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# Delaware Register of Regulations

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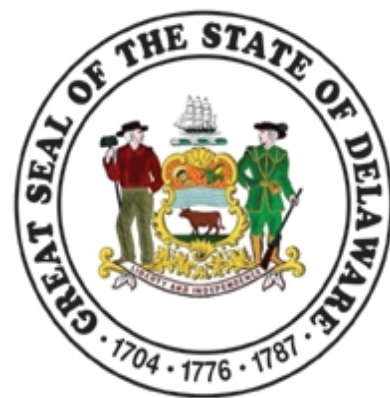
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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before June 16, 2014.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## 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.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 17	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

**Lori Christiansen**, Director; **Mark J. Cutrona**, Deputy Director; **Jerry Grant**, Joint Sunset Analyst; **Jeffrey W. Hague**, Registrar of Regulations; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Executive Secretary; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Yvette W. Smallwood**, Assistant Registrar of Regulations; **Don Sellers**, Printer; **Holly Wagner**, Research Analyst; **Rochelle Yerkes**, Office Manager; **Sara Zimmerman**, Legislative Librarian.

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# PROPOSED REGULATIONS

## Symbol Key

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

## Proposed Regulations

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

## DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

### PUBLIC NOTICE

### 501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule in Section 7- 7.1.3.4. The Commission will hold a public hearing on the proposed rule changes at Harrington Raceway on August 12, 2014 at 10:15 am. Written comments should be sent to Mark Davis, Racing Administrator of the Delaware Harness Racing Commission, Department of Agriculture, 2320 South DuPont Highway, Dover, DE 19901. Written comments will be accepted from publication in the July 1, 2014 *Register of Regulations* until August 27, 2014.

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

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

#### 7.0 Rules of the Race

##### 7.1 Declarations and Drawing

#### (Break in Continuity Within Section)

##### 7.1.3 Qualifying Races

#### (Break in Continuity Within Section)

- 7.1.3.4 Any horse regularly wearing ~~hopples~~ hobbles shall not be permitted to be declared to race without them and any horse regularly racing without ~~hopples~~ hobbles shall not be

permitted to wear ~~hopples~~ hobbles in a race without first having qualified with this equipment change. In addition to the foregoing, any horse regularly wearing ~~hopples~~ hobbles and which is not on a qualifying list or Stewards' List, is allowed one start without ~~hopples~~ hobbles in a qualifying race; and this single performance shall not affect its eligibility to race with ~~hopples~~ hobbles in a subsequent event to which it is declared.

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

**501 Harness Racing Rules and Regulations**

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 930

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

#### 930 Supportive Instruction (Homebound)

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 930 Supportive Instruction. The amendment is related to supportive instruction for students who are pregnant.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **August 5, 2014** to Susan Haberstroh, Associate Secretary, Education Supports & Innovative Practices Branch, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment is related to students who are pregnant, and may improve the student achievement of these students.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendment will help ensure all students receive an equitable education.

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendment preserves the necessary authority and flexibility of decision making at the local board and school level.

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

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 does not change with regard to the amendments.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with state and federal 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 may be additional costs to the local boards for compliance; however, the amendments are consistent with federal Title IX laws.

## 930 Supportive Instruction (Homebound)

### 1.0 Definition

“**Supportive Instruction**” is an alternative educational program provided at home, in a hospital or at a related site for a student temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature. Subject to 14 **Del.C.**, §1604(8), this may also include an alternative educational program provided at home to a student that has been suspended, expelled or subject to expulsion based upon the student’s local school district or charter school policy.

- 1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.
- 1.2 Services for children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C 1400 et.seq), and its regulations (34 CFR parts 300 and 301), 14 **Del.C.**, Ch. 31, and the Department of Education's regulations on Children with Disabilities (14 **DE Admin. Code** 922 through 929) shall be provided in accordance with these laws and shall be processed under the district's or charter school's special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and its regulations, 14 **Del.C.**, Chapter 31, and the Department of Education's regulations on Children with Disabilities.
- 1.3 Nothing in this regulation shall alter a district's or charter school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

### 2.0 Eligibility for Conditions other than Suspension, Expulsion or Subject to Expulsion

- 2.1 A student enrolled in a school district or charter school is eligible for supportive instruction when the district or charter school receives the required certification that an accident, injury, sudden illness or episodic flare up of a chronic condition will prevent the student from attending school for at least ten (10) school days.
  - 2.1.1 A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician must certify absences due to a medical condition.
    - 2.1.1.1 A student qualifies for supportive instruction during absences because of pregnancy, childbirth, or related medical conditions, which shall be excused absences for as long as deemed medically necessary by a physician or an advanced practice nurse, employed by and who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.
    - 2.1.1.2 A student who remains enrolled in school is eligible for supportive instruction during a postpartum period for as long as deemed medically necessary. Postpartum absences shall be certified by a physician or an advanced practice nurse, employed by and who has



a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.

2.1.2 Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.

~~2.1.3 A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician must certify absences due to pregnancy complicated by illness or other abnormal conditions.~~

~~2.1.3.1 A student does not qualify for supportive instruction for normal pregnancies unless there are complications.~~

~~2.1.3.2 A student who remains enrolled in school is eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.~~

~~2.1.42.2~~ Supportive instruction can be requested as an in school transitional program that follows a period of supportive instruction that was provided outside of the school setting. If the supportive instruction is provided as an in school transitional program, it must be approved through a staff conference.

### 3.0 Implementation

3.1 Supportive instruction for a student shall begin as soon as the documentation required by 2.0 is received. Supportive instruction may continue upon the return to school setting only in those exceptional cases where it is determined that a student needs a transitional program to guarantee a successful return to the school setting in accordance with ~~2-42.2~~.

3.1.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.

3.1.1.1 The school shall provide a minimum of 3 hours of supportive instruction each week of eligibility for a K to 5th grade student, and a minimum of five hours each week of eligibility for a 6 to 12th grade student. There is no minimum for in school transition.

3.1.1.2 Nothing in this regulation shall prevent a school district or charter school from providing additional hours of supportive instruction to an eligible student from other available funding sources.

3.1.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school setting the following school year.

### 4.0 Eligibility and Implementation for Suspension, Expulsion, or Subject to Expulsion

If a local school district or charter school provides for supportive instruction (homebound) for students that have been suspended or expelled, the local school district or charter school shall have a written policy, which conforms with 14 **Del.C.** §1604(8), and any of its implementing regulations, regarding eligibility and implementation.

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

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

### PUBLIC NOTICE

#### Telemedicine

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), with 42 CFR §447.205 and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit a state plan amendment regarding telemedicine, specifically, *to clarify provider types authorized to deliver medically necessary services via telemedicine.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by July 31, 2014.

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

### **SUMMARY OF PROPOSAL**

The proposed provides notice to the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding telemedicine *to clarify provider types authorized to deliver medically necessary services via telemedicine.*

#### **Statutory Authority**

- 42 CFR 410.78, *Telehealth services*
- 42 CFR Part 440, *Services*

#### **Background**

For the purposes of Medicaid, telemedicine seeks to improve a patient's health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site. This electronic communication means the use of interactive telecommunications equipment that includes, at a minimum, audio and visual equipment. This definition is modeled on Medicare's definition of telehealth services (42 CFR §410.78).

According to the Centers for Medicare and Medicaid Services (CMS), the Medicaid program and the federal Medicaid statute (Title XIX of the Social Security Act) does not recognize telemedicine as a distinct service. CMS does note, however, that "telemedicine is viewed as a cost-effective alternative to the more traditional face-to-face way of providing medical care" (e.g., face-to-face consultations or examinations between provider and patient) that states can choose to cover under Medicaid and that there is "flexibility inherent in federal law to create innovative payment methodologies for services that incorporate telemedicine technology."

#### **Summary of Proposal**

Effective July 2, 2012, the Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to use the telemedicine delivery system for providers enrolled under the Delaware Medical Assistance Program (DMAP).

The Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 3.1-A of the Medicaid State Plan to clarify that qualifying provider services include any covered state plan services that would typically be provided to an eligible individual in a face-to-face setting by an enrolled provider.

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

#### **Fiscal Impact Statement**

This revision imposes no increase in cost on the General Fund as current policy allows for the use of telemedicine.

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**DMMA PROPOSED REGULATION #14-25****REVISION:**

ATTACHMENT 3.1-A

Introductory Page 2

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: DELAWARE****TELEMEDICINE – CONTINUED****PROVIDER QUALIFICATIONS**

In order to provide telemedicine under DMAP, providers at both the originating and distant site must be enrolled with DMAP or have contractual agreements with the managed care organizations (MCOs) and must meet all requirements for their discipline as specified in the Medicaid State Plan.

For services delivered through telemedicine technology from DMAP or MCOs to be covered, healthcare practitioners must:

- Act within their scope of practice;
- Be licensed (in Delaware, or the State in which the provider is located if exempted under Delaware State law to provide telemedicine services without a Delaware license) for the service for which they bill DMAP;
- Be enrolled with DMAP/MCOs;
- Be located within the continental United States.

**COVERED SERVICES**

DMAP covers medically necessary telemedicine services and procedures covered under the Title XIX State Plan. Qualifying provider services include any covered State Plan services that would typically be provided to an eligible individual in a face-to-face setting by an enrolled provider. Telemedicine is not limited based on the diagnosed medical condition of the eligible recipient. All telemedicine services must be furnished within the limits of provider program policies and within the scope and practice of the provider's professional standards as described and outlined in DMAP Provider Manuals which can be found at:

<http://www.dmap.state.de.us/downloads/manuals.html>

**NON-COVERED SERVICES**

If a service is not covered in a face-to-face setting, it is not covered if provided through telemedicine. A service provided through telemedicine is subject to the same program restrictions, limitations and coverage which exist for the service when not provided through telemedicine.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**PUBLIC NOTICE****Increased Medicaid Payment for Primary Care Services – Section 1202 of the Affordable Care Act**

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 Title XIX Medicaid State Plan regarding *additional codes eligible for enhanced primary care payments*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by July 31, 2014.

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

### **SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan regarding Increased Medicaid Payment for Primary Care, specifically, *Additional Codes Eligible for Enhanced Primary Care Payments*.

#### **Statutory Authority**

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*
- 42 CFR 447.405, *Amount of required minimum payments*
- 42 CFR 447.410, *State plan requirements*
- 42 CFR 447.415, *Availability of Federal financial participation (FFP)*

#### **Background**

In compliance with Section 1202 of the Patient Protection and Affordable Care Act, Delaware Health and Social Services/Division of Medicaid and Medical Assistance increased certain Medicaid primary care and vaccine administration payments made to designated providers to 100% of the Medicare physician fee schedule in effect as of January 1, 2013 through December 31, 2014. To implement this increase, the Centers for Medicare and Medicaid Services approved Delaware's state plan amendment on June 24, 2013 with an effective date of the increase retroactive to January 1, 2013. The services eligible for the rate increase are billed under the Healthcare Common Procedures Coding System (HCPCS) Evaluation and Management (E & M) codes and also apply to the administration of vaccines under the Vaccines for Children Program.

#### **Summary of Proposal**

Recent guidance from the Centers for Medicare and Medicaid Services (CMS), dated April 14, 2014, advises that if a state uses vaccine product codes to pay for vaccine administration that it must submit a new section 1202 of the Affordable Care Act (ACA) state plan amendment (SPA) when those product codes change. Also, a state must submit a revised SPA page updating that list of codes eligible for higher payment if it chooses to provide coverage for a new Current Procedural Terminology (CPT) billing code that is within the range of Evaluation and Management (E & M) codes specified in the law and regulation.

Therefore, pursuant to public notice requirements of 42 CFR §447.205, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives notice of a significant proposed change in its method and standards for setting payment rate for services.

DHSS/DMMA intends to submit a SPA to CMS to comply with certain provisions in the Affordable Care Act. With an effective date of the increase retroactive to January 1, 2014, this SPA includes the following additional Evaluation and Management (E & M) and vaccine product codes to the list of eligible codes for enhanced primary care payments:

*Evaluation and Management Codes*

99481

99482

*Vaccine Code*

90673

The provisions of this state plan amendment relating to methodology and payment of the enhanced Medicaid rates are subject to approval by CMS.

## Fiscal Impact Statement

Due to the availability of 100% FMAP for these primary care services, the DMMA projects no fiscal impact on the General Fund in Calendar Year 2014.

## DMMA PROPOSED REGULATION #14-24

### REVISION:

ATTACHMENT 4.19-B

Introduction - Page 4

OMB No. 0938-1148

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

### METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE

#### Physician Services

Increased Primary Care Service Payment 42 CFR 447.405, 447.410, 447.415

Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment Continued  
(Primary Care Services Affected by this Payment Methodology – continued)

- The state will make payment under this SPA for the following codes which have been added to the fee schedule since July 1, 2009 (specify code and date added).

99408 - Added October 10, 2010

90673 - Added January 1, 2014

99409 - Added October 10, 2010

99481 - Added January 1, 2014

99224 - Added January 1, 2011

99482 - Added January 1, 2014

99225 - Added January 1, 2011

99226 - Added January 1, 2011

#### Physician Services – Vaccine Administration

For calendar years (CYs) 2013 and 2014, the state reimburses vaccine administration services furnished by physicians meeting the requirements of 42 CFR 447.400(a) at the lesser of the state regional maximum administration fee set by the Vaccines for Children (VFC) program or the Medicare rate as implemented by the state in CYs 2013 and 2014.

- Medicare Physician Fee Schedule rate as implemented by the state and using the 2009 conversion factor.  
 State regional maximum administration fee set by the Vaccines for Children program.

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# PROPOSED REGULATIONS

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)p (16 Del.C. §122(3)p)  
16 DE Admin. Code 4405

### PUBLIC NOTICE

#### 4405 Free Standing Surgical Centers

The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to the State of Delaware Regulations Governing Free Standing Surgical Centers. Due to the extensive number of amendments the Division has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. The purpose of the amendments is to update the requirements so that they are in concert with current healthcare standards and to align them more closely with current federal requirements. On July 1, 2014, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the July 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Thursday, July 31, 2014 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4913

#### 4405 Free Standing Surgical Centers

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

#### 4405 Free Standing Surgical Centers

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Food Supplement Program Determining Income Deductions

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Determining Income Deductions*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by July 31, 2014.

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

## SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Determining Income Deductions*.

### Statutory Authority

- Agricultural Act of 2014, P.L. 113-79, enacted February 7, 2014
- 7 USC 2014(e)(6)(C), *Standard utility allowance*
- 7 CFR §273.9(d), *Income and deductions*

### Background

Delaware's Food Supplement Program, formerly known as food stamps, is operated under the provisions of the Food and Nutrition Act of 2008, as amended, and is administered by the Food and Nutrition Service (FNS) under the United States Department of Agriculture (USDA). The Delaware Division of Social Services (DSS) is responsible for the administration of the Food Supplement Program (FSP), including, but not limited to certification of applicant households and issuance, control, and accountability of FSP benefits.

Please note that the Supplemental Nutrition Assistance Program (SNAP) is the federal name for the food benefit program. State programs may have different names.

### *Low Income Home Energy Assistance Program (LIHEAP) and Supplemental Nutrition Assistance Program (SNAP)*

The connection between the Low Income Home Energy Assistance Program (LIHEAP) and Supplemental Nutrition Assistance Program (SNAP) was originally established in 1985 in order to provide a simpler way for States and applicants to determine household utility costs. Receipt of LIHEAP benefits is intended to serve as a reasonable proxy for the actual utility costs that a household incurs. As a result, in lieu of demonstrating actual utility costs, receipt of LIHEAP benefits may be used to trigger the higher heating and cooling Standard Utility Allowance (HCSUA), and thereby increase the SNAP deductions for which households may be eligible.

On February 7, 2014, President Obama signed the Agriculture Act of 2014 ("Act") referenced as the Farm Bill. Section 4006 of the Act requires that households receive a payment greater than twenty dollars (\$20.00) annually in Low Income Heating Assistance Program (LIHEAP) benefits or in other similar energy assistance benefits in the current month or in the immediately preceding twelve (12) months in order to automatically qualify for the HCSUA based on receipt of LIHEAP. This change took effect thirty (30) days after enactment (March 10, 2014) and applies to certification periods that begin on or after that date.

This provision was intended to prevent the issuance of nominal LIHEAP payments in order to automatically qualify SNAP households for the SUA.

### Summary of Proposed Changes

Food and Nutrition Service (FNS) regulations allow that States may accept receipt of Low Income Home Energy Assistance Program (LIHEAP) benefits or other similar energy assistance benefits as verification of a utility expense. Verification of a utility expense allows a SNAP household to claim the Heating Cooling Standard Utility Allowance (HCSUA). For many households, claiming the HCSUA increases the amount of monthly food benefits the household receives.

The Agriculture Act of 2014, section 4006, created additional conditions households must meet to be able to claim the HCSUA as a result of receipt of LIHEAP. Specifically the LIHEAP payment must be greater than twenty dollars (\$20.00), and the household member must have received the LIHEAP benefit in the current month or in the immediately preceding twelve (12) months.

FNS issued the following memorandum, dated April 7, 2014, to serve as formal guidance for use by State agencies as they implement the provisions of Section 4006:

[http://www.fns.usda.gov/sites/default/files/LIHEAP Questions and Answers.pdf](http://www.fns.usda.gov/sites/default/files/LIHEAP_Questions_and_Answers.pdf)

**DSSM 9060, *Determining Income Deductions*:** To be compliant with section 4006 of the Agriculture Act of 2014 the Division of Social Services (DSS) is amending policy 9060 to include that the LIHEAP payment must be greater than twenty dollars (\$20.00), and the household member must have received the LIHEAP benefit in the current month or in the immediately preceding twelve (12) months.

The applicable federal citation is also revised to be more precise.

## DSS PROPOSED REGULATION #14-22

### REVISION:

#### 9060 Determining Income Deductions

~~[273.9(d)]~~ 7 CFR 273.9(d)

This policy applies to all households applying for food benefits.

DSS will deduct the following from the household's income:

- Standard deduction
- Earned income deduction
- Excess Medical
- Dependent Care
- Child Support Payments
- Shelter Costs
- Standard utility allowances
- Costs of Unoccupied Homes and Disaster Repairs.

#### A. GIVING THE STANDARD DEDUCTION

This policy applies to all Food Supplement Program (FSP) households with income.

1. Give each household a standard deduction that is deducted from any income the household has.
2. Food and Nutrition Service (FNS) determines the amount of the standard deduction published each October in the Cost-of-Living Adjustment Administrative Notice.

#### B. CALCULATING THE EARNED INCOME DEDUCTION

This policy applies to FSP households with earned income.

1. Allow all households with earned income a twenty percent (20%) earned income deduction.
2. Give the earned income deduction to self-employed individuals after the standard business deduction.

**Exception:** Do not give the earned income deduction to individuals with rental income when they do not manage the property at least twenty (20) hours a week. The rental income is considered unearned income.

#### C. DETERMINING EXCESS MEDICAL DEDUCTION

This policy applies to individuals who are elderly or disabled and eligible for food benefits.

1. Give a medical deduction for unreimbursed medical expenses in excess of thirty-five dollars (\$35.00) per month.



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2. Give the medical deduction only to individuals who are age sixty (60) or older or receiving a disability payment.
  3. Do not give the medical deduction to spouses or other persons receiving benefits as a dependent of the disabled recipient.
  4. Give the medical deduction to persons receiving emergency SSI benefits based on presumptive eligibility.
  5. Allow the following medical expenses as a deduction:
    - Medical and dental care, including psychotherapy and rehabilitation services, provided by a licensed practitioner or other qualified health professional.
    - Hospitalization, outpatient treatment, nursing home care (including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State).
    - Prescription drugs and over-the-counter medication when approved by a licensed practitioner or other qualified health professional.
    - Cost of medical supplies and sick room equipment (including rental costs) are deductible (when approved by a licensed practitioner or other health professional).
    - Health and hospitalization insurance are deductible, but health and accident insurance policies such as income maintenance or death or dismemberment policies are not deductible.
    - Medicare premiums, cost-sharing or spend down expenses incurred by Medicaid recipients,
    - Dentures, hearing aids and prosthetics.
    - Costs of securing and maintaining a seeing-eye or hearing dog, including dog food and veterinary bills.
    - Eye glasses prescribed by a physician skilled in eye disease or by an optometrist.
    - Reasonable costs of transportation and lodging in order to obtain medical treatment or services, which includes: trips to doctors or dentists, trips to fill prescriptions for medicine, dentures, hearing aids or eye glasses, and mileage using the standard state allowance privately-owned vehicles.
    - Maintaining an attendant, homemaker, home health aide, housekeeper, or child care services necessary due to age, infirmity, or illness.
    - An amount equal to the one-person food benefit allotment if the household furnishes the majority of the attendant's meals, update at recertification.

NOTE: If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, treat the costs as a medical expense.

#### D. DETERMINING DEPENDENT CARE DEDUCTION

This policy applies for households with dependent care expenses.

1. Allow the dependent care costs only when necessary for employment, training or educational purposes.

Allow the dependent care costs when needed to:

  - Seek employment,
  - Accept employment,
  - Continue employment,
  - Comply with the employment and training requirements, or
  - Attend training or pursue education which is preparatory to employment.
2. Give the actual costs the household pays for the dependent care deduction.

#### E. HOMELESS SHELTER DEDUCTION

This policy applies to households in which all members are homeless and have limited shelter expenses.

1. Allow homeless households with limited shelter expenses a homeless shelter deduction of ~~\$143~~ one hundred forty-three dollars (\$143.00).

2. Give homeless households the ~~\$143~~ one hundred forty-three dollars (\$143.00) homeless shelter deduction when their anticipated monthly shelter expenses are at or less than ~~\$143~~ one hundred forty-three dollars (\$143.00).
3. Allow homeless households that incur monthly expenses greater than ~~\$143~~ one hundred forty-three dollars (\$143.00) the regular shelter expense deduction.
4. Do not give the homeless shelter deduction to households that are provided free housing and utilities or households that work for their shelter.

## F. DETERMINING SHELTER DEDUCTION

This applies to households who have shelter costs.

1. Give a shelter deduction for costs that exceed fifty percent (50%) of the household's countable income up to the maximum excess shelter limit.
2. Give households with a member who is age sixty or older or disabled (Per DSSM 9013) the excess shelter deduction for costs that exceed fifty percent (50%) of the household's countable income with no limit.
3. Allow continuing charges for the shelter occupied by the household that lead to the ownership of the shelter.

Continuing charges will include:

- Rent,
- Mortgages,
- Condo and association fees,
- Loan repayments for the purchase of a mobile home,
- Second mortgages,
- Home equity loans. and
- Interest on such payments.

A mortgage is defined as any loan which uses the house as collateral.

4. Do not allow security deposits as a shelter deduction.
5. Allow property taxes, state and local assessments, and insurance on the structure of the dwelling as shelter deductions.
  - If separate insurance costs for furniture or personal belongings are not identified, use the total.
  - Local assessments include, but are not limited to, regular school taxes and an annual school capitation tax.

## G. DETERMINING THE MANDATORY UTILITY AND PHONE ALLOWANCE

This policy applies to households with utility or phone expenses.

1. Give the heating and cooling standard utility allowance (HCSUA) to the following households:
  - Households that have heating or cooling costs separate and apart from their rent or mortgage payments.
  - Residents of private rental housing billed on a monthly basis by their landlords for actual usage or who are charged a flat rate;
  - Households receiving energy payments under the Low Income Home Energy Assistance Program (LIHEAP) in the current month or in the immediately preceding twelve (12) months of an amount greater than twenty dollars (\$20.00).
  - Households receiving energy direct or indirect energy assistance payments of an amount greater than twenty dollars (\$20.00) like HUD utility reimbursements, other than LIHEAP, that is excluded as income and who continue to incur any out-of-pocket heating or cooling expenses ~~during any month in the previous twelve (12) months; and~~ in the current month or in the immediately preceding twelve (12) months; and
  - Households living in public housing or other rental housing units that has central utility meters and charges the household only for excess heating or cooling costs.

Accept the household's statement that they pay for cooling.

2. Give the limited utility allowance (LUA) to households that have costs for two non-heat or non-cooling utilities.
3. Give the one-utility standard to households that have only one non-heat, non-cooling, or non-telephone utility.
4. Give the telephone allowance to households with only telephone costs.
5. Do not prorate the utility or phone allowances when more than one household shares living quarters, including prorated deemers.

**NOTE: Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility and phone allowance amounts**

## H. ALLOWING DEDUCTIONS FOR UNOCCUPIED HOMES AND DISASTER REPAIRS

This policy applies to households claiming expenses for unoccupied homes.

1. Allow shelter costs of the home if not occupied by the household for the following reasons:
  - Employment or training away from home,
  - Illness, or
  - Abandonment caused by a natural disaster or casualty loss.
2. Allow the shelter costs for the unoccupied home with the following conditions: The household must intend to return to the home;
  - The current occupants of the home, if any, must not be claiming the shelter costs for food benefit purposes; and
  - The home must not be leased or rented during the absence of the household.
3. Give only one standard utility allowance to households that have both an occupied home and an unoccupied home.
4. Allow deductions for charges for the repair of the home substantially damaged or destroyed by a natural disaster such as a flood or fire with the following conditions:
  - A. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.
  - B. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

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### DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Child Care Subsidy Program; Prioritizing Service Needs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Prioritizing Service Needs*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by July 31, 2014.

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

## SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Prioritizing Service Needs*.

### Statutory Authority

45 CFR §98.20, *A child's eligibility for child care services*

45 CFR §98.44, *Priority for child care services*

### Background

Delaware Health and Social Services ("DHSS")/Division of Social Services ("DSS") is designated as the lead agency with primary responsibilities for the planning and administration of child care subsidies funded with the Child Care Development Fund.

The Child Care and Development Fund ("CCDF") Block Grant Act of 1990, as amended, 42 USC § 9858b (b)(1)(A), (the "Act") requires the Lead Agency to "administer, directly, or through other governmental or non-governmental agencies" the funds received. The regulations at 45 CFR 98.11 provide that, in addition to retaining "overall responsibilities" for the administration of the program, the Lead Agency must also (among other things) promulgate all rules and regulations governing the overall administration of the CCDF program.

### Summary of Proposed Changes

**DSSM 11004.3.1, *Service Priorities Prioritizing Service Needs***, is amended and updated to clarify priority for subsidized child care services to include teen parents enrolled in or attending middle school or high school and parent/caretakers enrolled in and participating in a General Education Diploma (GED) program.

Additionally, the following changes are made:

- the section title is changed to more accurately reflect the content of the policy;
- the applicable federal citations are added to the policy section;
- the outdated term (acronym) "Food Stamp (FS)" is removed and replaced with the current term (acronym) "Food Supplement Program (FSP)";
- the term "Family Services" is removed and replaced with the more precise term "Division of Family Services"; and,
- this section is relettered and renumbered to accommodate the new format.

### DSS PROPOSED REGULATION #14-23

#### REVISION:

#### **11004.3.1 *Service Priorities Prioritizing Service Needs***

45 CFR 98.20

45 CFR 98.44

~~In addition to the eligibility questions in Section 11004.3, determine if the applicant meets a priority for service. If the applicant has a need, but is not a service priority, services may be delayed. Delay services by placing non-service priority applicants on a waiting list while authorizing service for those who are a priority. The following families qualify for priority service:~~

- ~~A. TANF recipients who are Workfare mandatory and not working (Category 11);~~
- ~~B. TANF recipients who are working; (Category 12);~~
- ~~C. Individuals receiving FS who are mandatory E&T participants; (Category 21);~~
- ~~D. Families in Category 31 with the following need for service:~~
  - ~~1. teen parents who attend high school or ABE or GED programs,~~

- ~~2. special needs parent/caretaker or child, and~~
- ~~3. homeless families as defined in Section 11003.7.2;~~
- ~~4. families who meet the 40% of FPL criteria in Section 11004.7~~

~~protective children as referred by Family Services up to the number agreed upon between DSS and Family Services.~~

~~Parents/caretakers in the above circumstances will continue to receive child care services as long as they meet the service need and they continue to meet program requirements, e.g., they continue in Food Stamp Employment & Training (FS E&T).~~

This policy applies to all Child Care Assistance applicants who may experience a delay in service due to a wait list.

DSS Requires When There Is A Wait List That Certain Groups Be Given Priority. Applicants Will Be Referred To A Waitlist If Their Need For Child Care Does Not Meet One (1) Of The Requirements.

Parents/Caretakers on the list below will continue to receive Child Care Assistance as long as they meet all eligibility requirements.

A. The following groups are given priority:

1. TANF applicants and recipients who are Employment and Training (E&T) Mandatory and not working (Category 11);
2. TANF recipients who are working (Category 12);
3. Individuals receiving Food Benefits (FB) who are mandatory E&T participants (Category 21);
4. Teen parents who are attending middle school or high school;
5. Parent/Caretakers or child with special needs as defined in DSSM 11003.7.8;
6. Homeless families as defined in DSSM 11003.7.2;
7. Families who meet the 40% of FPL criteria as defined in DSSM 11004.7;
8. Division of Family Services (DFS) may refer children to DSS for protective Child Care up to the number agreed upon by both Divisions.

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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### DIVISION OF STATE POLICE

#### 5500 Bail Enforcement Agents

Statutory Authority: 24 Delaware Code, Section 5504(a) (24 **Del.C.** §5504(a))  
24 **DE Admin. Code** 5500

#### PUBLIC NOTICE

#### 5500 Bail Enforcement Agents

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to amend Adopted Rule 4.0 – Firearms Policy, Adopted Rule 5.0 – Nightstick, PR 24, Mace, Peppergas, Chemical Spray, and Handcuffs. The amendment to Rule 4.0 specifies the shoot dates and who the instructors are approved by; Rule 5.0 specified who the instructors are approved by. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by July 31, 2014, to Delaware State Police, Professional Licensing Section, P.O. Box 430,

Dover, DE 19903. The Board will hold its quarterly meeting Thursday, August 28, 2014, 10:00 am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

## 5500 Bail Enforcement Agents (Break in Continuity of Sections)

### 4.0 Firearms Policy

- ~~4.1 No person shall carry a firearm under this chapter unless the individual first completed and passed an approved 40-hour firearm course, instructed by a certified firearm instructor, recognized by the Professional Licensing Section. The initial qualification shoot may be used to fulfill one day and one low light requirement during the first year.~~
- ~~4.2 All persons licensed to carry a firearm under this chapter must be re-certified yearly, by an instructor as described in Section 4.1, by shooting a minimum of three (3) qualifying shoots a year. The shoots must be scheduled on at least two (2) separate days, with a minimum 90 days between scheduled shoots. Of the three (3) shoots, there shall be one mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. The minimum passing score is 80%.~~
- ~~4.2.1 All renewal shoot sheets must be submitted by January 31st of each year for the previous calendar year.~~
- ~~4.2.2 Any person not meeting the minimum qualifications set forth in 4.2 may have their firearms certification suspended until such time that they meet the minimum three (3) qualifying shoots within the calendar year.~~
- ~~4.3 The only approved firearms that may be carried shall be either a revolver or semi-automatic handgun and be maintained to factory specifications. Only the handguns with the following calibers are permitted:~~
- ~~4.3.1 9mm~~
- ~~4.3.2 .357~~
- ~~4.3.3 .38~~
- ~~4.3.4 .40~~
- ~~4.3.5 .45~~
- ~~4.4 All ammunition will be factory fresh (no re-loads).~~
- ~~4.5 All persons must carry the same firearm that they qualify with (this will be noted by the serial number of each firearm on the shoot sheets).~~
- ~~4.6 All persons must undergo a drug screening for certification and re-certification. The screening results shall be submitted with the firearms certification/re-certification forms to the Professional Licensing Section. A copy of any drugs prescribed by a medical doctor shall be provided, if necessary.~~
- 4.1 No individual licensed under 24 Del.C. Ch. 55 shall carry a firearm unless the individual has first passed an approved firearms course of instruction and an initial qualification administered by an approved certified firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement).
- 4.2 All individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per calendar year, scheduled on at least two (2) separate days, with a minimum 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot and may be combined with a day shoot. Two day shoots may NOT be on the same day. Simulation is permitted. The initial qualification shoot may be used to fulfill one day and one low light requirement during the first year.
- 4.2.1 All renewal shoot sheets must be submitted to the Professional Licensing Section by January 31<sup>st</sup> of each year for the previous calendar year.

- 4.2.2 An individual not meeting the minimum qualifications set forth in 4.2 may have their firearms license suspended until such time that they meet the minimum three (3) qualifying shoots within the calendar year.
- 4.3 Only the handguns with the following calibers are permitted:
- 4.3.1 9mm;
- 4.3.2 .357;
- 4.3.3 .38;
- 4.3.4 .40; or
- 4.3.5 45.
- 4.4 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 4.5 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 4.6 All individuals must qualify with the same make/model/caliber of weapon that he/she will carry.
- 4.7 All ammunition will be factory fresh (no re-loads).
- 4.8 The minimum passing score is 80%.
- 4.9 Firearms Instructors
- 4.9.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), and/or another professional firearms training institution as a "certified firearms instructor".
- 4.9.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified handgun instructor may only instruct and qualify individuals with the handgun.)
- 4.9.3 All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals issued an ID card, license and badge under 24 **Del.C.** Ch. 55.
- 5.0 **Nightstick, Pr24, Mace, Peppergas, Chemical Spray, And Handcuffs**
- ~~To carry the above weapons/items, a bail enforcement agent must have completed training, by a Professional Licensing Section approved instructor on each and every weapon/item carried. Proof of training, and any renewal training, must be provided to the Professional Licensing Section. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Professional Licensing Section.~~
- 5.1 To carry the above weapons/items a BEA must have completed a training program on each and every weapon/item carried and all certifications must be on file in the Professional Licensing Section to be valid to carry/use. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Professional Licensing Section.
- 5.2 Weapon/Item Instructors
- 5.2.1 All weapon/item instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 24 **Del.C.** Ch. 13.

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

**5500 Bail Enforcement Agents**

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# PROPOSED REGULATIONS

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## DEPARTMENT OF STATE DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Statutory Authority: 30 Delaware Code, Section 1815(b) (30 **Del.C.** §1815(b))

### PUBLIC NOTICE

#### 100 Historic Preservation Tax Credit Program

**Title:**

Amendments to the Regulations Governing the Historic Preservation Tax Credit

**Brief Synopsis:**

The Historic Preservation Tax Credit Act (30 **Del.C.** Ch. 18, Subch. II) was first enacted by the General Assembly in 2001 and was amended in 2002, 2003, 2004, 2005 and 2010. Program regulations were adopted on July 11, 2002 (6 **DE Reg.** 108 published 07/01/02), and were amended on July 11, 2004 (8 **DE Reg.** 194 published on 07/01/04), on January 11, 2005 (8 **DE Reg.** 1031 published 01/01/05), and on October 11, 2010 (14 **DE Reg.** 485, published 11/01/2010). The 2014 amendments to the legislation provide for revisions to §1816(a) to set aside a portion of the available tax credits for projects located in Downtown Development Districts. The purpose of the following proposed regulatory amendments is to implement the code changes of 2014 and to clarify or to make minor editorial changes to various sections of the regulations. The proposed amendments address the changes to the way in which credits are awarded under this program in new section 7.9 with an associated definition added to section 3.0. As to the clarification of the regulations, the proposed amendments modify seven sections of the regulations (3.0, 5.8, 7.2, 7.4-7.8, and 11.1) and editorial changes have been made to twelve sections of the regulations (1.0, 3.0, 4.5, 5.8, 6.1-6.5, 7.1, 7.3, 8.1). The Historic Preservation Tax Credit Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate a certified historic property.

**Statutory Basis or Legal Authority to Act:**

30 **Del.C.** Ch. 18, Subch. II, §1815(b)

**Other Regulations that may be Effected by the Proposal:**

The State Bank Commissioner and the Division of Revenue may adopt regulations or issue guidelines for tax elements of the Historic Preservation Tax Credit Act.

**Notice of Public Comment:**

**PLEASE TAKE NOTICE**, pursuant to 29 **Del.C.** Ch. 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider all written comments on the proposed rules and regulations related to implementation of amendments to the Historic Preservation Tax Credit Act. Submit comments to the Division in care of Timothy A. Slavin, Director, Division of Historical and Cultural Affairs, 21 The Green, Dover, DE 19901. The final date to submit comments is July 30, 2014. Anyone wishing to obtain a copy of the proposed amendments to the rules and regulations should notify Timothy A. Slavin at the above address or call 302-736-7400. This notice will be published in two newspapers of general circulation.

**Prepared by:**

Timothy A. Slavin, Director  
302-736-7400  
July 1, 2014



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## 100 Historic Preservation Tax Credit Program

### 1.0 Scope

With permission of the property owner, a person or business entity who rehabilitates a certified historic property may apply for a credit against personal Delaware State income tax or bank franchise tax liabilities according to procedures and criteria established in these regulations and those that may be promulgated by the Division of Revenue or the State Bank Commissioner. ~~Any~~ A person eligible for tax credits under this Chapter, except a person engaged in a resident curator relationship, may transfer, sell or assign ~~any~~ a portion or all unused credits.

### 2.0 Statutory Authority

These regulations are created pursuant to 30 **Del.C.** Ch. 18, Subch. II, which authorizes the Division of Historical and Cultural Affairs to promulgate regulations for implementation of the provisions of this subchapter (except tax-related procedures) including, but not limited to, setting of fees and development of standards for the rehabilitation of eligible historic properties. The subchapter further authorizes the Division of Historical and Cultural Affairs to promulgate the application and forms governing participation in the certification program.

### 3.0 Definitions

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

**"Act"** ~~shall~~ means the 30 **Del.C.** Ch. 18, Subch. II.

**"Application"** ~~shall~~ means the Delaware Historic Preservation Tax Credit application that shall consist of four parts, as follows: the Request for Certification of Historic Property (Part 1); the Request for Certification of Rehabilitation (Part 2); the Request for Certificate of Completion (Part 3), and the Request for Credit Award.

**"Building"** means created principally to shelter any form of human activity.

**"Certified historic property"** shall mean a property located within the State of Delaware that is:

- individually listed in the National Register of Historic Places; or
- located in a historic district listed in the National Register of Historic Places and certified by the United States Secretary of the Interior as contributing to the historic significance of that district; or
- individually designated as a historic property by local ordinance and certified by the State Office as meeting the criteria for inclusion in the National Register of Historic Places; or
- located in a historic district set apart or registered by a local government, which historic district is certified by the State Office as meeting the criteria for inclusion in the National Register and which property contributes to the historic significance of ~~such~~ the historic district.

**"Certification of Completion"**, or **"Certificate of Completion"** ~~shall~~ means the certificate issued by the Delaware State Historic Preservation Officer attesting that the certified rehabilitation, or, if applicable, a phase thereof of the certified rehabilitation project, has been completed, and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credits under Section 47 of the Internal Revenue Code (26 USC 47) (whether or not ~~such~~ the project would be eligible for ~~such~~ the federal tax credit) has been obtained.

**"Certified rehabilitation"** ~~shall~~ means rehabilitation of a certified historic property, or portion ~~thereof~~ of the property, that has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation, and is in conformance with the Secretary of the Interior's Standards for Rehabilitation (36 CRF 67) or ~~such~~ other standards as the State Office shall from time to time adopt.

**"Credit award"** ~~shall~~ means the amount of qualified expenditures as determined by the State Office as part of the Part 2 approval multiplied by the appropriate percentage as determined in 30 **Del.C.** §1813.

**"Delaware State Historic Preservation Officer"** ~~shall~~ means the person designated and appointed in accordance with National Historic Preservation Act of 1966, as amended (16 USC §470a(b)(1)(A)).

## PROPOSED REGULATIONS

The Delaware State Historic Preservation Officer is an appointed position held by the Director, Division of Historical and Cultural Affairs.

**"Downtown Development District"** or **"DDD"** means an area within a municipality or unincorporated area designated by the governor as a Downtown Development District under 79 Del. Laws c. 240.

**"Federal tax credit"** shall mean the Federal Rehabilitation Tax Credit as defined in the United States Tax Code, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart E, Section 47 (26 USC 47).

**"Fiscal Year"** shall mean the State of Delaware's fiscal year.

**"National Register of Historic Places"** or **"National Register"** shall mean the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, as amended (16 USC §470(a)(1)(A)).

**"Office"** or **"State Office"** shall mean the Delaware State Historic Preservation Office, which is a part of the Division of Historical and Cultural Affairs.

**"Owner-occupied historic property"** shall mean any a certified historic property, or any portion thereof of the property, which is being used, or within a reasonable period will be used, by an applicant as the applicant's principal residence. Such The property may consist of part of a multiple dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such that portion shall be eligible under this subchapter to apply for tax credits calculated at the percentage available to owner-occupants.

**"Person"** or **"applicant"** shall mean any an individual; any form of company or corporation which is lawful within the State of Delaware (including limited liability companies and S corporations) whether or not for profit; any form of partnership which is lawful within the State of Delaware (including limited liability partnerships) whether or not for profit; any trust or estate; and any lawful joint venture. "Person" or "applicant" shall also mean any a non-state governmental entity; or any a pass-through entity or person under a lease contract for five years or longer.

**"Phased rehabilitation"** shall mean any a certified rehabilitation of a certified historic property reasonably expected to be completed in two or more distinct stages of development as more fully described in Treasury Regulation 1-48-12(b)(v) or any a successor provision.

**"Property"** shall mean real estate and shall include any building or structure which meets the definition in this section, including multiple-unit structures buildings.

**"Qualified expenditure"** shall mean any an amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

- acquisition of real property or acquiring an interest in real property, or any costs associated with the acquisition of the property;
- any additions to an existing structure except where the combined square footage of all additions is 20% or less than the total square footage of the historic portion of the property and each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:
  - preserving the character-defining features of the certified historic property,
  - adequately differentiating the new construction from the existing structure, and
  - complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;
- sitework, paving or landscaping costs in excess of 10% of the total qualified expenditures;
- sales and marketing costs; or
- an expenditure not properly charged to a capital account, including, in the case of owner-occupied property, an expenditure that would not properly be charged to a capital account where the person using such the property is in a trade or business.

**"Reasonable period"** shall mean that an owner must shall occupy the rehabilitated property as their principal residence within six months of the issuance of the Certificate of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause.

“**Resident Curator**” ~~shall~~ means a person who has entered into a contractual agreement with the owner of a certified property in which the person agrees to pay for full restoration of the owner’s property in exchange for a life tenancy in the property without remunerative compensation to the owner for the life tenancy.

“**Substantial rehabilitation**” or “**full restoration**” ~~shall~~ means rehabilitation of a certified historic property for which the qualified expenditures, during the 24-month period, or the 60-month period for a phased rehabilitation, selected by the applicant exceeds:

- for income-producing property, the current standard required by Section 47(c)(1)(C) of the Internal Revenue Code (26 USC 47(c)(1)(C)); and
- for owner-occupied historic property, non-income producing property, or property under contract with a resident curator, a minimum expenditure of \$5,000.

“**Taxpayer**” ~~shall~~ mean ~~any~~ a person, as defined in this section, and shall include ~~any~~ an individual or corporation taxable under Title 5, or taxable under either 30 **Del.C.** Ch. 11, or 30 **Del.C.** Ch. 19.

#### **4.0 Procedures for Certification of Historic Property**

- 4.1 With permission of the property owner, an applicant may submit a Part 1 application to the State Office requesting that the State Historic Preservation Officer certify that a property in a National Register listed or locally designated historic district is a certified historic property as defined in Section 3.0 of this regulation. The applicant shall file the Part 1 application on standard forms developed by the State Office.
- 4.2 The State Office shall not process an incomplete Part 1 application until all required application information is received. Where adequate documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete the review.
- 4.3 The Delaware State Historic Preservation Officer shall determine whether the property for which a complete Part 1 application is received meets the definition of certified historic property and shall notify the applicant of the decision.
- 4.4 If a property is individually listed in the National Register, submission of a Part 1 application is not required.
- 4.5 The Delaware State Historic Preservation Officer may certify as historic ~~any~~ a property for which an applicant has obtained a Part 1 certification from the federal government pursuant to 36 CFR 67. Under this provision, an applicant shall file only the cover page of the Delaware Part 1 application.

#### **5.0 Procedures for Certification of Rehabilitation**

- 5.1 An applicant may submit a Part 2 application to the State Office requesting that the Delaware State Historic Preservation Officer determine if a proposed rehabilitation plan meets the criteria as a certified rehabilitation as defined in Section 3.0 of this regulation. The applicant shall file the Part 2 application on standard forms developed by the State Office.
- 5.2 An applicant shall submit Part 1 of the application prior to, or with, Part 2. The State Office shall not process the Part 2 application until an adequately documented and approved Part 1 application, where required as outlined in Section 4.4 of these regulations, is on file.
- 5.3 The State Office shall not process an incomplete Part 2 application until all required application information is received. Where adequate documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete review.
- 5.4 Applicants may submit subsequent Part 2 applications for the same property as long as the following criteria are met:
  - For certified properties held for income (depreciable properties, as often as the project work qualifies for income tax credits under Section 47(c)(1)(C) of the Internal Revenue Code (26 USC 47(c)(1)(C))
  - For all other certified properties, no sooner than 24 months from the date of the prior Part 2 approval as long as other program requirements have been met.

- 5.5 An applicant requesting approval of a phased rehabilitation plan shall provide the State Office with a description of the phases and their completion dates when submitting the Part 2 application. The Delaware State Historic Preservation Officer shall notify the applicant if the phased rehabilitation plan is approved. The final completion date for a phased rehabilitation is binding unless the applicant requests a change in writing. For a phased rehabilitation, the applicant is allowed up to 60 months to meet the substantial rehabilitation test.
- 5.6 The Delaware State Historic Preservation Officer shall determine whether the proposed rehabilitation for which a complete application is received under Section 5.1 of this regulation meets the definition of a certified rehabilitation and shall send the applicant notice of the determination. The State Office may require modifications to the plan in order to meet the definition of a certified rehabilitation.
- 5.7 The Delaware State Historic Preservation Officer may issue a Part 2 approval to an applicant who has obtained a Part 2 certification from the federal government pursuant to 36 CFR 67. Under this provision, an applicant shall file only the cover page of the Delaware Part 2 application.
- 5.8 Applicants ~~must~~ shall begin construction on the approved certified rehabilitation plan within one year of receiving the Part 2 approval. If construction on the rehabilitation plan is not substantially commenced and diligently pursued within this time period, the State Historic Preservation Officer may require that the applicant ~~shall~~ forfeit any assigned credit award. Any forfeited tax credits may become available for award to other applicants. Substantially commenced and diligently pursued shall mean the applicant can demonstrate that ~~at~~ a minimum, 25% of the estimated rehabilitation costs was expended within the first year after the tax credits are assigned. The State Office reserves the right to obtain documentation from the applicant supporting the expenditure.
- 5.9 The Delaware State Historic Preservation Officer, or his/her designated representative, may inspect the property to determine if the work is consistent with the approved certified rehabilitation plan, and if the project has substantially commenced and is being diligently pursued.
- 5.10 The applicant may request that the State Office review changes to the project plan after the Part 2 application is approved. The Delaware State Historic Preservation Officer shall determine whether the proposed change meets the definition of a certified rehabilitation and shall send the applicant notice of the determination.

#### **6.0 Procedures for Certification of Completion**

- 6.1 Upon completion of the rehabilitation work outlined in the Part 2 application, or an approved project phase ~~thereof~~, the applicant ~~must~~ shall submit to the State Office a Part 3 application with documentation supporting any conditions in the Part 2 application approval, the form(s) required in the Division of Revenue's regulations indicating the name of the taxpayer who will claim the tax credit, and a final accounting of qualified expenditures.
- 6.2 The State Office shall not process an incomplete Part 3 application until all required application information is received. Where adequate documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete the review. The State Office may inspect the completed project to determine if the work meets the definition of a certified rehabilitation.
- 6.3 Upon approval by the State Office that the completed rehabilitation, or an approved phase ~~thereof~~, meets the definition of a certified rehabilitation, the State Office shall submit the documentation of qualified expenditures to the Division of Revenue and request a determination of the value of the tax credit for the completed project or an approved phase ~~thereof~~, meets the definition of a certified rehabilitation, the Delaware State Historic Preservation Officer shall issue a Certificate of Completion for the project, or approved phase ~~thereof~~. For approved phased rehabilitations, each phase must receive a Certificate of Completion in order for the overall project to be considered a certified rehabilitation.
- 6.4 After a project, or an approved phase ~~thereof~~, receives its Certificate of Completion, the State Office shall submit the documentation outlined in 6.3 of these regulations to the Division of Revenue, and request a determination of the value of the tax credit for the completed project or an approved phase. For all projects in which the tax credits are to be applied against franchise taxes, and at other times as

requested by the Division of Revenue, the forms and documentation will also be submitted to the State Bank Commissioner's Office.

- 6.5 The Division of Revenue will return the forms certifying the value of the tax credit for the project, or an approved phase thereof, to the State Officer which shall transmit the Certificate of Completion and the Revenue form(s) to the taxpayer who will claim the tax credits.
- 6.6 In the case of approved phased projects, a single rehabilitation project may receive more than one Certificate of Completion. Credits issued to the initial assignee, or in the case of a tax-exempt assignee, to the first taxable transferee after the associated phase completion, are subject to revocation and repayment to the Delaware Division of Revenue or the Office of the State Bank Commissioner if, under regulations issued by the State Office, a phased rehabilitation is not completed by the agreed upon completion date indicating that the applicant for the credit award is unable or unwilling to complete it; or in the event that the project does not meet the certification requirements previously agreed to with the State Office.

## 7.0 Procedures for Requesting a Credit Award

- 7.1 An applicant shall request a credit award by filing a Request for Credit Award application with the State Office. The Request for Credit Award application may be submitted at the same time or subsequent to the submission of the Part 2 application, but no ~~later~~ later than simultaneously with the Part 3 application.
- 7.2 If submitted with the Part 2 application, ~~the~~ applicant shall support the amount of qualified expenditures indicated on the Request for Credit Award by submitting a cost estimate prepared by a licensed architect or engineer; an accountant; a contractor or a certified construction cost estimator. Where the rehabilitation work is complete, documentation of costs may be prepared by a licensed architect or engineer; an accountant; a contractor or a certified construction cost estimator; or may be documented by paid invoices or cancelled checks for contractual work; and store invoices for material purchases. The State Office may prescribe the format in which the documentation of qualified expenditures is submitted. The cost estimate is verified by and may be adjusted by the State Office if documentation is inadequate or costs are disallowed.
- 7.3 The State Office will not process an incomplete Request for Credit Award application until all documentation as required in Section 7.32 of the regulations is received. Where adequate documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete the review.
- 7.4 The credit award is calculated as a percentage of the qualified expenditures and will be rounded down to the nearest whole dollar. The criteria for applying the percentages to establish the credit award are:
- For depreciable (income-producing) certified properties, 20% of qualified expenditures;
  - For depreciable certified properties where the whole or a part, receives low income housing credits, 30% to be applied to that portion of the square footage;
  - For all other certified properties, 30% except where an owner would meet HUD established low income criteria, then 40%: and
  - For resident curators, 100% of the qualified expenses submitted up to \$5,000.

The State Historic Preservation Officer shall notify the applicant of the amount of their credit award.

- 7.5 ~~The State Historic Preservation Officer shall notify the applicant of the amount of the credit award.~~ The Delaware State Historic Preservation Officer ~~will~~ may consider ~~increasing the~~ an increase in a credit award where there has been an increase in qualified costs of greater than 5% of the total.
- 7.6 Despite having been assigned a certain credit award, an applicant may only claim the amount of tax credits which are supported by their actual rehabilitation costs. Excess tax credits made available in these circumstances are not eligible for subsequent award to other applicants.
- 7.7 Each fiscal year, \$100,000 of the \$5 million assigned to make credit awards under these regulations is reserved for distribution to qualified resident curators. If in any fiscal year there are insufficient qualified resident curators to exhaust this allotment, the unused credit amount will be available in the next fiscal year for award to any eligible project.

7.6~~8~~ Each fiscal year, ~~\$2~~ \$1.5 million of the \$5 million assigned to make credit awards under these regulations is reserved for projects receiving a credit award of not more than \$300,000. After April 1, any unassigned portion of the ~~\$2~~ \$1.5 million is released to be available for credit awards to any eligible project.

7.9 Each fiscal year, \$1.5 million of the \$5 million assigned to make credit awards under these regulations is reserved for projects located in Downtown Development Districts, of which \$500,000 is reserved for projects in DDDs receiving tax credits of not more than \$300,000. After April 1, any unassigned portion of the \$1.5 million is released to be available for credit awards to any eligible project.

### **8.0 Fees for Processing Rehabilitation Certification Request**

8.1 The fee for review of rehabilitation work for projects where the qualified expenditures are over \$100,000 is \$250 for each separate application. Final action will not be taken on ~~any~~ an application until the appropriate remittance is received. No fee will be charged for rehabilitation projects where the qualified expenditures are less than \$100,000.

8.2 The applicant shall submit the fee, where applicable, with the Part 3 application. For phased projects, the applicant shall submit the fee with the first Part 3 submitted. All checks shall be made payable to the State of Delaware.

### **9.0 Requirements for Resident Curator Properties**

9.1 Curatorship property is subject to periodic inspection by the State Office during the tax years in which the credit is applicable.

9.2 Improvements to curatorship property shall be completed within five years from the date of execution of the contract between the owner and the resident curator.

9.3 Curatorship property shall not be used for commercial purposes.

### **10.0 Administrative Review**

10.1 A taxpayer whose application is disapproved by the Delaware State Historic Preservation Officer under these regulations may file a written request for review with the Secretary of State or the Secretary's designee within 60 days after the notice of disapproval is sent.

10.2 The Secretary of State or the Secretary's designee shall review the request within 60 days after receipt of the request. If the Secretary of State or the Secretary's designee determines that the application filed meets the standards set forth in these regulations the application shall be considered approved. If the Secretary of State or Secretary's designee determines that the application filed does not meet the standards set forth in these regulations, the application shall be disapproved. The Secretary of State or Secretary's designee shall promptly notify the taxpayer of the Secretary's determination.

10.3 A taxpayer whose application is disapproved by the Secretary of State may appeal that action in accordance with the Administrative Procedures Act, 29 **Del.C.** §10101 et. seq.

10.4 An appellant who exhausts all administrative remedies is entitled to judicial review in accordance with 29 **Del.C.** Ch. 101, Subch. V of the Administrative Procedures Act.

### **11.0 Reporting Requirements**

11.1 Annually, on or before January 31<sup>st</sup>, the Delaware State Historic Preservation Officer shall issue an annual report on the restoration and rehabilitation status of all tax credit projects approved in the previous ~~calendar~~-fiscal year.

11.2 The annual report shall include a list of all tax credit projects issued in previous years for which the tax credits have not been claimed.

11.3 The annual report will be distributed to the Governor and the General Assembly.

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## 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.

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 106A

### REGULATORY IMPLEMENTING ORDER

#### 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2014, in the form hereto attached as *Exhibit "A"*. The Department received comments from numerous entities, including but not limited to the Delaware State Education Association, Delaware Association of School Administrators, Governor's Advisory Council for Exceptional Citizens, State Council for Persons with Disabilities, and representatives of local education associations. The Department reviewed and considered each comment.

The primary comments were related to three revisions that a) broaden the potential usage of the form related to teacher "Planning and Preparation", b) incorporate the potential usage of "Short Observations" into the teacher appraisal process, and c) shift the overall summative rating of "Needs Improvement" to be considered "Unsatisfactory" instead of "Satisfactory".

Historically, the Pre-Observation Form was limited to the announced observation process. As the system has shifted to increase flexibility in allowing for more unannounced observations, the ability to collect meaningful evidence related to "Planning and Preparation" now also requires increased flexibility. Many comments received requested that individual teachers have choice in this matter rather than allowing for the credential observer to exercise professional judgment. Note: "Experienced Teachers" are required to receive only one observation per year. This has been discussed at several working groups.

Historically, DPAS-II contained only two types of observations—announced and unannounced—both of which require thirty (30) minutes in length. Many comments received categorized the addition of “Short Observations” as “walk-throughs”. The Department underscores that such observations are formal and thus are not “walk-throughs” (which are generally developed and designed at the local-level). Further, the Department will incorporate feedback from comments received into the DPAS-II Guide for Teachers as it pertains to “Short Observations.” This has been discussed at several working groups.

Historically, an overall summative rating of “Needs Improvement” was considered to be a “Satisfactory” evaluation under the definitions of 2.0 while also being considered a year in a “Pattern of Ineffective Teaching” in 7.0 and meriting an improvement plan under the terms of 8.0. The Department seeks to resolve this contradiction, while noting the comments received as it pertains to concerns regarding teacher licensure. Provisions within state code currently exist to allow for individual cases to be brought to the Secretary of Education. Within the proposed regulations no other categorical ratings have been modified, based upon the Department’s ongoing convening of working groups of stakeholders regarding DPAS-II.

The Delaware State Education Association outlined objections to the three revisions above, and called upon the State Board to direct the Department to convene a working group. Such comments were echoed by numerous representatives of local education associations. The Delaware Association of School Administrators expressed backing of the proposed changes, providing rationale as to their support of each of the three changes discussed above.

Other comments received provided grammatical feedback and expressed concern over the additional flexibility the proposed regulations would create, noting that such authorization “would make it much more difficult to make valid comparisons of data across districts and schools.” Data collection is certainly an imperative for the state, and the Department will take measures to ensure that the ability to conduct such comparisons if not eliminated while still allowing for districts and charters to build alternative systems.

After consideration, the Department has made a minor change to the definition of Student Achievement for grammatical and clarification purposes.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised which 1) provides that the proposed amended regulation will be in effect beginning with the 2014-15 school year; 2) provides that the DPAS-II appraisal process must be used by all districts and charter schools unless another teacher appraisal system has been state-approved under the applicable provisions of Delaware Code; 3) provides that an observation form may be utilized as part of an Announced or Unannounced observation; 4) clarifies the definition of Student Achievement and modifies the definitions of groups of educators as it pertains to Student Achievement; 5) states the Department of Education’s intent to not incorporate its proposed new statewide English Language Arts and Mathematics assessment as part of Student Achievement in the 2014-2015 school year; 6) defines a summative rating of “Needs Improvement” to be considered an Unsatisfactory Evaluation; 7) defines, creates, and incorporates the concept of a Short Observation into the DPAS-II appraisal process; 8) provides the opportunity for districts and charter schools to substitute a local-developed Professional Responsibilities Appraisal Component, provided it has been state-approved, follows the guidelines set forth pursuant to a state-approval process, and is established no later than the last day of July of a given year.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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.



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## IV. Text and Citation

The text of 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 **June 19, 2014**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of June 2014.

### Department of Education

Mark T. Murphy, Secretary of Education

Approved this 19th day of June 2014

### State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

## 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

### 1.0 Effective Date

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the ~~2013-14~~ 2014-15 school year, unless another teacher appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.

### 2.0 Definitions

The following definitions shall be applied for purposes of this regulation:

**"Announced Observation"** shall consist of ~~the an~~ Pre-observation Form and conference with the Credentialed Observer, an observation by the Credentialed Observer at an agreed upon date and time, using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

**"Board"** shall mean a local board of education or charter school board of directors.

**"Credentialed Observer"** shall mean an individual, not always the supervisor of the teacher, who has successfully completed DPAS II credentialing in accordance with 10.0. Credentialed Observer denotes any individual who may conduct observations as part of a teacher's appraisal process. The term Credentialed Observer encompasses those administrators who are Evaluators.

**"DASA"** shall mean the Delaware Association of School Administrators.

**"Department"** shall mean the Delaware Department of Education.

~~**"DCAS Teacher"** shall mean any Novice Teacher or Experienced Teacher providing instruction in reading and/or mathematics to a student that meets the following criteria:~~

~~(a) The student is enrolled in any grade three (3) through ten(10) for either reading and/or mathematics instruction as verified by the State's pupil accounting system; and~~

# FINAL REGULATIONS

~~(b) The student has valid Delaware Comprehensive Assessment System (DCAS) score(s) and the student was not subject to an invalidation or special exemption as provided in 14 DE Admin. Code 403.~~

"**DPAS II Revised Guide for Teachers**" shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

"**DSEA**" shall mean the Delaware State Education Association.

"**Evaluator**" shall mean a Credentialed Observer who is responsible for a teacher's Summative Evaluation. A teacher's required observations as part of the appraisal cycle shall generally be conducted by the assigned Evaluator; however, the assigned Evaluator may designate a school administrator who is also a Credentialed Observer to conduct the required observations.

"**Experienced Teacher**" shall mean a teacher who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the **Delaware Code**; or Standard or Professional Status Certificate issued prior to August 1, 2003.

"Group 1 Teacher" shall mean any Novice Teacher or Experienced Teacher providing instruction in reading and/or mathematics to a student enrolled in any grade three (3) through ten (10) as verified by the State's pupil accounting system.

"**Improvement Plan**" shall be the plan that a teacher and Evaluator mutually develop in accordance with 8.0.

"**Interim assessment**" shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers and administrators at the student, classroom, school, and district levels.

"**Non-DCAS Group 1 Teacher**" shall mean any Novice Teacher or Experienced Teacher that does not meet the definition of DCAS Group 1 Teacher as defined herein and explained in the Guide.

"**Novice Teacher**" shall mean a teacher who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the **Delaware Code**.

"**Satisfactory Component Rating**" shall mean the teacher's performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the **Delaware Code**.

"**Satisfactory Evaluation**" shall be equivalent to the overall "Highly Effective" or "Effective" or "~~Needs Improvement~~" rating on the Summative Evaluation and shall be used to qualify for a continuing license.

"Short Observation" shall consist of an observation by a Credentialed Observer, using the associated conferences and forms, at a date and time that has not been previously arranged. The observation shall be no less than ten (10) minutes, and be limited to specified criteria. Such observations shall not substitute for required observations under Section 3.0.

~~"State Assessment" shall mean the Delaware Comprehensive Assessment System (DCAS).~~

"**Student Achievement**" shall mean

(a) For tested grades and subjects:

(1) ~~A student's score~~ Student[s] scores on the DCAS state assessment system; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures must be approved by the Department and developed in partnership with the ~~local collective bargaining representatives~~ DSEA and DASA.

(c) For the 2014-15 school year only, student scores on [statewide assessments in English Language Arts and Mathematics (i.e., Smarter ELA and Smarter Mathematics) shall not be incorporated into any teacher's performance appraisal the Smarter English Language Arts and

**Smarter Mathematics statewide assessments shall not be incorporated into any teacher's 2014-15 performance appraisal].**

"**Student Growth**" shall mean the change in Student Achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

"**Summative Evaluation**" shall mean the comprehensive, end-of-cycle appraisal and shall incorporate the results of the minimum required observations, any additional observations, and required component-level data. At the discretion of the Evaluator, it may also include additional Announced, ~~or~~ Unannounced or Short observation data, beyond the required observation data, provided by other Credentialed Observers.

"**Unannounced Observation**" shall consist of an observation by a Credentialed Observer at a date and time that has not been previously arranged using the associated formative conferences and reports, and which may include the use of an observation form. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"**Unsatisfactory Component Rating**" shall mean the teacher's performance does not demonstrate an understanding of the concepts of the component.

"**Unsatisfactory Evaluation**" shall be the equivalent to the overall Needs Improvement or "Ineffective" rating on the Summative Evaluation as it pertains to educators seeking a continuing license.

"**Working Day**" shall mean a day when the employee would normally be working in that district or charter school.

### 3.0 Appraisal Cycles

- 3.1 Experienced ~~†~~Teachers who have earned a rating of "Highly Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced ~~†~~Teachers who have earned a rating of "Effective" and have earned "Satisfactory" ratings on at least four (4) of the components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Effective teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.3 Experienced ~~†~~Teachers who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one (1) year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.
- 3.4 Novice ~~†~~Teachers shall receive a minimum of one (1) Announced Observation and two (2) Unannounced Observations with a Summative Evaluation every year. Novice teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.

## 4.0 DPAS II Guide for Teachers

- 4.1 All school districts and charter schools shall use the manual entitled DPAS II Guide Revised for Teachers as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.
- 4.2 The manual shall contain, at a minimum, the following:
  - 4.2.1 Specific details about each of the five (5) components listed in 5.1.
  - 4.2.2 All forms or documents needed to complete the requirements of the appraisal process.
  - 4.2.3 Specific procedures to implement the appraisal system.

## 5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be determined. In each academic year, for each of the first four (4) Appraisal Components, a school district or charter school may waive one (1) criterion identified as optional below. In addition, for the Professional Responsibilities Component (5.1.4), a school district or charter school may substitute a locally determined alternative Appraisal Component, which must be approved by the Department no later than the last day of July of each year. Final Notification of any such waiver or substitution shall be provided to all teachers in a school district or charter school and the Department of Education by the last day in August of each year:
  - 5.1.1 Planning and Preparation
    - 5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable. (Optional)
    - 5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the instructional goals and support student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the district or charter school's curricula.
    - 5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his or her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula. (Optional)
    - 5.1.1.4 Demonstrating Knowledge of Students: Teacher shows his or her knowledge of student developmental characteristics; approaches to learning, knowledge, and skills; interests; cultural heritage; and, where applicable, State Assessment performance levels.
    - 5.1.1.5 Designing Student Assessments: Teacher creates and or selects assessments that are congruent with instructional goals, criteria and standards. The teacher plans for the use of formative and summative assessments of the teacher's students.
  - 5.1.2 Classroom Environment
    - 5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routines that maximize learning time.
    - 5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.
    - 5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-to-student and student-to-student interactions show rapport that is grounded in mutual respect. (Optional)
    - 5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and makes resources accessible to all students. (Optional)

**5.1.3 Instruction**

- 5.1.3.1 **Engaging Students in Learning:** Content is appropriate, clear, and linked to student knowledge and experience. Content is aligned with the district or charter school's curricula. Activities and assignments engage all students. Instructional materials are suitable to the instructional goals. The instruction is coherent and paced appropriately for all students.
- 5.1.3.2 **Demonstrating Flexibility and Responsiveness:** Teacher has a repertoire of instructional strategies and makes use of them to make modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and achievement data. (Optional)
- 5.1.3.3 **Communicating Clearly and Accurately:** Verbal and written communication is clear and appropriate to students' ages, backgrounds, and levels of understanding. (Optional)
- 5.1.3.4 **Using Questioning and Discussion Techniques:** Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student led discussions.
- 5.1.3.5 **Using Assessment in Instruction:** Teacher makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.

**5.1.4 Professional Responsibilities**

- 5.1.4.1 **Communicating with Families:** Teacher shares information about the school's educational program and expectations for student performance. Teacher develops a mechanism for two way communication with families about student progress, behavior, and personal needs or concerns. (Optional)
- 5.1.4.2 **Recording student data in a Student Record System:** Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.
- 5.1.4.3 **Growing and Developing Professionally:** Teacher chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or charter school, or students. (Optional)
- 5.1.4.4 **Reflecting on Professional Practice:** Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.

**5.1.5 Student Improvement**

- 5.1.5.1 **Measuring Student Improvement:** Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

**6.0 Summative Evaluation Ratings**

- 6.1 Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
  - 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the teacher has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components. Appraisal Criteria observed shall be rated on each observation conducted and Appraisal Criteria also shall be assigned an overall rating in a teacher's Summative Evaluation.
  - 6.1.2 A satisfactory rating for the Student Improvement component shall mean that the teacher has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement", or "Ineffective".

- 6.2.1 **"Highly Effective"** shall mean that the teacher has earned a Satisfactory Component rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth as defined in the *DPAS II Revised Guide for Teachers*, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.
- 6.2.2 **"Effective"** shall mean that:
- 6.2.2.1 The teacher has earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and
  - 6.2.2.2 The teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.
- 6.2.3 **"Needs Improvement"** shall mean that:
- 6.2.3.1 The teacher has earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
  - 6.2.3.2 The teacher has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the teacher has earned an Unsatisfactory rating in the Student Improvement Component.
- 6.2.4 **"Ineffective"** shall mean that:
- 6.2.4.1 The teacher has earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
  - 6.2.4.2 The teacher earned an Unsatisfactory Component Rating in the Student Improvement Component.
- 6.2.5 If a teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the teacher's rating shall be re-categorized as "Ineffective."

## 7.0 Pattern of Ineffective Teaching Defined

- 7.1 A pattern of ineffective teaching shall be based on the most recent Summative Evaluation ratings of a teacher using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective teaching. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective teaching:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

## 8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of Unsatisfactory on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.
- 8.2 An Improvement Plan may be developed if a teacher's overall performance during an observed lesson is unsatisfactory. In instances where an improvement plan is to be developed, the Evaluator shall first have noted the unsatisfactory performance on the required forms by noting "Performance is Unsatisfactory" and initialing the statement.
- 8.3 The Improvement Plan shall contain the following:
- 8.3.1 Identification of the specific deficiencies and recommended area(s) for growth;

- 8.3.2 Measurable goals for improving the deficiencies to satisfactory levels;
  - 8.3.3 Specific professional development or activities to accomplish the goals;
  - 8.3.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
  - 8.3.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
  - 8.3.6 Timeline for the plan, including intermediate check points to determine progress;
  - 8.3.7 Procedures for determining satisfactory improvement;
  - 8.3.8 Multiple observations and opportunity for feedback provided by a Credentialed Observer, a mentor, a lead teacher, or an instructional coach.
- 8.4 Professional development that is completed during the time that the Improvement Plan is in effect must directly relate to areas identified as needing improvement.
  - 8.5 The Improvement Plan shall be developed cooperatively by the teacher and Evaluator. If the plan cannot be cooperatively developed, the Evaluator shall have the authority and responsibility to determine the plan as specified in 8.1 and 8.2 above.
  - 8.6 The teacher shall be held accountable for the implementation and completion of the Improvement Plan.
  - 8.7 Upon completion of the Improvement Plan, the teacher and Evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

## **9.0 Challenge Process**

- 9.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the required form(s). To initiate a challenge, a teacher shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the Evaluator unless the supervisor of the Evaluator is also in the same building as the teacher. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level Evaluator.
  - 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the Evaluator or the designated district or charter school level Evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, meet with the teacher, and issue a written decision.
  - 9.1.2 If the challenge is denied, the written decision shall state the reasons for denial.
  - 9.1.3 The decision of the supervisor of the Evaluator or the designated district or charter school's level Evaluator shall be final.

## **10.0 Credentialing**

- 10.1 Credentialed Observers shall have successfully completed the DPAS II training as developed by the Department of Education. Each shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
  - 10.1.1 The Department of Education shall annually monitor evaluation implementation.
- 10.2 The training shall occur no less than once every three (3) years and shall include techniques of observation and conferencing, content and relationships of frameworks for teaching, and a thorough review of the DPAS II Revised Guide for Teachers. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

**11.0 Evaluation of Process**

The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and Evaluators and interviews with a sampling of teachers and Evaluators. Data from the evaluation and proposed changes to the DPAS II Revised ~~Guide for Teachers~~ shall be presented to the State Board of Education for review on an annual basis.

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 107A

**REGULATORY IMPLEMENTING ORDER****107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2014, in the form hereto attached as *Exhibit "A"*. The Department received comments from six entities, including the Delaware State Education Association, Delaware Association of School Administrators, Governor's Advisory Council for Exceptional Citizens, State Council for Persons with Disabilities and local education associations. The Department reviewed and considered each comment.

The primary comments were related to two proposed revisions that a) broaden the potential usage of the form related to specialist "Planning and Preparation", and b) shift an overall summative rating of "Needs Improvement" to be considered "Unsatisfactory" instead of "Satisfactory".

Historically, the Pre-Observation Form was limited to the announced observation process. As the system has shifted to increase flexibility in allowing for more unannounced observations, the ability to collect meaningful evidence related to "Planning and Preparation" now also requires increased flexibility. Many comments received requested that individual educators have choice in this matter rather than allowing for the credential observer to exercise professional judgment. Note: "Experienced Specialists" are required to receive only one observation per year. This mirrors the change in the teacher appraisal process.

Historically, an overall summative rating of "Needs Improvement" was considered to be a "Satisfactory" evaluation under the definitions of 2.0 while also being considered a year in a "Pattern of Ineffective Teaching" in 7.0 and meriting an improvement plan under the terms of 8.0. The Department seeks to resolve this contradiction, while noting the comments received as it pertains to concerns regarding educator licensure. Provisions within state code currently exist to allow for individual cases to be brought to the Secretary of Education. Within the proposed regulations no other categorical ratings have been modified, based upon the Department's ongoing convening of working groups of stakeholders regarding DPAS-II.

The Delaware State Education Association outlined objections to the revisions above, while focusing mostly on teacher practice and application, and called upon the State Board to direct the Department to convene a working group of stakeholders. Such comments were echoed by numerous representatives of local education associations. The Delaware Association of School Administrators expressed backing of the proposed changes, providing rationale as to their support of each of the changes discussed above.

Other comments received provided grammatical feedback and expressed concern over the additional flexibility the proposed regulations would create, noting that such authorization "would make it much more difficult to make valid comparisons of data across districts and schools." Data collection is certainly an imperative for the state, and the Department will take measures to ensure that the ability to conduct such comparisons if not eliminated while still allowing for districts and charters to build alternative systems.

After consideration, the Department has made a minor change to the definition of Student Achievement for grammatical and clarification purposes.



**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised which 1) provides that the proposed amended regulation will be in effect beginning with the 2014-15 school year; 2) provides that the DPAS-II appraisal process must be used by all districts and charter schools unless another specialist appraisal system has been state-approved under the applicable provisions of Delaware Code; 3) provides that an observation form may be utilized as part of an Announced or Unannounced observation; 4) clarifies the definition of Student Achievement beginning with the 2014-2015 school year; 5) states the Department of Education's intent to not incorporate its proposed new statewide English Language Arts and Mathematics assessment as part of Student Achievement in the 2014-2015 school year; 6) defines a summative rating of "Needs Improvement" to be considered an Unsatisfactory Evaluation; 7) clarifies that the annual evaluation of the DPAS-II process must include Specialists; 8) provides the opportunity for districts and charter schools to substitute a locally determined Professional Responsibilities Appraisal Component, provided it has been state-approved, follows the guidelines set forth pursuant to a state-approval process, and is established no later than the last day of July of a given year.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 **June 19, 2014**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of June 2014.

**Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 19th day of June 2014

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

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**107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised**
**1.0 Effective Date**

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the ~~2013-14~~ 2014-15 school year, unless another specialist appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.

**2.0 Definitions**

The following definitions shall be applied for purposes of this regulation:

**“Announced Observation”** shall consist of the ~~Pre-observation Form~~ and conference with the Credentialed Observer, an observation by the Credentialed Observer at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

**“Board”** shall mean a local board of education or a charter school board of directors.

**“Credentialed Observer”** shall mean an individual, not always the supervisor of the specialist, who has successfully completed DPAS II credentialing in accordance with 10.0. Credentialed Observer denotes any individual who may conduct observations as part of a specialist’s appraisal process. The term Credentialed Observer encompasses those administrators who are Evaluators.

**“DASA”** shall mean the Delaware Association of School Administrators.

**“Department”** shall mean the Delaware Department of Education.

**“DPAS II Revised Guide for Specialists”** shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

**“DSEA”** shall mean the Delaware State Education Association.

**“Evaluator”** shall mean a Credentialed Observer who is responsible for a specialist’s Summative Evaluation. A specialist’s required observations as part of the appraisal cycle shall generally be conducted by the assigned Evaluator; however, the assigned Evaluator may designate a school administrator who is also a Credentialed Observer to conduct the required observations.

**“Experienced Specialist”** shall mean a specialist who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the *Delaware Code*; or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from his or her respective licensure body.

**“Improvement Plan”** shall be the plan that a specialist and Evaluator mutually develop in accordance with 8.0.

**“Interim assessment”** shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students’ knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers, administrators, and specialists at the student, classroom, school, and district levels.

**“Novice Specialist”** shall mean a specialist who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the *Delaware Code* or holds a valid and current license from his or her respective licensure body.

**“Satisfactory Component Rating”** shall mean the specialist’s performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the *Delaware Code*.

**“Satisfactory Evaluation”** shall be equivalent to the overall Highly Effective or Effective ~~or Needs Improvement~~ rating on the Summative Evaluation and shall be used to qualify for a continuing license.

**"Specialist"** shall mean an educator other than a teacher or administrator and includes, but is not limited to, School Counselors, Library Media Specialists, School Psychologists, and School Nurses.

**"State Assessment"** shall mean the Delaware Comprehensive Assessment System (DCAS).

**"Student Achievement"** shall mean

- (a) For tested grades and subjects:
  - (1) ~~A student's score~~ Student[s] scores on the DCAS state assessment system; and, as appropriate,
  - (2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.
- (b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessment; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures shall be approved by the Department of Education and developed in partnership with input from the relevant specialist organizations or respective licensure body and the Delaware State Education Association (DSEA).
- (c) ~~For the 2014-15 school year only, student scores on [statewide assessments in English Language Arts and Mathematics (i.e., Smarter ELA and Smarter Mathematics) shall not be incorporated into any specialist's performance appraisal]~~ the Smarter English Language Arts and Smarter Mathematics statewide assessments shall not be incorporated into any specialist's 2014-15 performance appraisal.

**"Student Growth"** shall mean the change in Student Achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

**"Summative Evaluation"** shall mean the comprehensive, end-of-cycle appraisal and shall incorporate the results of the minimum required observations and required component-level data. At the discretion of the Evaluator, it may also include additional Announced or Unannounced observation data, beyond the required observation data, provided by other Credentialed Observers.

**"Unannounced Observation"** shall consist of an observation by a Credentialed Observer at a date and time that has not been previously arranged using the associated formative conferences and reports, and which may include the use of the observation form. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

**"Unsatisfactory Component Rating"** shall mean the specialist's performance does not demonstrate an understanding of the concepts of the component.

**"Unsatisfactory Evaluation"** shall be the equivalent to the overall Needs Improvement or Ineffective rating on the Summative Evaluation as it pertains to educators seeking a continuing license.

**"Working Day"** shall mean a day when the employee would normally be working in that district or charter school.

### 3.0 Appraisal Cycles

- 3.1 Experienced ~~s~~Specialists who have earned a rating of Highly Effective on their most recent Summative Evaluation shall receive a minimum of (1) Announced or Unannounced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced ~~s~~Specialists who have earned a rating of Effective and have earned Satisfactory ratings on at least four (4) of the Appraisal Components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation each year with a Summative Evaluation at least once every two (2) years.

The Student Improvement component for Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.

- 3.3 Experienced ~~s~~Specialists who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative evaluation at the end of the one (1) year period. These specialists shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the *DPAS II Revised Guide for Specialists*.
- 3.4 Novice ~~s~~Specialists shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have earned a rating of Needs Improvement or Ineffective on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the *DPAS II Revised Guide for Specialists*.

#### 4.0 ***DPAS II Guide for Specialists***

- 4.1 All districts and charter schools shall use the manual entitled *DPAS II Revised Guide for Specialists* as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.
- 4.2 The manual shall contain, at a minimum, the following:
- 4.2.1 Specific details about each of the five (5) Appraisal Components listed in 5.1.
  - 4.2.2 All forms or documents needed to complete the requirements of the appraisal process.
  - 4.2.3 Specific procedures to implement the appraisal system.

#### 5.0 **Appraisal Components and Appraisal Criteria**

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be determined. In each academic year, for each of the first four (4) Appraisal Components, a school district or charter school may waive one (1) criterion identified as optional below. In addition, for the Professional Responsibilities Component (5.1.4), a school district or charter school may substitute a locally determined alternative Appraisal Component, which must be approved by the Department no later than the last day of July of each year. Final Notification of any such waiver or substitution shall be provided to all specialists in a school district or charter school and the Department of Education by the last day in August of each year:
- 5.1.1 Planning and Preparation
    - 5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students or clients served.
    - 5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards. (Optional)
    - 5.1.1.3 Demonstrating Knowledge of Students or Clients: Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests. (Optional)
    - 5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.
    - 5.1.1.5 Demonstrating Knowledge of How to Design or Use Student Assessments: Specialist creates and or selects assessments that are congruent with instructional goals, criteria and standards. The specialist plans for the use of formative and summative assessments of the specialist's students.
  - 5.1.2 Professional Practice and Delivery of Services

- 5.1.2.1 Creating an Environment to Support Student or Client Needs: Specialist creates an environment in which student or client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.
- 5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients. (Optional)
- 5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding. (Optional)
- 5.1.2.4 Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students or clients. The delivery of service is coherent.
- 5.1.3 Professional Collaboration and Consultation
  - 5.1.3.1 Collaborating with Others: Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs. (Optional)
  - 5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school wide issues, problems, or concerns. (Optional)
  - 5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the resources.
  - 5.1.3.4 Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.
  - 5.1.3.5 Use of Assessment in Planning and Delivery of Services: Specialist makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.
- 5.1.4 Professional Responsibilities
  - 5.1.4.1 Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.
  - 5.1.4.2 Recording student data in a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel. (Optional)
  - 5.1.4.3 Growing and Developing Professionally: Specialist chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or students. (Optional)
  - 5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.
- 5.1.5 Student Improvement
  - 5.1.5.1 Measuring Student Improvement: Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards set by the Secretary based on input from stakeholder groups.

## 6.0 Summative Evaluation Ratings

- 6.1 Each Appraisal Component shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

- 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the specialist has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components. Appraisal Criteria observed shall be rated on each observation conducted and Appraisal Criteria also shall be assigned an overall rating in a specialist's Summative Evaluation.
- 6.1.2 A satisfactory rating for the Student Improvement Component shall mean that the specialist demonstrates acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: Highly Effective, Effective, Needs Improvement or Ineffective.
- 6.2.1 Highly Effective shall mean that the specialist has earned a Satisfactory Component Rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth, as defined in the *DPAS II Revised Guide for Specialists*, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.
- 6.2.2 Effective shall mean that:
- 6.2.2.1 The specialist has earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and
- 6.2.2.2 The specialist does not meet the requirements for a Highly Effective rating found in 6.2.1.
- 6.2.3 Needs Improvement shall mean that:
- 6.2.3.1 The specialist has earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
- 6.2.3.2 The specialist has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the specialist has earned an Unsatisfactory rating in the Student Improvement Component.
- 6.2.4 Ineffective shall mean that:
- 6.2.4.1 The specialist has earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
- 6.2.4.2 The specialist has earned an Unsatisfactory Component Rating in the School Improvement Component.
- 6.2.5 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

## 7.0 Pattern of Ineffective Practice Defined

A pattern of ineffective practice shall be based on the most recent Summative Evaluation ratings of a specialist using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective practice. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective practice:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

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## 8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory on any component in 5.0 on the Summative Evaluation regardless of the overall rating.
- 8.2 An Improvement Plan may be developed if a specialist's overall performance during an observation is unsatisfactory. In instances where an improvement plan is to be developed, the evaluator shall first have noted the unsatisfactory performance on the required forms by noting "Performance is Unsatisfactory" and initialing the statement.
- 8.3 The Improvement Plan shall contain the following:
  - 8.3.1 Identification of the specific deficiencies and recommended area(s) for growth;
  - 8.3.2 Measurable goals for improving the deficiencies to satisfactory levels;
  - 8.3.3 Specific professional development or activities to accomplish the goals;
  - 8.3.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
  - 8.3.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
  - 8.3.6 Timeline for the plan, including intermediate check points to determine progress;
  - 8.3.7 Procedures for determining satisfactory improvement.
  - 8.3.8 Multiple observations and opportunity for feedback provided by a Credentialed Observer, a mentor, or lead specialist, or an instructional coach.
- 8.4 Professional development that is completed during the time that the Improvement Plan is in effect must directly relate to areas identified as needing improvement.
- 8.5 The Improvement Plan shall be developed cooperatively by the specialist and Evaluator. If the plan cannot be cooperatively developed, the Evaluator shall have the authority and responsibility to determine the plan as specified in 8.1 and 8.2 above.
- 8.6 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.7 Upon completion of the Improvement Plan, the specialist and Evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

## 9.0 Challenge Process

- 9.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions of an observation if the statement PERFORMANCE IS UNSATISFACTORY has been included on the required form(s). To initiate a challenge, a specialist shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the specialist's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the Evaluator unless the supervisor of the Evaluator is also in the same building as the specialist. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level Evaluator.
  - 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the Evaluator or the designated district or charter school level Evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, meet with the specialist, and issue a written decision.
  - 9.1.2 If the challenge is denied, the decision shall state the reasons for denial.
  - 9.1.3 The decision of the supervisor of the Evaluator or the designated district or charter school level Evaluator shall be final.

## 10.0 Credentialing

- 10.1 Credentialed Observers shall have successfully completed the DPAS II training as developed by the Department of Education. Each shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.1.1 The Department of Education shall annually monitor evaluation implementation.
- 10.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the *DPAS II Revised Guide for Specialists*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

## 11.0 Evaluation of Process

The Department of Education shall conduct an annual evaluation of the ~~teacher~~ specialist appraisal process. The evaluation shall, at a minimum, include a survey of teachers, specialists and Evaluators and interviews with a sampling of teachers, specialists and Evaluators. Data from the evaluation and proposed changes to the DPAS II Revised ~~Guide for Teachers~~ shall be presented to the State Board of Education for review on an annual basis.

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 108A

### REGULATORY IMPLEMENTING ORDER

### 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2014, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Delaware Association of School Administrators, Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Each comment was reviewed and changes were made in response, including clarification in sections 2.0 and 6.2.2. The Delaware Association of School Administrators expressed support for all revisions. Comments specifically outlined the major revisions believed to strengthen the administrator appraisal system and noted the intensive stakeholder involvement and collaboration to arrive at these revisions.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised which 1) provides that the proposed amended regulation will be in effect beginning with the 2014-15 school year; 2) provides that the Department will create up to four Guides differentiated by administrator role; 3) replaces the formative process with the required components of the Annual Appraisal Cycle; 4) clarifies that student achievement data from new state assessments in ELA and Mathematics will not be used as part of the Annual Appraisal Cycle during the 2014-15 school year; 5) replaces appraisal cycles differentiated by administrator experience with an Annual Appraisal Cycle (new definition) for all administrators; 6) removes Appraisal Criteria from the regulation to allow for the development of Appraisal Criteria differentiated by administrator role in the relevant Guides; 7) amends the language of the Appraisal Components to include revised descriptions; 8) clarifies that the differentiated Guides will include guidance on evidence collection,



among other resources; 9) replaces the binary summative evaluation rating system with a four-level rating system that mirrors the Appraisal Component and Appraisal Criteria rating system; and 10) simplifies the description of the Improvement Plan and Challenge Process.

### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 **June 19, 2014**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of June 2014.

#### Department of Education

Mark T. Murphy, Secretary of Education

Approved this 19<sup>th</sup> day of June 2014

#### State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

### 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

#### 1.0 Effective Date

- 1.1 ~~The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the 2011-12 school year, and shall, at such time, replace the current 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). This regulation shall be effective for all school districts and charter schools beginning with the 2014-15 school year, unless another administrator appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.~~
- 1.2 For purposes of this regulation, an administrator shall be a professional employee authorized by a board to serve in a supervisory capacity involving the oversight of an instructional program(s).

## 2.0 Definitions

The following definitions shall apply for purposes of this regulation:

**"Annual Appraisal Cycle"** means the administrator appraisal process that occurs within one school year.

**"Board"** shall mean the local board of education or charter school board of directors.

**"Credentialed Evaluator"** shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 10.0. A superintendent **[or head of charter school]** shall be evaluated by member(s) of the local school board of education Board who shall also have successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

**"DASA"** shall mean the Delaware Association of School Administrators.

**"Department"** shall mean the Delaware Department of Education.

**"DPAS II Revised Guides for Administrators"** shall mean the manuals that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that are used to implement the appraisal process. The Department shall create up to four (4) manuals differentiated by administrator role. The DPAS II Revised Guides for Administrators may also be referred to collectively as "Guides" or individually as "Guide."

**"DSBA"** shall mean the Delaware School Boards Association.

~~"DSEA" shall mean the Delaware State Education Association.~~

~~"Experienced Administrator" shall mean an administrator who has three (3) or more years of service as an administrator.~~

~~"Formative Process" shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences and reports as outlined in the DPAS II Guide for Administrators.~~

"Goal-Setting Conference" shall mean a meeting that occurs between the administrator and the Credentialed Evaluator at the beginning of the Annual Appraisal Cycle, which typically is in the summer or fall. The meeting shall include but not be limited to establishing goals for the year and discussing areas of support, as described in the DPAS II Revised Guides for Administrators.

**"Improvement Plan"** shall be the plan that an administrator and evaluator mutually develop in accordance with 8.0.

~~"Inexperienced Administrator" shall mean an administrator who has less than three (3) years of service as an administrator.~~

"Mid-Year Conference" shall mean a meeting that occurs between the administrator and the Credentialed Evaluator as part of the Annual Appraisal Cycle, which typically occurs midway through the school year. The meeting shall include but not be limited to discussion of progress toward goals and areas of support, as described in the DPAS II Revised Guides for Administrators.

~~"Satisfactory Component Rating" shall mean the administrator's performance demonstrates an understanding of the concepts of the component.~~

**"Satisfactory Evaluation"** shall be equivalent to the overall "Highly Effective" or "Effective" or "Needs Improvement" rating on the Summative Evaluation.

~~"State Assessment" shall mean the Delaware Comprehensive Assessment System (DCAS).~~

**"Student Achievement"** shall mean

(a) For tested grades and subjects:

(1) Student[s] scores on the DCAS state assessment system; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measure of student achievement that are rigorous and comparable across classrooms.

Such alternative measures shall be approved by the Department and developed in partnership with the Delaware Association of School Administrators (DASA) and the Delaware School Boards Association (DSBA).

(c) ~~For the 2014-15 school year only, student scores on [statewide assessments in English Language Arts and Mathematics (i.e., Smarter ELA and Smarter Mathematics) shall not be incorporated into any administrator's performance appraisal]~~ the Smarter English Language Arts and Smarter Mathematics statewide assessments shall not be incorporated into any administrator's 2014-15 performance appraisal].

"**Student Growth**" shall mean the change in Student Achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

"**Summative Evaluation**" shall be the final evaluation at the conclusion of the Annual Appraisal Cycle.

~~"Unsatisfactory Component Rating" shall mean the administrator's performance does not demonstrate an understanding of the concepts of the component.~~

"**Unsatisfactory Evaluation**" shall be the equivalent to the overall "Needs Improvement" or "Ineffective" rating on the Summative Evaluation.

"**Working Day**" shall mean a day when the employee would normally be working in that district or charter school.

### 3.0 **Annual Appraisal Cycles**

- 3-1 ~~Experienced All administrators who have earned a rating of "Highly Effective" on their most recent Summative Evaluation shall receive a yearly appraisal in all five (5) Appraisal Components, including Student Improvement, that includes a minimum of one (1) Formative Process Goal Setting Conference, one (1) Mid-Year Conference and one (1) Summative Evaluation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective administrators shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective administrator does not achieve a Satisfactory rating on the Student Improvement Component, the administrator shall receive a Summative Evaluation the following year, regardless of whether the administrator would otherwise be due for a Summative Evaluation pursuant to this section. The Annual Appraisal Cycle shall be led by the administrator's Credentialed Evaluator and may include other supports and opportunities for feedback from his or her Credentialed Evaluator or other Credentialed Evaluators, as outlined in the DPAS II Revised Guides for Administrators.~~
- 3-2 ~~Experienced administrators who have earned a rating of "Effective" and have earned Satisfactory ratings in four (4) of the Appraisal Components found in 5.0, including Student Improvement on his or her most recent Summative Evaluation shall receive a minimum of one (1) Formative Process each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Effective administrators shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective administrator does not achieve a Satisfactory rating on the Student Improvement Component, the administrator shall receive a Summative Evaluation the following year, regardless of whether the administrator would otherwise be due for a Summative Evaluation pursuant to this section.~~
- 3-3 ~~Experienced administrators who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Formative Process with a Summative Evaluation at the end of the one year period. These administrators shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the DPAS II Revised Guide for Administrators.~~
- 3-4 ~~Inexperienced administrators shall have a minimum of one (1) Formative Process with a Summative Evaluation every year. Inexperienced administrators who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the DPAS II Revised Guide for Administrators.~~

#### 4.0 DPAS II Revised Guides for Administrators

- 4.1 All districts and charter schools shall use the manuals entitled DPAS II Revised Guides for Administrators as developed and as may be amended by the Department of Education in collaboration with DSEA administrators, which shall include but not be limited to representatives from DSBA and DASA to implement the appraisal system. For any administrator role for which a Guide is not available, Credentialed Evaluators shall use the Appraisal Components in Section 5.0 of this regulation for the purpose of the Annual Appraisal Cycle until such time as a Guide becomes available.
- 4.1.1 The manual Guides shall contain at a minimum the following:
- 4.1.1.1 Specific details about each of the five (5) Appraisal Components pursuant to 5.1, including the Appraisal Criteria within each Component that form the basis for ratings.
- 4.1.1.2 All forms or documents needed to complete the requirements of the appraisal process Annual Appraisal Cycle.
- 4.1.1.3 Specific procedures to implement the appraisal system Annual Appraisal Cycle, including information on the required Goal-Setting Conference, Mid-Year Conference and Summative Evaluation as well as other recommended supports and opportunities for feedback.
- 4.1.1.4 Guidance related to evidence collection, including relevant definitions, samples of quality evidence and other resources.

#### 5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including ~~any~~ Appraisal Criteria specified for each in the Guides, shall be the basis upon which the performance of an administrator shall be evaluated by a ~~certified evaluator(s):~~ his or her Credentialed Evaluator; Appraisal Criteria for each Appraisal Component, as appropriate, shall be differentiated by administrator role in the DPAS II Revised Guides for Administrators.
- 5.1.1 Vision and Goals: Focuses on the administrator's actions to establish, implement, promote and communicate the vision and goals of the school or district, including the use of data to establish goals aligned to the school or district success plan. The goals and strategies contained within the district or school success plan also align to an administrator's individual goals in Component Five.
- 5.1.1.1 ~~Using Data: Administrator, in collaboration with others such as the school or district improvement team or board, uses multiple sources of information and assists in analyzing data to establish rigorous and concrete school or district improvement goals in the context of student achievement and instructional programs.~~
- 5.1.1.2 ~~Implementing Vision and Goals: Administrator provides leadership for major initiatives and change efforts relative to the school or district improvement goals. Administrator is committed to doing the work required for continuous school and district improvement.~~
- 5.1.1.3 ~~Promoting Vision and Goals: Administrator promotes high expectations for teaching and learning. Administrator is committed to ensuring that all students have the knowledge and skills necessary to become successful in future educational activities.~~
- 5.1.1.4 ~~Communicating the Vision and Goals: Administrator communicates effectively to appropriate stakeholders about progress towards meeting the school or district improvement plan goals. Administrator participates in a process to regularly monitor, evaluate and revise school or district improvement goals.~~
- 5.1.2 Culture of Learning Teaching and Learning: Focuses on the administrator's actions to implement rigorous curricula, assessments and high-quality instructional practices and to monitor student progress to inform instructional practices.
- 5.1.2.1 ~~Advocating a Culture of Learning: Administrator provides leadership for assessing, developing and improving the school or district culture and instructional program that is conducive to student learning. Administrator can articulate the desired school or district instructional program and shows evidence about how he or she reinforces the instructional program and culture.~~

- 5.1.2.2 ~~Monitoring the Culture of Learning: Administrator participates in monitoring and evaluating the effectiveness of the curriculum, instruction or assessment of students. Administrator evaluates staff and provides on going coaching for improvement. Administrator uses a variety of sources of information to make decisions.~~
- 5.1.2.3 ~~Sustaining the Culture of Learning: Administrator helps to ensure that staff have professional development opportunities that enhance their performance and improve student learning. Administrator is accessible and approachable by staff, families, and community and is visible in the school or district community. Administrator supports the use of technology as appropriate in teaching and learning.~~
- 5.1.2.4 ~~Maintaining the Culture of Learning: Administrator systematically and fairly recognizes accomplishments of staff and students towards a positive school or district culture. Administrator uses and analyzes data to instill the importance of continually developing programs and strategies to enhance opportunities for learning.~~
- 5.1.3 Management People, Systems and Operations: Focuses on the administrator's actions to create and implement a strategic plan, manage resources and organize time, ensuring alignment with mandated policies and creating a safe, efficient and effective environment in the school or district that supports student learning. Also focuses on the administrator's actions to attract, support, develop, evaluate and retain educators based upon performance indicators.
  - 5.1.3.1 ~~Solving Problems or Concerns: Administrator addresses and resolves issues as they arise in a timely manner and works to prevent potential problems. Operational procedures are designed and managed to maximize opportunities for learning for all students.~~
  - 5.1.3.2 ~~Managing Resources: Administrator manages fiscal and physical resources responsibly, efficiently and effectively. Administrator protects instructional time by managing operational procedures in such a way as to maximize learning. Administrator efficiently manages his or her time so that teaching and learning are a high priority.~~
  - 5.1.3.3 ~~Complying with Policies: Administrator complies with federal, state, and board policies. School or district contractual agreements are effectively managed. Administrator maintains confidentiality and privacy of school or district records, including student or staff information.~~
  - 5.1.3.4 ~~Protecting the Welfare and Safety of Students and Staff: Administrator works to ensure a safe and secure school or district environment and a culture that is conducive to teaching and learning. Challenges that could potentially interrupt teaching and learning are addressed and resolved.~~
- 5.1.4 Professional Responsibilities: Focuses on the administrator's personal leadership actions, including building trusting relationships, engaging in self-reflection and ongoing learning, problem solving with a constant focus on student learning, constructively managing change and effectively communicating with and engaging families and other stakeholders.
  - 5.1.4.1 ~~Maintaining Professional Relationships: Administrator fosters and maintains positive professional relationships with staff. Administrator is respectful of other's opinions and demonstrates an appreciation for and sensitivity to diversity in the school or district community.~~
  - 5.1.4.2 ~~Promoting Family and Community Involvement: Administrator collaboratively works to establish a culture that encourages and welcomes families and community members and seeks ways in which to engage them in student learning.~~
  - 5.1.4.3 ~~Demonstrating Fairness: Administrator is fair and consistent when dealing with students and staff. Administrator demonstrates values, beliefs and attitudes that inspire all students and staff to higher levels of performance.~~
  - 5.1.4.4 ~~Growing and Developing Professionally: Administrator chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school or district.~~
- 5.1.5 Student Improvement

- 5.1.5.1 ~~Measuring Student Improvement~~: Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

## 6.0 Summative Evaluation Ratings

- 6.1 Each ~~of the first four (4) Appraisal Components~~ shall be assigned a rating of ~~Satisfactory or Unsatisfactory~~ Highly Effective, Effective, Needs Improvement or Ineffective on the Summative Evaluation. The rating for the Student Improvement Component shall be assigned a rating of Exceeds, Satisfactory or Unsatisfactory on the Summative Evaluation. The rating for each of the five (5) Appraisal Components shall reflect the standards as described in the DPAS II Revised Guides for Administrators.
- 6.1.1 ~~A satisfactory rating~~ Ratings for each of the first four (4) Appraisal Components shall ~~mean the administrator demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the components be informed by Criteria-level ratings, as described in the DPAS II Revised Guides for Administrators. Each Appraisal Criterion shall be assigned a rating of Highly Effective, Effective, Needs Improvement or Ineffective on the Summative Evaluation.~~
- 6.1.2 ~~A satisfactory rating for the Student Improvement component shall mean that the administrator has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.~~
- 6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement" or "Ineffective".
- 6.2.1 **"Highly Effective"** shall mean that the administrator has a ~~Satisfactory Component Rating earned an Effective or Highly Effective rating in the first four (4) of the five (5) Appraisal Components in accordance with 5.0, including and an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth, as defined in the DPAS II Revised Guide for Administrators, as the same may be amended from time to time, developed pursuant to 4.0.~~
- 6.2.2 **"Effective"** shall mean that: the administrator has earned an Effective or Highly Effective rating in at least three (3) of the first four (4) Appraisal Components with zero (0) Ineffective ratings and a Satisfactory [or Exceeds] rating in the Student Improvement Component.
- 6.2.2.1 ~~The administrator has earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and~~
- 6.2.2.2 ~~The administrator does not meet the requirement for a "Highly Effective" rating found in 6.2.1.~~
- 6.2.3 **"Needs Improvement"** shall mean that:
- 6.2.3.1 ~~The administrator has earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Effective or Highly Effective ratings in one (1) or two (2) of the first four (4) Appraisal Components in accordance with 5.0, including with zero (0), one (1) or two (2) Ineffective ratings and a Satisfactory or Exceeds rating in the Student Improvement Component, or~~
- 6.2.3.2 ~~The administrator has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Effective or Highly Effective ratings in three (3) or four (4) of the first four (4) Appraisal Components in accordance with 5.0 and the administrator has earned an Unsatisfactory rating in the Student Improvement Component.~~
- 6.2.4 **"Ineffective"** shall mean that:
- 6.2.4.1 ~~The administrator has earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Effective or Highly Effective ratings in zero (0), one (1), or two (2) of the first four (4) Appraisal Components in accordance with 5.0, and an Unsatisfactory rating in the Student Improvement Component, or~~

6.2.4.2 The administrator has earned an ~~Unsatisfactory Component Rating~~ Effective or Highly Effective ratings in zero (0) of the first four (4) Appraisal Components and Satisfactory or Exceeds rating in the Student Improvement Component; ~~or~~

6.2.4.3 The administrator has earned Ineffective ratings in three (3) or four (4) of the first four (4) Appraisal Components.

6.2.5 ~~If an administrator's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the administrator's rating shall be re-categorized as "Ineffective".~~

## 7.0 Pattern of Ineffective Administrative Performance

7.1 A pattern of ineffective administrative performance shall be based on the most recent Summative Evaluation ratings of an administrator using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective administration. The following chart shows the consecutive Summative Evaluation ratings determined to be a pattern of ineffective administrative performance:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

## 8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of ~~Unsatisfactory~~ Needs Improvement or Ineffective on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall may also be developed if an administrator's ~~overall~~ performance during the ~~Formative Process~~ Annual Appraisal Cycle is unsatisfactory, as outlined in the DPAS II Revised Guides for Administrators. This ~~unsatisfactory performance shall be noted by the evaluator(s) on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.~~

8.2 The Improvement Plan shall contain the following:

8.2.1 ~~Identification of the specific deficiencies and recommended area(s) for growth;~~

8.2.2 ~~Measurable goals for improving the deficiencies to satisfactory levels;~~

8.2.3 ~~Specific professional development or activities to accomplish the goals;~~

8.2.4 ~~Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with curriculum specialist(s) or others with relevant experience;~~

8.2.5 ~~Procedures and evidence that must be collected to determine that the goals of the plan were met;~~

8.2.6 ~~Timeline for the plan, including intermediate check points to determine progress;~~

8.2.7 ~~Procedures for determining satisfactory improvement.~~

8.3 ~~Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect shall be certified by the Department and shall be directly related to areas identified as needing improvement.~~

8.42 The Improvement Plan shall be developed cooperatively by the administrator and evaluator ~~his or her Credentialed Evaluator~~. If the plan cannot be cooperatively developed, the ~~evaluator~~ administrator's

Evaluator shall have the authority and responsibility to determine the plan as specified in ~~8.2~~ 8.1 above.

- 8.53 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.64 Upon completion of the Improvement Plan, the administrator and ~~evaluator(s)~~ his or her Credentialed Evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

## 9.0 Challenge Process

- 9.1 An administrator may challenge any rating on the Summative Evaluation, either a an Appraisal Component Rating or the Overall Rating, or an administrator may challenge ~~the conclusions of the Formative Process if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form~~ unsatisfactory performance identified by his or her Credentialed Evaluator during the Annual Appraisal Cycle, pursuant to 8.1.1. To initiate a challenge, an administrator shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of administrator's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator, if any.
- 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of all documents used in the appraisal and the written challenge, meet with the administrator, and issue a written decision.
- 9.1.2 If the challenge is denied, the written decision shall state the reasons for denial.
- 9.1.3 The decision of the supervisor of the evaluator shall be final.

## 10.0 Evaluator(s) Credentials

- 10.1 Evaluators shall have successfully completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.1.1 The Department of Education shall annually monitor ~~evaluation~~ implementation of DPAS II for Administrators.
- 10.2 The training shall occur no less than once every three (3) years and shall include techniques for observation and conferencing, content and relationships of ~~ISLLC~~ the state standards for administrators, and a thorough review of the DPAS II Revised Guides for Administrators. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

## 11.0 Evaluation of Process

The Department of Education shall conduct an annual evaluation of the ~~teacher~~ administrator appraisal process. The evaluation shall, at a minimum, include a survey of ~~teachers and evaluators~~ administrators and interviews with a sampling of ~~teachers and evaluators~~ administrators. Data from the evaluation and proposed changes to ~~the DPAS II Revised Guide for Administrators~~ shall be presented to the State Board of Education for review on an annual basis.

**~~DPAS II Revised Guides for Teachers, Specialists, and Administrators~~**



## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
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. The amendment is to align the regulation to Senate Bill No. 51 as amended by Senate Amendment No. 1 of the 147<sup>th</sup> General Assembly and align to the changes in the national teacher education accrediting agency. For ease of reading, the regulation was stricken though in its entirety and new language will be represented as underlined. Some language, from the original regulation has been incorporated into the amendment.

The Department took into account feedback from a variety of stakeholders during the drafting process. The Department conducted multiple conversations with educator preparation programs, the State Board of Education, the Professional Standards Board, teachers, administrators, and Districts. It also considered national research and best practices in the field of educator preparation. As a result of these consultations, the Department defined a process for program approval that meets the requirements of the law and raises the bar for candidates and institutions of higher education, with the intention of increasing the supply of high quality teachers for all of Delaware's children.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **May 1, 2014**, in the form hereto attached as *Exhibit "A"*. The Department received comments from members of the University of Delaware faculty, the Education Department faculty of Wesley College, Reading Assist, Governor's Advisory Council for Exceptional Citizens, State Council for Persons with Disabilities and State Board of Education. The comments were each reviewed and considered. The Department has made changes to the regulation for clarification purposes.

##### 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 to the changes in the national teacher education accrediting agency.

The amendment includes but is not limited to: 1) inclusion of a Department-led educator preparation program approval and renewal process, replacing the prior process which relied heavily on a partner organization, National Council for Accreditation of Teacher Education (NCATE); 2) an update of the name of the partner which will contribute to the Department-led approval process to the Council for the Accreditation of Educator Preparation (CAEP) (formerly NCATE); 3) establishment of rigorous entry requirements as prerequisites for admission into an approved program; 4) the requirement that approved programs have a clinical residency component, supervised by high quality educators, consisting of at least ten weeks of full-time student teaching, with clinical experiences interwoven throughout; 5) the requirement that approved programs for early childhood and elementary school teachers include instruction using research-based strategies for teaching childhood literacy and age-appropriate mathematics content; 6) the requirement that programs conduct ongoing evaluation of their students, aligned to the state-wide educator evaluation system; 7) establishment of rigorous exit requirements for approved programs, including achievement of passing scores on a content-readiness exam and a performance assessment; 8) the requirement that approved programs collaborate with the Department to collect and report data, including data on performance and effectiveness of program graduates by student achievement; 9) the requirement that approved programs report on all aspects of program compliance and outcomes as a prerequisite for ongoing program approval; 10) establishment of a process for public reporting that provides and publishes ratings of programs based on outcomes; and 11) inclusion of definitions for all key terms in this regulation.

##### 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 **June 13, 2014**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 13th day of June 2014.

#### Department of Education

Mark T. Murphy, Secretary of Education

Approved this 13<sup>th</sup> day of June 2014

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

**290 Approval of Educator Preparation Programs**

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## DEPARTMENT OF ELECTIONS FOR KENT COUNTY

Statutory Authority: 29 Delaware Code, Section 10003(b) (29 **Del.C.** §10003(b))

### ORDER

#### 1602 Policies and Procedures Regarding FOIA Requests

AND NOW, this 12th day of June, 2014 in accordance with 29 **Del.C.** §10003(b) for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures of the Delaware Department of Elections for Kent County regarding Freedom of Information Act ("FOIA") requests.

#### NATURE OF PROCEEDINGS

The Department of Elections for Kent County has adopted final regulations governing its Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Elections for Kent County pursuant to 29 **Del.C.** Ch. 100, the FOIA. The regulations establish a reasonable fee structure for copying, printing or electronically delivering public records as well as streamlining the procedures used to disseminate the information.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of Elections for Kent County has developed procedures for responding to requests from

the public for information as set forth in 29 **Del.C.** Ch. 100. These regulations are in substantial compliance with, and necessary to, effectuate 29 **Del.C.** Ch. 100.

2. The Delaware Department of Elections for Kent County has statutory authority to promulgate these Policies and Procedures pursuant to 29 **Del.C.** §10003(b).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing a Department's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

## DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director and Deputy Director of the Department of Elections for Kent County do hereby ORDER that the Policies and Procedures be, and that they hereby are, adopted and promulgated 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).

Doris J. Young, Director & J. Douglas Greig, Deputy Director

### 1602 Policies and Procedures Regarding FOIA Requests

#### **1.0 Purpose**

1.1 The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records in accordance with 29 **Del.C.** Ch. 100.

1.2 Department employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Department and to comply with the policy that the public shall have reasonable access to Public Records.

#### **2.0 Definitions**

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

"Department" means the Department of Elections for Kent County

"Deputy Director" means the Deputy Director, Department of Elections for Kent County.

"Director" means the Director, Department of Elections for Kent County.

"FOIA" means the Freedom of Information Act as established pursuant to 29 **Del.C.** Ch. 100.

"FOIA Coordinator" means the person designated by the Director and/or Deputy Director to receive and process FOIA Requests.

"FOIA Request" or "Request" means a request to inspect Public Records pursuant to 29 **Del.C.** §10003 and in accordance with the policy hereunder.

"FOIA Request Form" means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

"Non-Custodial Records" shall have the meaning set forth in Section 3.6.

"Public Record" shall have the meaning set forth in 29 **Del.C.** §10002.

"Requesting Party" means the party filing a FOIA Request.

#### **3.0 Records Request, Response Procedures and Access**

##### **3.1 Form of Request**

3.1.1 All FOIA Requests shall be made in writing to the Department in person, by mail, email or online in accordance with Section 3.2. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not

on the proper form. Copies of the FOIA Request Form may be obtained from the Department, the Department's website, or from the office or website of any state Agency.

- 3.1.2 All requests shall describe the records sought in sufficient detail to enable the Department to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Department in locating the requested records, the Department may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

### 3.2 Method of Filing Request

- 3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at the Department's office, by email to [votekc@state.de.us](mailto:votekc@state.de.us), or via online request form, which can be found at [http://electionskc.delaware.gov/information/foia/foia\\_request\\_form.pdf](http://electionskc.delaware.gov/information/foia/foia_request_form.pdf)

- 3.2.2 The Department's address is as follows:

Department of Elections for Kent County  
100 Enterprise Place, Suite 5  
Dover, DE 19904  
Phone: 302.739.4498  
FAX: 302.739.4515  
Email: <mailto:votekc@state.de.us>  
Web Site: <http://electionskc.delaware.gov/>

### 3.3 FOIA Coordinator

- 3.3.1 The Director and Deputy Director shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and shall coordinate the Department's responses thereto. The FOIA Coordinator shall be identified on the Department's website. The FOIA Coordinator may designate other Department employees to perform specific duties and functions hereunder.

- 3.3.2 The FOIA Coordinator and/or his or her designee shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Department in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Department and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another Agency, the FOIA Coordinator shall promptly forward such request to that Agency and promptly notify the Requesting Party that the request has been forwarded. The Department may close the initial request upon receipt of a written confirmation from the FOIA coordinator of the relevant Agency has received the request. The Department shall provide the Requesting Party with the name and phone number of the FOIA coordinator of the relevant Agency and confirmed that it had received the request.

- 3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Department received the Request; the Department's response deadline pursuant to Section 3.4; the date of the Department's response pursuant to Section 3.4 (including the reasons for any extension pursuant to Section 3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to Sections 3.3.2, 3.5 and 3.6; the dates of review by the Department pursuant to Section 3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

### 3.4 Department Response to Requests

- 3.4.1 The Department shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in

storage or archived. If access cannot be provided within fifteen (15) business days, the Department shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Department denies a request in whole or in part, the Department's response shall indicate the reasons for the denial. The Department shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

### 3.5 Requests for Email

3.5.1 Requests for email records may be fulfilled by the Department from its own records, if doing so can be accomplished by the Department with reasonable effort. If the Department determines that it cannot with reasonable effort fulfill all or any portion of such request, the Department shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Department. Upon receipt from DTI, the Department may review the email records in accordance with 3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Department shall forward a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving the records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

### 3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Department but that are either not within its possession or cannot otherwise be fulfilled by the Department with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Department shall promptly request that the relevant public body provide the Non-Custodial Records to the Department. Prior to disclosure, records may be reviewed in accordance with Section 3.7 hereunder by the Department, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Department.

3.6.2 Before requesting any Non-Custodial Records, the Department shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Department. Prior to disclosure, records may be reviewed by the Department to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Department from disclosing or permitting access to Public Records if the Department determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review. The Department shall provide reasonable access for reviewing Public Records during regular business hours from 8 a.m. to 4:30 p.m. Monday through Friday.

## 4.0 Fees

### 4.1 Photocopying, printing and other associated Fees:

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying and printing fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

# FINAL REGULATIONS

- 4.1.1.2 Oversized Copies/Printouts: The charge for copying or printing oversized Public Records shall be as follows:

<u>18" x 22":</u>	<u>\$2.00 per sheet</u>
<u>24" x 36":</u>	<u>\$3.00 per sheet</u>
<u>Larger than 24" x 36":</u>	<u>\$3.00 plus \$1.00 per square foot above the first 6 square feet</u>

- 4.1.1.3 Color Copies/Printouts: An additional charge of \$.50 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.00 per sheet for larger copies.
- 4.1.1.4 Electronic Media fees: The cost of providing records on a CD or DVD is \$10.00 in addition to any Administrative or copying fees.
- 4.1.1.5 There shall be no charge for delivering records electronically, however there may be a copying fee if portions of a record or records have to be redacted in addition to an Administrative fee in accordance with section 4.2.

## 4.2 Administrative Fees:

- 4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying responsive records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Department's legal review of whether any portion of the requested records are exempt from FOIA. The Department shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Department shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible. Administrative fees shall be charged at the rate of \$14 per hour.
- 4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Department shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.
- 4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. Administrative fees will be in addition to any other charges incurred under this Section 4.0, including copying fees.
- 4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Department may in its discretion aggregate staff time for all such requests when computing fees hereunder.
- 4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.
- 4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.
- 4.5 Payment: The Department requires payment of fees in U. S. currency by cash or check (payable to the "State of Delaware") before fulfilling a request for records.
- 4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Department in preparing the requested records. The Department shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

## 5.0 **Applicability**

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 3204 (16 Del.C. §3204)  
16 DE Admin. Code 4201

### ORDER

### 4201 Cancer Registry

#### NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing the Delaware Cancer Registry. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Del.C.** §3204.

On May 1, 2014 (Volume 17, Issue 11), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by May 30, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

#### SUMMARY OF EVIDENCE

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

Entities offering written comments include:

- State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson
- Governor’s Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson

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

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

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health’s (DPH’s) proposal to amend the State of Delaware Cancer Registry regulations. Specifically, the Division proposes to amend its implementing regulations to convert health care provider reporting from a “paper” system to an “electronic” system. The proposed regulation was published as 17 **DE Reg.** 1035 in the May 1, 2014 issue of the *Register of Regulations*. SCPD endorses the concept of switching to an electronic reporting system subject to consideration of the following amendments.

First, in §4.0, SCPD recommends deletion of the third sentence. It is redundant to reiterate the definition of a “non-hospital reporter” which is already defined in §2.0.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has deleted the third sentence as per the suggestion of the commenter.

Second, in §4.0, sixth sentence, SCPD recommends substituting “it is” for “they are” since the antecedent noun (provider) is singular.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has substituted the words “it is” for “they are” as suggested by the commenter.

Third, in §4.0, the eighth “sentence” reads as follows: “All data required by the reporting requirements of the National Cancer Data Base established by the American College of Surgeons.” This is not a sentence since it

lacks a predicate.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised the sentence as suggested by the commenter.

Fourth, in §4.0, ninth sentence, SCPD believes “request” should be “include”.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has substituted the word “request” with the word “include” as suggested by the commenter.

Fifth, §§4.0 and 5.0 condense the scope of information related to patient residence and employment. This may not comport with the enabling legislation. Consider the following:

A. Title 16 **Del.C.** §3204(2) requires reporting of the patient’s “primary residential address”. The regulation omits any reference to collection of such information.

B. Section §3204(2) requires reporting of “the location and nature of the patient’s primary past employment.” The regulation deletes the requirement of reporting the “name and address of employer” and merely contemplates identification of type of occupation. This is not consistent with the enabling law.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised the regulations as suggested by the commenter to be consistent with the enabling law.

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

The Governor’s Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Public Health (DPH) proposal to amend its implementing regulations converting health care provider cancer registry reporting to an “electronic” system from the current “paper” system. The Division is required to maintain a cancer registry by the Delaware Cancer Control Act codified at 16 **Del.C.** §§3201-3209. Council **endorses** the concept of switching to an electronic reporting system subject to consideration of the following amendments.

First, in §4.0, Council recommends deletion of the third sentence. It is unnecessary to reiterate the definition of a “non-hospital reporter” since it is already defined in §2.0.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has deleted the third sentence as per the suggestion of the commenter.

Second, in §4.0, sixth sentence, Council recommends substituting “it is” for “they are” since the antecedent noun (provider) is singular.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has substituted the words “it is” for “they are” as suggested by the commenter.

Third, in §4.0, the eighth “sentence” reads as follows: “All data required by the reporting requirements of the National Cancer Data Base established by the American College of Surgeons.” This is not a sentence since it lacks a predicate.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised the sentence as suggested by the commenter.

Fourth, in §4.0, ninth sentence, Council believes “request” should be “include”.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has substituted the word “request” with the word “include” as suggested by the commenter.

Fifth, §§4.0 and 5.0 condense the scope of information related to patient residence and employment. This may not align with the enabling legislation. Consider the following:

A. Title 16 **Del.C.** §3204(2) requires reporting of the patient’s “primary residential address”. The regulation omits any reference to collection of such information.

B. Section §3204(2) requires reporting of “the location and nature of the patient’s primary past employment.” The regulation deletes the requirement of reporting the “name and address of employer” and merely contemplates identification of type of occupation. This is not consistent with the enabling law.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised the regulations as suggested by the commenter to be consistent with the enabling law.

The public comment period was open from May 1, 2014 through May 30, 2014. Based on comments received during the public comment period, only non-substantive changes have been made to the proposed regulations. The regulations have been reviewed by the Delaware Attorney General’s office and approved by the Cabinet Secretary of DHSS.



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## FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing the Delaware Cancer Registry are adopted and shall become effective July 1, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

### 4201 Cancer Registry

#### 1.0 Purpose

These regulations are promulgated by the Department pursuant to Senate Bill 372 of the 141<sup>st</sup> General Assembly. These regulations are also independently authorized by 29 **Del.C.** §7903. The purpose of the regulations is to implement 16 **Del.C.** Ch. 32.

#### 2.0 Definitions

“**Benign Tumor**” means any nonmalignant neoplasm, regardless of the tissue or origin, that appears on the American College of Surgeons most recently published list of reportable cancers and benign tumors.

“**Cancer**” means any malignant neoplasm, regardless of the tissue origin, that appears on the American College of Surgeons most recently published annual list of reportable cancers and benign tumors.

“**Clinical Laboratory**” means a facility in which tests are performed identifying findings of anatomical changes, and/or specimens are interpreted and pathological diagnoses are made.

“**The Department**” means the Department of Health and Social Services.

“**Health Care Provider**” means:

person, corporation, facility or institution licensed by this State pursuant to Titles 16 or 24 of the **Delaware Code** to perform any act to or on behalf of a patient during the patient’s medical care, treatment, or confinement, or

a clinical laboratory. When a person acting as a health care provider is working for a corporation, facility, or institution, the corporation, facility, or institution shall be considered the health care provider for purposes of these regulations.

“**Non-hospital reporter**” means one that: is not located within a Delaware hospital and/or does not report cancer case data to such hospital’s cancer registry.

#### 3.0 Duty to Report

Each health care provider shall ~~complete and~~ submit cancer data to the Department ~~the forms electronically as~~ described in Section 4 with respect to (a) each patient whom it diagnoses with cancer or a benign tumor, and (b) each patient for whom it renders any care after the individual is diagnosed with cancer or a benign tumor. Compliance by one health care provider with this Section with respect to an individual patient shall not obviate compliance by other health care providers with respect to the same patient. Physician offices that are located in a hospital and have an electronic database accessible to the hospital cancer registry may be asked to submit to the Department an electronic data file listing of cancer cases for linkage prior to submission of case information. Once the linkage is made, any missing cases must be reported electronically as indicated in Section 4.0.

#### 4.0 ~~Forms Supplied by Department~~ **Process and Specifications of Reporting Data to the Department**

Cancer data should be submitted in a secure, electronic method. Non-hospital providers should submit all cancer case data utilizing the CDC's Web Plus software. ~~[A non-hospital reporter is defined as one that is not located within a Delaware hospital and/or does not report cancer case data to such hospital's cancer registry.]~~ If a non-hospital provider is unable to submit data electronically, the provider may contact the Department to inquire about an exemption. Upon approval of the exemption, the Department will provide data collection forms to the provider. To request an exemption, a provider must submit a letter stating reason why ~~[they are it is]~~ unable to report using the electronic method to the Delaware Cancer Registry. The address can be found at: <http://www.dhss.delaware.gov/dhss/main/maps/other/oxfordbd.htm>

Forms prepared by the Department for use by health care providers in complying with Section 3 shall request ~~a~~All data **[required as indicated]** by the reporting requirements of the National Cancer Data Base established by the American College of Surgeons **[is required]**. Forms prepared ~~Data submitted~~ under this section shall also **[request include]** disclosure of the address at which the patient has lived for the longest period of time, the occupation at which the patient has worked for the longest period of time, and the name and address of the employer at the occupation where the patient has worked for the longest period of time, ~~[length of residence in Delaware and the type of occupation(s)]~~ **patient's length of residency in Delaware, primary residential address in Delaware and the location and nature of the patient's primary past employment]** if such information is available to the health care provider. A health care provider shall make reasonable efforts to obtain all information requested by the form prepared under this Section ~~as required on the electronic reporting system.~~ However, reasonable efforts by a clinical laboratory shall not include the interviewing of patients to obtain required information.

#### 5.0 **Retention of Required Information**

A health care provider who is treating a patient who has been diagnosed with cancer or a benign tumor shall ask that patient to fill out a form requesting disclosure of ~~the address at which the patient has lived for the longest period of time in his or her life, the occupation at which the patient has worked for the longest period of time in his or her life, and the name and address of the employer at the occupation where the patient has worked for the longest period of time~~ **[length of residence in Delaware, and the type of occupation(s) at which the patient has worked patient's length of residency in Delaware, primary residential address in Delaware and the location and nature of the patient's primary past employment]**. The health care provider shall retain the form required by this Section with the patient's medical records pursuant to generally accepted protocol for the retention of patient medical records. The health care provider shall include the information from the form required by this Section with information it submits pursuant to Section 3.0 of these regulations. The Department shall provide a form for use in complying with this Section.

#### 6.0 **Deadlines for Submission**

A health care provider shall provide the information required by Section 3 4.0 within 180 days of the initiation of treatment of a patient or diagnosis of that patient with a cancer or benign tumor, whichever is earlier.

#### 7.0 **Failure to Submit Required Information**

A health care provider that fails to comply with Section 5 3.0 shall permit the Department to audit its records and abstract information that should have been provided under Section 6 4.0. The health care provider shall reimburse the Department for the cost of said audit. If the audit does not identify a compliance failure by the health care facility or provider, the cost of such audit shall not be assessed against the facility or provider.

## 8.0 Voluntary Audit

A health care provider may voluntarily request that an audit be performed if it does not intend to submit the information required by Section 6 4.0. The Department shall determine if the request for an audit will be honored. The health care provider shall reimburse the Department for the cost of said audit if the Department honors the request. The Department shall determine whether said costs shall be prepaid, or paid upon completion of the audit.

## 9.0 Fines

Failure to comply with Sections 6 3.0 and 6.0 of these regulations may result in a \$100 fine against the health care provider that has failed to comply. Each failure to comply shall constitute a separate violation and shall subject the health care provider to a separate \$100 fine.

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### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §133 (16 **Del.C.** §133)  
16 **DE Admin. Code** 4203

### ORDER

### 4203 Cancer Treatment Program

#### NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulation Governing the Delaware Cancer Treatment Program. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Del.C.** §133.

On April 1, 2014 (Volume 17, Issue 10), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 30, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

#### SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulation Governing the Delaware Cancer Treatment Program were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Entities offering written comments include:

- State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson
- Governor’s Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson

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

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

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health’s (DPH’s) proposal to revise its technical, financial, and residency eligibility requirements for the Delaware Cancer Treatment program. The SCPD commented on prior versions of the regulations in May and December of 2004, and in September of 2007. The proposed regulation was published as 17 **DE Reg.** 955 in the April 1, 2014 issue of the *Register of Regulations*. SCPD has the following observations.

**First**, DPH adds a new definition of “uninsured” as follows:

- 1.2. Definition of “uninsured” for purposes of this regulation - a person who meets all technical, financial, and residency requirements of this regulation.

This definition is counterintuitive and makes no sense. Literally, someone who is insured but not a Delaware resident would be considered “uninsured”. Similarly, someone who is insured but “overincome” would be considered “uninsured”. If the Division wishes to retain the reference, consider substituting “a person who meets §§4.1.4 - 4.1.6 of this regulation”.

DPH should consider creation of a “definitions” section rather than inserting a definition in the “purposes” section. See Delaware Administrative Code Style Manual, §3.1. Indeed, the Manual recites as follows: “Define a term only if it is important and it is used more than once in the regulation.” The term “uninsured” is only used once (§1.1) in the regulation so there is technically no need for a definition of “uninsured”. The better approach would be to establish a “definitions” section, substitute “Be uninsured” for “Have no health insurance” in §4.1.4, and then include all definitions in the definitions section, including “uninsured” and “inmate” and “public institution” (currently defined in §4.3.1).

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has determined to leave the statement as is and due to the limited number of terms being defined, has determined not to include a definitions section. While the section appears to make no sense to the organization that submitted comments, the section does have meaning for the Agency and will be used to assist with determining eligibility for the program.

**Second**, the regulation limits authorization for treatment to a “physician”. See §§4.1.1, 4.2.1, and 11.2. DPH may wish to consider adding references to “advanced practice nurse”. See 24 **Del.C.** §1902(b)(1). Alternatively, DPH could adopt a generic term (e.g. “licensed health care professional” and add a definition of the term to cover physicians and advanced practice nurses.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has determined to leave the term “physician”.

**Third**, in §3.1, the Division may wish to consider deletion of the extraneous “acting” in the second sentence.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has added to the sentence “acting on behalf of the applicant” to address this comment.

**Fourth**, in §3.1, the third sentence lists protected classes. It omits some classes. See Title 6 **Del.C.** §§4501, 4502(14), and 4503.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised the sentence to include all of the following: race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, or national origin of such persons.

**Fifth**, in §4.1.5.1, DPH should consider correcting the grammar. There should be parallel form in lists. In this section, some items begin with nouns and some items begin with verbs. See Delaware Administrative Code Drafting & Style Manual, §6.2.3.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised the list to be of parallel form and all start with nouns.

**Sixth**, the regulation is inconsistent in the context of retroactivity. On the one hand, §4.2.4 authorizes 3 months of retroactive coverage for children with no analogous authorization for adults in §4.1. It’s unclear why 3-months retroactive coverage would be authorized for children but not adults. Moreover, 12 month retroactivity for children and adults is authorized by §12.7. The Division may wish to clarify its intention and adopt a uniform standard.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has removed the additional unneeded language under §4.2.4 related to children as retroactivity for both adults and children as covered under §12.7.

**Seventh**, the references to “inmate of a public institution... as used in the Delaware Medicaid program” do not provide much guidance. It would be preferable to provide a citation to 16 **DE Admin Code** 14120 for clarity and ease of reference.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised the statement to refer to 16 **DE Admin Code** 14120.

**Eighth**, the Division is switching from a net income to a gross income standard for most forms of earned income. See §§5.3.5 and 5.3.6. This creates an anomaly since rental income (§5.3.11 and 5.3.12) is reduced by expenses to amount to net income. Obviously, it would be more consumer-oriented to continue to count net earned income.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has

determined to maintain the language as originally proposed. The allowance for expenses related to rental income and Roomer/Boarder income are directly related to operating expenses for such incomes. The same is allowed under §5.3.13 Self-Employment, whereby operating expenses are accounted for prior to a person submitting countable income to the IRS.

**Ninth**, the Division proposes to change the residency standard as follows:

- 6.1. A Delaware resident is an individual who lives in Delaware with the intention to remain permanently ~~or for an indefinite period~~ or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

The deletion of “or for an indefinite period” is highly objectionable. Residency does not require an intention to remain in the State permanently. See 16 **DE Admin Code** 14110.5 -14110.8. See also 17 **DE Reg.** 386 (10/1/13). The term “or for an indefinite period” should be retained. DPH may wish to consult its assigned Attorney General for guidance.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has determined that the removal of the language follows the intent of the program as well as 16 **DE Admin Code** 14110.5 - 14110.8. 16 **DE Admin Code** 14110.5 -14110.8 states “intends to reside including without a fixed address”, this expressed intent is the same for the purposes of this program.

**Tenth**, the Division proposes the following deletion:

Eligibility: ...

- ~~6.3.2. Will not be denied because of a durational residence requirement.~~

The implication of the change is to reinforce the proposed requirement in §6.1 that residency must be “permanent” to be eligible for the program. This is objectionable. Residency can be established without meeting a “permanency” standard. Section 6.3.2 should be retained.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has removed the word “permanently” from 6.1

**Eleventh**, the Division proposes the following revision:

- 7.4 Failure to provide requested documentation ~~may~~ will result in denial or termination of eligibility.

It would be preferable for the Division to retain discretion in how it addresses lack of documentation rather than adopting a “brittle” standard. For example, an individual may lack competency or attempt unsuccessfully to obtain documentation from other sources.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency maintains that failure to provide requested documentation will result in denial or termination of eligibility. The Division partners with hospitals and cancer programs statewide to offer assistance to individuals who need assistance obtaining the required documentation.

**Twelfth**, the grammar in §9.3 could be improved. The reference to “regardless as to if the individual” is somewhat awkward. Consider substituting “regardless of whether the individual”.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has made the suggested revision.

**Thirteenth**, §11.2 recites as follows:

- 11.2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer.

Literally, if someone became ineligible for one month due to excess earnings, or if someone’s eligibility were terminated due to lack of documentation which is then located, this section would categorically preclude reinstatement or continued therapy in following months. This would be a harsh result. The section should be reconsidered. For example, for someone with variable income, could benefits be subject to “suspension” in a high-income month rather than outright termination of eligibility. Alternatively, if someone’s eligibility is terminated (per §7.4) for lack of documentation, and the requested documentation is then acquired and submitted, reconsideration of eligibility should be allowed.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §10.2 and thus addresses that section. The Agency maintains that if eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer. The intent of this is further explained in §10.2, whereby it states that a person cannot receive program services for a recurrence of the same cancer.

**Fourteenth**, the Division could consider deletion of §112.8 since no one would ostensibly be affected by this section in 2014 or later.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §11.2 and thus addresses that section. The Agency has determined that §11.2 will remain in the regulation.

**Fifteenth**, in §10.1, the Division is modifying a reference to read “his/her”. The Delaware Administrative Code Drafting & Style Manual (§3.3.2.1) discourages use of “him/her” and similar references. It would also be preferable to revise the multiple references to “his/her” in §5.6.2 and the reference to “his or her” in §3.2.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §9.1, §5.6.2 and §3.2 and thus will address those sections. The Agency has replaced “his/her” and “him/her” with “his or her”.

**Sixteenth**, appeal rights under §16.0 are meager and do not include even rudimentary due process. Compare Goss v. Lopez, 397 U.S. 254 (1970). Cf. Title 29 **Del.C.** §10121-10129. DHSS could consider applying 16 **DE Admin Code** 5000 to the program.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §15.0 and thus addresses that section. The Agency has determined that as the regulations for the program are clear and that the appeal process has worked for many years, no changes will be made to §15.0 at this time.

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

The Governor’s Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Public Health (DPH) proposal to revise its “technical, financial, and residency eligibility requirements for the Delaware Cancer Treatment program.” At 955. Council would like to share the following observations.

**First**, DPH adds a new definition of “uninsured” as follows:

- 1.2. Definition of “uninsured” for purposes of this regulation - a person who meets all technical, financial, and residency requirements of this regulation.

This definition is counterintuitive and makes no sense. Literally, someone who is insured but not a Delaware resident would be considered “uninsured”. Likewise, someone who is insured but “over income” would be considered “uninsured”. If the Division wishes to retain the reference, consider substituting “a person who meets §§4.1.4 - 4.1.6 of this regulation”.

DPH should consider creation of a “definitions” section rather than inserting a definition in the “purposes” section. See Delaware Administrative Code Style Manual, §3.1. Indeed, the Manual recites as follows: “Define a term only if it is important and it is used more than once in the regulation.” The term “uninsured” is only used once (§1.1) in the regulation so there is technically no need for a definition of “uninsured”. The better approach would be to establish a “definitions” section, substitute “Be uninsured” for “Have no health insurance” in §4.1.4, and then include all definitions in the definitions section, including “uninsured” and “inmate” and “public institution” (currently defined in §4.3.1).

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has determined to leave the statement as is and due to the limited number of terms being defined, has determined not to include a definitions section. While the section appears to make no sense to the organization that submitted comments, the section does have meaning for the Agency and will be used to assist with determining eligibility for the program.

**Second**, the regulation limits authorization for treatment to a “physician”. See §§4.1.1, 4.2.1, and 11.2. DPH may wish to consider adding references to “advanced practice nurse”. See 24 **Del.C.** §1902(b)(1). Alternatively, DPH could adopt a generic term (e.g. “licensed health care professional” and add a definition of the term to cover physicians and advanced practice nurses.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has determined to leave the term “physician”.

**Third**, in §3.1, the Division may wish to consider deletion of the unnecessary “acting” in the second sentence.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has added to the sentence “acting on behalf of the applicant” to address this comment.

**Fourth**, in §3.1, the third sentence lists protected classes. Some classes have been omitted. See Title 6 **Del.C.** §§4501, 4502(14), and 4503.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised the sentence to include all of the following: race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, or national origin of such persons.

**Fifth**, in §4.1.5.1, DPH should consider correcting the grammar. There should be parallel form in lists. In this section, some items begin with nouns and some items begin with verbs. See Delaware Administrative Code Drafting & Style Manual, §6.2.3.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised the list to be of parallel form and all start with nouns.

**Sixth**, the regulation is inconsistent in the context of retroactivity. On the one hand, §4.2.4 authorizes three months of retroactive coverage for children with no corresponding authorization for adults in §4.1. It's unclear why three-months retroactive coverage would be authorized for children but not adults. Moreover, 12 month retroactivity for children and adults is authorized by §12.7. The Division may wish to clarify its intention and adopt a uniform standard.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has removed the additional unneeded language under §4.2.4 related to children as retroactivity for both adults and children as covered under §12.7.

**Seventh**, the references to "inmate of a public institution ... as used in the Delaware Medicaid program" do not provide much guidance. It would be preferable to provide a citation to 16 **DE Admin Code** 14120 for clarity and ease of reference.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has revised the statement to refer to 16 **DE Admin Code** 14120.

**Eighth**, the Division is switching from a net income to a gross income standard for most forms of earned income. See §§5.3.5 and 5.3.6. This creates an abnormality since rental income (§5.3.11 and 5.3.12) is reduced by expenses to amount to net income. Obviously, it would be more consumer-oriented to continue to count net earned income.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has determined to maintain the language as originally proposed. The allowance for expenses related to rental income and Roomer/Boarder income are directly related to operating expenses for such incomes. The same is allowed under §5.3.13 Self-Employment, whereby operating expenses are accounted for prior to a person submitting countable income to the IRS.

**Ninth**, the Division proposes to change the residency standard as follows:

- 6.1. A Delaware resident is an individual who lives in Delaware with the intention to remain permanently ~~or for an indefinite period~~ or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

The deletion of "or for an indefinite period" is highly objectionable. Residency does not require an intention to remain in the State permanently. See 16 **DE Admin Code** 14110.5 -14110.8. See also 17 **DE Reg.** 386 (10/1/13). The term "or for an indefinite period" should be retained. DPH may wish to consult its assigned Attorney General for guidance.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has determined that the removal of the language follows the intent of the program as well as 16 **DE Admin Code** 14110.5 - 14110.8. 16 **DE Admin Code** 14110.5 -14110.8 states "intends to reside including without a fixed address", this expressed intent is the same for the purposes of this program.

**Tenth**, the Division proposes the following deletion:

Eligibility: ...

- ~~6.3.2. Will not be denied because of a durational residence requirement.~~

The implication of the change is to reinforce the proposed requirement in §6.1 that residency must be "permanent" to be eligible for the program. This is objectionable. Residency can be established without meeting a "permanency" standard. Section 6.3.2 should be retained.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has removed the word "permanently" from 6.1

**Eleventh**, the Division proposes the following revision:

- 7.4 Failure to provide requested documentation ~~may~~ will result in denial or termination of eligibility.

It would be preferable for the Division to retain discretion in how it addresses lack of documentation rather than

adopting an inflexible standard. For example, an individual may lack competency or attempt unsuccessfully to obtain documentation from other sources.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency maintains that failure to provide requested documentation will result in denial or termination of eligibility. The Division partners with hospitals and cancer programs statewide to offer assistance to individuals who need assistance obtaining the required documentation.

**Twelfth**, Council would like to point out that although sections 9 through 15 have been re-numbered, the section headers have not been renumbered leading to "910.0 Changes In Circumstances And Personal Information", "1011.0 Termination Of Eligibility" and continuing.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has moved the original section 9.0 to section 13.0 and renumbered the headers following this change. The Agency would like to thank the commenter for pointing out this error.

**Thirteenth**, the grammar in §9.3 could be improved. The reference to "regardless as to if the individual" is somewhat awkward. Consider substituting "regardless of whether the individual".

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency has made the suggested revision.

**Fourteenth**, in §10.1, the Division is modifying a reference to read "his/her". The Delaware Administrative Code Drafting & Style Manual (§3.3.2.1) discourages use of "him/her" and similar references. It would also be preferable to revise the multiple references to "his/her" in §5.6.2 and the reference to "his or her" in §3.2.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §9.1, §5.6.2 and §3.2 and thus will address those sections. The Agency has replaced "his/her" and "him/her" with "his or her".

**Fifteenth**, §11.2 recites as follows:

11.2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer.

Literally, if someone became ineligible for one month due to excess earnings, or if eligibility of the individual was terminated due to lack of documentation which is then located, this section would categorically prevent reinstatement or continued therapy in following months. This would be a severe result. The section should be reconsidered. For example, for someone with variable income, could benefits be subject to "suspension" in a high-income month rather than outright termination of eligibility. Alternatively, if the eligibility is terminated (per §7.4) for lack of documentation and the requested documentation is then acquired and submitted, reconsideration of eligibility should be allowed.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §10.2 and thus addresses that section. The Agency maintains that if eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer. The intent of this is further explained in §10.2, whereby it states that a person cannot receive program services for a recurrence of the same cancer.

**Sixteenth**, the Division could consider deletion of §12.8 since no one would ostensibly be affected by this section in 2014 or later.

**Agency Response:** The Agency appreciates and acknowledges these comments. There is not a section §12.8. The Agency believes the commenter was referring to §11.2 and thus addresses that section. The Agency has determined that §11.2 will remain in the regulation.

**Seventeenth**, appeal rights under §16.0 are limited and do not include even basic due process. Compare Goss v. Lopez, 397 U.S. 254 (1970). Cf. Title 29 **Del.C.** §10121-10129. DHSS could consider applying 16 **DE Admin Code** 5000 to the program.

**Agency Response:** The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §15.0 and thus addresses that section. The Agency has determined that as the regulations for the program are clear and that the appeal process has worked for many years, no changes will be made to §15.0 at this time.

The public comment period was open from April 1, 2014 through April 30, 2014. Based on comments received during the public comment period, only non-substantive changes have been made to the proposed regulations. The regulations have been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.



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## FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulation Governing the Delaware Cancer Treatment Program are adopted and shall become effective July 1, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

### 4203 Cancer Treatment Program

#### 1.0 Purpose

- 1.1 The Cancer Treatment Program (CTP) is a program of Delaware Health and Social Services (DHSS), Division of Public Health (DPH) intended to provide medical insurance coverage to uninsured Delawareans for the treatment of cancer.
- 1.2 Definition of "uninsured" for purposes of this regulation - a person who meets all technical, financial, and residency requirements of this regulation.

#### 2.0 Availability Of Funds

- 2.1 Benefits will be available to enrollees provided that funds for this program are made available to DHSS.
- 2.2 In the event that funds are not available, DHSS will notify enrollees and providers.

#### 3.0 General Application Information

- 3.1 The application must be made in writing on the prescribed CTP form. An individual, agency, institution, guardian or other individual acting **[on behalf of the applicant]** can make this request for assistance for the applicant with his knowledge and consent. The CTP will consider an application without regard to race, color, age, sex, **[marital status, creed, sexual orientation, gender identity,]** disability, religion, national origin or political belief as per State and Federal law.
- 3.2 Each individual applying for the CTP is ~~requested, but not required,~~ to furnish his or her Social Security Number, if the individual has a Social Security Number.
- 3.3 Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

#### 4.0 Technical Eligibility

- 4.1 The following for an adult applicant are required to receive benefits under this program. The adult applicant must:
  - 4.1.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.
  - 4.1.2 Be a Delaware resident.
  - 4.1.3 Have been a Delaware resident at the time cancer was diagnosed.
  - 4.1.4 Have no health insurance.
    - 4.1.4.1 Examples of health insurance include comprehensive, major medical and catastrophic plans, Veterans Affairs Medical Services, Correctional Healthcare Services, Medicare, and Medicaid.
    - 4.1.4.2 Excepted are the following types of insurance plans, which do not exclude eligibility for the CTP: dental, vision, dismemberment, drug, mental health, nursing home, blood bank,

workman's compensation, accident, family planning, the Delaware Prescription Assistance Program, the Delaware Chronic Renal Disease program, and non-citizen medical coverage.

- 4.1.4.3 The CTP is the payer of last resort and will only provide benefits to the extent that they are not covered by the plans listed in 4.1.4.2.
- 4.1.5 Meet one of the exemptions listed in the Patient Protection and Affordable Care Act's (PPACA) requirements to buy coverage.
- 4.1.5.1 Exemptions listed in the PPACA include: [applicant is] part of a religion opposed to acceptance of benefits from a health insurance policy; [are applicant is] an undocumented immigrant; [are applicant is] incarcerated; [applicant is] a member of an Indian tribe; [applicant's] family income is below the threshold for filing a tax return; [have applicant is required] to pay more than 8% of household income for health insurance, after taking into account any employer contributions or tax credits.
- 4.1.5.2 Applicants will need to show proof of exemption from the PPACA.
- 4.1.6 Be ineligible for Medicaid.
- 4.1.57 Be over the age of 18 years.
- 4.1.68 Be diagnosed with any cancer on or after July 1, 2004, or be receiving benefits for the treatment diagnosis of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004.
- 4.2 The following are required for a minor (child under 18 years of age) to receive benefits under this program. The minor applicant must:
- 4.2.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.
- 4.2.2 Be a Delaware resident
- 4.2.3 Have been a Delaware resident at the time cancer was diagnosed.
- 4.2.4 Be diagnosed with any cancer on or after July 1, 2004. ~~[Coverage shall be retroactive up to 3 months prior to date of application, provided applicant meets medical requirements and applicant's parent(s) or legal guardian(s) meet financial eligibility requirements under 5.1. In no case will the minor applicant be eligible for benefits under this program before July 1, 2004.]~~
- 4.2.5 The CTP is payer of last resort and will only provide benefits to the extent that they are not covered by other plans.
- 4.3 An inmate of a public institution shall be ineligible for the CTP, provided that the benefits of the CTP are not otherwise provided in full or in part.
- 4.3.1 For the purposes of the CTP, the definitions of public institution and inmate shall be the same as used by the Delaware Medicaid program **[16 DE Admin. Code 14120]**.
- 4.4 The Medical Assistance Card is the instrument used to verify an individual's eligibility for benefits. Prior to rendering services, medical providers are required to verify client eligibility using the client's identification number by accessing one of the Electronic Verification Systems (EVS) options. Instructions for accessing EVS are described in the EVS section of the billing manual.

## 5.0 Financial Eligibility

- 5.1 To be eligible for the CTP the applicant must have countable household income that is less than 650% of the Federal Poverty Level (FPL).
- 5.2 Income is any type of money payment that is of gain or benefit to an individual. Income is either counted or excluded for the eligibility determination.
- 5.3 Countable income includes but is not limited to:
- 5.3.1 Social Security benefits – as paid after deduction for Medicare premium
- 5.3.2 Pension – as paid

- 5.3.3 Veterans Administration Pension – as paid
- 5.3.4 U.S. Railroad Retirement Benefits – as paid
- 5.3.5 Wages – ~~net gross~~ amount ~~after~~ before deductions for taxes and FICA
- 5.3.6 Senior Community Service Employment – ~~net gross~~ amount ~~after~~ before deductions for taxes and FICA
- 5.3.~~6~~7 Interest/Dividends – gross amount
- 5.3.~~7~~8 Capital Gains – gross amount from capital gains on stocks, mutual funds, bonds.
- 5.3.~~8~~9 Credit Life or Credit Disability Insurance Payments – as paid
- 5.3.~~9~~10 Alimony – as paid
- 5.3.~~10~~11 Rental Income from entire dwelling – gross rent paid minus standard deduction of 20% for expenses
- 5.3.~~11~~12 Roomer/Boarder Income – gross room/board paid minus standard deduction of 10% for expenses
- 5.3.~~12~~13 Self Employment – countable income as reported to Internal Revenue Service (IRS)
- 5.3.~~13~~14 Unemployment Compensation - ~~as paid~~ gross amount before deductions for taxes and FICA
- 5.4 Excluded income includes but is not limited to:
  - 5.4.1 Annuity payments
  - 5.4.2 Individual Retirement Account (IRA) distributions
  - 5.4.3 Payments from reverse mortgages
  - 5.4.4 Capital gains from the sale of principal place of residence
  - 5.4.5 Conversion or sale of a resource (i.e. cashing a certificate of deposit)
  - 5.4.6 Income tax refunds
  - 5.4.7 Earned Income Tax Credit (EITC)
  - 5.4.8 Vendor payments (bills paid directly to a third party on behalf of the individual)
  - 5.4.9 Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)
  - 5.4.10 Loan payments received by individual
  - 5.4.11 Proceeds of a loan
  - 5.4.12 Foster care payments made on behalf of foster children living in the home
  - 5.4.13 Retired Senior Volunteer Program (RSVP)
  - 5.4.14 Veterans Administration Aid and Attendance payments
  - 5.4.15 Victim Compensation payments
  - 5.4.16 German reparation payments
  - 5.4.17 Agent Orange settlement payments
  - 5.4.18 Radiation Exposure Compensation Trust Fund payments
  - 5.4.19 Japanese-American, Japanese-Canadian, and Aleutian restitution payments
  - 5.4.20 Payments from long term care insurance or for inpatient care paid directly to the individual
- 5.5 Determination of the household income will be based on the family budget group, which is the total number of persons whose income is budgeted together. This will always include the following:
  - 5.5.1 Married couples if they live together; and,
  - 5.5.2 Unmarried couples who live together as ~~husband and wife~~ a married couple.
  - 5.5.3 Couples will be considered as living together as ~~husband and wife~~ a married couple if:
    - 5.5.3.1 They say they are married, even if the marriage cannot be verified; or,
    - 5.5.3.2 They are recognized as ~~husband and wife~~ a married couple in the community; or,
    - 5.5.3.3 One partner uses the other's last name; or,
    - 5.5.3.4 They state they intend to marry.
- 5.6 In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's income and those of ~~his/her~~ his or her children are always budgeted together. The income of any other children in the home will be considered separately. In

these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

- 5.6.1 CTP benefits would be denied to any of the recipients by maintaining separate budget groups.
- 5.6.2 The caretaker chooses to have ~~his/her~~ his or her income and those of ~~his/her~~ his or her children considered with the income of any other people in the home.

## 6.0 Residency

- 6.1 A Delaware resident is an individual who lives in Delaware with the intention to remain ~~or for an indefinite period,~~ **[permanently]** or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.
- 6.2 Factors that may be taken into account when determining residency are variables such as the applicant's age, location of dwellings and addresses, location of work, institutional status, and ability to express intent.
- 6.3 Eligibility:
  - 6.3.1 Will not be denied to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.
  - ~~6.3.2 Will not be denied because of a durational residence requirement.~~
  - 6.3.3~~2~~ Will not be denied to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.
  - 6.3.4~~3~~ Will not be terminated due to temporary absence from the State, if the person intends to return when the purpose of the absence has been accomplished.
- 6.4 When a State or agency of the State, including an entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.

## 7.0 Verification Of Eligibility Information

- 7.1 The CTP ~~may~~ will verify information related to eligibility. Verification may be verbal or written and may be obtained from an independent or collateral source.
- 7.2 Documentation shall be date stamped and become part of the CTP case record.
- 7.3 Verifications received and/or provided may reveal a new eligibility issue not previously realized. Additional verifications may be required.
- 7.4 Failure to provide requested documentation ~~may~~ will result in denial or termination of eligibility.

## 8.0 Disposition Of Applications

- 8.1 The CTP will dispose of each application by a finding of full eligibility, temporary eligibility or ineligibility, unless:
  - 8.1.1 There is an entry in the case record that the applicant voluntarily withdrew the application, and that the CTP sent a notice confirming the applicant's decision;
  - 8.1.2 There is a supporting entry in the case record that the applicant is deceased; or
  - 8.1.3 There is a supporting entry in the case record that the applicant cannot be located.
- 8.2 Disposition definitions:
  - 8.2.1 Full eligibility - applicants provided full eligibility in the CTP meet all technical, income and residency eligibility requirements
  - 8.2.2 Temporary eligibility - applicants provided temporary eligibility meet all technical, income and residency eligibility requirements except 4.1.5
  - 8.2.3 Ineligibility - applicants do not meet one or more of the technical, income and/or residency eligibility requirements

## **9.0 Temporary Eligibility**

- 9.1 Applicants provided temporary eligibility in the CTP are not exempt from the requirements to buy health insurance coverage per the PPACA.
- 9.2 Applicants provided temporary eligibility in the CTP are only afforded coverage under the CTP until such time as they can obtain health insurance coverage either through an employer or through the individual health insurance marketplace.
  - 9.2.1 CTP applicants can obtain individual health insurance coverage during the annual health insurance coverage open enrollment period on the individual health insurance marketplace.
- 9.3 After such time as the applicant can obtain health insurance coverage through means listed in 9.2, the CTP enrollee will be terminated from the CTP, regardless ~~[as to if of whether]~~ the individual has followed through with obtaining health insurance coverage.

## ~~910.0 Changes In Circumstances And Personal Information~~

- ~~910.1 Enrollees are responsible for notifying the CTP of all changes in his/her circumstances that could potentially affect eligibility for the CTP. Failure to do so may result in overpayments being processed and legal action taken to recover funds expended on his/her behalf during periods of ineligibility.~~
- ~~910.2 Enrollees are responsible for notifying the CTP of changes in the enrollee's name, address and telephone number.]~~

## ~~40[4110].0 Termination Of Eligibility~~

- ~~[404110].1 Eligibility terminates:~~
  - ~~[404110].1.1 When the enrollee attains other medical insurance, including Medicare, Medicaid, and the Medicaid Breast and Cervical Cancer treatment program as listed in 4.1.4.~~
  - ~~[404110].1.2 When the enrollee is no longer receiving treatment for cancer as defined in 4.1.1.~~
  - ~~[404110].1.3 When the enrollee no longer meets the technical or financial eligibility requirements.~~
  - ~~[404110].1.4 When applicants provided temporary eligibility status fail to obtain health insurance coverage or satisfy the requirements to transition to full eligibility status.~~
  - ~~[404110].1.45 Twenty-four months after the date that cancer treatment is initiated for each primary cancer diagnosis.~~
- ~~[404110].2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer. An individual who has a recurrence of cancer for which coverage has been previously provided is not eligible for additional coverage. The determination of a new primary cancer or recurring cancer is made by the treating physician.~~
- ~~[404110].3 When temporary eligibility is terminated or a disposition of ineligibility is received, applicants may request a financial hardship waiver and submit to DHSS for review to determine if a significant financial hardship exists for the applicant.~~

## ~~[441211].0 Coverage And Benefits~~

- ~~[441211].1 Coverage is limited to the treatment of cancer as defined by DHSS.~~
- ~~[441211].2 There is no managed care enrollment.~~
- ~~[441211].3 Benefits will be paid at rates equivalent to Medicaid under a fee for service basis. If a Medicaid rate does not exist for the service provided, the CTP will determine a fair rate.~~
- ~~[441211].4 Benefits will only be paid when the provider of the cancer treatment services is a Delaware Medicaid Assistance Provider.~~
- ~~[441211].5 Benefits for patients enrolled prior to September 1, 2004 (or whatever date is established by DHSS as having an operational benefits management information system), may not be paid until after that date.~~

~~[441211].6~~ The CTP is the payer of last resort and will only provide benefits to the extent that they are not otherwise covered by another insurance plan.

~~[441211].7~~ Eligibility may be retroactive to the day that cancer treatment was initiated provided that the application is filed within one year of that day. In such circumstances, covered services will only be provided for the time period that the applicant is determined to have been eligible for the CTP.

~~[441211].8~~ In no case will eligibility be retroactive to a time period prior to July 1, 2004, except if the enrollee was receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004. If this exception occurs, eligibility will be retroactive only to the date the enrollee was receiving benefits for colorectal cancer treatment through the Screening for Life program.

~~11.9 Enrollees receiving treatment for cancer through the CTP as of July 1, 2007 are able to extend their initial 12 month coverage to a maximum of 24 months after the date cancer treatment is initiated for each primary cancer diagnosis, provided that the enrollee continues to meet the technical and financial eligibility requirements.~~

#### ~~[421312].0~~ **Cancer Treatment Services Which Are Not Covered**

~~[421312].1~~ The cost of nursing home or long-term care institutionalization is not covered. (The cost of cancer treatment services within a nursing home or long term care institution is a covered benefit.)

~~[421312].2~~ Services not related to the treatment of cancer as determined by DHSS are not covered.

~~[421312].3~~ Cancer treatment services for which the enrollee is eligible to receive by other health plans as listed in 4.1.4.2 are not covered.

#### **[13.0 Changes In Circumstances And Personal Information**

**13.1 Enrollees are responsible for notifying the CTP of all changes in his or her circumstances that could potentially affect eligibility for the CTP. Failure to do so may result in overpayments being processed and legal action taken to recover funds expended on his or her behalf during periods of ineligibility.**

**13.2 Enrollees are responsible for notifying the CTP of changes in the enrollee's name, address and telephone number.]**

#### ~~4314.0~~ **Changes In Program Services**

~~4314.1~~ When changes in program services require adjustments of CTP benefits, the CTP will notify enrollees who have provided an accurate and current name, and address or telephone number.

#### ~~4415.0~~ **Confidentiality**

~~4415.1~~ The CTP will maintain the confidentiality of application, claim, and related records as required by law.

#### ~~4516.0~~ **Review Of CTP Decisions**

~~4516.1~~ Any individual who is dissatisfied with a CTP decision may request a review of that decision.

~~4516.2~~ Such request must be received by the CTP in writing within 30 days of the date of the decision in question.

~~4516.3~~ The CTP will issue the results of its review in writing. The review will be final and not subject to further appeal.

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**EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET  
STATE EMPLOYEE BENEFITS COMMITTEE**

Statutory Authority: 29 Delaware Code, Section 9602 (29 **Del.C.** §9602)  
19 **DE Admin. Code** 2001

**ORDER**

**Employees Eligible to Participate in the State Group Health Insurance Program**

**Eligibility and Enrollment Rules**

Effective on July 1, 2014, under the authority of Title 29, Section 9602(b)(4) of the **Delaware Code**, the State Employee Benefits Committee (SEBC) voted to amend the Group Health Insurance Program (GHIP) Eligibility and Enrollment Rules shown below. The amended rules are effective upon publication in the *Register of Regulations* in accordance with 147<sup>th</sup> General Assembly's House Bill 75.

**2001 Group Health Care Insurance Eligibility and ~~Coverage~~ Enrollment Rules  
(Effective July 1, ~~2013~~ 2014)**

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

**[2001 Group Health Care Insurance Eligibility and Enrollment Rules](#)**

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**OFFICE OF MANAGEMENT AND BUDGET  
STATEWIDE BENEFITS OFFICE**

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

**ORDER**

**2007 Disability Insurance Program Rules and Regulations  
Effective July 1, 2014**

Pursuant to 29 **Del.C.** §5256, the State Employee Benefits Committee (SEBC), is amending the rules and regulations for the general administration of the Disability Insurance Program (DIP) established pursuant to Title 29, Chapter 52A of the **Delaware Code**. The revisions become effective July 1, 2014 and clarify provisions of the program that are currently in force.

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

**[2007 Disability Insurance Program Rules and Regulations](#)**

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**CALENDAR OF EVENTS/HEARING NOTICES**

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

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule in Section 7- 7.1.3.4. The Commission will hold a public hearing on the proposed rule changes at Harrington Raceway on August 12, 2014 at 10:15 am. Written comments should be sent to Mark Davis, Racing Administrator of the Delaware Harness Racing Commission, Department of Agriculture, 2320 South DuPont Highway, Dover, DE 19901. Written comments will be accepted from publication in the July 1, 2014 *Register of Regulations* until August 27, 2014.

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

**DEPARTMENT OF EDUCATION****PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, July 17, 2014 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Telemedicine**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), with 42 CFR §447.205 and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit a state plan amendment regarding telemedicine, specifically, *to clarify provider types authorized to deliver medically necessary services via telemedicine.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by July 31, 2014.

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Increased Medicaid Payment for Primary Care Services – Section 1202 of the Affordable Care Act**

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 Title XIX Medicaid State Plan regarding *additional codes eligible for enhanced primary care payments.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written



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materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by July 31, 2014.

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

**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE**  
**4405 Free Standing Surgical Centers**

The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to the State of Delaware Regulations Governing Free Standing Surgical Centers. Due to the extensive number of amendments the Division has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. The purpose of the amendments is to update the requirements so that they are in concert with current healthcare standards and to align them more closely with current federal requirements. On July 1, 2014, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the July 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Thursday, July 31, 2014 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4913

**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**  
**Food Supplement Program**  
**Determining Income Deductions**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Determining Income Deductions*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by July 31, 2014.

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

**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**  
**Child Care Subsidy Program**  
**Prioritizing Service Needs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Prioritizing Service Needs*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by July 31, 2014.

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

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DIVISION OF STATE POLICE**  
**PUBLIC NOTICE**  
**5500 Bail Enforcement Agents**

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Chapter 55 proposes to amend Adopted Rule 4.0 – Firearms Policy, Adopted Rule 5.0 – Nightstick, PR 24, Mace, Peppergas, Chemical Spray, and Handcuffs. The amendment to Rule 4.0 specifies the shoot dates and who the instructors are approved by; Rule 5.0 specified who the instructors are approved by. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by July 31, 2014, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, August 28, 2014, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**  
**DIVISION OF FAMILY SERVICES**  
**OFFICE OF CHILD CARE LICENSING**  
**PUBLIC NOTICE**

**101 Rules for Early Care and Education and School-Age Centers**

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE Rules for Early Care and Education and School-Age Centers. A comprehensive review process was held in which all providers were asked to participate as part of the public hearing process for Executive Order 36 and a preliminary draft was created. The preliminary draft was posted on the OCCL website and comments were invited and received. Additional public comments were received from the Provider Advisory Board, from providers and stakeholders during a series of Task Force meetings, as well as written comments from other providers and stakeholders.

The proposed changes provide clarity, reflect changes in laws, align with current best practices, and improve standards of care. The revisions represent a consensus of participants including licensed providers and subject experts, and are based on best practice, a review of regulations promulgated by other States, research on subjects related to early care and education and school-age center care, internal OCCL review and discussion, and identified issues and services within existing programs within Delaware.

Regulations published here are numbered in administrative code format. To facilitate the comparison of this new document to the current regulations and the location of information in the current regulations, in many

instances a current rule number still appears in this document in parentheses regardless of whether the text has been edited or remains the same. (Example: Rules 102-104). Some current regulations have been eliminated and new information and regulations added. These referencing rule numbers will be eliminated in the next publication of these regulations in the *Register*.

Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on August 31, 2014. Comments may also be offered at public meetings to be held in each county. Participants may attend any meeting. While the meetings begin at 6:00 p.m., participants may arrive at any time prior to the close of the meetings at 7:45 p.m. Time allotted to each speaker will be limited. The meetings will be held as follows:

**New Castle County:** **Tuesday, June 24, 2014, 6:00 – 7:45 p.m.**  
Paul J. Sweeney Public Safety Building  
(also known as New Castle County Public Safety Building)  
3601 N. DuPont Highway, New Castle, DE 19720

**Sussex County:** **Wednesday, July 9, 2014, 6:00 – 7:45 p.m.**  
Thurman Adams State Service Center  
(also known as Georgetown State Service Center)  
546 South Bedford Street, Georgetown, DE 19947

**Kent County:** **Wednesday, July 16, 2014, 6:00 – 7:45 p.m.**  
DelDOT Administration Building, Farmington Room  
800 Bay Road, Dover, DE 19903

**DEPARTMENT OF STATE**  
**DIVISION OF HISTORICAL AND CULTURAL AFFAIRS**  
**PUBLIC NOTICE**

**100 Historic Preservation Tax Credit Program**

The Historic Preservation Tax Credit Act (30 **Del.C.** Ch. 18, Subch. II) was first enacted by the General Assembly in 2001 and was amended in 2002, 2003, 2004, 2005 and 2010. Program regulations were adopted on July 11, 2002 (6 **DE Reg.** 108 published 07/01/02), and were amended on July 11, 2004 (8 **DE Reg.** 194 published on 07/01/04), on January 11, 2005 (8 **DE Reg.** 1031 published 01/01/05), and on October 11, 2010 (14 **DE Reg.** 485, published 11/01/2010). The 2014 amendments to the legislation provide for revisions to §1816(a) to set aside a portion of the available tax credits for projects located in Downtown Development Districts. The purpose of the following proposed regulatory amendments is to implement the code changes of 2014 and to clarify or to make minor editorial changes to various sections of the regulations. The proposed amendments address the changes to the way in which credits are awarded under this program in new section 7.9 with an associated definition added to section 3.0. As to the clarification of the regulations, the proposed amendments modify seven sections of the regulations (3.0, 5.8, 7.2, 7.4-7.6, and 11.1) and editorial changes have been made to twelve sections of the regulations (1.0, 3.0, 4.5, 5.8, 6.1-6.5, 7.1, 7.3, 8.1). The Historic Preservation Tax Credit Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate a certified historic property.

The State Bank Commissioner and the Division of Revenue may adopt regulations or issue guidelines for tax elements of the Historic Preservation Tax Credit Act.

**PLEASE TAKE NOTICE**, pursuant to 29 **Del.C.**, Ch. 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider all written comments on the proposed rules and regulations related to implementation of amendments to the Historic Preservation Tax Credit Act. Submit comments to the Division in care of Timothy A.

Slavin, Director, Division of Historical and Cultural Affairs, 21 The Green, Dover, DE 19901. The final date to submit comments is July 30, 2014. Anyone wishing to obtain a copy of the proposed amendments to the rules and regulations should notify Timothy A. Slavin at the above address or call 302-736-7400. This notice will be published in two newspapers of general circulation.

**DIVISION OF PROFESSIONAL REGULATION**

**3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY  
PROFESSIONALS  
PUBLIC NOTICE**

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with the statutory provisions which govern the Board; eliminate regulatory references to the "Academy of Clinical Mental Health Counselors," a non-existent organization; and eliminate regulations stating that professional counselors must obtain licensure by first becoming assistant counselors.

The Board will hold a public hearing on the proposed rule change on August 27, 2014 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until September 11, 2014.