the public hearing held on July 12, 2018: (1) Sarah Bucic, R.N.; (2) Joseph DuNunzio, Executive Vice President, Artesian Water Company; (3) Sheila Shannon, Director of Water Quality, Tidewater Utilities; (4) Sandy Spence, a citizen residing in Lewes, Delaware; (5) Coralie Pryde, a citizen residing in Wilmington, Delaware; (6) Dr. Frank Malone; and (7) Stephanie Herron, representing the Delaware Chapter of the Sierra Club.

With regard to the comments received by the Department in this matter, it should be noted that all comments concerning the proposed amendments to both 7 **DE Admin. Code** 1101 and 7 **DE Admin. Code** 1102 were supportive in nature. Other comments received from the public concerned either the non-regulatory aspects of the Department’s proposed actions, or referred to activities not germane to the subject matter of the public hearing held on July 12, 2018. Nevertheless, the Department’s Division of Air Quality addressed those comments in its Technical Response Memorandum (“TRM”) as well.

One commenter pointed out a non-substantive clerical error contained in subsection 4.1.9 of the Permit. The Department has now corrected this error, and the revised version of this Permit will be published, along with the finalized aforementioned Amendments, in the next available edition of the *Register of Regulations*. It should be noted that no changes were made to the Department’s proposed Amendments during the post-hearing phase of this promulgation, and thus no additional public vetting or re-publication of the same is required in this matter.

At the request of the presiding Hearing Officer, the aforementioned TRM was prepared by the Department's Division of Air Quality staff to serve as a comprehensive summary of the comment received in this matter. The Department's TRM not only provides a thorough discussion of the comment received in this matter, but also provides the Department's responses and recommendations concerning the same.

Hearing Officer Vest prepared a Hearing Officer's Report dated December 10, 2018 ("Report"), which expressly incorporated both the Department's proposed Amendments, proposed new Source Category Permit, and the aforementioned TRM into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments and new Source Category Permit, as attached to the Report as Appendices A through C, respectively.

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed Amendments and proposed new Source Category Permit are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments, along with the proposed new Source Category Permit, be promulgated as final. I further find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the same.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to **7 DE Admin. Code** 1101, Section 2.0, *Definitions and Administrative Principles*; **7 DE Admin. Code** 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and the proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*, pursuant to **7 Del.C.** Ch. 60;

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

3. The Department provided adequate public notice of the initial proposed Amendments and proposed new Permit, and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed Amendments and proposed new Permit, including at the time of the public hearing held on July 12, 2018, and during the 15 days subsequent to the hearing (through close of business on July 27, 2018), before making any final decision;

4. Promulgation of the aforementioned proposed Amendments and proposed new Permit will qualify that outdoor dry abrasive blasting of water tanks with lead-containing coatings is no longer exempt from obtaining a permit from the Department. In further support of these proposed Amendments and Permit, the Department's addition of three definitions to Section 2.0 of **7 DE Admin. Code** 1102 for "dry abrasive blasting," "lead-containing coating," and "water tank," will provide greater clarity to the regulated community and the public with regard to this matter;

5. Moreover, the establishment of a new Source Category for outdoor water tanks with lead-containing coatings to be removed by dry abrasive blasting, and the requirement of a new Source Category Permit to be issued to the tank owner for such projects prior to such work commencing (which will require the use of a containment system to contain blasting residue and allow subsequent collection and safe disposal), will provide the necessary protection of people and property in the locations where such activity will take place, and will ensure that all such projects are under regulatory oversight;

6. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with **29 Del.C.** Ch. 104, and has selected Exemption B1, as this regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

7. The Department's Hearing Officer's Report, including its established record and the recommended proposed Amendments and proposed new Source Category Permit, as set forth in Appendices A through C thereto, are hereby adopted to provide additional reasons and findings for this Order;

8. The Department's proposed regulatory Amendments and proposed new Source Category Permit, as initially published in the June 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendices A through C hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments and a final new Source Category Permit, which shall go into effect ten days after their publication in the next available issue of the

Delaware *Register of Regulations*; and

9. The Department shall submit the proposed Amendments as final regulatory amendments to 7 **DE Admin. Code** 1101, Section 2.0, *Definitions and Administrative Principles*, and 7 **DE Admin. Code** 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*, as well as the proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

1101 Definitions and Administrative Principles (Break in Continuity of Sections)

~~12/11/2016 [xx/xx/2018~~ 01/11/2019]

2.0 Definitions

*Please note that no additional changes were made to the regulation as originally proposed and published in the June 2018 issue of the *Register* at page 957 (21 DE Reg. 957). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1101 Definitions and Administrative Principles

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)
7 **DE Admin. Code** 1102

Secretary's Order No.: 2018-A-0071

1102 Permits

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1101, Section 2.0, *Definitions and Administrative Principles*; 7 DE Admin. Code 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and a proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*

Date of Issuance: December 17, 2018

Effective Date of the Amendment: January 11, 2019

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

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 1101, Section 2.0, *Definitions and Administrative Principles*; 7 **DE Admin. Code** 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and a proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting* ("Permit").

The Amendments proposed for Appendix A, Section 15.0 of 7 **DE Admin. Code** 1102 will qualify that outdoor dry abrasive blasting of water tanks with lead-containing coatings are no longer exempt from obtaining a permit

from the Department. In further support of these proposed Amendments and Permit, the Department is adding three definitions to Section 2.0 of 7 **DE Admin. Code** 1102 for “dry abrasive blasting,” “lead-containing coating,” and “water tank.”

As set forth in 7 **DE Admin. Code** 1102, *Permits*, Appendix A contains a list of equipment for which an air permit for installation, alteration, or operation is not required. Section 15.0 of that Appendix relates to outdoor painting and sand blasting equipment. Water tanks, such as those containing potable drinking water, are often coated with lead-containing coatings. Removal of these coatings must be accomplished under conditions that protect people and nearby properties from the known harmful impacts of lead. Although dry abrasive blasting cleans the tank surface well in preparation for subsequent successful recoating, it is a difficult process to control, as it tends to disperse blasting residue with lead-containing particles over a broad area. Using a containment system to contain blasting residue and allow subsequent collection and safe disposal, will provide the necessary protection of people and property.

Many tank owners, both in Delaware and in other locations across the United States, use the aforementioned containment approach. However, as is the case in Delaware, this approach is made without regulatory supervision. To ensure all such projects will have DNREC’s regulatory oversight, the Department proposes to establish a new Source Category for outdoor water tanks with lead-containing coatings to be removed by dry abrasive blasting, and to issue a new Source Category Permit to the tank owner for a tank refurbishment project prior to the project commencing. Such Permits would be applicable to a specific project, and would be canceled upon completion of the project.

To further support this action, the Department has proposed a new Source Category for projects that perform dry abrasive blasting of water tanks that have lead-containing coatings. A Source Category, as set forth in Section 2.0 of 7 **DE Admin. Code** 1130, *Title V State Operating Permit Program*, is defined as follows:

“Source Category” means sources which may have the same or similar operations, emissions, activities; which may emit the same type of regulated air pollutants; which are subject to the same or similar standards, limitations and operating requirements; or which may be subject to the same or similar monitoring requirements.

The proposed new Permit is not a regulation, however, for transparency purposes, the Department published the same in the General Notices Section of the June 1, 2018 edition of the State of Delaware *Register of Regulations*, along with the aforementioned proposed Amendments. Additionally, the proposed new Permit language incorporates tank containment practices generally accepted by tank owners, and includes specific requirements as set forth in the Society of Protective Coatings (“SSPC”), Guide No. 6, “Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations,” a copyrighted document.

The proposed new Permit was also reviewed in consultation with the State of Delaware Department of Public Health. As a result of that review, the Department is revising the proposed new Permit, to add under Section 7.0, *Public Notification and Reporting Requirements*, a requirement that a lead fact sheet would be made available to the public.

Subsequent to finalizing this Permit, the Department will prepare and make available to tank owners permit application forms for water tank refurbishing projects. As is the case for all projects that require a permit, the Department’s proposal to issue a permit must be advertised to afford public review and comment.

The Department has the statutory basis and legal authority to act with regard to promulgation of the above proposed Amendments and the proposed new Permit, pursuant to 7 **Del.C.** Ch. 60 and 7 **DE Admin. Code** 1130, *Title V State Operating Permit Program*. As noted previously, the Department published its initial proposed regulatory Amendments and Permit in the June 1, 2018 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on July 12, 2018. Members of the public attended the aforementioned public hearing, with comment being received by the Department at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed for comment in this matter at the close of business on July 27, 2018, with the Department having received comment from the public prior to, during, and subsequent to the hearing on July 12, 2018.

After the comment period formally closed on July 27, 2018, the Department performed a thorough review of the record, including all of the comments received on the proposed Amendments. The full range of comments contained in the formal hearing record includes not only those from members of the public, but from other

contributors as well, such as Artesian Water Company, Tidewater Utilities, and the Sierra Club. It should be noted that all noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Written comment was submitted to the Department prior to, during, and subsequent to the hearing by the following persons: (1) Dr. Amy Roe and Sarah Bucic, R.N., jointly; (2) Sarah Bucic, R.N.; (3) Dr. Frank Malone, a citizen residing in the community of Ardentown, Delaware; (4) Alan Muller, Executive Director, Green Delaware; and (5) Tom Coleman, P.E., Acting City Manager, City of Newark. Additionally, the following persons offered verbal comment at the time of the public hearing held on July 12, 2018: (1) Sarah Bucic, R.N.; (2) Joseph DuNunzio, Executive Vice President, Artesian Water Company; (3) Sheila Shannon, Director of Water Quality, Tidewater Utilities; (4) Sandy Spence, a citizen residing in Lewes, Delaware; (5) Coralie Pryde, a citizen residing in Wilmington, Delaware; (6) Dr. Frank Malone; and (7) Stephanie Herron, representing the Delaware Chapter of the Sierra Club.

With regard to the comments received by the Department in this matter, it should be noted that all comments concerning the proposed amendments to both **7 DE Admin. Code** 1101 and **7 DE Admin. Code** 1102 were supportive in nature. Other comments received from the public concerned either the non-regulatory aspects of the Department's proposed actions, or referred to activities not germane to the subject matter of the public hearing held on July 12, 2018. Nevertheless, the Department's Division of Air Quality addressed those comments in its Technical Response Memorandum ("TRM") as well.

One commenter pointed out a non-substantive clerical error contained in subsection 4.1.9 of the Permit. The Department has now corrected this error, and the revised version of this Permit will be published, along with the finalized aforementioned Amendments, in the next available edition of the *Register of Regulations*. It should be noted that no changes were made to the Department's proposed Amendments during the post-hearing phase of this promulgation, and thus no additional public vetting or re-publication of the same is required in this matter.

At the request of the presiding Hearing Officer, the aforementioned TRM was prepared by the Department's Division of Air Quality staff to serve as a comprehensive summary of the comment received in this matter. The Department's TRM not only provides a thorough discussion of the comment received in this matter, but also provides the Department's responses and recommendations concerning the same.

Hearing Officer Vest prepared a Hearing Officer's Report dated December 10, 2018 ("Report"), which expressly incorporated both the Department's proposed Amendments, proposed new Source Category Permit, and the aforementioned TRM into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments and new Source Category Permit, as attached to the Report as Appendices A through C, respectively.

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed Amendments and proposed new Source Category Permit are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments, along with the proposed new Source Category Permit, be promulgated as final. I further find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the same.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to **7 DE Admin. Code** 1101, Section 2.0, *Definitions and Administrative Principles*; **7 DE Admin. Code** 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*; and the proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*, pursuant to **7 Del.C.** Ch. 60;

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

3. The Department provided adequate public notice of the initial proposed Amendments and proposed new Permit, and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed Amendments and proposed new Permit, including at the time of the public hearing held on July 12, 2018, and during the 15 days subsequent to the hearing (through close of business on July 27, 2018), before making any final decision;

4. Promulgation of the aforementioned proposed Amendments and proposed new Permit will qualify that outdoor dry abrasive blasting of water tanks with lead-containing coatings is no longer exempt from obtaining a permit from the Department. In further support of these proposed Amendments and Permit, the Department's addition of three definitions to Section 2.0 of 7 **DE Admin. Code** 1102 for "dry abrasive blasting," "lead-containing coating," and "water tank," will provide greater clarity to the regulated community and the public with regard to this matter;

5. Moreover, the establishment of a new Source Category for outdoor water tanks with lead-containing coatings to be removed by dry abrasive blasting, and the requirement of a new Source Category Permit to be issued to the tank owner for such projects prior to such work commencing (which will require the use of a containment system to contain blasting residue and allow subsequent collection and safe disposal), will provide the necessary protection of people and property in the locations where such activity will take place, and will ensure that all such projects are under regulatory oversight;

6. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption B1, as this regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

7. The Department's Hearing Officer's Report, including its established record and the recommended proposed Amendments and proposed new Source Category Permit, as set forth in Appendices A through C thereto, are hereby adopted to provide additional reasons and findings for this Order;

8. The Department's proposed regulatory Amendments and proposed new Source Category Permit, as initially published in the June 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendices A through C hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments and a final new Source Category Permit, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

9. The Department shall submit the proposed Amendments as final regulatory amendments to 7 **DE Admin. Code** 1101, Section 2.0, *Definitions and Administrative Principles*, and 7 **DE Admin. Code** 1102, Appendix A, Section 15.0, *Outdoor Painting and Sand Blasting Equipment*, as well as the proposed new Source Category Permit, *Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

1102 Permits
(Break in Continuity of Sections)

06/11/2006 [~~xx/xx/xxxx~~] 01/11/2019]

Appendix A

(For the applicability of Appendix A, see 2.2 of this regulation)

***Please note that no additional changes were made to the regulation as originally proposed and published in the June 2018 issue of the *Register* at page 958 (21 DE Reg. 958). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

1102 Permits

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DELAWARE SEX OFFENDER MANAGEMENT BOARD

Statutory Authority: 11 Delaware Code, Section 4120A(c)(8) (11 **Del.C.** §4120A(c)(8))
1 **DE Admin. Code** 1100

ORDER

1100 Delaware Sex Offender Management Board

NATURE OF THE PROCEEDINGS

At 22 **DE Reg.** 271 (October 1, 2018), The Sex Offender Management Board (SOMB), pursuant to 11 **Del.C.** §4120A (c)(8) and in accordance with 29 **Del.C.** §10115, published notice of intent to adopt regulations that update, clarify and provide more detailed information regarding qualifications for Sex Offense Service Providers and the credentialing process. At the same time, the SOMB submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del.C.** Ch. 104. The SOMB solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with law, public notice regarding the proposed revised regulation was published in the Delaware *Register of Regulations*. The public comment period was open from October 1, 2018 through October 31, 2018. During this period, the SOMB did not receive any written responses.

FINDINGS OF FACT

The public was given the required notice of the Boards intention to adopt the proposed revised regulation and was given opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. No written responses were received during the comment period. Thus, the SOMB finds that the proposed regulation should be adopted as submitted.

EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the SOMB pursuant to 11 **Del.C.** §4120A(c)(8). The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

ORDER

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Sex Offender Management Board does hereby ORDER this 29th day of October, 2018 that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

IT IS SO ORDERED, this 29th day of October 2018.

SEX OFFENDER MANAGEMENT BOARD:

Melanie Ewing-Lahutsky, President Judge,
Delaware Superior Court, or designee
Perry Phelps, Commissioner,
Delaware Department of Correction (absent)
Kecia Winchester, Representative,
Probation and Parole

Francesca Stasko, Governor appointed
Treatment Expert for juvenile sex offenders
Alicia Porter, Esq., Attorney General or designee
Lisa A. Minutola, Chief Defender or designee

David Henderson, Chairperson Board of Parole (absent)	Chief Marvin Mailey, Chairperson, Delaware Police Chiefs' Council (absent)
Dr. Amy Diehl-Iannetta, Representative, Division of Prevention and Behavioral Health Services	Cheri Will, Governor appointed Expert in the field of sex abuse
Governor appointed licensed Mental Health Professional - vacant	Valerie Marek, Governor appointed Expert in the field of sex abuse (absent)
Nancy McGee, Governor appointed Member at-large	Lt. Charles Sawchenko, Delaware State Police Sex Offender Unit
Dr. Kara Odom Walker, Secretary, Delaware Department of Health and Social Services (absent)	Earl McCloskey, Executive Director, DELJIS
Colonel McQueen, Superintendent, Delaware State Police	Ashley Bruncsak, Representative, Youth Rehabilitative Services (absent)
Brian Moore, Representative, Department of Education (absent)	Robert Coupe, Secretary, Department of Safety and Homeland Security (signed 10/29/2018)
James McGiffin, Jr., Chief Judge, Family Court	

***Please note that no changes were made to the regulation as originally proposed and published in the October 2018 issue of the *Register* at page 271 (22 DE Reg. 271). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1100 Delaware Sex Offender Management Board

DEPARTMENT OF STATE

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

ORDER

2600 Examining Board of Physical Therapists and Athletic Trainers

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 25, 2018 at a regularly scheduled meeting of the Delaware Examining Board of Physical Therapists and Athletic Trainers ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

Revisions to Section 7.0 modify the examination process for physical therapist and physical therapist assistant applicants. Specifically, subsection 7.3.1.3 gives the Board the discretion to identify a third-party as its authorized designee to approve applicants to sit for the examination. In addition, subsection 7.3.1.3.1 authorizes a physical therapist student or physical therapist assistant student to take the examination up to 90 days prior to graduation from a CAPTE accredited program.

The proposed changes to the rules and regulations were originally published in the *Register of Regulations*, Volume 21, Issue 12, on June 1, 2018. The hearing was rescheduled and notice of the September 25, 2018 hearing was published in the *Register of Regulations*, Volume 22, Issue 3, on September 1, 2018, the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was October 10, 2018, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on December 11, 2018.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

There was no public comment presented in the form of testimony at the September 25, 2018 hearing. Further, no written comment was submitted either before the hearing or during the 15 day period following the hearing.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §2604(a)(1), the Board has the statutory authority to promulgate rules and regulations.

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations. There was no verbal testimony or written comment submitted. In these circumstances, the Board finds no reason to amend the rules and regulations as proposed.

Decision and Effective Date

The Board finds that the rules and regulations shall be adopted as final in the form set forth in Exhibit A attached hereto. These changes will become effective ten days following publication of this Final Order in the *Delaware Register of Regulations*.

Text and Citation

The exact text of the rules and regulations, as amended, is attached to this Final Order as Exhibit A.

IT IS SO ORDERED this 11th day of December, 2018 by the Delaware Examining Board of Physical Therapists and Athletic Trainers.

Robert Price, Professional Member, Chairperson

Angela Smith, Professional Member,
Vice Chairperson

Kimberly Lewis, Professional Member, Secretary

Mary Mundrane-Zweiacher, Professional Member

Joan Couch, Professional Member

Paul Schweizer, Professional Member

Prameela Kaza, Public Member

Andrea Godfrey, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the June 2018 issue of the *Register* at page 960 (21 DE Reg. 960). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2600 Examining Board of Physical Therapists and Athletic Trainers

DIVISION OF PROFESSIONAL REGULATION

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

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

ORDER

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

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on August 21, 2018 at a scheduled meeting of the Delaware Board of Speech/Language Pathologists,

Audiologists and Hearing Aid Dispensers (“the Board”) to receive comments regarding the Board’s proposed revisions to its rules and regulations.

The Board’s proposed amendments added a requirement that licensees must timely update their addresses with the Division of Professional Regulation. Licensure requirements for speech/language pathologists, pertaining to the clinical practicum and the clinical fellowship, were updated to be consistent with the American Speech-Language-Hearing Association’s standards. The new Section 11.0 added disclosure requirements in connection with the fitting and sale of hearing aids. Audiologists and hearing aid dispensers must notify the prospective purchaser of the operation and benefits of telecoil technology, which is used to increase access to telephones and communication with businesses and the community. Finally, the list of substantially related crimes was revised to include updated drug offenses.

Pursuant to the Administrative Procedures Act, 29 **Del.C.** §10115, notice of the proposed amendments to the rules and regulations was published on July 1, 2018 in the Delaware *Register of Regulations*, Volume 22, Issue 1. Notice of the August 21, 2018 hearing was also published in the *News Journal* (Exhibit 1) and the *Delaware State News* Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was September 5, 2018, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on September 18, 2018.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

Board Exhibit 3: July 30, 2018 Memorandum from N. Fina, Chairperson for State Council for Persons with Disabilities, endorsing the proposed amendments.

Board Exhibit 4: July 25, 2018 Letter from A. Fisher, Chairperson for Governor’s Advisory Council for Exceptional Citizens, endorsing the proposed amendments.

There was no public comment presented in the form of testimony at the August 21, 2018 hearing. The written comments, in the form of correspondence from Mr. Fina and Ms. Fisher, endorsed the Board’s proposed amendments.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §3706(a)(1), the Board has the statutory authority to promulgate rules and regulations. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board’s rules and regulations. There was no verbal testimony and the submitted written comments expressed support for the Board’s proposed amendments. In these circumstances, the Board finds no reason to amend the rules and regulations as proposed.

Decision and Effective Date

The Board finds that the rules and regulations shall be adopted as final in the form set forth in Exhibit A attached hereto. These changes will become effective ten days following publication of this Final Order in the Delaware *Register of Regulations*.

Text and Citation

The exact text of the rules and regulations, as amended, is attached to this Final Order as Exhibit A.

IT IS SO ORDERED this 20th day of November, 2018 by the Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.

Meredith Sullivan, Professional Member, President (absent)

Dr. Yell Inverso, Professional Member, Secretary

Dr. Kiijuana Cann, Professional Member

Natalie Sparks, Professional Member

Deborah Cottrell, Public Member

Jamie Basler, Public Member (absent)

Sharon Collier, Professional Member

*Please note that no changes were made to the regulation as originally proposed and published in the July 2018 issue of the *Register* at page 30 (22 DE Reg. 30). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

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

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Section 141; 29 Delaware Code, Section 8404(8)
(17 Del.C. §141; 29 Del.C. §8404(8))
2 DE Admin. Code 2403

ORDER

2403 Special Events Policies and Procedures—Traffic Management

Under Title 17 of the **Delaware Code**, Section 141, as well as 29 **Delaware Code** Section 8404(8), the Traffic Operations and Management Section of the Delaware Department of Transportation (DelDOT), has the authority to regulate the traffic impacts of special events that affect the safe movement of traffic on the State's transportation network, and adopted the Special Events Policies and Procedures – Traffic Management regulation. The Department seeks to adopt revisions to this regulation.

Notice of the proposed revisions to the Special Events Policies and Procedures – Traffic Management regulation was published in pages 387 to 394 of the Delaware *Register of Regulations* Volume 22, Issue 5, dated November 1, 2018. The Department took written comments on these proposed revisions from November 1, 2018 through December 3, 2018. There were no questions or comments received during the public comment period and no changes were made to the regulation as originally proposed and published.

Summary of the Evidence and Information Submitted

The proposed revisions to this regulation waive temporary traffic control costs for special events held by an organizer exempt from federal income tax under Internal Revenue Code Section 501(c)(3) or if the applicant and organizer is a State Agency, County, incorporated Municipality, school district, or accredited college or university. The revisions allow organizers not meeting the conditions above to request a waiver if proceeds to an event are donated to a 501(c)(3) organization or if the need for temporary traffic control is created by impacts associated with a Department project.

Findings of Fact

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

1. The proposed revisions to the existing Special Events Policies and Procedures – Traffic Management regulation are useful and proper. The public comment period was appropriately held open for 30 days and no public comment was received.
2. The adoption of these proposed revisions to the Special Events Policies and Procedures – Traffic Management regulation 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 provision of Delaware law and the record of this docket, I hereby adopt the amended Special Events Policies and Procedures – Traffic Management regulation, as set forth in the version attached, to be

effective January 12, 2019.

It is so ordered on this 13th day of December 2018.

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 2018 issue of the *Register* at page 387 (22 DE Reg. 387). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[2403 Special Events Policies and Procedures—Traffic Management](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

REGISTER NOTICE

Source Category Permit - Removal of Lead-Containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting

1. TITLE OF PERMIT:

Final version of Source Category Permit for outdoor dry abrasive blasting of water tanks that have lead containing coatings.

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

The Department proposed to establish a Source Category Permit under existing provisions of 7 DE Admin Code 1102, "Permits". This action is the result of the Department's proposal to revise 7 DE Admin Code 1102, Section 15.0 "Outdoor painting and sand blasting equipment" of Appendix A to qualify that removal of lead-containing coatings from water tanks by dry abrasive blasting is no longer exempt from obtaining a permit.

This was accomplished in a July 12, 2018 hearing in the Levy Court. A number of comments were received on the source Category Permit and a Technical Response Memorandum was prepared to provide a response to these comments, which did not require revision to the Source Category Permit. Some typographical errors were pointed out and corrected. Prior to the hearing, text was added to section 7.0 regarding the development of a lead fact sheet by the Division of Public Health and that version was part of the July, 12 hearing.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. Ch. 60 Environmental Control

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

N/A

REMOVAL OF LEAD-CONTAINING COATINGS FROM OUTDOOR WATER TANKS BY DRY ABRASIVE BLASTING

SOURCE CATEGORY PERMIT

~~[DRAFT 5/11/2018]~~ [1/11/2019]

1.0 General Provisions

- 1.1 Dry abrasive blasting of an outdoor water tank with a lead-containing coating shall be carried out in accordance with the project as described in the application submitted by the tank owner or operator that served as the basis for the project being permitted under this source category.
- 1.2 Nothing in this permit relieves the permittee from the obligation to comply with all applicable federal, state, county, and municipal statutes, regulations, ordinances and policies.
- 1.3 The owner or operator shall not install, construct or alter any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to submitting an application to the Department pursuant to 7 DE Admin. Code 1102, and, when applicable 7 DE Admin. Code 1125, and receiving approval of such application from the Department; except as exempted in 7 DE Admin. Code 1102 Section 2.2.
- 1.4 Representatives of the Department may, at any reasonable time, inspect this facility.

- 1.5 This permit may not be transferred to another location or to another person, owner, or operator of an outdoor water tank.

2.0 Emission Limitations

- 2.1 No person shall cause or allow sandblasting or related abrasion operations unless sufficient containment measures are taken to prevent the sand or abrasive material from traveling beyond the property line where the operation is being conducted, or traveling beyond the containment system should the containment system be located, in whole or in part, beyond the property line.
- 2.2 No person shall cause or allow the emission of any visible air contaminant.
- 2.3 There shall be no measurable emissions of lead or lead-containing particles, compared to a previously determined background level, when measured in the ambient air at the water tank owner's property line, or beyond where the containment operation is being conducted if the containment operation, in whole or in part, extends beyond the property line.

3.0 Operational Limitations

- 3.1 Dry abrasive blasting shall not be operated unless the containment system ventilation, as described in condition 3.3.3 of this permit, is operating properly, and:
- 3.1.1 if a Type A1 - Rigid system, as described in 3.3.1.1 of this permit, is maintaining a negative pressure of at least 0.03 inch of water relative to ambient conditions as measured by a manometer or magnehelic gage, or
- 3.1.2 if a Type A2 -flexible system, as described in 3.3.1.1 of this permit, is maintaining a negative pressure throughout the containment system enclosure as determined by visual observation of the concave nature of the shrouding employed while taking into account wind effects.
- 3.2 For every start or restart of dry abrasive blasting, observe all areas of the containment system for visible emissions from the containment enclosure and from the exhaust stack. If emissions are observed which cannot be immediately controlled, dry abrasive blasting shall cease until the cause of emissions is found and corrected.
- 3.3 Containment and Ventilation Systems
- 3.3.1 Containment shall be Class 1A, as described in Table A "Abrasive Blast Cleaning" of the Society for Protective Coatings (SSPC) Technology Guide No. 6 "Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations", dated May 4, 2015. The required components of the Containment System shall be as follows:
- 3.3.1.1 Containment Materials shall be Type A1 - Rigid or Type A2 – Flexible, as described in section 5.3.1.1 or 5.3.1.2 respectively, of SSPC 6,
- 3.3.1.2 Penetrability shall be Type B1 – Air Impenetrable, as described in section 5.3.2.1 of SSPC 6,
- 3.3.1.3 Support Structure shall be Type C1 – Rigid or Type C2 – Flexible, as described in section 5.3.3.1 or 5.3.3.2 respectively, of SSPC 6,
- 3.3.1.4 Joints shall be Type D1 – Full Seal, as described in section 5.3.4.1 of SSPC 6, and
- 3.3.1.5 Entryway shall be Type E1 – Airlock or Type E2 - Resealable, as described in section 5.3.5.1 or 5.3.5.2 respectively, of SSPC 6.
- 3.3.2 Thorough cleanup of the containment system, the water tank exterior surface and all equipment within the containment system shall be performed prior to dismantling or moving any part of the containment system to a new location, lowering, or ceasing dry abrasive blasting operations at the end of the day,
- 3.3.2.1 with a vacuum equipped with a high efficiency particulate air filter that is capable of removing 99.97 percent of airborne particulate matter with a size of 0.3 microns or larger; or alternatively,
- 3.3.2.2 with dry, low pressure compressed air (150 psi or less) from a hose to blow off deposited dust and coating chips on contaminated areas described in condition 3.3.2 of this permit,

making such dust and chips airborne so the air flow through the containment area will pass these contaminants through the exhaust air filtration system.

- 3.3.3 Ventilation shall be Class 1A, as described in Table A “Abrasive Blast Cleaning” of the Society for Protective Coatings (SSPC) Technology Guide No. 6 “Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations”, dated May 4, 2015. The required components of the Ventilation System shall be as follows:
- 3.3.3.1 Air Makeup shall be Type F1 – Controlled, as described in section 5.4.1.1 of SSPC 6,
 - 3.3.3.2 Input Air Flow shall be Type G1 – Forced or Type G2 - Natural, as described in section 5.4.2.1 or 5.4.2.2 respectively, of SSPC 6,
 - 3.3.3.3 Air Pressure Inside Containment shall be Type H1 – Instrument Verification or Type H2 – Visual Verification, as described in section 5.4.3.1 or 5.4.3.2 respectively, of SSPC 6,
 - 3.3.3.4 Air Movement shall be Type I1 - Minimum Specified, as described in section 5.4.4.1 of SSPC 6, and
 - 3.3.3.5 Exhaust Air Filtration shall be Type J1 – Filtration, as described in section 5.4.5.1 of SSPC 6, where all air in the containment system is a forced flow into dust collectors followed by a high efficiency particulate air filter that is capable of removing 99.97 percent of airborne particulate matter with a size of 0.3 microns or larger and the filtered air is then exhausted through a stack.
- 3.3.4 The containment system shall be inspected daily, as well as when the system is raised, lowered, or moved prior to conducting any dry abrasive blasting activity. The inspection shall ensure the containment system is free of tears and holes and all seals are in working order.
- 3.3.5 The fan, moving containment system air into, and located just before, the exhaust air filtration system, shall be equipped with an outlet static pressure sensor and the dry abrasive blasting system shall be immediately shut down whenever static pressure is noted to have been lost, such as in the case of a fan failure.
- 3.3.6 The discharge of the exhaust air filtration system shall be directed away from buildings, personnel working in the area, air intakes to the containment system, and the clean compressed air supply for dry air for the dry abrasive blasting equipment.
- 3.3.7 No fugitive emissions shall be generated as a result of removing collected dust from the exhaust air filtration system or any vacuums used in cleanup or as a result of subsequent handling of the collected dust on-site or during off-site transit.

4.0 Site Emergency and Release Response Plan

- 4.1 The water tank owner or operator shall submit a Site Emergency and Release Response Plan to the Department a minimum of thirty (30) days prior to the start of on-site work. This plan shall include all aspects of foreseeable events likely causing environmental hazards to the public, describing proposed resolution, and including notification of the public likely to be impacted. Considerations must be site specific and should include, at a minimum:
- 4.1.1 Contractor’s Lead and Health safety program;
 - 4.1.2 Contractor’s procedures to address a release or discharge;
 - 4.1.3 Activities in response to a suspected or impending severe weather event;
 - 4.1.4 Notification tree (including phone numbers and email addresses);
 - 4.1.5 Procedures to be implemented to ensure adequate clean-up of off-site and on-site environmental consequences of event;
 - 4.1.6 Procedures to be implemented to review system performance to ensure prevention of future similar environmental events;
 - 4.1.7 List of on-site equipment to be used for clean-up;
 - 4.1.8 Addresses and contact information for the lab used for certified air monitoring analyses; and,
 - 4.1.9 Post-incident report to be submitted [e] [to] the Department.

GENERAL NOTICES

5.0 Monitoring Requirements

5.1 The Department reserves the right to require the owner or operator to perform emission tests using methods approved in advance by the Department. The owner or operator may submit a request to the Department to use a different method.

5.2 Visible Emission Observations

5.2.1 Upon initiation of dry abrasive blasting, observe all areas of the containment system for visible fugitive emissions and emissions from the stack(s) of the exhaust air filtration system. The observation shall be conducted using a trained observer in EPA Method 22 (EPA 40 CFR 60, Appendix A) for a period of at least five minutes. If visible emissions are observed from any point, the dry abrasive blasting operation shall cease until the cause is determined and corrected. A list of trained observers shall be posted on site.

5.2.2 Observations shall be recorded to include the date, name of observer, time, and the presence or absence of visible emissions. In the event that emissions are observed, record the actions taken to eliminate the emissions. Upon resumption of dry abrasive blasting, record observations until a successful startup is attained.

5.2.3 Observations of the containment system shall continue throughout the day so that for every two hour period of continuous dry abrasive blasting there is a recorded observation of at least five minutes in duration. If visible emissions are observed at any time, the dry abrasive blasting operation shall cease until the cause is determined and corrected.

5.3 Air Monitoring

5.3.1 Prior to initial startup of dry abrasive blasting, background air monitoring for lead shall be conducted for at least a three-day period as described in section 9.5 "Background Monitoring" of SSPC Technology Update No.7 "Conducting Ambient Air, Soil, and Water Sampling of Surface Preparation and Paint Disturbance Activities", dated May 4, 2015. The determination of the type and number of monitors and the locations and height above ground of each monitor shall be based on SSPC Technology Update No. 7. Operation of these same monitor sites shall be continued during dry abrasive blasting activity. This activity requires the use of a laboratory certified under the National Lead Laboratory Accreditation Program (NLLAP) of the EPA or an equivalent independent national accreditation program, to set-up the monitors, start and stop operation and analyze for lead in air monitor and HEPA filters. The laboratory report shall contain evidence of certification and limit of detection for each analysis performed.

5.3.2 The set of air monitors established in condition 5.3.1 of this permit shall be operated continuously during dry abrasive blasting and shall include a half hour prior to the start of dry abrasive blasting and a half hour following the termination of dry abrasive blasting, and during periods when lowering the shroud and until the area exposed by lowering the shroud has been cleaned of blasting debris.

5.3.3 The water tank owner or operator shall use either EPA 40 CFR Part 50, Appendix B method for high volume air sampling or 40 CFR Part 50, Appendix ~~G~~ **O** method for low volume air sampling.

5.3.4 Air monitor filters shall be replaced daily when in operation. Filters shall be analyzed for lead by EPA Method 7010 "Graphite Furnace Atomic Absorption Spectrophotometry" or EPA Method 6020 A "Inductively Coupled Plasma Mass Spectrometry". The analysis shall be performed by an EPA accredited lead air monitor analysis laboratory. Upon initial startup of dry abrasive blasting for the first time (or after an extended shutdown of more than two weeks), the performance of the containment system, as described in conditions 2.0, 3.0 and 5.2 of this permit, shall be closely observed for compliance and if all systems are found to be performing as required and there are no visible emissions over a two-hour period of operation, then that day's air monitor samples shall be submitted for analysis on a standard sample turnaround basis. Subsequent samples may be accumulated for up to one week before submission for analysis on a standard sample turnaround basis. If the system is shut down due to any system upset or visible fugitive emissions, start-up of abrasive blasting shall be closely observed to ensure all operating parameters are under control for two hours and the air monitor samples for that day's operation shall be submitted for analysis

on an expedited basis. Any samples found to contain lead above the background level shall require the dry abrasive blasting operation to cease until the cause is determined and corrected.

5.4 Static Pressure Monitoring

- 5.4.1 A visual observation, or instrument verification, of the negative pressure inside the containment enclosure shall be recorded every two hours during dry abrasive blasting on a data sheet and the times negative pressure is lost due to restricted air flow through the exhaust air filtration system or significant fugitive air loss noted along with any dry abrasive blasting shutdown and startup times.
- 5.4.2 A static pressure reading of the exhaust air filtration system shall be recorded every two hours of dry abrasive blasting on a data sheet or through the use of a recording monitor. Each instance when static pressure is lost and dry abrasive blasting is shut down shall be recorded on the data sheet.

6.0 Recordkeeping and Reporting Requirements

- 6.1 Records produced as required by Section 5.0 of this permit shall be maintained on-site for the duration of the project.
- 6.2 Analytical results of the filters from air monitoring, as required by condition 5.3 of this permit, shall be maintained on-site for the duration of the project. Test results showing the presence of lead above the background level shall be reported to the Department within two business days. If lead above background levels is detected in the samples, dry abrasive blasting shall be shut down until the cause is determined and corrected, unless such action has already been taken.
- 6.3 The owner or operator of the water tank shall maintain all records as required by Section 5.0 of this permit and any other records necessary for determining compliance with this permit for three years after completion of the project and shall make these records available to the Department upon written or verbal request.

7.0 Public Notification and Reporting Requirements

- 7.1 No less than thirty (30) days prior to commencement of initial dry abrasive blasting the owner or operator of the water tank shall prepare and distribute a notice to the Department and to the public located within one-thousand feet of the water tank, including, but not limited to, residences, schools, child care facilities, businesses and social service providers. The notice shall contain, at a minimum, the following items:
 - 7.1.1 a summary of the activities which are proposed to take place on the site;
 - 7.1.2 expected start and end dates of the overall project and expected dates of dry abrasive blasting;
 - 7.1.3 water tank owner company name;
 - 7.1.4 contact information for the tank owner and project contractor;
 - 7.1.5 the DNREC complaint line (1-800-662-8802);
 - 7.1.6 air quality permit issuance date,
 - 7.1.7 **[a statement identifying]** the presence of lead in the coatings to be removed;
 - 7.1.8 **[a Division of Public Health approved lead fact sheet;]**
 - 7.1.~~[8]~~ **[9]** steps taken to protect the public;
 - 7.1.~~[9]~~ **[10]** disposition of blasting waste generated;
 - 7.1.~~[40]~~ **[11]** the Department website address for dry abrasive blasting of water tanks; and,
 - 7.1.~~[44]~~ **[12]** the location of the water tank.
- 7.2 Delays in the project timeline of one month or more shall be communicated to the Department and to the public receiving notice per condition 7.1 of this permit.
- 7.3 Any complaints received by the water tank owner, operator or project contractor related to dry abrasive blasting shall be relayed to the Department by contacting the complaint line at 1-800-662-8802 as soon as practical.
- 7.4 Emissions in excess of any permit condition or emissions that create a condition of air pollution shall be reported to the Department upon discovery by calling the complaint line at 1-800-662-8802.

- 7.5 One original and one copy of all required reports shall be sent to the address below:
Division of Air Quality Attn. Division Director
State Street Commons
100 West Water Street, Suite 6A
Dover, Delaware 19904

8.0 Administrative Conditions

- 8.1 This permit shall be made available on the premises.
8.2 Failure to comply with the conditions of this permit may be grounds for suspension or revocation.
8.3 This permit will expire within one year of issuance unless the water tank owner submits a request to the Division of Air Quality (DAQ) for an extension within 45 days of the expiration date, with an explanation of why the extension is needed. The DAQ may approve one such extension of six months, after which, if the project is not completed, the permit will be closed. A new application will be required to restart the project.

9.0 Completion of Dry Abrasive Blasting

- 9.1 Within thirty (30) days of completion of dry abrasive blasting, the water tank owner or operator shall submit to the Department a post-project checklist certifying all conditions of this permit have been met and all citizen complaints, if any, have been addressed. The post-project checklist shall be signed by a responsible official of the company owning the water tank. Upon acceptance of the checklist, the Department shall close this permit.

**EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET**

Statutory Authority: 29 Delaware Code, Ch. 63A (29 Del.C. Ch. 63A)

NOTICE

Senate Bill 225 as amended by Senate Amendments 1 and 2

November 28, 2018

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly enacted Senate Bill 225 as amended by Senate Amendments 1 and 2 on June 30, 2018. The legislation which relates to insurance coverage for non-opioid treatment of back pain was subsequently signed by Governor Carney on September 10, 2018 (81 **Del Laws.** c. 430).

Section 7 of this legislation states the following:

"Section 7. Section 4 and Section 5 of this Act take effect 10 days following the date of publication in the Register of Regulations of a notice that both of the following have occurred:

- (1) Funds have been appropriated to implement the provisions of this Act.

(2) The Director of the Office of Management and Budget has provided notice to the Registrar of Regulations that the contingency in (1) has been fulfilled."

In accordance with Section 7 of Senate Bill 225, notice is hereby given that (1) sufficient funds have been appropriated in the current fiscal year to implement the provisions of Sections 4 and 5 of the Act effective January 11, 2019, corresponding to ten days subsequent to publication in the January 1, 2019 issue of the *Register of Regulations*; and (2) the Director of the Office of Management and Budget has provided notice to the Registrar of Regulations that the contingency in Section 7 (1) of Senate Bill 225 has been fulfilled.

Thank you,

Michael S. Jackson
Director

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, January 17, 2019 at 5:00pm at Seaford Central Elementary School (1 Delaware Place, Seaford, Delaware).

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF HEALTH CARE QUALITY
PUBLIC NOTICE
Regulations Governing Dialysis Centers

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 1, Section 122(3)(aa), Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Dialysis Centers.

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, the Office of Health Facilities Licensing and Certification, Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to Corinna.Getchell@state.de.us or by fax to 302-292-3931 by 4:30 p.m. on January 31, 2019. Please identify in the subject line: Regulations Governing Dialysis Centers

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Chiropractic Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and the DMMA Provider Policy Specific Manual regarding chiropractic services, specifically, to remove annual numerical limitations placed on chiropractic care visits for the purpose of treating back pain.

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, 2019. Please identify in the subject line: Chiropractic Services.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Eligibility Determination

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing

to amend the Delaware Social Services Manual (DSSM) regarding Eligibility Determination, specifically, *to align state and federal policy*.

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, 2019. Please identify in the subject line: Eligibility Determination.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

PUBLIC NOTICE

3300 Non-Tidal Finfish

3301 Definitions

3304 Creel Limits, Size Limits and Seasons

The Department proposes to adjust the start time for the opening day of freshwater trout season on designated trout streams. Opening day of the freshwater trout season is an event that draws large crowds of anglers to New Castle County's designated trout streams. Opening day of trout seasons often have a specified start time to help manage angler competition for fishing locations, but the current 7:30 a.m. opening day start time serves no current resource management purpose, is not meaningful for managing angler competition for fishing locations and unnecessarily limits angler access and participation. At the suggestion of a member of the public, Delaware's Advisory Council on Wildlife and Freshwater Fish recommended that the start time of Delaware's opening freshwater trout season be changed from 7:30 a.m. to 7 a.m., which is consistent with the 7:00 a.m. opening day start time established for designated trout ponds in Kent and Sussex Counties and provides expanded angler opportunity and participation. Angling hours for the remainder of the trout season (one-half hour before sunrise to one-half hour after sunset) are not affected by this action.

The Department also proposes two technical corrections to the Non-Tidal Finfish regulations. The Department proposes to clarify the definition for that portion of Pike Creek that is designated as a trout stream to reflect contemporary landmark and roadway naming. The Department also proposes to clarify that the upper bound of the smallmouth bass protected slot limit includes those fish measuring 17 inches in total length.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3300 Non-Tidal Finfish - 3301 Definitions and 3304 Creel Limits, Size Limits and Seasons opens January 1, 2019. Individuals may submit written comments regarding the proposed changes via e-mail to Bethany.Fiske@state.de.us or via the USPS to Bethany Fiske, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901. A public hearing on the proposed amendment will be held on Wednesday, January 23, 2019 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, February 7, 2019.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

PUBLIC NOTICE

101 DELACARE: Regulations for Early Care and Education and School-Age Centers

The Office of Child Care Licensing (OCCL) proposes to amend DELACARE: Regulations for Early Care and

Education and School-Age Centers in accordance with 31 Del.C §343. This proposal includes the following changes from the current regulations:

- Using plain language throughout the regulation;
- Clarification regarding the requirements for lead-paint risk assessments for centers that were built before 1978, including abatement for lead-paint hazards;
- Radon testing, including mitigation if necessary;
- Air quality testing for centers located in a building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Fingerprinting conducted before a staff member begins employment at the center;
- Comprehensive background checks for applicants, licensees, staff members, and volunteers before being alone with children;
- Broadening the education requirements for school-age site coordinators and reducing the experience requirements;
- Allowing early childhood interns to be alone with children during naptime;
- Certified staff at all times to administer medications, as needed;
- The allowance for licensees to be able to administer non-intravenous medication to comply with the Americans with Disabilities Act when requested by the parent;
- Adding the Administration of Medication Self-Training Guide to the appendices;
- Aligning the meals pattern requirements with the Child and Adult Care Food Program,
- Aligning the physical activity standards with national standards, and
- Requiring suspension and expulsion policies.

These amendments would require centers to be free of lead-paint and radon hazards and the additional requirement for centers located in a building/structure that contains or contained a business that may result in unacceptable air quality to have the air quality tested protects children's health. Comprehensive background checks and suspension and expulsion policies are required to comply with the Child Development Block Grant Act of 2014. Lastly, by amending these regulations, the needs of children requiring medication (with parent/guardian permission) while in child care will be met, consistent with the principles of the Americans with Disabilities Act. In addition, the application forms, the specific requirements to obtain a license, and due process provisions have been added to the regulation.

This proposal is very similar to the regulations that were proposed in November 2018; however changes were made based on stakeholder and providers' comments that OCCL received and the Administration of Medication Self-Training Guide was included as an appendix. Since the November proposal, the following sections, subsections, and appendices were changed:

- Definition of conference;
- Definition of toddler;
- Definition of early childhood teacher;
- Definition of group size;
- Youth camp was added to the definitions;
- Subsection 7.3;
- Subsection 4.3.1;
- Subsection 12.5;
- Subsection 13.4.6.3;
- Subsection 14.1.1;
- Subsection 15.2;
- Subsection 53.8.4;
- Subsection 62.1.24;
- Subsection 63.1;
- Subsection 63.1.1;
- Subsection 63.6;
- Subsection 63.8 was added;
- Subsection 64.1.1.1
- Subsection 65.3.3;
- Subsection 71.6.1;
- Subsections 71.9.1-71.9.3;
- Subsections 72.1-72.3;

- Subsection 23.1.2;
- Subsection 23.1.6;
- Subsection 26.6 added and the previous 26.6 was renumbered to 26.7;
- Subsection 30.1.19;
- Subsection 32.1.20;
- Subsection 45.2.2;
- Subsection 45.2.2.3;
- Subsection 45.2.3.2;
- Subsection 76.3.1;
- Subsection 76.4;
- Subsection 88.7;
- Subsection 90.1;
- Appendix IV was added and the designation of the previously IV and V were changed to V and VI;
- Appendix V; and
- Appendix VI.

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them to the Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families, 3411 Silverside Road, Hagley Building, Wilmington, Delaware, 19810, Attention: Kelly McDowell or email them to Kelly McDowell at Kelly.McDowell@state.de.us by the close of business on January 31, 2019.

DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING
PUBLIC NOTICE

103 Regulations for Family and Large Family Child Care Homes

The Office of Child Care Licensing (OCCL) proposes to amend DELACARE: Regulations for Family and Large Family Child Care Homes in accordance with 31 Del.C. §343. This proposal includes the following changes:

- Lead-paint risk assessments for family child care homes that were built before 1978, including abatement for lead-paint hazards;
- Radon testing for family and large family homes, including mitigation if necessary;
- Air quality testing for large family homes located in a commercially-zoned building/structure that contains or contained a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality;
- Fingerprinting conducted before a staff member begins employment and before a new adult household member moves into the home;
- Comprehensive background checks for applicants, licensees, adult household members, staff members, and adult volunteers;
- Qualified staff at all times to administer medications, as needed;
- The allowance for licensees to be able to administer non-intravenous medication to comply with the Americans with Disabilities Act when requested by the parent;
- Administration of Medication Self-Training Guide was added to the appendices;
- Meals pattern requirements align with the Child and Adult Care Food Program,
- Physical activity standards align with national standards, and
- Suspension and expulsion policies.

These amendments would require family and large family homes to be free of lead-paint and radon hazards, and the additional requirement for large family homes located in commercially located buildings that contain or contained a business that may result in unacceptable air quality to have the air quality tested protects children's health. Lastly, by amending these regulations, the needs of children requiring medication (with parent/guardian permission) while in child care will be met, consistent with the principles of the Americans with Disabilities Act. In addition, the application forms, the specific requirements to obtain a license, and due process provisions have

been added to the regulation.

This proposal is very similar to the regulations that were proposed in November 2018; however changes were made based on stakeholder and providers' comments that OCCL received and the Administration of Medication Self-Training Guide was included as an appendix. Since the November proposal, the following sections, subsections, and appendices were changed:

- Definition of conference;
- Definition of toddler;
- Subsection 7.1.2.6.1;
- Subsection 7.1.3.3;
- Subsection 7.1.3.3.3;
- Subsection 7.1.3.4.2;
- Subsection 7.3;
- Subsection 11.5;
- Subsection 12.4.6.3;
- Subsection 12.4.7;
- Subsection 13.12;
- Subsection 20.1.2 was stricken and the rest of this section was renumbered;
- Subsection 20.2.12 was added;
- Subsection 22.1.9;
- Subsection 41.1.24;
- Subsection 42.1;
- Subsection 42.1.1;
- Subsection 42.8 was added;
- Subsection 43.1.1.1;
- Subsection 44.2.3;
- Subsection 50.4.1;
- Subsection 50.7.2;
- Subsection 50.7.3;
- Subsection 50.7.4;
- Subsection 51.18;
- Subsection 51.19;
- Subsection 51.20;
- Subsection 52.6;
- Subsection 52.10;
- Subsection 63.1;
- Subsection 66.3;
- Subsection 69.1.17;
- Appendix VIII was added and the designation of the previously VIII and IX were changed to IX and X;
- Appendix IX; and
- Appendix X.

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them to the Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families, 3411 Silverside Road, Hagley Building, Wilmington, Delaware, 19810, Attention: Kelly McDowell or email them to Kelly McDowell at Kelly.McDowell@state.de.us by the close of business on January 31, 2019.

DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING AND POLICY
PUBLIC NOTICE
2306 Crash Data Release

Pursuant to the authority provided by 29 **Del.C.** §8404(8), the Delaware Department of Transportation (DelDOT), adopted 2306 Policy and Procedures for Crash Data Release.

The Department, through its Division of Planning and Policy ("DelDOT"), seeks to repeal 2 **DE Admin. Code** 2306. The regulation covers the release of crash data by the Department of Transportation to any entities or personnel outside of DelDOT. The Delaware Department of Safety and Homeland Security ("DSHS") are the owners of all crash data received by DelDOT. Based on current operating procedures between the two agencies, this regulation is no longer necessary and can be repealed.

DelDOT will take written comments on these proposed general revisions to 2 **DE Admin. Code** 2306 from January 1, 2019 through January 31, 2019. The public may submit their comments to:

Scott Neidert, Design Resource Engineer, Traffic Section (Scott.Neidert@state.de.us) or in writing to his attention,

Delaware Department of Transportation
 169 Brick Store Landing Road
 Smyrna, DE 19977