
Delaware Register of Regulations

Issue Date: July 1, 2019

Volume 23 - Issue 1, Pages 1 - 76

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 15, 2019.



INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

3

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 16	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.

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TABLE OF CONTENTS

PROPOSED

DEPARTMENT OF EDUCATION

Office of the Secretary

815 Health Examinations and Screening.....	6
--------------------------------------------	---

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Health Care Quality

4404 Free Standing Emergency Centers.....	9
-------------------------------------------	---

Division of Medicaid and Medical Assistance

Over-the-Counter Drugs Without a Prescription.....	10
----------------------------------------------------	----

Division of Public Health

4452 Clean Indoor Air Act.....	12
--------------------------------	----

DEPARTMENT OF STATE

Division of Professional Regulation

Controlled Substance Advisory Committee

Uniform Controlled Substances Act Regulations.....	16
----------------------------------------------------	----

Office of the State Bank Commissioner

701 Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code.....	17
1103 Instructions for Preparation of Franchise Tax.....	21
1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks.....	26

FINAL

DEPARTMENT OF EDUCATION

Office of the Secretary

901 Education of Homeless Children and Youth.....	33
---------------------------------------------------	----

Professional Standards Board

1510 Issuance of Initial License	38
1511 Issuance and Renewal of Continuing License	40

DEPARTMENT OF FINANCE

Office of the State Lottery

204 Delaware Sports Lottery Rules and Regulations.....	42
--------------------------------------------------------	----

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Health Care Quality

3320 Intensive Behavioral Support and Educational Residence.....	43
3325 Financial Capability Reporting.....	45

Division of Medicaid and Medical Assistance

PRTFs – Provision of EPSDT Services.....	46
Title XXI Delaware Healthy Children Program State Plan - Children's Health Insurance Program (CHIP).....	51

Division of Public Health

4458A Cottage Food Regulations.....	52
-------------------------------------	----

TABLE OF CONTENTS

5

Division of Social Services

DSS Application Process: DSSM 2000.....	53
Income Reporting Requirements for Child Care: DSSM 11003.....	60
Temporary Assistance for Needy Families (TANF) - CMR: DSSM 3000.....	63

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

5500 Bail Enforcement Agents.....	72
-----------------------------------	----

CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Education, Notice of Monthly Meeting.....	74
Dept. of Health and Social Services, Div. of Health Care Quality; Div. of Medicaid and Medical Assistance; Div. of Public Health; Notices of Public Comment Periods.....	74
Dept. of State, Div. of Professional Regulation, Controlled Substance Advisory Committee; Office of the State Bank Commissioner; Notice of Public Hearing and Public Comment Periods.....	75 - 76

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 EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 **Del.C.** §122(b)(2))
14 **DE Admin. Code** 815

PUBLIC NOTICE

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

815 Health Examinations and Screening

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 **Del.C.** §122(b)(2), the Secretary of Education intends to reauthorize 14 **DE Admin. Code** 815 Health Examinations and Screening. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be readopted without any changes.

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

C. Impact Criteria

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

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

regulation is intended to help ensure all students receive an equitable education.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The reauthorized regulation helps ensure that all student's health and safety are adequately protected by providing guidelines for student health examinations and screening.

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

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

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

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

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

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

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

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

<http://regulations.delaware.gov/register/july2019/proposed/23 DE Reg 6RFA 07-01-19.pdf>

815 Health Examinations and Screening

1.0 Definitions

"Delaware Interscholastic Athletic Association (DIAA) Pre-Participation Physical Evaluation" means the form approved by the DIAA.

"Delaware School Health Examination Form" means the age appropriate form developed by the Delaware Department of Education for documenting information from the parent, guardian or Relative Caregiver and healthcare provider on the student's health status.

"Healthcare Provider" means a currently licensed physician, advanced practice nurse, nurse practitioner, or physician's assistant.

"Health Examination or Health Evaluation" means the medical or nursing examination or evaluation and assessment of the body by a healthcare provider to determine health status and conditions.

2.0 Health Examinations

- 2.1 All public school students shall have two health examinations, as provided in this section, that have been administered by a healthcare provider. The first health examination shall have been done within the two years prior to entry into school. Beginning in school year 2012-2013, the second health examination shall be strongly recommended and not required for entering grade 9 students. Beginning in school year 2013-2014, the second health examination shall be required for entering grade 9 students. The required health examination shall be done within the two years prior to entry into grade 9. Within thirty calendar days after entry, new enterers and grade 9 students who have not complied with the second health examination requirement shall have received the health examination or shall have a documented appointment with a licensed health care provider for the health examination. For purposes of this regulation only, students entering grades 10, 11 or 12 in the 2013-2014 school year shall not be required to have the second health examination or evaluation.

PROPOSED REGULATIONS

- 2.1.1 The requirement for the health examination may be waived for students whose parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of health examinations.
- 2.1.2 Notwithstanding the above, a second health examination shall not be required if the first health examination is within two years of entering Grade 9.
- 2.1.3 The Delaware School Health Examination Form or the DIAA Pre-Participation Physical Evaluation form may be used as documentation of the health examination. In addition, a district or charter school may accept a health examination or evaluation documentation on a form which includes, at a minimum, health history, immunizations, results on medical testings and screenings, medical diagnoses, prescribed medications and treatments, and healthcare plans.
- 2.1.4 The school nurse shall record all findings within the student's electronic medical record (see 14 **DE Admin. Code** 811) and maintain the original copy in the child's medical file.

Non regulatory note: See 14 **DE Admin. Code** 1008.3 and 14 **DE Admin. Code** 1009.3 for physical or health examination requirements associated with participation in sports.

3.0 Screening

- 3.1 Vision and Hearing Screening
 - 3.1.1 Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th of each school year.
 - 3.1.1.1 In addition to the screening requirements in 3.1.1, screening shall also be provided to new enterers, students referred by a teacher or an administrator, and students considered for special education.
 - 3.1.1.1.1 Driver education students shall have a vision screening within a year prior to their in car driving hours.
 - 3.1.2 The school nurse shall record the results within the student's electronic medical record and shall notify the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if the student has a suspected problem.
- 3.2 Postural and Gait Screening
 - 3.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by December 15th.
 - 3.2.2 The school nurse shall record the findings within the student's electronic medical record (see 14 **DE Admin. Code** 811) and shall notify the parents, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if a suspected deviation has been detected.
 - 3.2.2.1 If a suspected deviation is detected, the school nurse shall refer the student for further evaluation through an on site follow up evaluation or a referral to the student's health care provider.
- 3.3 Lead Screening
 - 3.3.1 Children who enter school at kindergarten or at age 5 or prior, shall be required to provide documentation of lead screening as per 16 **Del.C.** Ch. 26.
 - 3.3.1.1 For children enrolling in kindergarten, documentation of lead screening shall be provided within sixty (60) calendar days of the date of enrollment. Failure to provide the required documentation shall result in the child's exclusion from school until the documentation is provided.
 - 3.3.1.2 Exemption from this requirement may be granted for religious exemptions, per 16 **Del.C.** §2603.
 - 3.3.1.3 The Childhood Lead Poisoning Prevention Act, 16 **Del.C.**, Ch. 26, requires all health care providers to order lead screening for children at or around the age of 12 months of age.

- 3.3.2 The school nurse shall document the lead screening within the student's electronic medical record. See 14 DE Admin. Code 811.
-

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 122(3)p. (16 Del.C. §122(3)p.)
16 DE Admin. Code 4404

PUBLIC NOTICE

4404 Free Standing Emergency Centers

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Office of Health Facilities Licensing and Certification, Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on July 31, 2019. Please identify in the subject line: Regulations Governing Free Standing Emergency Departments.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Free Standing Emergency Departments.

Statutory Authority

- 16 Del.C. §122(3)(p)

Background

Current literature makes it clear that any freestanding emergency department must be required to meet the same standards as a hospital emergency department. Recent legislation updated Delaware Code to clearly define the scope of practice required of a free standing emergency department. This clarification provides a level of protection for the public that seek services in a freestanding emergency department.

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing free standing emergency departments and hold them out for public comment per Delaware law. The amendments update the regulatory language to clearly define the scope of practice required of a free standing emergency department. In addition, the amendments provide a level of protection for the public that seeks services at free standing emergency departments by ensuring the delivery of safe and adequate care.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed

regulation. Comments must be received by 4:30 p.m. on July 31, 2019.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/july2019/proposed/23 DE Reg 9RFA 07-01-19.pdf>

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

[4404 Free Standing Emergency Centers](#)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE**Over-the-Counter Drugs Without a Prescription**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Over-the-Counter Drugs, specifically, to ensure members may request coverage of over-the-counter FDA-approved medications without a prescription.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on July 31, 2019. Please identify in the subject line: Over-the-Counter Drugs Without a Prescription.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Over-the-Counter Drugs, specifically, to ensure members may request coverage of FDA approved medications without a prescription.

Statutory Authority

- DE Senate Bill 151 (2018)
- 18 Del.C. §3342A(b)(2)
- Social Security Act §1927(k)(4)
- 31 Del.C. §512

Background

Delaware Senate Bill 151 became effective on July 11, 2018 and required that FDA-approved emergency contraception be available over-the-counter, whether with a prescription or dispensed consistent with the

requirements of Chapter 25 of Title 24.

Summary of Proposal

Summary of Proposed Changes

Effective for services provided on and after July 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1 Page 5 of Title XIX Medicaid State Plan regarding Over-the-Counter Drugs, specifically, to ensure members may request coverage of over-the-counter FDA approved medications without a prescription when required by law.

Public Notice

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

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

There is no anticipated fiscal impact to the agency as a result of this proposed change in program policy.

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

<http://regulations.delaware.gov/register/july2019/proposed/23 DE Reg 10RFA 07-01-19.pdf>

Revision: HCFA-PM-92-1 (MB)

Attachment 3.1

February 1992

Page 5

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

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

12.a. Prescribed Drugs: Drug Coverage

- 1) Drug products are covered when prescribed or ordered by a physician, or other licensed practitioner within the scope of their practice and when obtained from a licensed pharmacy. When required by

PROPOSED REGULATIONS

state or federal law DMMA members may request coverage of FDA approved medications, distributed by a CMS rebate participating labeler, without a prescription. Covered drugs, as defined in Section 1927(k)(2) of the Act, are those which are prescribed for a medically accepted indication, medically necessary, and produced by any pharmaceutical manufacturer, which has entered into and complies with a drug rebate agreement under Section 1927(a) of the Act.

- 2) Drugs excluded from coverage by Delaware Medicaid as provided by Section 1927(d)(2) of the Act, include:
 - a. Drugs designated less than effective by the FDA (DESI drugs) or which are identical, similar, or related to such drugs;
 - b. Drugs when used to promote fertility;
 - c. Drugs that have an investigational or experimental or unproven efficacy or safety status; and
 - d. Drugs when used for anorexia, weight loss or weight gain.
- 3) The State will cover agents when used for cosmetic purposes or hair growth only when the state has determined that use to be medically necessary.
- 4) Non-covered services also include: drugs used to correct sexual dysfunction and compound drugs (compound prescriptions must include at least one medication that on its own would be a covered entity).

Quantity and Duration

1. Dosage limits: Medications are limited to a maximum dose recommended by the FDA and appropriate medical compendia described in section 1927(k) of the Social Security Act, that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are specified in regional or national guidelines published by established expert groups such as the American Academy of Pediatrics, or guidelines recommended by the Delaware Medicaid Drug Utilization Review (DUR) Board and accepted by the DHSS Secretary.

TN No. SPA #	Approval Date
Supersedes	
TN No. SPA #17-005	Effective Date

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 2906(b) (16 Del.C. §2906(b))
16 DE Admin. Code 4452

PUBLIC NOTICE

4452 Clean Indoor Air Act

Pursuant to 16 Del.C. §2906(b), Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the Clean Indoor Air Act. On July 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the Clean Indoor Air Act regulations. The

revisions include increasing the minimum age to enter vapor establishments from 18 to 21 years old to conform to recent legislative changes (SS 1 to SB 25 from the 150th General Assembly).

Copies of the proposed regulations are available for review in the July 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Thursday, August 1, 2019, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

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

<http://regulations.delaware.gov/register/july2019/proposed/23 DE Reg 12RFA 07-01-19.pdf>

4452 Clean Indoor Air Act

1.0 Preamble

These ~~Regulations~~ regulations are adopted in accordance with authority vested in the Secretary, Department of Health and Social Services, by 16 ~~Del.C.~~ §2906(b). These ~~Regulations~~ regulations establish standards for the enforcement of the Clean Indoor Air Act as it relates to most indoor enclosed areas to which the general public is invited or in which the general public is permitted. Regulations establishing standards for the enforcement of the Clean Indoor Air Act affecting employers, employees and the workplace are adopted by the Department of Labor.

2.0 Purpose

These regulations shall be construed and applied to protect the nonsmoker from involuntary exposure to environmental tobacco smoke and emissions produced by electronic smoking devices in most enclosed indoor areas to which the public is invited or in which the general public is permitted. The purpose of the Clean Indoor Air Act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke and emissions produced by electronic smoking devices.

3.0 Severability

In the event any particular clause or section of the regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

~~4.0 Date of Effect~~

~~These regulations shall be effective December 1, 2015.~~

~~5-04.0~~ Inspections

The Secretary, DHSS, or authorized designee shall have right of entry into any enclosed indoor area subject to 16 ~~Del.C.~~ Ch. 29.

~~6-05.0~~ Waiver

The Department of Health and Social Services may upon written request waive the provisions of these ~~Regulations~~ regulations if the Department determines there are compelling reasons to do so, and such waiver will not significantly affect the health and comfort of non-consumers of tobacco products.

7.06.0 Definitions

7.16.1 The following words, terms, and phrases, when used in these regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

7.26.2 For the purposes of these ~~Regulations~~ regulations:

“Department” means the Delaware Department of Health and Social Services (DHSS) as defined in Title 29 **Del.C.** §7901.

“Electronic Smoking Device” means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

“Environmental Tobacco Smoke” (ETS), or “Secondhand Smoke” means the complex mixture formed from the escaping smoke of a burning tobacco product (termed as sidestream smoke) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as “passive smoking” or “involuntary smoking.”

“Enclosed Indoor Area” means an indoor area that is neither open nor partially enclosed except for normal means of access and egress through doors or passageways.

“Fraternal Benefit Society” means any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of 18 **Del.C.** §6237(a)(2) of this title, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government and which provides benefits in accordance with this chapter.

“Private Club” means any club or organization that does not permit the general public to access its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of the Clean Indoor Air Act, the establishment must adhere to all of, but not limited to, the following criteria:

- a. Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;
- b. Limits access and use of facilities, services and activities of the organization to members and guests of the members;
- c. Is controlled by its membership and operates solely for the benefit and pleasure of its members;
- d. Advertises exclusively and only to its members, excluding membership drives.

“Private Social Function” means a function to which the public is neither invited ~~or~~ nor generally permitted access and which is held in separate indoor enclosed indoor area.

“Public Transportation of Children” means transportation ~~which that~~ involves the transportation of children by a vehicle under the control of a daycare, school or other organizations.

“Secretary” means the Administrator of the Delaware Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as: Secretary; The Secretary; or, Secretary, DHSS.

“Smoking” means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco; or, the use of an electronic smoking device which creates an aerosol or vapor, or in any manner or in any form.

“Vapor Establishment” means a business that: 1) generates at least 80% of its revenue from the sale of electronic smoking devices and substances for use within electronic smoking devices; and 2) does not share indoor common space with other businesses unless there are doors from the vapor establishment to the indoor common space that remain closed other than for ingress and egress.

“**Volunteer Fire Company**” means a fire, ambulance, or rescue company recognized as such by the Delaware State Fire Prevention Commission.

8-07.0 Smoking Prohibitions

~~8-17.1~~ Except as is provided in ~~section 3-4~~ subsection 8.1 of these regulations, and in order to reduce the levels of exposure to environmental tobacco smoke and emissions produced by electronic smoking devices, smoking shall not be permitted and no person shall smoke in any of the following areas:

~~8-1-17.1.1~~ Any enclosed indoor area, including, but not limited to, those listed in 16 **Del.C.** §2903, to which the general public is invited or in which the general public is permitted. This shall apply to any organization, business or establishment ~~which that~~ caters to or offers goods or services or facilities to, or solicits patronage from the general public.

~~8-1-27.1.2~~ Government owned and/or operated means of mass transportation including buses, vans, trains, taxicabs and limousines.

~~8-1-37.1.3~~ Functions or activities of private clubs or organizations, as defined by Section ~~7-06.0~~ of these regulations, when access by the general public is allowed or solicited.

~~8-1-47.1.4~~ Any private vehicle used for the public transportation of children or as part of health care or day care transportation.

~~8-1-57.1.5~~ In private homes or private residences when such homes or residences are being used for child care or day care.

~~8-27.2~~ No owner of any indoor enclosed area subject to 16 **Del.C.** Ch. 29 and/or person(s) responsible for the management of such area or employee ~~thereof~~, thereof shall permit or authorize smoking by any person(s) in areas not designated specifically for the smoking of tobacco products as permitted by ~~section 3-4~~ subsection 8.1.

~~8-37.3~~ Vapor Establishments

~~8-3-17.3.1~~ Vapor establishments are permitted to have emissions produced by electronic smoking devices within their places of businesses.

~~8-3-27.3.2~~ Any vapor establishment permitted to have emissions produced by electronic smoking devices in such establishment pursuant to these regulations, and which permits such emissions, shall prohibit anyone under the age of ~~48~~ 21 from entering.

9-08.0 Smoking Prohibitions Inapplicable

~~9-18.1~~ Smoking prohibitions shall not apply in the following:

~~9-1-18.1.1~~ Private homes, private residences and private ~~automobiles~~, automobiles;

~~9-1-28.1.2~~ Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;

~~9-1-38.1.3~~ Limousines under private ~~hire~~ hire;

~~9-1-48.1.4~~ A hotel or motel room rented to 1 or more guests provided that the total percentage of such hotel or motel rooms does not exceed twenty-five percent (~~25%~~) (25%);

~~9-1-58.1.5~~ Any fund raising activity or function sponsored by a volunteer fire company, auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company; provided, however, that the fund raising activity or function takes place upon property owned or leased by the volunteer fire, rescue or ambulance ~~company~~ company;

~~9-1-68.1.6~~ Any fund raising activity or function sponsored by a fraternal benefit society as defined by 18 **Del.C.** §6201; provided, however, that the fund raising activity or function takes place upon property owned or leased by said ~~organization~~ organization; and

~~9-1-78.1.7~~ Any enclosed indoor area operated or in use exclusively by a private club as defined in these regulations.

40.09.0 Posting of Signs**40.19.1 Failure to Properly Post and Maintain Signs**

~~40.1.49.1.1~~ Owners, operators, managers or other person(s) having control of enclosed indoor areas subject to the regulations of 16 **Del.C.** Ch. 29 shall post signs which indicate "Warning: Smoking Permitted" prominently to indicate those locations where smoking is permitted pursuant to ~~section 9.4~~ subsection 8.1. Failure to prominently post properly maintained signs with letters at least one (1) inch in height and in accord with the CLEAN INDOOR AIR ACT shall be a violation subject to administrative penalties as set forth in ~~section 44.4~~ subsection 10.1 of the Clean Indoor Air Act Regulations.

~~40.1.29.1.2~~ Any vapor establishment permitted to have emissions produced by electronic smoking devices in such establishment pursuant to these regulations, and which permits such emissions, shall display a sign at all entrances stating that no one under the age of ~~18~~ 21 is allowed in such a vapor shop. Failure to prominently post at all entrances properly maintained signs with letters at least one (1) inch in height shall be a violation subject to administrative penalties as set forth in ~~section 44.4~~ subsection 10.1 of the Clean Indoor Air Act Regulations.

44.010.0 Compliance and Enforcement Procedures

~~44.110.1~~ Administrative Penalties. Whoever violates any provision of these regulations shall be subject to an administrative penalty of \$100.00 for the first violation and not less ~~then~~ than \$250.00 for each subsequent violation.

~~44.210.2~~ Right to Administrative Hearing. Upon due notice that the Department intends to assess an administrative penalty, as indicated in ~~44.4~~ subsection 10.1, the entity may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing.

~~44.310.3~~ Orders of the Department. Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Dept. of Health and Social Services, shall be fined not less than \$100.00 and not more than \$1,000.00, together with cost, unless otherwise provided by law.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
CONTROLLED SUBSTANCE ADVISORY COMMITTEE
Statutory Authority: 16 Delaware Code, Section 4731 (16 **Del.C.** §4731)

PUBLIC NOTICE

Uniform Controlled Substances Act Regulations

Pursuant to 16 **Del.C.** §4731, the Delaware Secretary of State has proposed revisions to the Uniformed Controlled Substances Act regulations. Revisions to Section 4.0 specify the requirements pertaining to expiration of Schedule II and III prescriptions and partial filling of controlled substance prescriptions. The new subsection 9.4 provides that, prior to issuing a prescription for an opioid analgesic, or a prescription for a benzodiazepine, the practitioner must query the Prescription Monitoring Program ("PMP") to obtain and review the patient's prescription history. Language that conflicts with these requirements has been stricken. The new subsection 9.10 adds the requirement that, when a practitioner prescribes a patient a medication dose in excess of 120 MME/day (morphine milligram equivalency), such practitioner shall also issue the patient a prescription for naloxone with adequate refills for a year. Finally, certain revisions strike outdated subsections regarding procedural matters, such as the discipline of a controlled substance registration and rule-making.

Pursuant to 16 **Del.C.** §4731(b), a public hearing will be held before the Controlled Substance Advisory Committee ("Committee") on July 31, 2019 at 9:00 a.m. in the second floor conference room A of the Cannon

Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Jessica Mason, administrative specialist for the Committee, at jessica.mason@delaware.gov or 861 Silver Lake Boulevard, Dover, Delaware 19904. In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be August 15, 2019, which is 15 days following the public hearing. The Committee will deliberate on the proposed revisions at its next regularly scheduled meeting.

***Please Note:**

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

<http://regulations.delaware.gov/register/july2019/proposed/23 DE Reg 16RFA 07-01-19.pdf>

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

[Uniform Controlled Substances Act Regulations](#)

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))
5 DE Admin. Code 701

PUBLIC NOTICE

701 Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code

Summary

The State Bank Commissioner proposes to amend Regulation 701 (Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code). The proposed amendment provides that no application to form a new limited purpose trust company will be approved, unless the new limited purpose trust company will be an affiliate, as defined in Section 773 of Title 5, of a bank, insured institution or bank holding company, as those terms are defined in the federal Bank Holding Company Act, 12 USC 1841, or of any other insured depository institution, as that term is defined in the Federal Deposit Insurance Act, 12 USC 1813, or of any national banking association, chartered in accordance with the National Bank Act and regulated by the Comptroller of the Currency, that is engaged primarily in trust and fiduciary activities. This proposed amendment is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other Regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this proposed amended Regulation in accordance with Section 121(b) of Title 5 of the Delaware Code. This Notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, Chapter 101, Subchapter II, and Chapter 104, Sections 10404A(b)(1) and 10404B(b)(1).

Comments

A copy of the proposed amended Regulation is being published in the July 1, 2019 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 43 South DuPont Highway, Edgehill Shopping Center, Dover, DE 19901, and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended Regulation or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amended Regulation should be adopted, rejected or modified. Pursuant to 29 Del.C. §10118(a), public comments must be received on or before August 2, 2019. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Amended Regulation

On or after August 2, 2019, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulation, or make additional changes because of the public comments received.

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

<http://regulations.delaware.gov/register/july2019/proposed/23 DE Reg 17RFA 07-01-19.pdf>

701 Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code

Formerly Regulation No.: 5.701/774.0004

Effective Date: ~~December 11, 1998~~ XX/X/XXXX

1.0 Scope

- 1.1 This Regulation establishes procedures for filing an application to organize a bank or bank and trust company (hereinafter collectively referred to as a "Bank") or limited purpose trust company pursuant to Chapter 7 of Title 5 of the Delaware Code and the manner in which determinations will be made by the State Bank Commissioner (the "Commissioner") respecting such applications.
- 1.2 No application to form a new limited purpose trust company will be approved, unless the new limited purpose trust company will be an affiliate, as defined in Section 773 of Title 5 of the Delaware Code, of a bank, insured institution or bank holding company, as those terms are defined in the federal Bank Holding Company Act, 12 USC 1841, or of any other insured depository institution, as that term is defined in the Federal Deposit Insurance Act, 12 USC 1813, or of any national banking association, chartered in accordance with the National Bank Act and regulated by the Comptroller of the Currency, that is engaged primarily in trust and fiduciary activities.

2.0 Notice of Intent

- 2.1 Notice of the intention ("Notice of Intent") of the incorporators (the "Incorporators") to form a Bank or limited purpose trust company shall be filed with the Commissioner. All filings must be in duplicate.
- 2.2 A \$1,150 non-refundable investigation fee shall be submitted with the Notice of Intent, payable to "Office of the State Bank Commissioner."
- 2.3 The Notice of Intent shall specify: (i) the names of all Incorporators; (ii) the name of the proposed Bank or limited purpose trust company (note: the word "trust" may be used only if a limited purpose trust company or a bank with trust powers is being formed); (iii) the city or town in which the Bank or limited purpose trust company will be located; and (iv) the amount of capital stock of the proposed Bank or limited purpose trust company.
- 2.4 The Notice of Intent shall have attached as exhibits: (i) a copy of the application for a Certificate of Public Convenience and Advantage (the "Application") in the form the Incorporators intend to file pursuant to Section 4 of this Regulation; (ii) a copy of the proposed form of written agreement in which the subscribers thereto associate themselves with the intent of forming a Bank or limited purpose trust company (the "Articles of Association"); (iii) a proposed form of public notice as provided for in Section 3 of this Regulation (the "Public Notice"); and, (iv) where the Incorporators are acting on behalf of a corporate entity in the application process, a copy of the corporate resolution, sworn to and subscribed by a president or vice-president and certified by the secretary or an assistant secretary, authorizing the Incorporators to execute and file the Notice of Intent and Application on behalf of the corporation.

3.0 Public Notice

- 3.1 If the Notice of Intent and the attached exhibits filed with the Commissioner are in the form required by this Regulation, conform to applicable provisions of law and are approved by the Commissioner, the Commissioner shall schedule a formal, public evidentiary hearing to receive testimony and

documentary evidence relevant to determining whether the public convenience and advantage would be promoted by the establishment of the Bank or limited purpose trust company and whether the Articles of Association are in compliance with applicable provisions of law (such hearing to be held within 60 days following the second publication of Public Notice in accordance with Section 3.2 of this Regulation, but not prior to the expiration of twenty days following the date of the second publication).

- 3.2 The Incorporators shall cause a Public Notice in such form as the Commissioner shall have approved to be published at least once a week, for two successive weeks, in at least two Delaware newspapers of general circulation designated by the Commissioner, at least one of which newspapers shall be published in the county where it is proposed to establish the Bank.
- 3.3 The Public Notice shall (i) specify the names of all Incorporators; (ii) set forth the name of the proposed Bank or limited purpose trust company; (iii) identify the city or town where the Bank or limited purpose trust company is to be located; (iv) specify the amount of the Bank's capital stock; (v) describe the subject matter of the proceedings; (vi) give the date, time and place fixed for a hearing on the Application; (vii) cite the law (5 **Del.C.** §726 for a Bank, and 5 **Del.C.** §777 for a limited purpose trust company) and regulations (State Bank Commissioner Regulations 701 (~~formerly 5.701/774.0004~~) and 703 (~~formerly 5.725/726.0003.P/A~~) for a Bank, and 701 (~~formerly 5.701/774.0004~~) and 702 (~~formerly 5.777.0002~~) for a limited purpose trust company) giving the Commissioner authority to act; (viii) inform interested parties of their right to present evidence, to be represented by counsel and to appear personally or by other representatives; and (ix) state the Commissioner's obligation to reach his decision based upon the evidence received.

4.0 Application For A Determination of Public Convenience and Advantage

- 4.1 Within sixty days following the second publication of Public Notice, and prior to or on the date of the public hearing, but not prior to the expiration of twenty days following the date of the second publication, the Incorporators shall file the definitive fully executed Application in the form prescribed by the Commissioner. See Commissioner's Regulation No. 703 (~~formerly 5.725/726.0003.P/A~~) for a Bank, and 702 (~~formerly 5.777.0002~~) for a limited purpose trust company.
- 4.2 The Application shall include the information specifically requested in the form of application supplied by the Commissioner and any supplemental information requested by the Commissioner.

5.0 Public Hearing

- 5.1 The public hearing provided for in this Regulation may be conducted by the Commissioner or his designee. At such hearing, the Commissioner or his designee shall accept all relevant, non-cumulative evidence offered by or on behalf of the Incorporators or by any interested person. Interested parties may appear at the public hearing, in person or by counsel or by other representative. Anyone wishing to present testimony is requested to register with the Commissioner in advance of the hearing.
- 5.2 A record from which a verbatim transcript can be prepared shall be made. The Incorporators shall be responsible for arranging for a certified court reporter to be present at the public hearing and shall bear the expense of an original written transcript for the Commissioner's use (which shall be supplied to the Commissioner as promptly as practical following the public hearing). Additional transcripts provided to any interested person shall be at the expense of the person requesting the transcript.
- 5.3 The Commissioner or his designee may request the Incorporators or any other party or parties who appear at the public hearing to submit proposed findings of fact and conclusions of law.

6.0 Record

- 6.1 With respect to each Application, all notices, correspondence between the Commissioner and the Incorporators or other interested parties, all exhibits, documents and testimony admitted into evidence and all recommended orders, summaries of evidence and findings, and all interlocutory and final orders shall be included in the Commissioner's record of the matter and shall be retained for a period of at least five (5) years following final action on the Application.

- 6.2 A copy of the proposed order shall be mailed or hand delivered to the Incorporators (or their agent) and to each person who presented data, views or argument at the public hearing, each of whom shall thereafter have twenty (20) days to submit in writing to the Commissioner exceptions, comments and arguments respecting the proposed order.
- 6.3 If the decision on the Application is not adverse to the Incorporators, the Commissioner may waive the entry of a proposed order and may instead proceed directly to the entry of a final order under Section 7.0 of this Regulation.

7.0 Decision and Final Order

- 7.1 Every decision on an Application shall be incorporated in a final order which shall include: (i) a brief summary of the evidence; (ii) findings of fact based upon the evidence; (iii) conclusions of law; (iv) any other conclusions or findings required by law; and (v) a concise statement of the determination or action on the case.
- 7.2 Every final order shall be authenticated by the signature of the Commissioner and shall be mailed or delivered to (i) the Incorporators (or their agent); (ii) each person that presented data, views or argument at the hearing; and (iii) any other person requesting a copy of the final order.

8.0 Organization Meeting of Incorporators

- 8.1 The first meeting of the Incorporators shall be called by a notice signed by the Incorporator designated in the Articles of Association for that purpose or by a majority of Incorporators (see 5 **Del.C.** §727). The statutory purpose of the first meeting is to organize by: (i) choosing by ballot a temporary secretary; (ii) adopting bylaws; and (iii) electing in such manner as the bylaws may determine directors, a president, a secretary, and such other officers as the bylaws may prescribe. All of the officers elected shall be sworn to the faithful performance of their duties. Action permitted to be taken at the organization meeting may be taken without a meeting if each Incorporator signs a written consent in lieu of meeting which states the action so taken.
- 8.2 The President and a majority of directors elected at the organization meeting of the Incorporators shall make, sign and make oath to a certificate (hereinafter the "Articles of Organization") setting forth: (i) a true copy of the Articles of Association; (ii) the names of the subscribers thereto; (iii) the name, residence, and mailing address of each officer; and (iv) the date of the first meeting of the Incorporators (see 5 **Del.C.** §728).
- 8.3 The Articles of Organization and attachments shall be submitted to the Commissioner. The Commissioner may require such amendments or additional information as he may consider proper or necessary. The Commissioner shall endorse approval upon the Articles of Organization at such time as he has determined that the applicable provisions of law have been complied with (see 5 **Del.C.** §729).

9.0 Incorporation and Commencement of Business

- 9.1 The Articles of Organization shall be filed with the Secretary of State within 30 days after the date of the Commissioner's endorsement (see 5 **Del.C.** §730).
- 9.2 Upon issuance of a Certificate of Incorporation by the Secretary of State and compliance with all provisions of law, a certified copy of the Certificate of Incorporation together with the endorsed Articles of Organization shall be recorded in the Office of the Recorder of Deeds for the county in which the place of business of the Bank or limited purpose trust company is to be located (see 5 **Del.C.** §731).
- 9.3 A certified copy of the Bank's or limited purpose trust company's Certificate of Incorporation together with its bylaws and its Articles of Organization shall be filed with the Commissioner together with the \$5,750 fee for the certificate to transact business. No transaction of business can begin until authorized by the Commissioner by the issuance of a certificate to transact business (see 5 **Del.C.** §§733, 735, 902, 903).
- 9.4 An application for a certificate to transact business shall include a certification as to the issuance of the whole capital stock of the Bank or limited purpose trust company (unless the Articles of Organization

otherwise specifically provide) and receipt of payment therefor in cash; a list of stockholders (including the number of shares held by each and the residence and post office address of each stockholder), which list shall be certified by the president and the cashier or treasurer of the Bank; evidence of the deposit of the proceeds of the sale of capital stock in an account for the benefit of the Bank or limited purpose trust company; and, for a Bank, evidence satisfactory to the Commissioner demonstrating that FDIC deposit insurance for the Bank has been approved by the FDIC.

- 9.5 The Commissioner shall review the application and, in the case of a Bank, the status of the applicant's FDIC insurance. In the case of a limited purpose trust company, the Commissioner shall review the applicant's compliance with subsection 1.2 of this Regulation. If the above referenced \$5,750 fee has been paid and it appears that all requirements of this Regulation and applicable law have been complied with, the Commissioner shall issue a certificate authorizing the Bank or limited purpose trust company to transact business.

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))
5 DE Admin. Code 1103

PUBLIC NOTICE

1103 Instructions for Preparation of Franchise Tax

Summary

The State Bank Commissioner proposes to amend bank franchise tax Regulations 1103 (Instructions for Preparation of Franchise Tax) and 1110 (Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks). The proposed amendments clarify the definition of the term "Securities Business". Neither of these proposed amendments are substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other Regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed amended Regulations in accordance with Section 121(b) of Title 5 of the Delaware Code. This Notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, Chapter 101, Subchapter II, and Chapter 104, Sections 10404A(b)(1) and 10404B(b)(1).

Comments

Copies of the proposed amended Regulations are being published in the July 1, 2019 edition of the Delaware *Register of Regulations*. Copies are also on file in the Office of the State Bank Commissioner, 43 South DuPont Highway, Edgehill Shopping Center, Dover, DE 19901, and are available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended Regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amended Regulations should be adopted, rejected or modified. Pursuant to 29 Del.C. §10118(a), public comments must be received on or before August 2, 2019. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Amended Regulations

On or after August 2, 2019, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulations, or make additional changes because of the public comments received.

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

<http://regulations.delaware.gov/register/july2019/proposed/23 DE Reg 21RFA 07-01-19.pdf>

1103 Instructions for Preparation of Franchise Tax
5 Del.C. Ch. 11Effective Date: ~~February 11, 2017~~ XX/XX/XXXX

1.0 This regulation applies to banking organizations and trust companies, other than resulting branches in this State of out-of-state banks or federal savings banks not headquartered in this state but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 1104 and 1105, respectively. Regulations 1106, 1107 and 1108 are applicable to federal savings banks not headquartered in this State but maintaining branches in this State. Regulations 1110, 1111 and 1112 are applicable to resulting branches in this State of out-of-state banks.

2.0 Definitions

“Bank” means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

“Banking organization” means:

- A bank or bank and trust company organized and existing under the laws of this State;
- A national bank, including a federal savings bank, with its principal office in this State;
- An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq. (an “Edge Act Corporation”), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an “Agreement Corporation”), and maintaining an office in this State;
- A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;
- A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or
- A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

“International Banking Facility” means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

“International Banking Transaction” shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 Del.C. §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

- The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
- The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
- The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
- The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;
- The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to and Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or
- The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

“**National Bank**” means a banking association organized under the authority of the United States and having a principal place of business in this State.

“**Net Operating Income Before Taxes**” means the total net interest income plus total non-interest income, minus provision for loan and lease losses, provision for allocated transfer risk, and total non-interest expense, and adjustments made for securities gains or losses and other appropriate adjustments.

“**Out-of-State Bank**” has the same meaning as in §795 of Title 5 of the **Delaware Code**, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

“**Resulting Branch In This State Of An Out-of-State Bank**” has the same meaning as in §1101(a) of Title 5 of the **Delaware Code**, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the **Delaware Code**, and, in addition, a branch office in this State of an out-of-state bank.

“**Securities Business**” means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities. For purposes of this regulation and Title 5, Section 1101(a)(1)b, a subsidiary that is a bank or insured institution, as those terms are defined in the federal Bank Holding Company Act, 12 USC 1841, is not considered to be “engaged in the sale, distribution or underwriting of, or dealing in, securities”.

“**Trust Company**” means a trust company or corporation doing a trust company business which has a principal place of business in this State.

3.0 Estimated Franchise Tax

- 3.1 A banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax.
- 3.2 Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.
- 3.3 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in subsection 3.2, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 3.4 Form. The estimated franchise tax report shall be in the form set out in Regulation 1104.
- 3.5 Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:
 - 3.5.1 The estimated net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 1101;
 - 3.5.2 Adjusted for any estimated income from an insurance division or subsidiary;
 - 3.5.3 Less any deductions set forth in 5 **Del.C.** §1101;
 - 3.5.4 Multiplied by .56 to arrive at estimated taxable income;
 - 3.5.5 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied;
 - 3.5.6 The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109;
 - 3.5.7 The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
 - 3.5.8 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5

Del.C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C. §1814(c)**;

- 3.5.9 The subtotal estimated annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].
- 3.6 Payment of estimated tax. The estimated tax liability shall be due and payable as follows:
 - 3.6.1 40% due on or before June 1 of the current taxable year;
 - 3.6.2 20% due on or before September 1 of the current taxable year;
 - 3.6.3 20% due on or before December 1 of the current taxable year.

4.0 Final Franchise Tax

- 4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization and the final franchise tax report, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a banking organization may file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income, except as otherwise required by 5 **Del.C. §904**.
- 4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection 4.1, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 4.3 Form. The final franchise tax report shall be in the form set out in Regulation No. 1105.
- 4.4 Calculation of final tax. The total final franchise tax shall be calculated as follows:
 - 4.4.1 The net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 1101;
 - 4.4.2 Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary);
 - 4.4.3 Less any deduction set forth in 5 **Del.C. §1101**; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction);
 - 4.4.4 Multiplied by .56 to arrive at "taxable income";
 - 4.4.5 The appropriate rate of taxation set forth in 5 **Del.C. §1105** shall be applied to the taxable income to arrive at subtotal annual franchise tax;
 - 4.4.6 The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del.C. §1105**, which are calculated in accordance with Regulation No. 1109;
 - 4.4.7 The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
 - 4.4.8 The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C. §§1811 et seq.** and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C. §1105(g)**. If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C. §1814(c)**;
 - 4.4.9 The subtotal annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].

5.0 Payment of Final Franchise Tax

- 5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable to the State of Delaware and directed to the Office of the State Bank Commissioner.

- 5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

6.0 Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

- 6.1 In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:
- 6.1.1 The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;
- 6.1.2 The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.
- 6.2 The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year.
- 6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

7.0 Penalty - Late Payment of Final Franchise Tax

- 7.1 In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

8.0 Election to be listed as a "Subsidiary Corporation"

- 8.1 Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 1101 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for a banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the final franchise tax report due January 30 or any later date allowed as provided in subsection 4.1 above.
- 8.2 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 1101 must be completed each year for each Electing Corporation and submitted with the final franchise tax report.
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PROPOSED REGULATIONS

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b))
5 **DE Admin. Code** 1110

PUBLIC NOTICE

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

Summary

The State Bank Commissioner proposes to amend bank franchise tax Regulations 1103 (Instructions for Preparation of Franchise Tax) and 1110 (Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks). The proposed amendments clarify the definition of the term "Securities Business". Neither of these proposed amendments are substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other Regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed amended Regulations in accordance with Section 121(b) of Title 5 of the Delaware Code. This Notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, Chapter 101, Subchapter II, and Chapter 104, Sections 10404A(b)(1) and 10404B(b)(1).

Comments

Copies of the proposed amended Regulations are being published in the July 1, 2019 edition of the Delaware *Register of Regulations*. Copies are also on file in the Office of the State Bank Commissioner, 43 South DuPont Highway, Edgehill Shopping Center, Dover, DE 19901, and are available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended Regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amended Regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before August 2, 2019. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Amended Regulations

On or after August 2, 2019, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulations, or make additional changes because of the public comments received.

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

<http://regulations.delaware.gov/register/july2019/proposed/23 DE Reg 26RFA 07-01-19.pdf>

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

5 **Del.C.** Ch. 11

Effective Date: ~~February 11, 2017~~ XX/X/XXXX

1.0 This regulation applies only to resulting branches in this State of out-of-state banks. The estimated and final franchise tax reports that accompany this regulation are found in regulations 1111 and 1112, respectively.

2.0 Definitions

“**Bank**” means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

“Banking organization” means:

A bank or bank and trust company organized and existing under the laws of this State;

A national bank, including a federal savings bank, with its principal office in this State;

An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq. (an “Edge Act Corporation”), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an “Agreement Corporation”), and maintaining an office in this State;

A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;

A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or

A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

“International Banking Facility” means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

“International Banking Transaction” shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 **Del.C.** §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;

The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;

The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;

The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;

The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to an Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or

The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

“National Bank” means a banking association organized under the authority of the United States and having a principal place of business in this State.

“Net Operating Income Before Taxes” means the total net income calculated in accordance with Section 9.0 of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

“Out-of-State Bank” has the same meaning as in §795 of Title 5 of the **Delaware Code**, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

“Resulting Branch In This State Of An Out-of-State Bank” has the same meaning as in §1101(a) of Title 5 of the **Delaware Code**, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the **Delaware Code**, and, in addition, a branch office in this State of an out-of-state bank.

“**Securities Business**” means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities. For purposes of this regulation and Title 5, Section 1101(a)(1)b, a subsidiary that is a bank or insured institution, as those terms are defined in the federal Bank Holding Company Act, 12 USC 1841, is not considered to be “engaged in the sale, distribution or underwriting of, or dealing in, securities”.

“**Trust Company**” means a trust company or corporation doing a trust company business which has a principal place of business in this State.

3.0 Estimated Franchise Tax

- 3.1 A resulting branch or branches in this State of an out-of-state bank whose franchise tax liability for the current year, on a consolidated basis, is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated tax.
- 3.2 Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.
- 3.3 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in subsection 3.2, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 3.4 Form. The estimated franchise tax report shall be in the form set out in Regulation 1111.
- 3.5 Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:
 - 3.5.1 The estimated net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 1101;
 - 3.5.2 Adjusted for any estimated income from an insurance division or subsidiary;
 - 3.5.3 Less any deductions set forth in 5 **Del.C.** §1101;
 - 3.5.4 Multiplied by .56 to arrive at estimated taxable income;
 - 3.5.5 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied;
 - 3.5.6 The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109;
 - 3.5.7 The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
 - 3.5.8 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c);
 - 3.5.9 The subtotal estimated annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the credit(s)].
- 3.6 Payment of estimated tax. The estimated tax liability shall be due and payable as follows:
 - 3.6.1 40% due on or before June 1 of the current taxable year;
 - 3.6.2 20% due on or before September 1 of the current taxable year;
 - 3.6.3 20% due on or before December 1 of the current taxable year.

4.0 Final Franchise Tax

- 4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income, on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank and the final franchise tax report, setting forth the "taxable income", on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a resulting branch of an

out-of-state bank may file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income.

- 4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection 4.1, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 4.3 Form. The final franchise tax report shall be in the form set out in Regulation No. 1112.
- 4.4 Calculation of final tax. The total final franchise tax shall be calculated as follows:
- 4.4.1 The net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No.1101;
 - 4.4.2 Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary);
 - 4.4.3 Less any deduction set forth in 5 **Del.C.** §1101; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction);
 - 4.4.4 Multiplied by .56 to arrive at "taxable income";
 - 4.4.5 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;
 - 4.4.6 The subtotal annual franchise tax shall be adjusted for tax credits pursuant to 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109;
 - 4.4.7 The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
 - 4.4.8 The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c).
 - 4.4.9 The subtotal annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the credit(s)].

5.0 Payment of Final Franchise Tax

- 5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.
- 5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

6.0 Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

- 6.1 In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:
- 6.1.1 The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;
 - 6.1.2 The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.

- 6.2 The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year.
- 6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the resulting branch(es) of the out-of-state bank for the preceding taxable year.

7.0 Penalty - Late Payment of Final Franchise Tax

- 7.1 In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

8.0 Election to be listed as a "Subsidiary Corporation"

- 8.1 Any corporation which has elected to be treated as a "subsidiary corporation" of the resulting branch(es) of the out-of-state bank pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No.1101 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for the resulting branch(es) of the out-of-state bank whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the Final Franchise Tax Report due January 30 or any later date allowed as provided in subsection 4.1 above.
- 8.2 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation 1101 must be completed each year for each Electing Corporation and submitted with the final franchise tax report.

9.0 Separate Accounting by Resulting Branches

- 9.1 Books and Records. Each resulting branch must keep a separate set of books and records as if it were an entity separate from the rest of the bank that operates such resulting branch. These books and records must reflect the following items attributable to the resulting branch:
- 9.1.1 Assets and the credit equivalent amounts of offbalance sheet items used in computing the riskbased capital ratio under 12 C.F.R. part 325;
 - 9.1.2 Liabilities;
 - 9.1.3 Income and gain;
 - 9.1.4 Expense and loss.
- 9.2 Consolidation of Delaware Branches. If a bank operates more than one resulting branch, it may treat all resulting branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.
- 9.3 Determining Assets Attributable to a Resulting Branch
- 9.3.1 General Principle of Asset Attribution. The general principle will be to attribute assets to a resulting branch if personnel at the resulting branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.
 - 9.3.2 Loans and Finance Leases. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.

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- 9.3.3 Stocks and Debt Securities. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.
 - 9.3.4 Foreign Exchange Contracts and Futures, Options, Swaps, and Similar Assets. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.
 - 9.3.5 Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the licensing of such asset.
 - 9.3.6 Currency. U.S. and foreign currency will be attributed to a resulting branch if physically stored at the resulting branch.
 - 9.3.7 Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a resulting branch if they are located at or are part of the physical facility of a resulting branch.
 - 9.3.8 Other Business Assets. Other business assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.
 - 9.3.9 Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in Appendix A to 12 C.F.R. part 325 (the "Appendix") not otherwise addressed above (e.g., guarantees, surety contracts, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities, note issuance facilities described in the Appendix). These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.
 - 9.4 Liabilities Attributable to a Resulting Branch. The liabilities attributable to a resulting branch shall be the deposits recorded on the books of the resulting branch plus any other legally enforceable obligations of the resulting branch recorded on the books of the resulting branch or its parent.
 - 9.5 Income of a Resulting Branch.
 - 9.5.1 Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a resulting branch in accordance with the rules in section 9.3 above will be attributed to the resulting branch.
 - 9.5.2 Income from Fees. Fee income not attributed to a resulting branch in accordance with paragraph 9.5.1. above will be attributed to the resulting branch depending on the type of fee income.
 - 9.5.2.1 Fee income from letters of credit, travelers checks, and money orders will be attributed to the resulting branch if the letters of credit, travelers checks, or money orders are issued by the resulting branch, except to the extent that paragraph 9.5.1 above requires.
 - 9.5.2.2 Fee income from services (e.g., trustee and custodian fees) will be attributed to the resulting branch if the services generating the fees are performed by personnel at the resulting branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.
 - 9.6 Determining the Expenses of a Resulting Branch.
 - 9.6.1 Interest. The amount of interest expense of a resulting branch shall be the actual interest booked by the resulting branch, which should reflect market rates.
 - 9.6.2 Direct Expenses of a Resulting Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of

the resulting branch are direct expenses of such resulting branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the resulting branch, some taxes, insurance, the cost of supplies and fees for services rendered to the resulting branch.

- 9.6.3 Indirect Expenses of a Resulting Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a resulting branch must be allocated between the resulting branch and the rest of the bank operating the resulting branch. If the bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the resulting branch to the assets of the entire bank or based on the ratio of gross income of the resulting branch to gross income of the entire bank.
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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.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122 and 202(c) (14 **Del.C.** §§122 & 202(c))
14 **DE Admin. Code** 901

REGULATORY IMPLEMENTING ORDER

901 Education of Homeless Children and Youth

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §202 (c) the Secretary of Education intends to amend 14 **DE Admin. Code** 901 Education of Homeless Children and Youth. This amendment changes the title of the regulation, provides clarification of the dispute resolution process, and amends the regulation to comply with changes made to the federal Every Student Succeeds Act (ESSA). One clarification was changing the definition of "homeless children and youths". Prior to ESSA, a student "awaiting foster care" was considered homeless and this is no longer the case. Delaware law was amended through Senate Bill 87 of the 149th General Assembly for compliance with the federal law.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on April 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) requesting that: (1) the definition of "Best Interest Meeting" be removed as it is not used in the regulation; (2) the definition of "School of Origin" be amended to improve clarity by removing "before becoming homeless"; (3) the Department clarify where a homeless student should be enrolled in the event of a dispute; (4) the use of "Homeless Youth" be changed to "Unaccompanied Youth" for consistency throughout the regulation; (5) the word "Local" be included in front of "School District" in 4.4.1 and 4.4.3.1 for consistency throughout the regulation; and (6) that the Department should consider adding the phrase "or designee" following "Secretary" in 4.5.7.

The Department agrees that the definition of "Best Interest Meeting" should be removed as it is not used in the

regulation, and has removed it. The Department believes that the definition of “School of Origin” needs to be clarified by adding the word “public” to clarify the type of school involved. It does not believe removing “before becoming homeless” is necessary to clarify the definition. The Department believes further clarification is needed on the wording regarding where a homeless student should be enrolled in the event of a dispute, and has clarified the regulation by adding “either the School of Origin or the School of Residence” in 4.2. The Department agrees that the term “Homeless Youth” in 4.5.1 should be changed to “Unaccompanied Youth”, and has made that change in this regulation. Also the Department added “Local” before the term “School District” in 4.4.1 and 4.4.3.1 as suggested. Lastly, the Department agrees that for clarification “or designee” should be added after “Secretary” in 4.5.7 and made that change to the regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 901 Education of Homeless Children and Youth in order to change the title of the regulation, provide clarification of the dispute resolution process, and amend the regulation to comply with changes made to the federal Every Student Succeeds Act (ESSA).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 901 Education of Homeless Children and Youth. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 901 Education of Homeless Children and Youth attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 901 Education of Homeless Children and Youth 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** 901 Education of Homeless Children and Youth amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 901 Education of Homeless Children and Youth 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 14, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 14th day of June 2019.

Department of Education

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

Approved this 14th day of June 2019

901 Education of Homeless Children and Youth Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness

1.0 Purpose

Consistent with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.), the intent of this regulation is to ensure the educational rights and protections for children and youth experiencing homelessness. The intent of this regulation is to outline the dispute resolution process for children and youth experiencing homelessness.

2.0 Definitions

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

~~"Awaiting foster care placement" as defined by the provisions of 14 Del.C. §202(c) includes all children in foster care.~~

~~["Best Interest Meeting" means the convening of certain individuals to determine if the student should remain in the School of Origin or enroll in the School of Residence.]~~

"Charter School" means a school established pursuant to Chapter 5 of Title 14 of the Delaware Code.

"Department" means the Delaware Department of Education.

"Guardian" means a non-parent legally appointed by the court with the powers, rights, and duties which are necessary to protect, manage, and care for a child.

"Homeless Children and Youths" as defined by the provisions of the 42 U.S.C. §11434a(2), means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. §11302(a)(1)); and includes:

- Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship ~~hardship~~, or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; or are living in emergency or transitional shelters; or are abandoned in hospitals; ~~or are Awaiting foster care placement;~~
- Children and youths who have a primary nighttime residence that is ~~in~~ a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. §11302(a)(2)(C));
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and Migratory children (as such term is defined in section 20 U.S.C. §6399 of Title 20, the Elementary and Secondary Education Act of 1965, as amended) who qualify as homeless because the children are living in circumstances described above.

"Inter-Local Education Agency" or "Inter-LEA" means between Local Education Agencies.

"LEA Homeless Liaison" means the Local Educational Liaison for Homeless Children and Youths designated under 42 U.S.C. §11432(g)(1)(J)(ii).

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

"Local School District" means a reorganized school district or vocational technical school district established pursuant to 14 Del.C., Ch. 10.

"Relative Caregiver" means an adult who by blood, marriage or adoption is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, niece, nephew, first cousin or first cousin once removed but who does not have legal custody or legal guardianship of the child.

"School of Origin" means the specific public school building that the student attended when permanently housed, the [public] school in which the student was last enrolled before becoming homeless or the next receiving [public] school the student would attend for all feeder schools.

"School of Residence" means the specific public school building that the student would attend based on where the student is currently residing.

"Secretary" means the Secretary of Education.

"State Coordinator" means the Delaware Coordinator for Education of Homeless Children and Youths designated under 42 U.S.C. §11432(d)(3).

~~"Unaccompanied Youth" as defined by the provisions of 42 U.S.C. §11434a(6) includes~~ means a homeless child or youth not in the company physical custody of a parent Parent or guardian Guardian.

3.0 Federal Regulations

~~Local school districts shall comply with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.) and any regulations issued pursuant thereto.~~

Local School Districts and Charter Schools shall comply with the provisions of the federal McKinney-Vento Homeless Education Assistance Improvement Act 42 U.S.C. §11431 et. seq and federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. §6301 et seq. and any regulations issued pursuant thereto.

4.0 Procedures for the Resolution of Disputes Concerning the Educational Placement of Homeless Children and Youths

- 4.1 ~~If a dispute arises over school selection or enrollment, the local school district must immediately enroll the homeless student in either the school of origin (as defined in 42 U.S.C. 11432(g)(3)(G)) or the school that nonhomeless students who live in the attendance area in which the homeless student is actually living are eligible to attend, whichever is sought by the parent, guardian, Relative Caregiver or homeless youth, pending resolution of the dispute.~~
- 4.24.1 The local school shall provide the parent Parents, guardian Guardians, Relative Caregiver Caregivers or homeless youth Unaccompanied Youth with a written notice of the school's decision regarding school selection or enrollment. The notice shall include:
- 4.2.14.1.1 A written explanation of the school's decision regarding school selection or enrollment;
- 4.2.24.1.2 Contact information for the LEA Homeless ~~Liaison~~ Liaisons and State Coordinator, with a brief description of their roles;
- 4.2.34.1.3 A simple, detachable form that parents Parents, guardians Guardians, Relative Caregiver Caregivers or homeless youth Unaccompanied Youth can complete and turn ~~into~~ in to the school to initiate the dispute resolution process;
- 4.2.44.1.4 Instructions as to how to dispute the school's decision at the ~~district~~ Local School District or Charter School level;
- 4.2.54.1.5 Notice of the right to enroll immediately in the school of choice pending resolution of the dispute;
- 4.2.64.1.6 Notice that immediate enrollment includes full participation in all school activities for which the student is eligible;
- 4.2.74.1.7 Notice of the right to appeal to the State if the ~~district~~ Local School District or Charter School level resolution is not satisfactory; and
- 4.2.84.1.8 ~~Time lines~~ Timelines for resolving ~~district~~ Local School District or Charter School and State level appeals.
- 4.2 ~~If a dispute arises over school selection or enrollment, the child or youth shall be immediately enrolled in [the school either the School of Origin or the School of Residence] in which enrollment is sought by the Parents, Guardians, Relative Caregivers, or Unaccompanied Youth, pending final resolution of the dispute, including all available appeals.~~
- 4.3 Local School District and Charter School Level Dispute Resolution Process
- 4.3.1 ~~Local school districts~~ School Districts and Charter Schools shall develop a dispute resolution process at the ~~district~~ Local School District or Charter School level. The dispute resolution process shall be as informal and accessible as possible, but shall allow for impartial and complete review. Parents, ~~guardians~~ Guardians, Relative Caregivers and homeless youth Unaccompanied Youth shall be able to initiate the dispute resolution process directly at the school they choose or the ~~school district~~ Local School District or Charter School or LEA Homeless Liaison's office.
- 4.3.2 Within ten (10) business days of the initiation of the ~~district~~ Local School District and Charter School level dispute resolution ~~process;~~ process, the ~~school district~~ Local School District or Charter School shall inform the parties in writing of its determination, along with notice of the right to appeal to the State if the ~~district~~ Local School District or Charter School level resolution is not satisfactory.
- 4.4 ~~Interdistrict~~ Inter-LEA Resolution Process

- 4.4.1 When ~~interdistrict~~ Inter-LEA issues arise, including transportation, representatives from all involved ~~school districts~~ [Local] School Districts and Charter Schools, the State Coordinator, or ~~his or her~~ their designee, and the ~~parent(s)~~ Parents, guardian(s) Guardians, Relative Caregivers or unaccompanied youth Unaccompanied Youth shall meet within ten (10) business days of the initiation of the dispute process to attempt to resolve the dispute.
- 4.4.2 The State Coordinator's role is to facilitate the meeting.
- 4.4.3 If the parties are unable to resolve the ~~interdistrict~~ Inter-LEA dispute, it shall be referred to the Secretary or designee within ten (10) business days of the meeting. Subsection ~~4.5.4 through 4.5.9~~ 4.5 shall govern the Secretary's or ~~review official's~~ designee's determination. The Secretary or ~~review official~~ designee shall consider the entire record of the dispute, including any written statements submitted and shall make a determination based on the child's or youth's best interest, as defined in 42 U.S.C. §11432(g)(3).
- 4.4.3.1 Notwithstanding 4.4.3, where the ~~interdistrict~~ Inter-LEA dispute is limited solely to the issue of the apportionment of responsibility and costs for providing the child transportation to and from the school of origin, there shall be no referral to the Secretary. Pursuant to 42 USC 11432 (g)(1)(J)(iii)(II), if the ~~school districts~~ [Local] School Districts and Charter Schools are unable to agree upon such a method of appropriation, the responsibility for the costs for transportation shall be shared equally.
- 4.5 State Level Dispute Resolution Process
- 4.5.1 The State level dispute resolution process is available for appeals from ~~district level~~ Local School District and Charter School level decisions and ~~interdistrict~~ Inter-LEA disputes. Appeals may be filed by ~~parents, guardians, homeless youths or school districts~~ Parents, Guardians, [Homeless Youth Unaccompanied Youth], Local School Districts or Charter Schools. Appeals filed by a local school board within a Local School District shall not be accepted.
- 4.5.2 To initiate the State level dispute resolution process, the appellant must file a written notice of appeal with the Secretary no later than ten (10) business days after receiving written notification of the ~~district~~ Local School District or Charter School level or ~~interdistrict~~ Inter-LEA decision. The notice of appeal shall state with specificity the grounds of the appeal, and shall be signed by the appellant. Where the appeal is being initiated by a ~~school district~~ Local School District or Charter School, the superintendent of the ~~district~~ Local School District or Charter School head of school must sign the notice of appeal.
- 4.5.3 A copy of the notice of appeal shall be delivered by hand or certified mail or electronically to all other parties to the proceeding at the time it is sent to the Secretary. A copy of any other paper or document filed with the Secretary or ~~review official~~ designee shall, at the time of filing, also be provided to all other parties to the proceeding.
- 4.5.4 Upon receipt of a notice of appeal, the Secretary or ~~his/her~~ designee, shall within five (5) business days decide whether to hear the appeal or assign it to an independent and impartial review official and shall so advise the parties.
- 4.5.5 The ~~local district~~ Local School District or Charter School shall file a certified record of the ~~district~~ Local School District or Charter School or ~~inter-district~~ Inter-LEA level dispute proceeding with the Secretary or ~~review official~~ designee within five (5) business days of the date the Secretary notifies the parties that an appeal has been filed. The record shall contain any written decision, any written minutes of the meeting(s) at which the disputed action was taken, all exhibits or documentation presented at the ~~district~~ LEA or interdistrict Inter-LEA level dispute proceeding, and any other evidence relied on by the ~~District(s)~~ Local School District or Charter School in making ~~(their)~~ its decision.
- 4.5.6 Appeals are limited to the record. The parties may support their positions in written statements limited to matters in the existing record. In order to be considered, written statements must be filed with the Secretary or ~~review official~~ designee no later than ~~twenty (20)~~ fifteen (15) business days after the appeal is filed.
- 4.5.7 The Secretary [or designee] or ~~review official~~ shall consider the entire record of the dispute, including any written statements submitted in reaching ~~his or her~~ a decision. The Secretary or

FINAL REGULATIONS

- ~~review official designee~~ shall overturn the ~~district~~ Local School District or Charter School or ~~interdistrict Inter-LEA~~ decision only if ~~he or she decides~~ it is decided that the ~~district's Local School District or Charter School~~ decision was not supported by substantial evidence or was arbitrary or capacious or is inconsistent with state and federal law or regulation.
- 4.5.8 Within thirty (30) business days of the receipt of the notice of appeal, the Secretary or ~~review official designee~~ shall inform the parties of ~~his or her~~ the appeal determination.
- 4.5.9 The determination of the Secretary or ~~review official designee~~ shall be final and is not subject to further appeal within the Department of ~~Education~~.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1510

REGULATORY IMPLEMENTING ORDER

1510 Issuance of Initial License

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1510 Issuance of Initial License. The regulation applies to the issuance of an initial license for educators pursuant to 14 **Del.C.** §1210. The proposed changes include revising the definition of the term "Performance Assessment" in Section 2.0; amending subsection 3.3, which concerns the requirements that must be met prior to the issuance of an initial license; and amending Section 16.0, which concerns Secretary of Education Review requests.

Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2019. The Professional Standards Board received one written submittal from Ann C. Fisher, the Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC").

GACEC commented that it "supports the proposed amendments." GACEC further commented that the proposed amendment to subsection 3.3 correctly removes the performance assessment provision from the requirements for the issuance of an initial license; the proposed amendment to subsection 7.2 incorrectly strikes the phrase "within the first two years;" and the proposed amendments to subsections 16.1.1 and 16.1.2 require certain school officials to approve requests for Secretary of Education review whereas the proposed amendments to 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License require the school officials to submit such requests.

On June 6, 2019, the Professional Standards Board considered GACEC's written submittal. The Professional Standards Board found that an initial license is valid for four years pursuant to a statute (*i.e.*, 14 **Del.C.** §1210(a)) and that an educator is required to obtain a passing score on a performance assessment if the educator intends to apply for a continuing license. Thus, if an educator is required to obtain a passing score on a performance assessment within the first two years of his or her initial license, and the educator does not obtain a passing score within that timeframe, the educator would still hold an initial license for the remainder of the time his or her initial license is valid (at least two more years) without having another opportunity to attempt to obtain a passing score in order to meet the requirements for a continuing license. In addition, the Professional Standards Board found that the proposed amendments to subsections 16.1.1 and 16.1.2 are consistent with the Department's practice that requests for Secretary of Education Review be approved, not actually submitted, by the superintendent of a school district or the board of directors or head of a charter school.

On June 6, 2019, the Professional Standards Board found that further changes in response to the written submittal were not necessary and voted to propose 14 **DE Admin. Code** 1510 Issuance of Initial License, in the form that was published, for adoption by the Department subject to the State Board of Education's approval.

II. FINDINGS OF FACTS

The Department finds that if an educator is required to obtain a passing score on a performance assessment within the first two years of his or her initial license, and the educator does not obtain a passing score within that timeframe, the educator would still hold an initial license for the remainder of the time the educator's initial license is valid but the educator would not have another opportunity to attempt to obtain a passing score in order to meet the requirements for a continuing license. In addition, the Department finds that its current practice requires requests for Secretary of Education Review be approved by the superintendent of a school district or the board of directors or head of a charter school, so the proposed amendments to subsections 16.1.1 and 16.1.2 are consistent with that practice.

The Department finds that further changes in response to the written submittal are not necessary. Additionally, the Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1510 Issuance of Initial License.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1510 Issuance of Initial License subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1510 Issuance of Initial License attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1510 Issuance of Initial License adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1510 Issuance of Initial License in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Department pursuant to 14 **Del.C.** §§1203 and 1205(b) on June 20, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 20th day of June, 2019.

Department of Education

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

Approved this 20th day of June, 2019.

State Board of Education

Whitney Sweeney, President

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

Nina Lou Bunting

Candace Fifer

Vincent Lofink

Provey Powell, Jr.

Wali W. Rushdan, II

*Please note that no changes were made to the regulation as originally proposed and published in the May 2019 issue of the *Register* at page 899 (22 DE Reg. 899). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1510 Issuance of Initial License

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1511

REGULATORY IMPLEMENTING ORDER

1511 Issuance and Renewal of Continuing License

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education (“Department”), developed amendments to 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License. The regulation applies to the issuance and renewal of a continuing license for educators pursuant to 14 **Del.C.** §§1211 and 1212. The proposed changes include revising the definition of the terms “Experience Educator” and “Performance Assessment” and adding a definition of the term “Micro-credential” in Section 2.0; amending Section 12.0, which concerns Secretary of Education Review requests; and amending Section 13.0, which concerns options for relicensure.

Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2019. The Professional Standards Board received one written submittal from Ann C. Fisher, the Chairperson of the Governor’s Advisory Council for Exceptional Citizens (“GACEC”).

GACEC commented that it “supports the proposed amendments.” GACEC further commented that the proposed amendments to subsections 12.1.1 and 12.1.2 require certain school officials to submit requests for Secretary of Education review whereas the proposed amendments to 14 **DE Admin. Code** 1510 Issuance of Initial License require the school officials to approve such requests.

On June 6, 2019, the Professional Standards Board considered GACEC’s written submittal. The Professional Standards Board found that the Department’s practice requires Secretary of Education Review requests be approved, rather than submitted, by the superintendent of a school district or the board of directors or head of a charter school, and that “submitted” should be changed to “approved” in subsections 12.1.1 and 12.1.2. The Professional Standards Board’s Chairperson determined that such change constituted a nonsubstantive change under 29 **Del.C.** §10118(c).

On June 6, 2019, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License, in the form attached hereto as Exhibit “A,” for adoption by the Department subject to the State Board of Education’s approval.

II. FINDINGS OF FACTS

The Department finds that its current practice requires requests for Secretary of Education Review be approved by the superintendent of a school district or the board of directors or head of a charter school, and the additional, nonsubstantive change of “submitted” to “approved” in subsections 12.1.1 and 12.1.2 is consistent with that practice.

The Department finds that the nonsubstantive change in response to the written submittal is necessary. Additionally, the Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License subject to the State Board of Education’s approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License attached hereto as Exhibit “A” is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Department pursuant to 14 **Del.C.** §§1203 and 1205(b) on June 20, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 20th day of June, 2019.

Department of Education

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

Approved this 20th day of June, 2019.

State Board of Education

Whitney Sweeney, President

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

Nina Lou Bunting

Candace Fifer

Vincent Lofink

Provey Powell, Jr.

Wali W. Rushdan, II

1511 Issuance and Renewal of Continuing License (Break in Continuity of Sections)

12.0 Secretary of Education Review

12.1 The Secretary of Education may, upon ~~at~~ the written request of ~~the superintendent of a public school district or charter school administrator~~ school, review licensure credentials on an individual basis and grant a Continuing License to an applicant who otherwise does not meet the requirements for a Continuing License, but whose effectiveness is documented by the ~~public school district or charter school administrator~~.

12.1.1 For school districts, requests shall be [submitted approved] by the superintendent of the school district.

12.1.2 For charter schools, requests concerning the head of school of the charter school shall be [submitted approved] by the charter school's board of directors and requests concerning all other educators shall be [submitted approved] by the charter school's head of school.

***Please note that no additional changes were made to the regulation as originally proposed and published in the May 2019 issue of the *Register* at page 901 (22 DE Reg. 901). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

1511 Issuance and Renewal of Continuing License

FINAL REGULATIONS

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Sections 4805(a)(16) and 4825(a) (29 **Del.C.** §§4805(a)(16) & 4825(a))
10 **DE Admin. Code** 204

ORDER

204 Delaware Sports Lottery Rules and Regulations

The Director of the Office of the State Lottery (Director) hereby gives notice of amendments to 10 **DE Admin. Code** §204, the Delaware Sports Lottery Rules and Regulations. These amendments are non-substantive and relate to the internal operations, practices, and procedures of the Office of the State Lottery. They should not pose additional burdens on licensees or consumers. Pursuant to 29 **Del.C.** §10113(b)(2), regulations describing an agency's rules of practice and procedure are exempted from the notice and public comment requirements of 29 **Del.C.** ch. 101. The Delaware Code authority for these revisions is 29 **Del.C.** §§4805(a)(16) and 4825(a).

The Office of the State Lottery does not plan to hold a public hearing on the proposed amendments to the existing regulations. The proposed revisions appear below. Members of the public may also request a copy of the revisions by visiting the Office of the State Lottery, 1575 McKee Road, Suite 102, Dover, Delaware 19904.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Office of the State Lottery does hereby ORDER that the regulations be amended as set forth below. The effective date of this order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Vernon A. Kirk, Director
Office of the State Lottery

6/4/2019
Date

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

7.0 Sports lottery

(Break in Continuity Within Section)

- 7.10 Liability for Malfunction. Unless the Director is satisfied that a mutilated lottery ticket is genuine, no credit or prize will be issued to the holder of said ticket. The Delaware Lottery is not responsible for wagers not placed due to a system or terminal malfunction or from human error or paying winning tickets resulting from any system or terminal malfunction or from human error. Tickets misprinted due to machine error or any malfunction or other type of error must be returned to the Delaware Lottery's office, and the Agent's account will be credited. If a ticket that has been sold to the public is determined by the Director to be misprinted due to machine error (as determined by the Delaware Lottery's internal procedures) or is determined to be erroneously issued due to a malfunction or other type of error, the Delaware Lottery shall reimburse the ticket holder for the cost of the ticket. Such tickets will not be eligible for any prize. The Director may require agents to comply with such directives as he deems necessary for erroneous, misprinted, or mutilated tickets received by an agent.
- 7.11 Each prize ticket winner must present a physical paper ticket to an agent or to the Delaware Lottery to claim a prize, and the physical paper ticket must have been printed on official or authorized Delaware Lottery ticket stock. In addition, a winner may be required to provide (i) a photo identification card that has the winner's name and current residential address and (ii) a Social Security card.

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

204 Delaware Sports Lottery Rules and Regulations

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1102(4)b.9. and 29 Delaware Code, Section 7971(d)(1) (16 **Del.C.** §1102(4)b.9. & 29 **Del.C.** §7971(d)(1))
16 **DE Admin. Code** 3320

ORDER

3320 Intensive Behavioral Support and Educational Residence

NATURE OF THE PROCEEDINGS:

The Department of Health and Social Services ("Department") / Division of Health Care Quality (DHCQ) initiated proceedings to establish Regulation 3320 Intensive Behavioral Support and Educational Residence in the April 1, 2019 Delaware *Register of Regulations* on page 839 (22 **DE Reg.** 839 (04/01/19)).

The Department's proceedings to establish the regulation were initiated pursuant to 16 **Del.C.** §1102(4)b.9.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 7971(d) in the April 1, 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 1, 2019, at which time the Department would receive information, factual evidence and public comment to the said proposed regulations.

Statutory Authority

16 **Del.C.** §1102(4)b.9.

29 **Del.C.** §7971(d)(1) Subchapter VI "Department of Health And Social Services, Division of Health Care Quality."

Background

DHCQ is revising these regulations pursuant to 16 **Del.C.** §1102(4)b.9., 29 **Del.C.** §7971(d)(1). These regulations are being revised to be more concise, readable, and to assist with clarification in all sections.

Summary of Evidence

The proposal establishes regulations related to the IBSER regulations.

The following **comments and/or suggestions** were received by the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD). DHCQ responses are below with comments.

Comment: 1: Subsection 2.1.1.3.1 mentions "...substantial compliance..." Council queries the meaning of this term.

Response 1: The DHCQ disagrees. Substantial compliance is a term used consistently in the regulations of health care facilities. Substantial compliance is determined by the number and severity of deficient practices identified by the regulatory agency. Substantial compliance means a level of compliance with State law and regulatory requirements such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm. Substantial compliance constitutes compliance with State law and regulatory requirements.

Comment 2: Subsection 2.1.2.2 regarding Suspension or Revocation of License, and subsection 2.1.3 Imposition of Disciplinary Action list two different timeframes for actions to be taken (10 days vs. 20 days). Council considers suspension or revocation of licenses to be disciplinary actions and questions the use of two different timeframes. Are there other disciplinary actions besides suspending or revoking licenses?

Response 2: The DHCQ disagrees. There are other disciplinary actions, including but not limited to:

requirement for a plan of correction, directed in-service and civil monetary penalties. Disciplinary actions are addressed in 16 **Del.C.** §§1109-1113.

Comment 3: Subsection 2.1.7, what is meant by the phrase "...readily available...?"

Response 3: The DHCQ is stating that the license must be kept on the premises for which it was issued and not in a corporate location.

Comment 4: In subsection 2.3.3, Council notes that the list of items to be submitted for an initial license does not include a listing of all owners, funding sources or proof of background checks. Can this information be found in a different location?

Response 4: The DHCQ disagrees. Background checks are as required by statute, not by regulation. Financial requirements are included in the financial capability regulations. Application requirements are addressed in 16 **Del.C.** §1104 License and renewal application.

Comment 5: In subsection 3.2.10, Council would suggest a definition for "funds" as the proposed wording might be too broad. It is not clear on the types of funds (cash on hand, bank accounts, etc.) or if there are any limits.

Response 5: The DHCQ disagrees. Rather than listing all types of funds; funds would include all funds, thus the reason for the generalization.

Comment 6: Subsections 4.5.4 and 4.7 discuss plumbing and electrical code requirements. Plumbing has to meet the requirements of municipal or county codes, unless there are no local codes, then it must meet the state Sanitary Plumbing Code (subsection 4.5.4) but electric has to meet all municipal, county and State requirements. Council would suggest adding State in the plumbing requirements for consistency.

Response 6: The DHCQ disagrees. Subsection 4.3 requires that the IBSER shall comply with all local and state building codes and ordinances as pertain to this occupancy.

Comment 7: Subsection 4.10.8 states that bedrooms must have "...adequate electrical outlets which are conveniently located." The number of outlets is dictated by Electrical Code and should be the standard.

Response 7: DHCQ agrees and subsection 4.3 would require that.

Comment 8: In subsection 5.8, Council suggests adding "...or discovery" after "...occurrence..."

Response 8: The DHCQ disagrees. This language is consistent with federal requirements.

Comment 9: Council questions who performs the physical examination in subsection 8.6.9.11.

Response 9: The DHCQ clarifies that this would be included by any staff in attendance. Physical examinations would be performed by a licensed independent medical practitioner. See subsection 8.6.4.2.1.

Comment 10: In subsection 8.8, no description is provided on the membership of the Behavior Management Committee (BMC) unlike the list of participants on the Human Rights Committee (HRC) in subsection 8.7. Council would suggest more information on the BMC for consistency.

Response 10: DHCQ disagrees. As established by definition, "Behavior Management Committee" or "BMC" means the group that establishes and reviews each resident's Specialized Behavior Support Plan (SBS Plan). Also subsection 8.8.1 establishes that the BMC is also known as the professional interdisciplinary treatment team.

Comment 11: Finally, in subsection 9.5 the proposed regulations increase the minimum number of hours of orientation training for new hires and volunteers from 15 hours found in subsection 14.1 in existing regulations to 40 hours. This makes sense given the challenges presented in the provision of individualized services in this type of setting. The proposed regulation also sets a uniform requirement for 40 hours of additional training annually regardless of an employee's position, whereas currently there are different requirements for staff based on how many hours they are working per week. While generally more training for staff is a positive, it is possible that part-time staff could find these training requirements burdensome, and staff retention is always a major concern.

Response 11: The DHCQ disagrees. While we understand that staff retention is always a major concern; knowledge of behavior issues with these type of residents, the care and safety of our residents, is not only of major concern, but also primary concern.

Decision to Adopt the Regulation

The Division's proposed regulatory amendments, as initially published in the April 1, 2019 Delaware *Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect on July 11, 2019 after publication in the July 1, 2019 issue of the Delaware *Register of Regulations*; and

The Division shall submit the proposed amendments to Regulation 3320 Intensive Behavioral Support and Educational Residence Amendments as final, pursuant to 16 **Del.C.** §1102(4)b.9. and 29 **Del.C.** §7971(d)(1)

Subchapter VI "Department of Health And Social Services, Division of Health Care Quality." to the Delaware Registrar of Regulations for publication in the July 1, 2019 issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Finding of Facts:

Based on the research by the Division's experts and the comments received, I find that the proposed regulatory amendments to Regulation 3320 Intensive Behavioral Support and Educational Residence, are well-supported. Therefore, the proposed Amendments shall be promulgated as final. I further find that the Division's experts fully support adoption of these Amendments.

In conclusion, the Division:

Has the statutory basis and legal authority to act with regard to the proposed Amendments pursuant to 16 **Del.C.** §1102(4)b.9.; 29 **Del.C.** §7971(d)(1) Subchapter VI "Department of Health And Social Services, Division of Health Care Quality."

The Division provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed Amendments, including at the time of the public comment held on April 1, 2019, and during the 30 days subsequent to the comments ending on May 1, 2019 before making any final decision.

Promulgation of the proposed Amendments to Regulation 3320 Intensive Behavioral Support and Educational Residence, pursuant to 16 **Del.C.** §1102(4)b.9. and 29 **Del.C.** §7971(d)(1) Subchapter VI "Department of Health And Social Services, Division of Health Care Quality," will enable the Division to further regulate this entity in a more clear and concise manner.

THIS ORDER IS EFFECTIVE this 11th day of July, 2019.

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

6/13/19
Date

***Please note that no changes were made to the regulation as originally proposed and published in the April 2019 issue of the *Register* at page 839 (22 DE Reg. 839). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3320 Intensive Behavioral Support and Educational Residence

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 29 Delaware Code, Section 7903(9) (29 **Del.C.** §7903(9))
16 **DE Admin. Code** 3325

ORDER

3325 Financial Capability Reporting

NATURE OF THE PROCEEDINGS:

The Department of Health and Social Services ("Department") / Division of Health Care Quality (DHCQ) initiated proceedings to establish Regulation 3325 Financial Capability Reporting.

The Department's proceedings to establish the regulation was initiated pursuant to 29 **Del.C.** §7903(9) and its authority as prescribed by 29 **Del.C.** §7971.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 7971(d) in the March 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 1, 2019, at which time the Department would receive information, factual evidence and public comment to the said proposed regulations.

SUMMARY OF PROPOSAL

Effective July 1, 2019, the Department/DHCQ is publishing the final regulations governing Financial Capability Reporting.

Statutory Authority

29 Del.C. §7903(9)

29 Del.C. §7971(d)(1) Subchapter VI "Department of Health And Social Services, Division of Health Care Quality."

Background

DHCQ is revising these regulations pursuant to 29 Del.C. §7903(9), 29 Del.C. §7971(d)(1).

Summary of Final Amendment

The purpose of the proposed regulation amends DHCQ Regulation 3326, Financial Capability Reporting to establish a process to assess the financial capability of Family Care Home providers and revise the process for establishing capital availability for newly established facilities or facilities with a parent organization.

Findings of Fact

No comments were received during the public comment period.

The Department finds that the proposed changes as set forth in the March 2019 *Register of Regulations* should be adopted.

THIS ORDER IS EFFECTIVE this 11th day of July, 2019.

6/11/19

Date of Signature

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

*Please note that no changes were made to the regulation as originally proposed and published in the March 2019 issue of the *Register* at page 723 (22 DE Reg. 723). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

3325 Financial Capability Reporting

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

PRTFs – Provision of EPSDT Services

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Psychiatric Residential Treatment Facilities (PRTFs), specifically, *to ensure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary services*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the March 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 1, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after July 1, 2019 Delaware Health and Social Services/ Division of Medicaid and Medical Assistance proposes to amend Title XIX Medicaid State Plan regarding Psychiatric Residential Treatment Facilities (PRTFs), specifically, *to ensure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary services.*

Background

The Medicaid program's benefit for enrolled children and adolescents is known as the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit. EPSDT provides a comprehensive array of prevention, diagnostic, and treatment services for low-income individuals under age 21 as specified in section 1905(r) of the Act.

Previously, covered services not provided by or in the psych under 21 hospital or facility could be reimbursed when they were 1) provided to a child residing in an inpatient psychiatric hospital or facility, 2) authorized under the child's plan of care, and 3) provided by individual practitioners or suppliers under an arrangement with the hospital or facility. The Section 12005 of the Cures Act requires that individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to the full range of EPSDT services. A plan of care is not necessary to authorize any other medically necessary services and Medicaid services may be provided by community practitioners not affiliated with the facility.

Statutory Authority

Section 12005(a) of the 21st Century Cures Act

Purpose

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on April 1, 2019.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no fiscal impact associated with this policy.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: Two commenters endorsed the proposed changes to the Medicaid State Plan to insure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary services.

Agency Response: DMMA appreciates the endorsement.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Governor's Advisory Council for Exceptional Citizens; and
- State Council for Persons with Disabilities.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Psychiatric Residential Treatment Facilities (PRTFs), specifically, *to ensure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary services*, is adopted and shall be final effective July 11, 2019.

6/10/19

Date of Signature

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

FINAL

ATTACHMENT 4.19-A.3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT State:

DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR UNDER AGE 21

1. Psychiatric Residential Treatment Facility (PRTF) Reimbursement

Reimbursement for services are based upon a Medicaid fee schedule established by the State of Delaware. Psychiatric residential treatment facilities will be reimbursed the lesser of:

- The Delaware Medicaid per diem reimbursement rate for activities in the per diem plus additional fee-for-service reimbursement using the Delaware Medicaid fee schedule for ~~activities on the plan of care~~ any other medical services under 1905(a) of the Social Security Act that children under age 21 who are residing in a PRTF are determined to need in order to correct or ameliorate health conditions, regardless of whether such services are identified in the child's plan of care, but not in the per diem PRTF reimbursement rate;
- The facility's usual and customary charge to privately insured or private-pay beneficiaries; or
- If an out of state facility, the lesser of a negotiated per diem reimbursement rate, the facility's usual and customary charge, or the Delaware Medicaid per diem rate. For ~~plan of care activities not included in the per diem~~ any other medical services under 1905(a) of the Social Security Act that children under age 21 who are residing in a PRTF are determined to need in order to correct or ameliorate health conditions, regardless of whether such services are identified in the child's plan of care, that are not included in the per diem PRTF reimbursement rate, additional fee-for-service reimbursement using the Delaware Medicaid fee schedule is available.

Except as otherwise noted in the State Plan, the State-developed fee schedule is the same for both governmental and private individual providers and the fee schedule and any annual/periodic adjustments to the fee schedule are published in the Delaware *Register of Regulations*. The Agency's fee schedule rate was set as of July 1, 2016 and is effective for services provided on or after that date. All rates are published on the Delaware Medical Assistance Program (DMAP) website at

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

<https://medicaidpublications.dhss.delaware.gov/dotnetnuke/search?EntryId=17>

A. Community-Based Delaware Medicaid per diem PRTF reimbursement rate includes the following covered inpatient psychiatric residential treatment facility (PRTF) activities for individuals under twenty-one years of age ~~when included on the patient's inpatient psychiatric active treatment plan of care:~~

- a. Behavioral Health care by staff who are not physicians
- b. Occupational Therapy / Physical Therapy / Speech Therapy
- c. Laboratory
- d. Transportation
- e. ~~Dental~~
- f. ~~Vision~~
- g. Diagnostics/radiology (x-ray)

~~Starting on 1/1/2019, dental, vision, laboratory, and diagnostics/radiology are excluded from this rate and paid through EPSDT under authority of the 21st Century Cures Act.~~

No. SPA# _____	Approval Date _____
TN Supersedes	
TN No. SPA# <u>17-012</u>	Effective Date _____

FINAL

ATTACHMENT 4.19-A.3.1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
– INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21 CONTINUED

1. Psychiatric Residential Treatment Facility (PRTF) Reimbursement (continued)

B. Hospital-Based Delaware Medicaid per diem PRTF reimbursement rate includes the following covered inpatient psychiatric residential treatment facility (PRTF) activities for individuals under twenty-one years of age ~~when included on the patient's inpatient psychiatric active treatment plan of care:~~

- a. Behavioral Health care by staff who are not physicians
- b. Occupational Therapy / Physical Therapy / Speech Therapy
- c. Laboratory
- d. Transportation
- e. Dental
- f. Vision
- g. Diagnostics/radiology (x-ray)

C. Pharmaceuticals and physician activities provided to the youth in a PRTF, when on the active treatment plan of care, are components of the Medicaid covered PRTF service. These activities will be paid directly to the treating pharmacy or physician, using Medicaid pharmacy and physician fee schedule rates excluded from the psychiatric residential treatment facility (PRTF) State of Delaware Medicaid per diem reimbursement rates.

~~D. Medical services under 1905(a) of the Social Security Act that are listed on the inpatient psychiatric active treatment plan and~~ Any other medical services under 1905(a) of the Social Security Act that

children under age 21 who are residing in a PRTF are determined to need in order to correct or ameliorate health conditions, regardless of whether such services are identified in the child's plan of care, that are excluded in A, B, or C above, shall be paid directly to the treating provider, using Medicaid fee schedule rates. Such services are excluded from the psychiatric residential treatment facility (PRTF) State of Delaware Medicaid per diem reimbursement rates.

E. The Medicaid PRTF per diem reimbursement rates shall also ~~exclude such costs, other than pharmaceutical, physician, and other medical services that could be covered under 1905(a) of the Social Security Act on the inpatient psychiatric active treatment plan~~ any additional costs that are unrelated to providing inpatient psychiatric care for individual less than twenty-one (21) years of age including, but not limited to the following:

- 1) Group education, including elementary and secondary education.
- 2) Medical services that are not listed in Items A, B, and C A or B above.
- 3) Activities not on the inpatient psychiatric active treatment plan.

2. Psychiatric Residential Treatment Facility (PRTF) Reimbursement Rate Methodology

A. ~~Medicaid certified providers will be reimbursed for covered PRTF services using a Medicaid per diem reimbursement rate consistent with the principles in section 1 above. The Medicaid per diem reimbursement rate paid to the provider will be determined by the following service criteria:~~

- 1) ~~PRTF specializing in sexually-based treatment programs.~~
- 2) ~~PRTF specializing in substance use disorder treatment programs.~~
- 3) ~~PRTF treating children with mental health diagnoses.~~

No. SPA# _____	Approval Date _____
TN Supersedes	
TN No. SPA# <u>17-012</u>	Effective Date _____

AMENDED

ATTACHMENT 4.19-A.3.2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
– INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21 CONTINUED

2. Psychiatric Residential Treatment Facility (PRTF) Reimbursement Rate Methodology ~~(continued)~~

A. Medicaid certified providers will be reimbursed for covered PRTF services using a Medicaid per diem reimbursement rate consistent with the principles in section 1 above. The Medicaid per diem reimbursement rate paid to the provider will be determined by the following service criteria:

- 1) PRTF specializing in sexually-based treatment programs.
- 2) PRTF specializing in substance use disorder treatment programs.
- 3) PRTF treating children with mental health diagnoses.

The Delaware Medicaid PRTF fee development methodology will build fees considering each component of provider costs as outlined below. These reimbursement methodologies will produce rates sufficient to enlist enough providers so that services under the State Plan are available to beneficiaries at least to the extent that these services are available to the general population, as

required by 42 CFR 447.204. These rates comply with the requirements of Section 1902(a)(3) of the Social Security Act and 42 CFR 447.200, regarding payments and are consistent with economy, efficiency, and quality of care. Provider enrollment and retention will be reviewed periodically to ensure that access to care and adequacy of payments are maintained.

No. SPA# _____	Approval Date _____
TN Supersedes _____	
TN No. SPA# <u>17-012</u>	Effective Date _____

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XXI Delaware Healthy Children Program State Plan - Children's Health Insurance Program (CHIP)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend XXI Delaware Healthy Children Program State Plan to demonstrate compliance with the Medicaid Managed Care final rule as it relates to the Children's Health Insurance Program (CHIP). The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The following regulatory action is exempt from the Administrative Procedures Act in accordance with 29 Delaware Code, Ch 101, §10113(b)(4)(5), which exempts from the procedural requirements of the Administrative Procedures Act (APA) regulations for existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations and codifications of existing agency or judicial principles of decision derived from previous decisions and rulings.

SUMMARY OF PROPOSAL

Effective for services provided on and after July 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend XXI Delaware Healthy Children Program State Plan to demonstrate compliance with the Medicaid Managed Care final rule as it relates to the Children's Health Insurance Program (CHIP).

Background

In May 2016, the Centers for Medicare & Medicaid Services (CMS) published the Medicaid and CHIP final managed care rule. The rule aligns key rules with those of other health insurance coverage programs, modernizing how states purchase managed care for beneficiaries, and strengthens the consumer experience and key consumer protections.

Statutory Authority

81 FR 27497 - Medicaid and CHIP Managed Care Final Rule

Citation

29 **Del.C.** §10113, Adoption of Regulations; Exemptions

Fiscal Impact Statement

There is no anticipated fiscal impact to the agency.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend XXI Delaware Healthy Children Program State Plan to demonstrate compliance with the Medicaid Managed Care final rule as it relates to the Children's Health Insurance Program (CHIP), is adopted and shall be final effective July 11, 2019.

6/13/19

Date of Signature

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

***Please Note: A copy of the text of the final amendment is available at:**

Section 3 - Methods of Delivery and Utilization Controls.pdf

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)u.1 (16 **Del.C.** §122(3)u.1)
16 **DE Admin. Code** 4458A

ORDER**4458A Cottage Food Regulations****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Cottage Food Regulations. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsections 122(3)(u)(1).

On April 1, 2019 (Volume 22, 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 May 1, 2019, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Cottage Food Regulations were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (April 1, 2019 through May 1, 2019).

Entities offering written comments include:

- Ms. Lauren Smyrski, Lauren's Perfectly Crafted Sweets

Comments from Ms. Lauren Smyrski**Addition of a new term and definition, "Major Food Allergen."**

While I do include a generic allergen statement on my packaging since I am not a nut free facility, how much can one actually fit on labels with the 10 point font requirement and the third proposed added changes? I've attached a sample of my label, which (by some miracle) does meet the requirements. Current regulations makes individually packaged and labeled products nearly impossible to label without creating something that is double sided/trifold or larger than the product itself.

Response: Thank you for your comment. The Division feels the current labeling requirements are both

reasonable and appropriate. Labels are reviewed on a case-by-case basis and individual questions and concerns can be addressed during those reviews.

Addition of set time frame for effective dates and expiration dates of registration. Section 3.1.2 states, “Registrations shall remain effective only during a year beginning April 1 and ending March 31 or any remaining portion of the year beginning on the date the registration is issued and ending March 31.”

This proposal does not have my support. My concern is that the state of Delaware does not have adequate staffing to handle everyone applying for renewals around the same time. I applied for my initial CF permit back in early January and have yet to receive my kitchen inspection. I cannot imagine the backlog of paperwork with everyone looking to renew applications around the same time due to set application timeframe. Additional staffing is already needed with the current set up. If this is passed, I would highly encourage additional staffing, even if temporarily, to assist with the paperwork during the beginning of the year to help expedite the process.

Response: Thank you for your comment. The Office of Food Protection is confident that future applications will be reviewed in reasonable timeframes.

Addition of a new labeling requirement. Section 8.2.3 states, “Labels shall include the name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient.”

Again, the labeling requirements already set by the state of Delaware does make the requirement of including additional information an even tighter fit. Could highlighting allergen related food be an acceptable compromise?

Response: Thank you for your comment. The Division feels the current labeling requirements are both reasonable and appropriate. Labels are reviewed on a case-by-case basis and individual questions and concerns can be addressed during those reviews.

FINDINGS OF FACT:

No changes were made to the regulations since publication as proposed. 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 Cottage Food Regulations is adopted and shall become effective July 11, 2019 (ten days), after publication of the final regulation in the Delaware *Register of Regulations*.

6/10/19

Date

Dr. Kara Odom Walker
Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the April 2019 issue of the *Register* at page 840 (22 DE Reg. 840). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[4458A Cottage Food Regulations](#)

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 2000

ORDER

[DSS Application Process](#)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding DSS Application Process, specifically, to update

formatting and clarify the application process for DSS benefit programs. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the February 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 4, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after July 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend sections 2000, 2000.1, 2000.2, 2000.3, and 2000.4 of the Division of Social Service Manual specifically, to update formatting and clarify the application process for DSS benefit programs.

Statutory Authority

- 7 CFR 273.2
- 45 CFR 206.10

Background

The policies have been amended to explain the application process for DSS benefit programs in a text that is more concise and understandable. Also, language that referred to the prior DSS eligibility system was removed and references to "food stamps" were updated to "food benefits".

Purpose

The current policies have been amended to update formatting and to clarify the application process for DSS benefit programs.

Public Notice

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

Fiscal Impact Statement

These policies are currently in place and there are no new financial responsibilities.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: Several comments suggested that the proposed Subsection 20001.1(1)(E), "Submitting Applications," does not adequately address situations in which DSS should help an applicant with the application process. One of the statements received indicated that, "The proposed language, however, only states that applicants "[w]ill be assisted by DSS in completing the application process if hospitalized or ill." This policy is too narrow and should be expanded to require DSS to also assist persons who may be elderly, have a disability, be homeless, speak limited English, or otherwise have good cause for assistance."

Agency Response: DSS concurs with the request and amended policy subsection 2000.1 (1)(E) to state the following regarding applicants applying for benefits:

"Will be assisted by DSS in completing the application process if the applicant requires a reasonable accommodation."

In current practice, DSS makes several accommodations to help all clients who require assistance, including, but not limited to, accepting mail for clients who experience homelessness and using interpretation and translation services for clients who so request. DSS has also created the Community Partner Support Unit to help increase access to services by placing social workers in community hubs and providing ongoing, personalized support to organizations that serve those in need. The current policy of assisting clients who are hospitalized or ill has not dissuaded DSS from providing other supportive assistance to clients.

Comment: Comments were received suggesting that the proposed language regarding DSS-provided interpreters is inadequate.

Agency Response: DSS concurs and has amended policy subsection 2000.2 (1)(B) to state the following:

“DSS will offer interpretation services to applicants with limited English proficiency and will provide an interpreter through the Division’s contracted language service upon request or when deemed necessary. The person who serves as the interpreter:

- i. Must be age 18 or older,
- ii. Must sign the signature page of the application, and
- iii. Is preferably an interpreter available through the Division’s contracted language service.”

DSS’ practice is neither to discourage self-identification as LEP, nor to discourage clients from using whatever language aids with which they feel most comfortable.

Comment: Comments were received which stated that the, “updated version of Subsection 2000(C)(ii) states that DSS will inform applicants of their (1) potential eligibility for assistance; (2) right to an eligibility decision within a reasonable time; and (3) right to appeal any DSS eligibility decision. SCPD recommends that DSS remove the policy of notifying applicants about ‘potential eligibility for assistance.’

Agency Response: DSS does not ever wish to dissuade anyone from applying for benefits. DSS staff inform clients of potential eligibility for services during the application process so that clients will be encouraged to apply for additional benefits. DSS sees this as an agency training matter.

Comment: Comments were received suggesting that policy related to applicants with limited English proficiency could be improved.

Agency Response: DSS’ practice is to provide certified, trained interpreters for applicants with limited English proficiency. DSS uses certified, trained interpreters who operate under the terms of a statewide procurement contract for those services. DSS takes measures to ensure that interpreter services are readily accessible to all clients who request language interpretation. DSS’ practice is neither to discourage self-identification as LEP, nor to discourage clients from using whatever language aids with which they feel most comfortable. DSS never requires applicants to provide their own interpreters or to use family or friends who accompanying them during the application process to interpret.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Governor’s Advisory Council for Exceptional Citizens;
- Community Legal Aid Society, Inc.; and
- State Council for Persons with Disabilities.

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the February 2019 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding DSS Application Process, specifically, to update formatting and clarify the application process for DSS benefit programs is adopted and shall be final effective July 11, 2019.

6/10/19

Date of Signature

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

FINAL

POLICY – AMENDMENT

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

2000 Applications Applying for Assistance

An application is a request for assistance made by an individual, agency, institution, guardian, or other individual acting for the applicant with his knowledge and consent. An application must be formalized in writing and applicants must be interviewed by an application worker before an eligibility decision can be made.

Any person interested in applying for benefits will receive a DSS application form. These forms are available at all DSS locations. A daily log to record the names of individuals who request application forms will be maintained at each DSS location. Applications for benefits cannot be processed until applicants submit a completed application and complete the filing procedures as specified in DSSM 2001.1.

The primary responsibility for establishing eligibility resides with the client, however, the Division will take necessary action to assist the applicant to establish his eligibility for assistance.

Each applicant will be informed of the programs for which he may be eligible, of his right to a decision on eligibility within a reasonable period of time, and will be informed of his right to appeal any Division decision on eligibility.

Each applicant will have his need for assistance determined in accordance with Division standards. The income of an applicant will be considered in relation to his needs during the calendar month in which the individual applies for assistance. Only such resources as an applicant has currently available will be used in determining eligibility.

Policies specific to Medical Assistance applications and processing timelines are found in DSSM policy section 14100.

7 CFR 273.2, 45 CFR 206.10, 45 CFR 98.1 (b)(1)

An application for assistance allows DSS to determine an applicant's eligibility for benefits.

- 1. Any individual interested in applying for benefits may receive, complete, and submit a DSS application for assistance.**
 - A. Applications are available at all DSS locations and online.
 - B. The applicant or an agency, institution, guardian, or other person acting for the applicant (with the applicant's knowledge and consent) may submit an application in writing or electronically.
 - C. DSS will:
 - i. Maintain a daily log at each location to record the names of individuals who request an application.
 - ii. Inform applicants of their:
 - Potential eligibility for assistance.
 - Right to an eligibility decision within a reasonable period of time, and
 - Right to appeal any DSS eligibility decision.
- 2. The applicant has primary responsibility for providing verification of eligibility; however, DSS will assist the applicant when necessary.**
- 3. DSS will compare the applicant's income and need for the calendar month in which assistance is requested. DSS will use the applicant's available resources at the time of application in determining eligibility.**

4. DSS will process applications in accordance with Division standards when a completed and signed application is submitted to DSS and the applicant completes an interview with a DSS case worker.

Note: Policies specific to Medical Assistance applications and processing timelines are found in DSSM 14100.

FINAL

POLICY – AMENDMENT

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

2000.1 Filing Submitting Applications

To receive assistance benefits, applicants must file an application by submitting a completed application form (Form 100) to DSS. Application forms are available and can be filed at all DSS locations each business day from 8:00 a.m. to 4:30 p.m. Applicants have the right to file an application the same day they contact DSS to request assistance and will be referred to the correct DSS location to apply. If an applicant is hospitalized or is ill, provisions for completing the application process at the hospital or in the client's home will be made by the local intake office.

Upon request for assistance, applicants will:

- Complete a Request for Assistance,
- Complete a DSS application form (Form 100). The completed form is date stamped and must be processed as specified in DSSM 2000.5. An applicant, who will not be interviewed on the same day he/she applies, may file an application by completing page one of the Form 100. These applicants will be instructed to complete the remainder of the form and bring it to the application interview. (online or hard copy Form 100)

Applicants are screened through DCIS for prior case activity and MCI numbers will be assigned as needed.

Applicants must submit a completed and signed application or Request for Assistance to DSS to begin the process for determining eligibility for benefits.

1. Applicants applying for benefits:

- A. May obtain and submit an application at a DSS location or online.
- B. May submit an application on the same day as they make initial contact with DSS.
- C. May submit a Request for Assistance by completing and signing page one of the application.
- D. May be assisted by an individual (age 18 or older) of the applicant's choice in the application process.
- E. Will be assisted by DSS in completing the application process if **[hospitalized or ill the applicant requires a reasonable accommodation]**.
- F. Will be offered a copy of the DHSS Program Information and Rights and Responsibilities.

2. DSS date stamps, screens, and processes submitted applications according to Division standards.

- A. The screening process includes a search for prior DSS case activity, assignment of a Master Client Index (MCI) number, and an eligibility check for expedited food benefit services.
- B. DSS will interview the applicant (in person or via telephone) the same day the completed application is submitted. If the interview cannot be conducted on the same day, DSS will schedule an interview with the applicant for a later date.
- C. DSS will instruct applicants who submit a Request for Assistance to complete the remainder of the application and bring it to their scheduled intake interviews.

Related policies:
DSSM 2000.5

FINAL

POLICY – AMENDMENT

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

2000.2 Conducting Interviews

All applicants for assistance benefits must be interviewed by an application worker before eligibility for benefits can be determined. If a person cannot speak English, state on the signature page of the application whether translation services were offered or a family member or other person was present to translate. Interviews will be arranged as promptly as possible to ensure that applications are processed as specified in DSSM 2000.5.

The unit supervisor in each DSS location is responsible for determining the number of applicants that can be interviewed each day. If an applicant will not be interviewed on the same day that he/she files an application, the supervisor or his designee will screen the application for expedited service eligibility. All applicants who appear to qualify for expedited Food Stamp service must be scheduled for an application interview early enough to assure that benefits can be issued within expedited processing deadlines. (See DSSM 9041).

DSS must interview individuals applying for assistance before eligibility for benefits can be determined.

1. **DSS will conduct applicant interviews promptly to ensure that applications are processed according to Division standards.**
 - A. DSS will conduct applicant interviews either in person or by telephone (as indicated by the program).
 - B. DSS will offer [~~translation~~ interpretation] services to applicants [~~who cannot speak English with limited English proficiency and will provide an interpreter through the Division's contracted language service upon request or when deemed necessary]. The person who serves as the [~~translator~~ interpreter]:~~
 - i. Must be age 18 or older.

- ii. Must sign the signature page of the application, and
- iii. Is preferably ~~a translator~~ an interpreter] available through the Division's contracted language service.

- C. DSS will schedule an interview and will give Form 105 "Appointment and Request for Verification" to all applicants who are unable to be interviewed on the same day that they submit an application.

- D. DSS must schedule timely interviews with applicants who qualify for expedited food benefits to ensure that benefits can be issued within the expedited processing deadlines.

- E. DSS offices will maintain a daily log of all applications received, interviews scheduled, and cases processed.

Related policies:

DSSM 2000.5, 9041, 14100.3

POLICY – AMENDMENT

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

2000.3 ~~Record of~~ Recording Applications

~~Local offices are required to record the date that each application for benefits is filed. The application is recorded by data entering application information into the DCIS system. Applications are pending in the DCIS system.~~

Each DSS office must maintain a daily log to record when applications are received.

1. DSS offices will:

- Date stamp each application.
- Record the date and location that each application for assistance is received, and
- Process each application in the DSS eligibility system.

FINAL

POLICY – AMENDMENT

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

2000.4 ~~Disposition of Applications and Notice Requirements~~ Determining Application Status

~~All applications for benefits filed with DSS must be disposed of, and notice of the disposition must be sent promptly to the applicant.~~

Applications are disposed of as follows:

1. Accepted – benefits can begin because the applicant is found eligible for assistance; or
2. Withdrawn – the applicant chooses to terminate the application process; or
3. Denied – benefits will not begin because the applicant does not meet eligibility requirements.

Note: For cash assistance, benefits begin from the date all required verification is received. For Food Stamps, benefits begin from the application filing date, after all required verification is received.

DSS will process all filed applications for benefits and will promptly send a notice of the determination to the applicant.

1. DSS determines applications as follows:

- Approved – The applicant is found eligible for assistance and benefits can begin.
- Withdrawn – The applicant chose to terminate the application process, or
- Denied – The applicant does not meet eligibility requirements and benefits will not begin.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11003

ORDER

Income Reporting Requirements for Child Care

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Child Care, specifically, to update the income reporting requirements for the Purchase of Care subsidy program. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the February 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 4, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after July 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend section 11003.10 of the Division of Social Service Manual specifically, to update the income reporting requirements for the Purchase of Care subsidy program.

Statutory Authority

45 CFR 98.21 (e)(1)(i,ii)

Background

In 2014, the Child Care Development Block Grant Act was reauthorized with the focus on safety and continuity of care for children receiving child care subsidy funds. Households receiving subsidy funds are now only required to report limited changes in their circumstances. States have the discretion to establish policies requiring households to report changes addressing the limited reporting requirements. Households will be required to report income that exceeds 85% of the state median income (SMI) level for their household size. Households reporting changes resulting in a non-temporary change in their need for care will receive 90 consecutive days of child care before their child care is closed.

This policy establishes the new requirement that parents and caretakers are to report certain changes that may

affect their eligibility. The revised policy addresses the changes to be reported, the timeframe in which parents and caretakers are to report the changes, and the 90 consecutive days of child care they will receive prior to the case closing.

Public Notice

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

Fiscal Impact Statement

The policy amendment will have no fiscal impact since the purpose is to revise the requirements of the program. The policy amendment does not require any additional staff, system changes, agency costs, etc.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: One commenter raised concern regarding the proposed fiscal impact; suggesting the change would result in higher subsidies and extended assistance periods.

Agency Response: Under new federal requirements, the law establishes 12-month eligibility redetermination periods for families receiving child care subsidy, regardless of changes in their income (as long as the income is below 85% of the state median income) or temporary changes in participation in work, training, or education. The State has lowered the eligibility income limit for families applying for the program to 185% of the federal poverty level.

Comment: One commenter suggested the amendment would create a higher threshold for households to report income changes greater than \$75/month.

Agency Response: The federal law specifies how states must address reporting guidelines as follows:

- Under the law, states may not terminate Child Care and Development Fund assistance during the 12-month eligibility period if a family has an increase in income that exceeds the state's income eligibility threshold, but not the federal threshold of 85% of the state median come.
- Under the law, states may not terminate assistance prior to the end of the 12-month eligibility period if a family experiences a temporary job loss or a temporary change in participation in a training or education activity. In addition to temporary job loss, other examples of temporary changes include, but are not limited to: absence from employment due to extended medical leave, changes in a seasonal work schedule, and temporarily not attending class between semesters if a parent is enrolled in a training or educational program.

Comment: One commenter quested the increased cost of the change to the state.

Agency Response: The reauthorization of the Child Care and Development Block Grant created many new mandates to ensure continuity of care for the children in the child care subsidy program and to emphasize the importance of providing high-quality early education.

Comment: Two commenters suggest, "DSS explain how it will ensure that reporting requirements do not place an undue burden on eligible families and accommodate the needs of working parents".

Agency Response: A section was added to DSSM 11003.10 Reporting Changes in Need and Income for Child Care listing the various ways that a family can report the required changes.

Comment: Two commenters expressed concern that, "the DSS Manual lacks adequate explanation as to how DSS will prevent fluctuations in income resulting in the closure of a child care case."

Agency Response: A new policy will be developed addressing the new DSS copayment model and income guidelines.

Comment: Two commenters expressed concern regarding the clarity of the proposed language about reporting a change in monthly income.

Agency Response: DSSM 11003.10 (1) will be updated to, "A family must only report a change in income that results in the family's monthly income exceeding 85% of the state median income (SMI) guideline for the household size."

Comment: Two commenters suggested that, "DSS should consider extending the 90-day time period for

continued authorizations, or at least allow for extensions for reasons such as disability or other good cause.”

Agency Response: DSS has policies in place that address families who may have barriers. DSS offers programs that will assist these families and child care will be provided while the parent is participating.

Comment: Two commenters suggested that DSS, “include a policy explaining how DSS will evaluate whether a family has regained eligibility for benefits before closing a child care case after 90 days of continued authorization.”

Agency Response: DSS will consider your suggestion in regards to approving benefits for an additional 12-month eligibility period instead of only approving benefits until the next redetermination.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Mr. James Roberts
- Governor’s Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the February 2019 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding Child Care, specifically, to update the income reporting requirements for the Purchase of Care subsidy program is adopted and shall be final effective July 11, 2019.

6/14/19

Date of Signature

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

POLICY – AMENDMENT

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

11003.10 Reporting Changes in Need ~~or~~ and Income for Child Care

~~Parents/caretakers are required to report changes that affect either their need for child care or their income. Parents/caretakers are to report these changes to their Case Manager within 10 days. The types of changes that parents/caretakers are to report are:~~

- ~~A. loss of job;~~
- ~~B. new employment;~~
- ~~C. any increase or decrease in wages or income resulting in a change to income of \$75 or more per month;~~
- ~~D. any change in education/training or other status which would impact the parents/ caretakers need for care.~~

45 CFR 98.21 (e)(1)(i,ii)

Parents and caretakers are required to report a change in household income and need for child care to DSS within 10 days of the change.

1. A family must only report a change in [monthly] income that [exceeds results in the family's monthly income exceeding] 85% of the state median income (SMI) guideline for the household size.
2. A family must report a non-temporary change that occurs in their household circumstance, including:
 - The loss of employment;
 - The completion of an education or training program; and
 - A permanent change in state residency.
- [3. A family may report changes by:
 - Calling the local DSS office or the Change Report Center;
 - Emailing th local DSS office or the designated resource mailbox; or
 - Visiting the local DSS office.
- ~~3.4.]~~ When a family reports a non-temporary change that ends their need for child care, DSS will authorize 90 consecutive days of child care before the family's child care case is closed.
- [4.5.] DSS must verify a change reported by a third party agency or person with the family.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 3000

ORDER

Temporary Assistance for Needy Families (TANF) - CMR

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Temporary Assistance for Needy Families (TANF), specifically, to update the Contract of Mutual Responsibility (CMR). The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the March 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 4, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after July 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend sections 3009.1, 3009.3, 3010, 3010.1, 3017.1, 3017.1.1, and 3017.1.2 of the Division of Social Service Manual regarding Temporary Assistance for Needy Families (TANF), specifically, to update the Contract of Mutual Responsibility (CMR).

Statutory Authority

31 Del.C. § 524 - Eligibility for Temporary Assistance for Needy Families

Background

The caretaker of children in the TANF program enters into a Contract of Mutual Responsibility (CMR) with the Division of Social Services (DSS) of the Department of Health and Social Services (DHSS). Applicants and

recipients have a face-to-face interview. During this interview, the DSS worker explains to the recipient the CMR and those elements specific to the client. The CMR is an agreement between the TANF client and the Division of Social Services which sets obligations and expectations for helping the client achieve self-sufficiency.

DSS is amending policies to more concisely define the TANF CMR and to update the required elements of the contract. The formatting of the policies has been revised for better readability.

Public Notice

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

Fiscal Impact Statement

DSS is amending the policies to outline the requirements of the CMR and clarify the text and formatting of the existing TANF CMR policies. The policies are currently in place and there are no new financial responsibilities.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: Two comments were received suggesting people with disabilities have equal access to the TANF program and are not subject to disability-based discrimination. "The proposed regulation could be strengthened in various ways and must ensure that DSS is fulfilling its obligations under the ADA and Section 504..."

Agency Response: The goal of the revision is to give DSS staff clear guidance on CMR procedures. DSS must comply with the Americans with Disabilities Act (ADA) and will continue to ensure program access and consider good cause for all clients with compliance barriers. DSS will continue to make accommodations for any client with barriers to complying with the CMR components. DSS does not limit the scope of good cause due to each family's unique circumstances. DSS will continue to explore issues with families to determine when barriers exist that prevent compliance.

Comment: Two comments were received regarding section 3010 indicating that it "does not explain in adequate detail how DSS will accommodate individuals with disabilities in developing the CMR....Families - particularly those experiencing hardships like homelessness, disability, or medical emergencies that lead to non-compliance - often have great difficulty getting in touch with their case workers to report obstacles to complying with TANF requirements."

Agency Response: Clients with medical exemptions can be referred to the Transitional Work Program (TWP) under the Division of Vocational Rehabilitation. TWP staff use the information from the DSS Health Assessment Form combined with a TWP client assessment to create an individualized plan with the client for participation in the program.

DSS case workers explain the CMR to clients and address any questions or concerns during client intake and at redetermination. In addition, the client can request a copy of the CMR and time to review the CMR before signing it. A final copy of the CMR is provided to the client once it is signed.

Responsibilities for the client and the State, rights to an appeal and a fair hearing, good cause, and penalties for noncompliance are addressed in other sections of DSS policy.

Comment: Two commenters suggested that the, "updated version of DSSM 3009.1 explains that DSS will impose sanctions when clients fail to comply with their CMR requirements, but will not sanction a TANF case if DSS 'determines a client has good cause for non-compliance with the CMR' and that "DSS case workers must verify that clients are compliant....before sanctions can end."

Agency Response: DSS will continue to make accommodations for any client with barriers to complying with the CMR components. DSS does not limit the scope of good cause due to each family's unique circumstances. During the interview process, DSS case workers will continue to explore issues with families to determine when barriers exist that prevent compliance.

The burden of verifying compliance barriers is not solely on the client. The CMR is reviewed during intake and the redetermination process. The DSS case worker will interview the client and explore compliance barriers before a sanction is applied. DSS offers case management and interventions to all clients that have barriers. DSS has created the Transitional Work Program, the Bridge Program, the Community Partner Support Unit, and the

Housing Stabilization Unit to address client barriers. All DSS clients are eligible for these services and are referred if barriers are suspected.

Comment: One commenter suggested that, “instead of simply relying on TANF recipients to request the opportunity to review the CMR outside of the office, DSS should require case workers to inform all recipients of this opportunity so that they are aware of this option and can choose to exercise it. DSS should also ensure that the CMR uses plain language that the recipient can understand, as well as offer translated copies to persons with limited English proficiency.”

Agency Response: DSS case workers explain the CMR to clients and address any questions or concerns during client intake and at redetermination. In addition, the client can request a copy of the CMR and time to review the CMR before signing it. A final copy of the CMR is provided to the client once it is signed.

DSS ensures that written information given to clients is in plain language. DSS ensures that agency documents are translated for persons with limited English proficiency. DSS also provides interpretation services to explain information to persons with limited English proficiency.

Comment: Two commenters indicated that in section 3010(2)(F), “although clients may object to certain elements of the CMR, DSS has the final authority to determine what elements are included. How will DSS ensure that client objections are taken into account? Will DSS record these objections in the case record? What standards will DSS use in arriving at their final determinations of what elements are required in the CMR? DSS should clarify how it will ensure that case workers are not making these decisions unilaterally.”

Agency Response: DSS explores options for clients with objections to their CMR requirements by taking into account each client’s individual circumstances. DSS grants good cause and exemptions from CMR requirements. Client objections are thoroughly reviewed on a case-by-case basis. DSS documents all client interactions in our eligibility system.

Comment: Two commenters indicated that 3010(3) states that failure to comply (without good cause) in developing the CMR will result in a sanction. They questioned if DSS should require case workers to take affirmative steps to verify the reason for non-compliance and whether good cause exists.

Agency Response: DSS grants clients additional time to review the CMR due to extenuating circumstances.

Comment: Two commenters indicated that, “section 3017.1 describes the Transitional Work Program (TWP) for clients who have been determined unable to work in an unsubsidized employment setting by a health professional, emphasizes that failure to comply (without good cause) with the TWP Employability Plan will result in sanctions.”

Agency Response: The burden of verifying compliance barriers is not solely on the client. The CMR is reviewed during intake and the redetermination process. The DSS case worker will interview the client and explore compliance barriers before a sanction is applied. DSS offers case management and interventions to all clients that have barriers. DSS has created the Transitional Work Program, the Bridge Program, the Community Partner Support Unit, and the Housing Stabilization Unit to address client barriers. All DSS clients are eligible for these services and are referred if barriers are suspected.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Governor’s Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Temporary Assistance for Needy Families (TANF), specifically, to update the Contract of Mutual Responsibility (CMR), is adopted and shall be final effective July 11, 2019.

6/10/19

Date of Signature

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

FINAL

POLICY – AMENDMENT

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

3009.1 Failure to Comply With CMR and Imposition of Sanctions Imposing Sanctions for Non-Compliance with CMR Requirements

The Contract of Mutual Responsibility encompasses three broad categories of requirements: 1) enhanced family functioning, 2) self-sufficiency and 3) teen responsibility requirements.

1) Enhanced family functioning requirements of the Contract of Mutual Responsibility include, but are not limited to, attending family planning and parenting education sessions, ensuring that children are immunized, and participating in substance abuse assessment and treatment. Sanctions for non-compliance with these requirements start at \$50.

2) Self-sufficiency requirements of the Contract of Mutual Responsibility are employment and training responsibilities. Sanctions for non-compliance with these requirements result in the closure of the TANF case.

3) Teen responsibility requirements include maintaining satisfactory school attendance. Teens under the age of 16 must maintain satisfactory school attendance. The parent must work with the child and school to ensure satisfactory attendance. If the teen does not maintain satisfactory attendance at school and the parent fails to work with the school or appropriate agency to ensure school attendance, the case will be sanctioned. This sanction is an initial reduction of \$50. This reduction will increase by \$50 every month until there is compliance with the requirement. If the parent complies and works with the school the TANF benefit will be restored, even if the child does not return to school.

4) Teen responsibility requirements include maintaining satisfactory school attendance, or ensuring satisfactory attendance, for dependent children 16 years of age and older or participating in employment and training activities. The sanction for non-compliance with these requirements is the removal of the teen from the assistance grant. The teen can not be added back into the case until verification of school attendance is received or verification of four consecutive weeks of participation and one month of being removed from the grant.

5) The severity of the sanctions differs depending upon the type of violations. Individual penalties and the cure for each are noted in the policy sections which follow. However, when imposing sanctions, these are the rules in which sanctions are applied:

1. The penalty for failure to comply with self-sufficiency requirements of the Contract of Mutual Responsibility (employment and training responsibilities) is the closure of the TANF case.

2. The penalty for failure to comply with teen responsibility requirements for a child under 16 years of age is a \$50 reduction in the grant, if the teen does not comply. If the caretaker does not work with the appropriate agencies to remedy the situation, an additional \$50 penalty continues each month until the caretaker works with the appropriate agency, the child returns to school or the grant reduces to zero. The only way to cure the sanction is for the caretaker to work with the appropriate agency and/or the child returns to school. If the child does not return to school but the caretaker has been working with the appropriate agency then the sanction can be lifted.

3. The sanction for teens 16 years or older who do not attend school and/or employment and training activity for the required hours is the removal of that teen from the TANF grant and a reduction in the house hold size. The sanction can only be cured when the teen is removed from the grant for one month and participation in employment and training for four consecutive weeks is verified or satisfactory school attendance is verified.

4. The penalty for failure to comply with enhanced family functioning requirements of the Contract of Mutual Responsibility is an initial \$50 reduction of the TANF benefit. This reduction will increase by \$50 every month until there is compliance with the requirement. The initial \$50 reduction will be imposed whether the family fails to comply with one, or more than one, family functioning requirement. Clients will have to comply with all requirements before the sanction can end.

~~5. Failing to comply with both enhanced family functioning and self-sufficiency requirements of the Contract of Mutual Responsibility will result in combined penalties for each. For example, impose the \$50 reduction and then close the case.~~

~~6) When there are multiple sanctions always impose the monetary sanctions first; enhanced family functioning and teen under 16. The removal of a teen from the case is second, and the self-sufficiency which results in a case closure is last. All sanctions need to be imposed.~~

DSS imposes sanctions on TANF cases when clients fail to comply with their CMR requirements. If DSS determines a client has good cause for non-compliance with the CMR, DSS will not sanction the TANF case.

1. DSS applies sanctions to a TANF case based on a penalty hierarchy for the three broad categories of CMR requirements: self-sufficiency, enhanced family functioning, and teen responsibility.

2. DSS case workers must follow the CMR sanctions penalty hierarchy as outlined in this policy. Case workers must apply sanctions that reduce benefits before applying sanctions that close the TANF case. Case workers must impose all CMR sanctions.

A. DSS applies teen responsibility sanctions first. The teen responsibility sanction removes a teen, age 16 and older, from the TANF case when the teen does not maintain satisfactory school or employment and training attendance.

B. DSS applies family functioning sanctions second. The family functioning sanction reduces the TANF benefit amount by \$50 initially, with an additional reduction of \$50 in the benefit amount each month the client is non-compliant with the CMR requirements for:

- CMR development,
- Satisfactory school attendance for children under 16 years old,
- Immunizations,
- Family planning information,
- Parenting education,
- Bridge Program participation,
- Transitional Work Program (TWP) participation,
- Financial coaching orientation, and
- Other requirements specified in the CMR.

C. DSS applies self-sufficiency sanctions last. The self-sufficiency sanction closes the TANF case when the client is non-compliant with the CMR requirements for:

- Employment and training (E&T) participation, and
- Cooperation with the Division of Child Support Services (DCSS).

3. DSS removes sanctions from TANF cases when clients comply with their CMR requirements.

A. DSS case workers must verify that clients are compliant with their CMR requirements before the sanctions can end.

B. A sanction is removed from the TANF case on the date proof of compliance is provided to DSS.

FINAL

POLICY – AMENDMENT

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

~~3009.3 Benefit Reduction for Multiple Sanction Types~~

~~The sanctions for failure to meet Contract requirements allow for the possibility of multiple penalties to be imposed at the same time. The hierarchy is as follows:~~

- ~~1. The sanction for teens 16 and over who fail to meet school attendance requirements is the removal of the teen from the grant first, if applicable.~~
- ~~2. The \$50 sanction for failure to meet enhanced family functioning requirements (CMR) and the teen under 16 years of age sanction is imposed next.~~
- ~~3. The self-sufficiency sanction, failure to meet participation requirements is a full TANF sanction resulting in a case closure. This is imposed last.~~

~~The order in which sanctions are imposed is important because we can not sanction a closed case. If a client has both an enhanced family function and a self-sufficiency sanction for the same period it is important to make sure the enhanced family sanction that reduces the TANF grant is imposed prior to the self-sufficiency sanction that closes the case.~~

FINAL

POLICY – AMENDMENT

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

3010 Requiring Participation and Cooperation in Developing the CMR

~~It is mandatory that the caretaker enter into a Contract of Mutual Responsibility. The Contract applies to those families in the Time Limited Program and Children's Program, as well as to teen parents. Other family members within the assistance unit may be subject to compliance with provisions of the Contract, even if the caretaker is a non-needy caretaker payee.~~

~~If the caretaker is a non-needy caretaker, the individual would not be required to participate in employment-related activities, but may be required to participate in other Contract activities.~~

~~The caretaker may object to certain aspects of the Contract. The caretaker needs to present any objections up front, at the time of the initial Contract or upon Contract revision. DSS retains the ultimate decision making authority as to what elements are put into the Contract of Mutual Responsibility.~~

~~DSS expects clients to cooperate in the development of the Contract of Mutual Responsibility. Certain aspects of the Contract, such as, but not limited, to participation in employment-related activities, meeting school attendance requirements and immunization, cannot be amended. However, even though certain aspects cannot be amended, this does not imply that caretakers cannot discuss and/or negotiate Contract requirements. Further, this is not to imply that such discussion and/or negotiation is non-cooperation. To the extent possible, each caretaker should be able to mutually develop her/his Contract. DSS is to give caretakers the opportunity to understand the Contract and its requirements, as well as to discuss the Contract with persons outside the DSS office. Reasons for requesting such an outside review of the Contract include, but are not limited to, language barriers, developmental disabilities, or to seek legal or other counsel. Caretakers therefore, should be granted their requests to remove proposed Contracts from the DSS office in order to review it with another person. This should not be considered non-cooperation.~~

~~Negotiating elements of the CMR can mean that aspects of the CMR are waived. On a case by case basis, elements of the CMR can be waived if good cause exists. If the particular circumstances of a family warrant waiving elements of the CMR it is to be justified and properly documented in the case record.~~

~~See Administrative Notice A-10-99 DFS/DSS Procedures.~~

~~For example: a parent's only child is terminally ill. It is reasonable to determine that a parent would want to spend as much time with the child as possible. Therefore, waiving school attendance requirements and parenting education requirements are reasonable. Document the child's illness and the reason for the waiving of the CMR requirements in the case record.~~

Participating and cooperating with DSS in developing the CMR is a required CMR element for all TANF clients.

1. TANF clients are required to develop a CMR in collaboration with their DSS case workers. Compliance with developing the CMR applies to all TANF cases.

2. DSS case workers will discuss the CMR elements with clients and assist clients in developing and customizing the CMR.

A. DSS will give clients the opportunity to mutually develop their CMRs.

B. CMRs will include requirements for self-sufficiency, enhanced family planning, and teen responsibility.

C. Prior to signing the CMR, DSS will give clients the opportunity to understand the CMR and its requirements. Upon request, DSS will give clients a copy of the proposed CMR to review outside of the DSS office; this should not be considered non-cooperation.

D. Clients may object to certain elements of the CMR. Clients are to present any objections at the time of the initial CMR development or CMR revision.

E. On a case by case basis, DSS may waive elements of the CMR if good cause exists. If the particular circumstances of a family warrant waiving an element of the CMR, the case worker must justify and properly document the waiver in the client's case record.

F. DSS has the final determination of what elements are required in each client's CMR.

3. Failure to comply (without good cause) in developing the CMR will result in a sanction to the TANF case.

A. The sanction will be an initial \$50.00 reduction in the household's TANF benefit amount.

i. If the client is actively negotiating the terms of the CMR or reviewing the CMR outside of the DSS office, DSS will not impose the \$50.00 penalty. DSS must allow clients up to 10 days to reach a resolution or to complete contract review.

ii. DSS will consider clients who have not returned their CMRs within 10 days as non-compliant and subject to the \$50.00 penalty.

B. This reduction increases each month by \$50.00 until there is compliance or the TANF case is closed.

C. The client will receive written notification of compliance requirements.

D. The sanction will end when DSS receives proof that the client completed the development of the CMR.

FINAL

POLICY – AMENDMENT

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

3010.1 Penalties for Not Cooperating in Development of CMR

~~The fiscal sanction for not cooperating, without good cause, in the development of the Contract will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until there is compliance or the case is closed.~~

~~If caretakers are actively negotiating the terms of their Contracts, DSS will not impose the \$50.00 penalty. DSS will provide caretakers up to 10 days to reach a resolution. After this time, DSS will consider caretakers as not cooperating if they refuse to participate in the further development of their Contracts.~~

~~DSS will also give those caretakers, who choose to do so, the opportunity to discuss their Contracts with persons outside of the DSS office. DSS will allow caretakers up to 10 days to take Contracts outside of the office, during which DSS will not impose the \$50.00 penalty. DSS will consider caretakers who have not returned Contracts after that time as not cooperating and subject to the \$50.00 penalty.~~

FINAL

POLICY – AMENDMENT

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

3017.1 Transitional Work Program (TWP) Requirements Participating in the Transitional Work Program

~~The Transitional Work Program (TWP) is designed to help TANF parents and caretakers who as a result of physical and/or mental disability have been determined to be unable to work in an unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management. Services will be provided in a manner that accommodates the individual needs of clients including in-home services when necessary. Clients will not be expected to participate beyond the maximum limits established by health care professionals. All parents and caretakers receiving a TANF grant in the Non-Time Limited program are eligible for referral to the TWP.~~

~~The goal of the TWP program is to support clients in achieving the highest level of self sufficiency possible given their individual circumstances. This goal will be reached by:~~

- ~~• Promoting wellness activities and health maintenance planning for clients with disabilities that are expected to be of limited duration.~~
- ~~• Identifying and accessing accommodations, educational programs, and appropriate work settings for clients with disabilities amenable to those interventions.~~
- ~~• Identifying and assisting clients who are likely eligible for federal disability programs gain entry into those programs.~~

~~The TWP Employability Plan is a tool used to assist clients in reaching TWP program and client identified goals. The Employability Plan will detail the activities clients will need to engage in to reach the goals. The TWP program will collaborate with each client to develop their TWP Employability Plan. Goals and activities will include~~

~~but are not limited to; completion of assessments and healthcare appointments, enrollment/completion of training activities, completion of activities aimed at improving or maintaining wellbeing and the completion of activities necessary for application for federally funded disability programs.~~

~~The CMR and the TWP Employability Plan will establish time limits for the completion of TWP activities or goals.~~

All TANF E&T exempt clients are eligible for referral to the Transitional Work Program (TWP). Participating in TWP is a required CMR element for all clients who are referred to the program.

- 1. TWP provides assessment and case management services to TANF E&T exempt clients who have been determined unable to work in an unsubsidized employment setting by a health professional.**
- 2. TWP offers services to:**
 - Develop an Employability Plan with identified activities and goals that promote self-sufficiency. The Employability Plan is developed in collaboration with the client and is tailored to the client's individual circumstances.
 - Promote wellness activities and health maintenance planning for clients with short-term disabilities.
 - Identify and access accommodations, educational programs, and appropriate work settings for clients with disabilities amenable to those interventions.
 - Identify and assess clients who are potentially eligible for federal disability programs and assist clients in applying for those programs.
 - Provide in-home services, when necessary.
- 3. All clients who are referred to TWP are required to participate in the program. Clients are not expected to participate beyond the maximum limits established by a health professional.**
- 4. The CMR and the TWP Employability Plan establish time limits for the completion of TWP activities and goals.**
- 5. Failure to comply (without good cause) with the TWP element in the CMR will result in a sanction to the TANF case.**
 - A. The sanction will be an initial \$50.00 reduction in the household's TANF benefit amount.
 - B. This reduction increases each month by \$50.00 until there is compliance or the TANF case is closed.
 - C. The client will receive written notification of compliance requirements.
 - D. The sanction will end when DSS receives proof that the TANF client is actively participating with TWP.

FINAL

POLICY – AMENDMENT

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

3017.1.1 – Sanctions for Not Meeting the TWP Requirements

~~The sanction for failure, without good cause, to meet the time limits established in the CMR and the TWP Employability Plan will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until all activities which exceed the time limits established in the CMR and TWP employability plan are completed or the case is closed.~~

FINAL

POLICY – AMENDMENT

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

3017.1.2 – Curing TWP Sanctions

~~The sanction will end when all activities which exceed the time limits established in the CMR and TWP Employability Plan are completed.~~

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

5500 BAIL ENFORCEMENT AGENTS

Statutory Authority: 24 Delaware Code, Section 5503(d)(2) (24 **Del.C.** §5503(d)(2))
 24 **DE Admin. Code** 5500

ORDER

5500 Bail Enforcement Agents

Pursuant to the Guidelines in 29 **Del.C.** §10118(b)(1)-(7), the Board of Examiners of Bail Enforcement Agents ("Board") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on December 1, 2018 (Vol. 22, Issue 6). Following notice and a public hearing on the proposed adoption of amendments to Rule 2.0 – *Badges, Patches, and Advertisements*, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to *enable Bail Enforcement Agents to forgo Board approval of badges, patches, and advertisements; providing that those items meet with the criteria in place in the Rule.*

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.

4. The Board finds that the adoption of this rule will *enable Bail Enforcement Agents to forgo Board approval of badges, patches, and advertisements; providing that those items meet with the criteria in place in the Rule.*

5. The Board finds that the adoption will have no adverse impact on the public.

6. The Board finds that the amendment is well written and describes its intent to adopt the rule to *enable Bail Enforcement Agents to forgo Board approval of badges, patches, and advertisements; providing that those items meet with the criteria in place in the Rule.*

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §5503 et seq. and, in particular, 24 **Del.C.** §5503(d)(2).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §5503 et. seq.

9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §5503(d)(2) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be *July 11, 2019.*

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 23rd day of May, 2019.

Board of Examiners of Bail Enforcement Agents

Major Melissa A. Zebley, Chairman
- Proxy - Major Robert A. Hudson

Mr. Michael J. Dellose

Director John Yeomans
- Proxy - Chief Robert Kracyla

Mr. Kevin C. Hamilton

Ms. Robin David

Mr. Brandon Habron (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the December 2018 issue of the *Register* at page 455 (22 DE Reg. 455). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5500 Bail Enforcement Agents

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF EDUCATION PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, July 18, 2019 at 5:00pm in the Townsend Building, Dover, DE.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY PUBLIC NOTICE 4404 Free Standing Emergency Centers

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Office of Health Facilities Licensing and Certification, Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on July 31, 2019. Please identify in the subject line: Regulations Governing Free Standing Emergency Departments.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE PUBLIC NOTICE Over-the-Counter Drugs Without A Prescription

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Over-the-Counter Drugs, specifically, to ensure members may request coverage of over-the-counter FDA-approved medications without a prescription.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on July 31, 2019. Please identify in the subject line: Over-the-Counter Drugs Without a Prescription.

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 4452 Clean Indoor Air Act

Pursuant to 16 Del.C. §2906(b), Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the Clean Indoor Air Act. On July 1, 2019, the Division of Public Health plans to publish as "proposed" revisions to the Clean Indoor Air Act regulations. The revisions include increasing the minimum age to enter vapor establishments from 18 to 21 years old to conform to

recent legislative changes (SS 1 to SB 25 from the 150th General Assembly).

Copies of the proposed regulations are available for review in the July 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Thursday, August 1, 2019, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

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

Pursuant to 16 **Del.C.** §4731, the Delaware Secretary of State has proposed revisions to the Uniformed Controlled Substances Act regulations. Revisions to Section 4.0 specify the requirements pertaining to expiration of Schedule II and III prescriptions and partial filling of controlled substance prescriptions. The new subsection 9.4 provides that, prior to issuing a prescription for an opioid analgesic, or a prescription for a benzodiazepine, the practitioner must query the Prescription Monitoring Program (“PMP”) to obtain and review the patient’s prescription history. Language that conflicts with these requirements has been stricken. The new subsection 9.10 adds the requirement that, when a practitioner prescribes a patient a medication dose in excess of 120 MME/day (morphine milligram equivalency), such practitioner shall also issue the patient a prescription for naloxone with adequate refills for a year. Finally, certain revisions strike outdated subsections regarding procedural matters, such as the discipline of a controlled substance registration and rule-making.

Pursuant to 16 **Del.C.** §4731(b), a public hearing will be held before the Controlled Substance Advisory Committee (“Committee”) on July 31, 2019 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Jessica Mason, administrative specialist for the Committee, at jessica.mason@delaware.gov or 861 Silver Lake Boulevard, Dover, Delaware 19904. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be August 15, 2019, which is 15 days following the public hearing. The Committee will deliberate on the proposed revisions at its next regularly scheduled meeting.

OFFICE OF THE STATE BANK COMMISSIONER
PUBLIC NOTICE

701 Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code

The State Bank Commissioner proposes to amend Regulation 701 (Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code). The proposed amendment provides that no application to form a new limited purpose trust company will be approved, unless the new limited purpose trust company will be an affiliate, as defined in Section 773 of Title 5, of a bank, insured institution or bank holding company, as those terms are defined in the federal Bank Holding Company Act, 12 USC 1841, or of any other insured depository institution, as that term is defined in the Federal Deposit Insurance Act, 12 USC 1813, or of any national banking association, chartered in accordance

with the National Bank Act and regulated by the Comptroller of the Currency, that is engaged primarily in trust and fiduciary activities. This proposed amendment is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other Regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this proposed amended Regulation in accordance with Section 121(b) of Title 5 of the Delaware Code. This Notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, Chapter 101, Subchapter II, and Chapter 104, Sections 10404A(b)(1) and 10404B(b)(1).

A copy of the proposed amended Regulation is being published in the July 1, 2019 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 43 South DuPont Highway, Edgehill Shopping Center, Dover, DE 19901, and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended Regulation or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amended Regulation should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before August 2, 2019. Written materials submitted will be available for inspection at the above address.

OFFICE OF THE STATE BANK COMMISSIONER**PUBLIC NOTICE****1103 Instructions for Preparation of Franchise Tax****1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks**

The State Bank Commissioner proposes to amend bank franchise tax Regulations 1103 (Instructions for Preparation of Franchise Tax) and 1110 (Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks). The proposed amendments clarify the definition of the term "Securities Business". Neither of these proposed amendments are substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other Regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed amended Regulations in accordance with Section 121(b) of Title 5 of the Delaware Code. This Notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, Chapter 101, Subchapter II, and Chapter 104, Sections 10404A(b)(1) and 10404B(b)(1).

Copies of the proposed amended Regulations are being published in the July 1, 2019 edition of the Delaware *Register of Regulations*. Copies are also on file in the Office of the State Bank Commissioner, 43 South DuPont Highway, Edgehill Shopping Center, Dover, DE 19901, and are available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended Regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amended Regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before August 2, 2019. Written materials submitted will be available for inspection at the above address.
