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# Delaware Register of Regulations

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Issue Date: July 1, 2020

Volume 24 - Issue 1, Pages 1 - 68

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## IN THIS ISSUE:

Regulations:  
Emergency  
Proposed  
Final

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before June 15, 2020.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

| ISSUE DATE  | CLOSING DATE | CLOSING TIME |
|-------------|--------------|--------------|
| August 1    | July 15      | 4:30 p.m.    |
| September 1 | August 17    | 4:30 p.m.    |
| October 1   | September 15 | 4:30 p.m.    |
| November 1  | October 15   | 4:30 p.m.    |
| December 1  | November 16  | 4:30 p.m.    |
| January 1   | December 15  | 4:30 p.m.    |

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## DIVISION OF RESEARCH STAFF

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**Symbol Key**

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

**Emergency Regulations**

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

**§ 10119. Emergency regulations.**

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

- (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;
- (2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;
- (3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;
- (4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and
- (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903(h) and 29 Delaware Code, Section 10119  
(7 **Del.C.** §903(h) & 29 **Del.C.** §10119)  
7 **DE Admin. Code** 3503 & 3504

**SECRETARY'S ORDER NO: 2020-F-0016**  
**(Extension of Emergency Order 2020-F-0002)**  
**Pursuant to 7 Del.C. §903(h) and 29 Del.C. §10119**

**3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit**  
**3504 Striped Bass Possession Size Limit; Exceptions**

**AUTHORITY**

Pursuant to 7 *Del.C.* §903(h) and 29 *Del.C.* §10119, the Department of Natural Resources and Environmental Control adopted amendments through Emergency Order 2020-F-0002, dated February 15, 2020, to Tidal Finfish Regulation 7 DE Admin. Code 3503 *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit* and to 7 DE Admin. Code 3504 *Striped Bass Possession Size Limit; Exceptions*. This action was taken by the Secretary without prior notice or public hearing pursuant to 29 *Del.C.* §10119.

Emergency regulations, as contained in Emergency Order 2020-F-0002, are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act. Such regulations are valid for a 120-day period and are renewable for an additional sixty days. The Department is currently in the process of formally adopting final regulation amendments and additional time is necessary for completion. To retain its provisions while the amendments are being finalized pursuant to the Administrative Procedures Act, it is necessary to renew the Emergency Order for an additional 60 days, pursuant to 29 *Del.C.* §10119(3).

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**REASON FOR THE EMERGENCY ORDER**

The mandatory provisions of the Atlantic States Fisheries Commission's (ASMFC's) Addendum VI to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan requires a coastwide 18% reduction in striped bass removals (landings + discard mortality). The ASMFC adopted specific, prescribed coastwide management measures to meet the required 18% reduction, but these measures were not preferred for Delaware.

The Department developed two management alternatives that, if implemented by the Department, would be equivalent to the specific coastwide management measures in Addendum VI. One alternative (Option 1) provides a recreational possession limit of one striped bass and an allowable striped bass size limit of not less than 28-inches or more than 35-inches in total length; except, in the Delaware Bay, Delaware River and their tributaries during July and August, the allowable size limit is not less than 20-inches or greater than 25-inches. Delaware's authorized commercial striped bass quota is established as 142,474 pounds. The result of Option 1 measures a 1.8% reduction in commercial removals and a 20.4% reduction in recreational removals.

The other alternative (Option 2) provides a recreational possession limit of one striped bass and an allowable striped bass size limit of not less than 28-inches or more than 38-inches in total length; except, in the Delaware Bay, Delaware River and their tributaries during July and August, the allowable size limit is not less than 20-inches or greater than 25-inches. Delaware's authorized commercial striped bass quota would be 118,969 pounds. The result of Option 2 measures an 18% reduction in commercial removals and an 18.18% reduction in recreational removals.

The ASMFC's Striped Bass Management Board approved both alternatives for use at their February 4, 2020 meeting; however, at that time, there was insufficient time to promulgate regulations for either alternative through standard administrative procedures by the required April 1, 2020 implementation date. There was also a need to implement management measures by the February 15, 2020 opening of Delaware's commercial striped bass fishery to avoid jeopardizing the welfare of the striped bass resource and its dependent commercial and recreational fisheries.

The Department began the formal regulatory promulgation process with the publication of its initial proposed regulatory amendments in the June 1, 2020 *Register of Regulations*. The Department will hold a virtual public hearing on June 25, 2020. It is anticipated that the formal adoption of the regulatory amendments will be finalized prior to the expiration of this 60-day renewal period, (on or before August 14, 2020.)

**EFFECTIVE DATE OF ORDER**

The renewal of this Emergency Order shall take effect at 12:01 a.m. on June 15, 2020, and shall remain in effect for no longer than 60 additional days. The Department's formal regulatory amendments, however, shall immediately supersede the interim regulations upon formal approval, pursuant to the Administrative Procedures Act, and 29 *Del.C.* §10115.

**PETITION FOR RECOMMENDATIONS**

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

**ORDER**

It is hereby ordered, the 9th day of June, 2020 that the attached amendments to the Regulations are adopted pursuant to 29 *Del.C.* §10119 and effective as noted above.

Shawn M. Garvin  
Secretary

**3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.**

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It is lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulations 3502 and 3504.
- 2.0 It is unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.
- 3.0 Unless otherwise authorized, it is unlawful for any recreational fisherman to take and reduce to possession more than ~~two (2)~~ one striped bass per day (a day being 24 hours) from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.
- 4.0 Unless otherwise authorized, it is unlawful for any recreational fisherman to have in possession more than ~~two (2)~~ one striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.
- 5.0 Notwithstanding 7 **Del.C.** §943, which only relates to commercial fishermen, it is lawful for a recreational fisherman to possess striped bass that have not been tagged, unless otherwise prohibited.

**3504 Striped Bass Possession Size Limit; Exceptions.**

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it is unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than ~~twenty-eight (28)~~ 28 inches in total length or any striped bass that measures greater than ~~thirty-seven (37)~~ 35 inches in total length ~~but less than forty-four (44) inches in total length~~, except that a recreational hook and line fisherman may only take ~~two (2)~~ one striped bass measuring not less than ~~twenty (20)~~ 20 inches in total length and not greater than ~~twenty-five (25)~~ 25 inches in total length from the Delaware River, Delaware Bay, or their tributaries during the months of July and August.
- 2.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it is unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than ~~twenty-eight (28)~~ 28 inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than ~~twenty (20)~~ 20 inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through ~~the month of~~ March 31.
- 3.0 It is unlawful for any person to possess a striped bass except in accordance with Section 1.0 or 2.0 of this section or unless said striped bass is in one or more of the following categories:
  - 3.1 It has affixed a valid strap tag issued by the Department to a commercial food fisherman and was legally taken and tagged by said commercial food fisherman; or
  - 3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
  - 3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
  - 3.4 It was legally taken and reduced to possession in another state for noncommercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or



- 
- 3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.
- 4.0 It is unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.
- 5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.
- 6.0 The words "take and reduce to possession" shall mean the removal of any striped bass from Delaware waters with the intent to keep or harvest the striped bass.
- 7.0 It is unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than ~~twenty (20)~~ 20 inches in total length.
- 

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**5300 BOARD OF MASSAGE AND BODYWORK**

Statutory Authority: 24 Delaware Code, Section 5306(a)(1) and 29 Delaware Code, Section 10119 (24 **Del.C.** §5306(a)(1) & 29 **Del.C.** §10119))  
24 **DE Admin. Code** 5300

**ORDER**

**5300 Board of Massage and Bodywork**

**WHEREAS**, the Board of Massage and Bodywork (the "Board") has been charged by the Delaware legislature pursuant to 24 **Del.C.** §5301 to protect the general public from unsafe practices with respect to the practice of massage and bodywork and to maintain minimum standards of practitioner competency; and

**WHEREAS**, Section 9.0 of the Board's rules and regulations sets forth the biennial requirements for continuing education, which is mandated to ensure practitioner competency; and

**WHEREAS**, pursuant to subsection 9.4, practitioners are required to complete 24 hours of continuing education every two years, and, pursuant to subsection 9.4.2, nine of those hours must be taken in a classroom, hands-on setting; and

**WHEREAS**, the deadline for completion of these continuing education hours is August 31, 2020; and

**WHEREAS**, due to the current State of Emergency in Delaware related to COVID-19, in classroom, hands-on classes have been canceled and practitioners are prohibited from practicing massage, thereby sustaining financial hardship; and

**WHEREAS**, online classes, some at no cost, are available at all times; and

**WHEREAS**, to ensure practitioners complete 24 hours of continuing education by the August 31, 2020 deadline for the safety of the public, the requirements of subsection 9.4.2 shall be amended for the renewal period ending August 31, 2020 only; and

**WHEREAS**, amending subsection 9.4.2 to state "For the licensure renewal period ending August 31, 2020 only, nine nine hours of Core credits which ~~must~~ may be taken in a classroom, hands-on setting or online" will serve to both protect the public and ensure practitioner competency; and

**WHEREAS**, the Board finds that adoption of an emergency regulation to govern the Board's continuing education requirements must occur on an emergency basis to avoid imminent peril to the public health, safety or welfare; and

**WHEREAS**, consistent with the requirements of 29 **Del.C.** §10119(4), the Board will accept, consider and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of Danielle Cross, the Board of Massage and Bodywork, 861 Silver Lake Boulevard, Dover, Delaware 19904; and

**WHEREAS**, in accordance with the provisions of 29 **Del.C.** §10119(3), this Emergency Order shall be effective for 120 days from the date of execution and may be renewed once for a period not exceeding 60 days; and

**WHEREAS**, a copy of this Emergency Order will be submitted to the Registrar for publication in the next issue

of the Delaware *Register of Regulations*.

**NOW**, the Rules and Regulations of the Board of Massage and Bodywork, attached hereto as Exhibit A, shall take effect immediately.

**IT IS SO ORDERED** this 27th day of May 2020 by the Delaware Board of Massage and Bodywork.

/s/ Danielle DiFonzo, Professional Member                      /s/ Sandra Jachimowski, Professional Member  
President

Jermaine Cannon, Professional Member                      /s/ Elvis Amadi, Professional Member  
Vice President (absent)

/s/ Kathy Sherwin, Public Member                              Ethel Loesche, Public Member (absent)  
Secretary

**\*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

**5300 Board of Massage and Bodywork  
(Break in Continuity of Sections)**

**9.0 Continuing Education (CE)**

**(Break in Continuity Within Section)**

9.4 Licensees shall complete 24 hours of CE, which shall include:

9.4.1 Three hours in ethics, which may be taken in classroom or online;

9.4.2 ~~Nine~~ For the licensure renewal period ending August 31, 2020 only, nine hours of Core credits which ~~must~~ may be taken in a classroom, hands-on setting or online; and

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

**5300 Board of Massage and Bodywork**

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## Symbol Key

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

## Proposed Regulations

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

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 922

### PUBLIC NOTICE

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

#### **922 Children with Disabilities Subpart A, Purposes and Definitions**

#### **A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

#### **B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

Pursuant to 14 **Del.C.** §122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions. This regulation is being amended to remove definitions for the educational classifications of Autism, Deaf-Blindness, Developmental Delay, Emotional Disability, Hearing Impairment, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech or Language Impairment, Traumatic Brain Injury and Visual Impairment because the classifications are more appropriately addressed through their eligibility criteria found within 14 **DE Admin. Code** 925. It is also being amended to add new definitions including those for Adverse Effect on Educational Performance and Multi-Tiered System of Support, and to remove the definition of Highly Qualified Special Education Teachers. The definition of Adverse Effect on Educational Performance is being added for further clarity. The definition of Multi-Tiered System of Support is being added as it is part of the eligibility criteria for several of the disability categories. The definition of Highly Qualified Special Education Teachers is being removed as it is no longer required under the Every Student Succeeds Act of 2015. This regulation was originally published on February 1, 2020, with several comments being received. Due to the comments received and the substantive changes that were required to the regulation, the Department is republishing the regulation.

The Department will hold public hearings on the proposed regulation changes as follows:

(Virtually) Thursday, July 23, 2020 at 10:00 a.m. – Call details can be found [here \(https://www.doe.k12.de.us/domain/89\)](https://www.doe.k12.de.us/domain/89)

(Virtually) Thursday, July 30, 2020 at 2:00 p.m. – Call details can be found [here \(https://www.doe.k12.de.us/domain/89\)](https://www.doe.k12.de.us/domain/89)

(Virtually) Thursday, August 13 at 6:00 pm – Call details can be found [here \(https://www.doe.k12.de.us/domain/89\)](https://www.doe.k12.de.us/domain/89)

Written comments will also be accepted by the close of business on or before September 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto: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](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above. NOTE: IDEA Regulations are posted for a 60-day comment period.

### **C. IMPACT CRITERIA**

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

2. Will the amended regulation help ensure that all students receive an equitable education? Yes, the amended regulation will help ensure all students receive an equitable education because it revises the definitions for each of the educational classifications under which students may be found eligible to receive special education and related services to ensure students are properly identified for services.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? Yes, the amended regulation will help ensure all students' health and safety are adequately protected by revising the definitions for each of the educational classifications under which students may be found eligible to receive special education and related services to ensure students are properly identified for services.

4. Will the amended regulation help to ensure that all students' legal rights are respected? Yes, the amended regulation will help ensure that all students' legal rights are respected because students have a legal right to free appropriate public education.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no 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 are no material costs in implementing this amended regulation.

#### **\*Please Note:**

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

<http://regulations.delaware.gov/register/july2020/proposed/24 DE Reg 11RFA 07-01-20.pdf>

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

**922 Children with Disabilities Subpart A, Purposes and Definitions**

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3110 (14 Del.C. §3110)  
14 DE Admin. Code 925

### PUBLIC NOTICE

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

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

##### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

##### B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §122(a), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended to revise eligibility determination criteria relative to subsections 6.6 Autism, 6.7 Developmental Delay, 6.8 Deaf-Blind, 6.9 Emotional Disability, 6.10 Hearing Impairment, 6.11 Specific Learning Disability, 6.12 Intellectual Disability, 6.13 Orthopedic Impairment, 6.14 Other Health Impairment, 6.15 Speech or Language Impairment, 6.16 Traumatic Brain Injury, and 6.17 Visual Impairment Including Blindness. This regulation is also being amended to make technical changes. Additionally, this regulation was originally published on February 1, 2020, with several comments being received. Due to the comments received and the substantive changes that were required to the regulation, the Department is republishing the regulation.

The Department will hold public hearings on the proposed regulation changes as follows:

(Virtually) Thursday, July 23, 2020 at 10:00 a.m. – Call details can be found [here \(https://www.doe.k12.de.us/domain/89\)](https://www.doe.k12.de.us/domain/89)

(Virtually) Thursday, July 30, 2020 at 2:00 p.m. – Call details can be found [here \(https://www.doe.k12.de.us/domain/89\)](https://www.doe.k12.de.us/domain/89)

(Virtually) Thursday, August 13 at 6:00 pm – Call details can be found [here \(https://www.doe.k12.de.us/domain/89\)](https://www.doe.k12.de.us/domain/89)

Written comments will also be accepted by the close of business on or before September 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOERegulations.comment@doe.k12.de.us](mailto: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](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above. NOTE: IDEA Regulations are posted for a 60-day comment period.

##### C. IMPACT CRITERIA

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

2. Will the amended regulation help ensure that all students receive an equitable education? Yes, the amended regulation will help ensure all students receive an equitable education because it revises the criteria for each of the educational classifications under which students may be found eligible to receive special education and related services to ensure students are properly identified for services.

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

Yes, the amended regulation will help ensure all students' health and safety are adequately protected by amending the criteria for each of the educational classifications under which students may be found eligible to receive special education and related services to ensure students are properly identified for services.

4. Will the amended regulation help to ensure that all students' legal rights are respected? Yes, the amended regulation will help ensure that all students' legal rights are respected because students have a legal right to free appropriate public education.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no 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 are no material costs in implementing this amended regulation.

(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/july2020/proposed/24 DE Reg 13RFA 07-01-20.pdf>

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

**925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Ind. Ed. Programs**

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## OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 9003(a)(7) and 14 Delaware Code, Sections 3001A-3005A (29 **Del.C.** §9003(a)(7) & 14 **Del.C.** §§3001A-3005A)  
9 **DE Admin. Code** 101

### PUBLIC NOTICE

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

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

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

Pursuant to 29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A, the Secretary of Education wishes to transfer 9 **DE Admin. Code** 101 Regulations for Early Care and Education and School-Age Centers to 14 **DE Admin. Code** 933 Regulations for Early Care and Education and School-Age Centers. This amended regulation is being transferred from 9 **DE Admin. Code** 101 to 14 **DE Admin. Code** 933 in order to provide clarity regarding the movement of the Office of Child Care Licensing (OCCL) from the Department of Services for Children, Youth and

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Their Families to the Department of Education on July 1, 2020. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

This amended regulation includes the following changes:

- Due to legislative change, OCCL is moving from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020. Therefore, the definition of department was changed as well as references to the division director and the division's role;
- References to Title 31 were stricken and replaced with Title 14;
- To comply with the Childhood Lead Poisoning Prevention Act, proof of a blood lead test was added as a required component for each child's health appraisal when enrolled;
- For clarification, to comply with guidance provided by the Division of Public Health, the radon testing requirements were revised to state that testing must be performed in each room used for child care;
- For clarification, radon testing requirements and mitigation if necessary were added to the relocation procedures;
- To clarify inconsistent requirements regarding whether an appeal of an enforcement action could be made verbally or in writing, the text was revised allow for verbal requests for appeals of warning of probation or probation and to require written requests for all other appeal requests;
- Due to travel distance that may be required by licensing specialists, the 9AM delivery deadline for suspension orders was changed to 11AM;
- For clarification, the language was revised to include the requirement for the phone to be on-site at the center;
- For clarification, all the policies and procedures required for the employee handbook were grouped together;
- For clarification, text was added to ensure that the licensee is aware that participation in supervised experience must be approved by OCCL in advance;
- Substitutes who work less than 25 hours per week are exempt from annual training requirements and from having a professional development plan;
- For clarification, language was added that files for volunteers must be on-site;
- Clarification was added that school-age only programs operating in public schools are exempt from lead-risk assessments;
- For clarification, the text was revised regarding the differences between being trained and being certified in the administration of medication;
- In regard to the outdoor fencing requirement, language was added to clarify that a gate must move freely when opened and not be hindered by scraping the ground;
- The administration of medication self-training guide was revised to clarify regarding whether to administer the medication first or to call 9-1-1; and
- Typographical errors were corrected.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto: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](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

## C. Impact Criteria

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the regulation help ensure that all students receive an equitable education? The amended regulation will 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 amended regulation will help ensure all students' health and safety are adequately protected.

4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' 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 amended 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 amended regulation does not place any unnecessary reporting or administrative requirements or mandates 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 amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

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 amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

(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/july2020/proposed/24 DE Reg 14RFA 07-01-20.pdf>

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

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

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## OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 9003(a)(7) and 14 Delaware Code, Sections 3001A-3005A (29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A)  
**9 DE Admin. Code 103**

### PUBLIC NOTICE

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

**103 Regulations for Family and Large Family Child Care Homes**

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

Pursuant to 29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A, the Secretary of Education wishes to transfer 9 **DE Admin. Code** 103 to 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes. This amended regulation is being transferred from 9 **DE Admin. Code** 103 to 14 **DE Admin. Code** 934 in order to provide clarity regarding the movement of the Office of Child Care Licensing (OCCL) from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

This amended regulation includes the following changes:

- Due to a legislative change, OCCL is moving from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020. Therefore the definition of department was changed as well as references to the division director and the division's role;
- References to Delaware Code Title 31 were stricken and replaced with the appropriate citations to Delaware Code Title 14;



- To comply with the Childhood Lead Poisoning Prevention Act, proof of a blood lead test was added as a required component for each child's health appraisal when enrolled;
- The definition of large family home located in a private home was revised to make it clear that the licensee must reside in that home and provide care there;
- To comply with guidance provided by the Division of Public Health, the radon testing requirements were revised to state that testing must be performed in each room used for child care;
- Radon testing requirements and mitigation if necessary were added to the relocation procedures;
- To clarify inconsistent requirements regarding whether an appeal of an enforcement action could be made verbally or in writing, the text was revised allow for verbal requests for appeals of warning of probation or probation and to require written requests for all other appeal requests;
- Due to travel distance that may be required by licensing specialists, the 9AM delivery deadline of a written suspension order following a verbal suspension order was changed to 11AM;
- For clarification, regarding general qualifications of a person working in child care, a statement regarding the expectation that the licensee shall require staff members to be truthful when providing information to parents/guardians and OCCL was added;
- For clarification, the text was revised regarding the differences between being trained and being certified in the administration of medication;
- The section regarding pets was revised to prohibit poisonous or aggressive animals from being kept in rooms used by children;
- In regard to the outdoor fencing requirement, language was added to clarify that a gate must move freely when opened and not be hindered by scrapping the ground;
- The administration of medication self-training guide was revised because some sections provided confusing information regarding whether to administer the medication first or to call 9-1-1; and
- Typographical errors were corrected.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto: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](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

### **C. Impact Criteria**

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the regulation help ensure that all students receive an equitable education? The amended regulation will 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 amended regulation will help ensure all students' health and safety are adequately protected. Specifically, to comply with the Childhood Lead Poisoning Prevention Act, proof of a blood lead test was added as a required component for each child's health appraisal when enrolled and to comply with guidance provided by the Division of Public Health, the radon testing requirements were revised to state that testing must be performed in each room used for child care.

4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' 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 amended 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 amended regulation does not place any unnecessary reporting or administrative requirements or mandates 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 amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

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 amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amended regulation does not directly impact the State or local school boards. The amended regulation does not impose any additional, material costs imposed on Family and Large Family Child Care Homes.

(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/july2020/proposed/24 DE Reg 16RFA 07-01-20.pdf>

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

**103 Regulations for Family and Large Family Child Care Homes**

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## OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 9003(a)(7) and 14 Delaware Code, Sections 3001A-3005A (29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A)  
**9 DE Admin. Code 201**

### PUBLIC NOTICE

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

### **201 Child Placing Agencies**

#### **A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

Pursuant to 29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A, the Secretary of Education wishes to transfer 9 **DE Admin. Code 201** Child Placing Agencies to 14 **DE Admin. Code 936** Child Placing Agencies. This amended regulation is being transferred in order to provide clarity regarding the movement of the Office of Child Care Licensing (OCCL) from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020 per Senate Bill 187 of the 150th General Assembly. The regulation is also being edited to comply with the Delaware Administrative Code Drafting and Style Manual.

This amended regulation includes the following changes:

- Due to legislative change, OCCL is moving from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020. Therefore, the definition of department was changed as well as references to the division director, and the division's role;
- References to Title 31 were stricken and replaced with Title 14.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto: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](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

#### **C. Impact Criteria**

1. Will the regulation help improve student achievement as measured against state achievement standards?

The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the regulation help ensure that all students receive an equitable education? The amended regulation will 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 amended regulation will help ensure all students' health and safety are adequately protected.

4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' 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 amended 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 amended regulation does not place any unnecessary reporting or administrative requirements or mandates 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 amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

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 amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

(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/july2020/proposed/24 DE Reg 18RFA 07-01-20.pdf>

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

[201 Child Placing Agencies](#)

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 303(a) (14 Del.C. §§122(b) & 303(a))

14 DE Admin. Code 1008

## PUBLIC NOTICE

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

[1008 DIAA Junior High and Middle School Interscholastic Athletics](#)

### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

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

the Delaware Department of Education, developed the amendments to 14 **DE Admin. Code** 1008. The proposed amendments include adding the definitions of three terms in subsection 1.1; adding subsection 1.2.1.2 to clarify that the playing rules of the NFHS and US Lacrosse are adopted, except as modified, for girls' lacrosse; in subsection 1.4, clarifying that DIAA may consider an appeal for a forfeit of a game that is not played but it does not resolve contractual disputes; add subsection 1.5.7, which limits teams to three scrimmages and play days total on three competition dates each season; revising subsection 2.2.1.4 so that it is consistent with the statute; adding the requirement that officials complete the NFHS' "Concussion in Sports" course to subsection 8.3.1; amending the fees for officiating regular season contests in subsection 8.4.1; and increasing the aggregate retail value of permissible awards in Section 9.0. In addition, nonsubstantive changes to correct technical errors are proposed throughout the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto: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](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

## C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns interscholastic athletics at the middle school level.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns interscholastic athletics at the middle school level.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation is intended, in part, to help ensure all student athletes' health and safety are adequately protected. One example is adding the requirement that officials complete the NFHS' "Concussion in Sports" course every two years.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns interscholastic athletics at the middle school level.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation concerns interscholastic athletics at the middle school level.
9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of the amended regulation.
10. What is the cost to the state and to the local school boards of compliance with the amended regulation? The DIAA Board of Directors' statutory duties, powers, and authority include establishing the fees DIAA Member Schools pay to DIAA-recognized Officials' Associations for officiating contests and competitions (14 **Del.C.** §304(6)). Although there is a proposed increase in the fees for officiating contests and competitions, the increase was negotiated by DIAA Member Schools and Officials' Associations.

(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/july2020/proposed/24 DE Reg 19RFA 07-01-20.pdf>

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

**1008 DIAA Junior High and Middle School Interscholastic Athletics**

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## OFFICE OF THE SECRETARY

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

## PUBLIC NOTICE

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

### **1009 DIAA High School Interscholastic Athletics**

#### **A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

#### **B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics. The Delaware Interscholastic Athletic Association (“DIAA”), working in consultation and cooperation with the Delaware Department of Education, developed the amendments to 14 **DE Admin. Code** 1009. The proposed amendments include adding the definitions of six terms in subsection 1.1; adding subsection 1.2.1.2 to clarify that the playing rules of the NFHS and US Lacrosse are adopted, except as modified, for girls’ lacrosse; adding subsection 1.2.1.3, which adopts the Special Olympics of Delaware’s playing rules for Unified flag football, adopts the NFHS playing rules for basketball and track for Unified basketball and Unified track and field, and authorizes the DIAA Board of Directors (“Board”) to modify the playing rules in consultation with Special Olympics of Delaware; in subsection 1.4, clarifying that DIAA may consider an appeal for a forfeit of a game that is not played but it does not resolve contractual disputes; add subsection 1.5.7, which limits teams to three scrimmages and play days total on three competition dates each season; revising subsection 2.2.1.5 so that it is consistent with the statute; adding Unified sports to subsection 2.10; adding subsection 4.3.6, which concerns Unified Partners participating on a non-Unified school team; amending subsections 5.1.3.2 and 5.1.3.3 regarding the number of participating schools required for Level 2 recognition and to establish a state championship for Unified sports; adding the requirement that certified, emergency, and volunteer coaches complete the NFHS’ “Unified Sports” course to subsections 7.1, 7.2, and 7.3; adding the requirement that officials complete the NFHS’ “Concussion in Sports” course to subsection 8.3.1; amending the fees for officiating regular season contests in subsection 8.4.1; increasing the aggregate retail value of permissible awards in Section 9.0; and adding Section 11.0, which concerns interscholastic Unified sports. In addition, nonsubstantive changes to correct technical errors are proposed throughout the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOERegulations.comment@doe.k12.de.us](mailto: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](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education’s Office of the Secretary, located at the address above.

#### **C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns interscholastic athletics at the high school level.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns interscholastic athletics at the high school level.
3. Will the amended regulation help to ensure all students’ health and safety are adequately protected? The

# PROPOSED REGULATIONS

amended regulation is intended, in part, to help ensure all student athletes' health and safety are adequately protected. One example is adding the requirement that officials complete the NFHS' "Concussion in Sports" course every two years.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns interscholastic athletics at the high school level.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity.

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

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

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? The Board's statutory duties, powers, and authority include establishing the fees DIAA Member Schools pay to DIAA-recognized Officials' Associations for officiating contests and competitions (14 Del.C. §304(6)). Although there is a proposed increase in the fees for officiating contests and competitions, the increase was negotiated by DIAA Member Schools and Officials' Associations.

(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/july2020/proposed/24 DE Reg 21RFA 07-01-20.pdf>

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

**1009 DIAA High School Interscholastic Athletics**

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## PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1533

### PUBLIC NOTICE

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

**1533 Middle Level Science Teacher**

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1533 Middle Level Science Teacher. The regulation concerns the requirements for a Middle Level

Science Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a Middle Level Science Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Middle Level Science Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Middle Level Science Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to [DOEregulations.comment@doe.k12.de.us](mailto: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](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

### **C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The education and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for the Middle Level Science Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

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

<http://regulations.delaware.gov/register/july2020/proposed/24 DE Reg 22RFA 07-01-20.pdf>

## 1533 Middle Level Science Teacher

### 1.0 Content

- 4.1 This regulation shall apply to the issuance of a Middle Level Science Teacher Standard Certificate, Certificate pursuant to 14 ~~Del.C.~~ §1220(a), ~~for Middle Level Science Teacher.~~ This certification Standard Certificate is required for grades 6, 7 and 8 in a ~~Middle Level~~ middle level Delaware public school. Notwithstanding the above requirement, the Secondary Science Teacher Certification Standard Certificate may be used for grades 6, 7 and 8 in a ~~Middle Level~~ middle level school in lieu of ~~this certification~~ the Middle Level Science Teacher Standard Certificate.
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

### 2.0 Definitions

- 2.1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2.2 The following ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- "Department"** means the Delaware Department of Education.
- "Educator"** means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.
- "Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.
- "Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.
- "License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.
- "Major or Its Equivalent"** means a minimum of 30 semester hours of coursework in a particular content area.
- "Passing Score"** means a minimum score as established by the Professional Standards Board, Standards Board in consultation with the Department and with the approval of the State Board of Education.
- "Regionally Accredited"** means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.
- "Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.
- "Standards Board"** means the Professional Standards Board established pursuant to 14 Del.C. §1201.
- "Valid and Current License or Certificate"** means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met



all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

### 3.0 **Issuance of a Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Middle Level Science Teacher Standard Certificate as a Middle Level Science Teacher to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; License or a Standard or Professional Status Certificate issued by the Department prior to August 31, ~~2003; and, 2003~~ and meets the requirements set forth in Section 4.0 of this regulation; or
  - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for licensure and presents proof of a Valid and Current License or Certificate as a middle level science teacher.
  - ~~3.1.3 Has satisfied the additional requirements in this regulation.~~
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Middle Level Science Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

### 4.0 **Additional Prescribed Education, Knowledge, and Skill Requirements**

- 4.1 ~~An educator shall have also met the following:~~
- ~~4.1.1 achieved on the Praxis Subject Assessment – Middle School Science (ETS Test # 5440) a Passing Score of 150.~~
- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have:
    - 4.1.1.1 Obtained and currently maintain a Science certificate from the National Board for Professional Teaching Standards; or
    - 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a Major or Its Equivalent in middle level science education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
    - 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach middle level science as provided in 14 Del.C. §§1260 – 1266; or
    - 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in middle level science education.
  - 4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:
    - 4.1.2.1 A Passing Score of 150 on the Praxis Subject Assessment – Middle School Science (ETS Test Code # 5440); or
    - 4.1.2.2 A Passing Score of 152 on the Praxis Middle School Science (ETS Test Code #5442).
- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a Passing Score on an examination as provided in subsection 4.1.2.

**5.0 Application Requirements**

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Middle Level Science Teacher Standard Certificate:
- 5.2.1 Evidence of obtaining and maintaining a Science certificate from the National Board for Professional Teaching Standards, if applicable; and
- 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
- 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
- 5.2.2.2 Sealed paper transcripts may be submitted.
- 5.2.2.3 The Department will not accept copies of transcripts; and
- 5.2.3 Official score on the Praxis as provided in subsection 4.1.2; and
- 5.2.4 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Middle Level Science Teacher Standard Certificate:
- 5.3.1 Official score on the Praxis as provided in subsection 4.2; and
- 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate as a middle level science teacher, the following documentation is required in the application for a Middle Level Science Teacher Standard Certificate:
- 5.4.1 An official copy of the Valid and Current License or Certificate; and
- 5.4.2 Additional documentation as required by the Department.

**6.0 Validity of a Standard Certificate**

- 6.1 A Middle Level Science Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A Middle Level Science Teacher Standard Certificate is not subject to renewal.

**7.0 Disciplinary Action**

- 7.1 An Educator's Middle Level Science Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's Middle Level Science Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

**8.0 Secretary of Education Review**

The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Middle Level Science Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Middle Level Science Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

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## **9.0 Past Certificate Recognized**

The Department shall recognize a Middle Level Science Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach middle level science.

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### **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))  
14 DE Admin. Code 1570

### **PUBLIC NOTICE**

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

### **1570 Early Childhood Exceptional Children Special Education Teacher**

#### **A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

#### **B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1570 Early Childhood Exceptional Children Special Education Teacher. The regulation concerns the requirements for an Early Childhood Exceptional Children Special Education Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding clarifying language regarding category certificates in Section 1.0; adding defined terms to Section 2.0; clarifying the requirements for issuing an Early Childhood Exceptional Children Special Education Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining an Early Childhood Exceptional Children Special Education Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of an Early Childhood Exceptional Children Special Education Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to [DOEregulations.comment@doe.k12.de.us](mailto: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/currency\\_issue.shtml](http://regulations.delaware.gov/services/currency_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

#### **C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The education requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' legal rights

are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 Del.C. §1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for an Early Childhood Exceptional Children Special Education Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 Del.C. Ch. 12 relating to licensure and certification of educators.

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

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

<http://regulations.delaware.gov/register/july2020/proposed/24 DE Reg 27RFA 07-01-20.pdf>

## 1570 Early Childhood Exceptional Children Special Education Teacher

### 1.0 Content

1.1 This regulation shall apply to the issuance of ~~a Standard Certificate~~, an Early Childhood Exceptional Children Special Education Teacher Standard Certificate (Category) pursuant to 14 Del.C. §1220(a), ~~for Early Childhood Exceptional Children Special Education Teacher. This certification is for Birth to Grade 2, however, certification as an Exceptional Children Special Education Teacher may also be used in K to grade 2.~~

1.1.1 This Standard Certificate is required for an Educator whose primary assignment is teaching Students with Disabilities from Birth to Grade 2 in Delaware public schools.

1.1.1.1 The Early Childhood Exceptional Children Special Education Teacher Standard Certificate may be used for grades K to 2 in lieu of the Special Education Teacher of Students with Disabilities Standard Certificate.

1.1.1.2 The Teacher of Students with Autism or with Severe Intellectual Disabilities Standard Certificate, Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate, and Teacher of Students with Visual Impairments Standard Certificate shall be used when the teacher's primary assignment is providing instruction to the category of students designated within those category certifications.

1.1.2 This Certification is a category Standard Certificate and does not certify an Educator to practice in a particular area or teach a particular subject. A category Standard Certificate only establishes that an Educator has met the prescribed education, knowledge, or skill requirements to instruct a particular category of students. This Certification is limited to the category of teaching Students with Disabilities from Birth to Grade 2 in Delaware public schools.

1.1.3 An Educator shall hold at least one content area Standard Certificate.

1.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

## 2.0 Definitions

~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

The following words and terms, when used in this regulation, shall have the following meaning:

**"15 Credits or the Equivalent in Professional Development"** means college credits or an equivalent number of hours with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a Regionally Accredited college or university or other Department-approved provider.

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

**"Educator"** means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

**"Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

**"Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Major or Its Equivalent"** means a minimum of 30 semester hours of coursework in a particular content area.

**"Professional Development"** means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and perspectives and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

**"Regionally Accredited"** means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

**"Standards Board"** means the Professional Standards Board established pursuant to 14 Del.C. §1201.

**"Students with Disabilities"** means the same as "Child with a Disability" as provided in 14 Del.C. §3101(2).

**"Valid and Current License or Certificate"** means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

# PROPOSED REGULATIONS

## 3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a ~~Standard Certificate~~ as an Early Childhood Exceptional Children Special Education Teacher Standard Certificate to an ~~educator~~ Educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; ~~or a Limited Standard, or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and;~~ and meets the requirements set forth in Section 4.0 of this regulation; or
  - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and;~~ Has met the requirements for licensure and holds a Valid and Current License or Certificate in early childhood exceptional children special education.
  - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for an Early Childhood Exceptional Children Special Education Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

## 4.0 Additional Requirements Prescribed Education, Knowledge, and Skill Requirements

- 4.1 An Educator must also have met the following:
- 4.1.1 ~~If the educator is applying for a first Standard certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.3.1, the required 15 credits or their equivalent in professional development required in 14 DE Admin. Code 1505 Standard Certificate 3.1.3.1 that must be satisfactorily completed for this standard certificate must at a minimum include the following areas;~~
    - 4.1.1.1 Atypical Infants and Toddlers (3 credits);
    - 4.1.1.2 Emergent Literacy in Reading and Writing (3 credits);
    - 4.1.1.3 Assessment of Young Children (3 credits);
    - 4.1.1.4 Differentiated Instruction for Young Children (3 credits); and
    - 4.1.1.5 Consultation or Working with Families (3 credits).
  - 4.1.2 ~~If the educator is applying for a second or subsequent Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 5.0, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the following areas;~~
    - 4.2.1.1 Atypical Infants and Toddlers (3 credits);
    - 4.2.1.2 Emergent Literacy in Reading and Writing (3 credits);
    - 4.2.1.3 Assessment of Young Children (3 credits);
    - 4.2.1.4 Differentiated Instruction for Young Children (3 credits); and
    - 4.2.1.5 Consultation or Working with Families (3 credits).
- 4.1 An applicant shall have satisfied one of the following education requirements:
- 4.1.1 Obtained and currently maintain an Exceptional Needs Specialist certificate from the National Board for Professional Teaching Standards; or
  - 4.1.2 Earned a bachelor's, master's, or doctoral degree from a Regionally Accredited college or university with a Major or Its Equivalent in early childhood exceptional children special education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
  - 4.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach early childhood exceptional children as provided in 14 Del.C. §§1260 – 1266; or

- 4.1.4 Satisfactorily completed a Department-approved educator preparation program in early childhood exceptional children education; or
- 4.1.5 Earned a bachelor's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 15 Credits or the Equivalent in Professional Development in the following areas that are guided by and include the following Council for Exceptional Children's (CEC) Early Childhood Special Education (ECSE) Initial Preparation Standards:
  - 4.1.5.1 Child development and early learning for young children with special needs;
  - 4.1.5.2 Partnering with families of young children with special needs;
  - 4.1.5.3 Collaboration and teaming to meet the needs of young children with exceptionalities;
  - 4.1.5.4 Assessment processes for young children with special needs;
  - 4.1.5.5 Application of curriculum frameworks in the planning and facilitation of meaningful learning experiences for young children with special needs;
  - 4.1.5.6 Using responsive and reciprocal interactions, interventions, and instruction for young children with special needs; and
  - 4.1.5.7 Professionalism and ethical practice.

## **5.0 Application Requirements**

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 The following documentation is required with the application for an Early Childhood Exceptional Children Special Education Teacher Standard Certificate:
  - 5.2.1 Evidence of obtaining an Exceptional Needs Specialist certificate from the National Board for Professional Teaching Standards, if applicable.
  - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
    - 5.2.2.1 Electronic transcripts may be submitted by the applicant's Employing Authority or Regionally Accredited college or university.
    - 5.2.2.2 Sealed paper transcripts may be submitted by the applicant, the applicant's Employing Authority, or the applicant's Regionally Accredited college or university.
    - 5.2.2.3 The Department will not accept copies of transcripts.
  - 5.2.3 Evidence of completing the equivalent of 15 Credits or the Equivalent in Professional Development, as provided in subsection 4.1.5, if applicable.
  - 5.2.4 Additional documentation as required by the Department.
- 5.3 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate in early childhood exceptional children special education, the following documentation is required in the application for an Early Childhood Exceptional Children Special Education Teacher Standard Certificate:
  - 5.3.1 An official copy of the educator license or certificate from another state or jurisdiction.
  - 5.3.2 Additional documentation as required by the Department.

## **6.0 Validity of a Standard Certificate**

- 6.1 An Early Childhood Exceptional Children Special Education Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 An Early Childhood Exceptional Children Special Education Teacher Standard Certificate is not subject to renewal.

# PROPOSED REGULATIONS

## 7.0 Disciplinary Action

- 7.1 An Educator's Early Childhood Exceptional Children Special Education Teacher Standard Certificate may be limited, suspended, or revoked for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's Early Childhood Exceptional Children Special Education Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

## 8.0 Secretary of Education Review

The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for an Early Childhood Exceptional Children Special Education Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for an Early Childhood Exceptional Children Special Education Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

## 9.0 Past Certificate Recognized

The Department shall recognize an Early Childhood Exceptional Children Special Education Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate issued shall be considered certified to instruct Students with Disabilities from Birth to Grade 2.

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 520, 2304(16), and 2312 (18 Del.C. §§311, 520, 2304(16) & 2312)  
18 DE Admin. Code 903

### PUBLIC NOTICE

### 903 Prompt Payment of Settled Claims

#### A. Type of Regulatory Action Required

Re-proposal of amendments to Regulation 903 - Prompt Payment of Settled Claims.

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

In the March 1, 2020 edition of the *Register of Regulations* at 23 DE Reg. 730 and again in the April 1, 2020 edition of the *Register of Regulations* at 23 DE Reg. 831, the Commissioner of the Delaware Department of Insurance (Commissioner) published a notice of intent to amend Regulation 903 Prompt Payment of Settled Claims to:

- Allow insurance carriers to pay settled insurance claims other than claims that are subject to the Workers Compensation Statute at 19 Del.C. §2344 by electronic means; and
- Make grammatical and formatting edits throughout the regulation.

The authority for the proposed amendments is 18 Del.C. §§311, 520, 2304(16), and 2312, in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.

The Department solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 Del.C. §10118(a) and for an additional 30 days at the discretion of the



Department. The Department did not hold a public hearing on the proposal.

The Department received comments from nine commenters, which are on file with the Department. Two commenters endorsed the Department's proposed amendments wholesale. The other seven commenters offered comments that suggested substantive changes that require further public comment.

### **C. Summary of the Comments Received**

Several commenters offered objections to the proposed definition of "claimant." These commenters opined that including the phrase "representatives (other than a provider) designated by such person and entitled to make claims on that person's behalf" in the definition of "claimant" seems overly broad and could include unintended persons such as creditors unrelated to the underlying claim or factoring companies, or other individuals who are not a party to the insurance contract and who are not contemplated under the statute. One commenter pointed out that given recent efforts in Delaware and beyond to reform assignment of benefits abuses, this purported expansion of the definition is cause for concern. One commenter suggested that the definition of claimant be revised to mean "a person covered under an insurance policy or a legal representative (other than a provider) designated by such person and entitled to make claims on that person's behalf, but does not include any provider or other third party who has provided services to a claimant."

In response to these comments, the Department has determined to clarify the definition of claimant upon re-proposal.

Several commenters opined that including the phrase, "any third-party administrator or other entity that adjusts, administers or settles claims in connection with insurance provided in the state" in the definition of "insurance carrier" is problematic. One commenter reasoned that this would include public adjuster firms, third party administrators, plaintiff attorneys, as well as estimators at repair facilities, and building contractors, which is inconsistent with the definition of insurer in 18 **Del. C.** §102 (10). In addition, the commenter suggested that this proposed change creates significant interpretation challenges where the regulation incorporates those terms by reference. To avoid these interpretation hazards, commenters suggested that the regulation adopt a definition of insurance carrier that mirrors the statute.

In response to these comments, the Department has determined to replace the term "insurance carrier" with "person" throughout the regulation, and to define "person" as it is defined in the underlying statute at 18 **Del.C.** §2302.

Subsection 5.1 lists the criteria for prompt payment. One commenter opined that the definition of "prompt" does not include the case scenario when claims are paid upon receipt of all documentation and completion of the investigation of the claim. This commenter suggested that subsection 5.1 be amended to include "The date the insurance carrier has received all of claimant's documentation and investigation of the claim is complete;" to the list of what constitutes prompt payment.

The Department accepts the commenter's suggestion by adding the suggested phrase at proposed new subsection 5.1.3.

Several commenters objected to the proposed deletion of the concept of "remittance" from the prompt payment requirements of subsection 5.1. One commenter pointed out that remittance is the date the draft is sent, while payment is the date the amount is received by the payee and opined that the proposed revision to subsection 5.1 could shorten the settlement timeline for a payee who prefers a paper check. Prompt settlement would be reduced from 30 days to 30 days less mailing time. The commenter also pointed out that banks often place holds on electronic payments and queried whether insurers will be required to factor these electronic holds into the settlement timeline.

One commenter opined that while the insurer has control over when the payment is remitted, they do not have control over when that payment is received. The commenter therefore suggested that prompt payment continue to be defined in terms of remittance of payment as follows:

"Prompt payment is defined as remittance of the check or electronic payment within 30 days from any one of the following dates: . . . ."

The Department accepts the suggested phrase concerning remittance and has incorporated it into subsection 5.1.

Proposed new subsection 5.2.1 sets out practices for electronic payment. Several commenters asked the Department to clarify whether it intended to require that all claims be settled electronically, or to merely allow carriers the option of offering individuals an electronic settlement option, and ultimately suggested that subsection 5.2.1 be permissive, not mandatory. Two of these commenters reasoned that not all payments, particularly

payments with dual payees, are suitable for electronic payment, pointing out that dual payments to lienholders, public adjusters, mortgage holders or to an attorney on a settlement draft cannot be sent to a single electronic account. Additionally, this requirement may undermine contractual duties to protect mortgagors and lienholders, and that some insurers act to reduce their and their customer's exposure to electronic transfer fraud, by limiting the size of electronic payments.

A third commenter suggested that requiring rather than allowing carriers to remit settlement payments electronically would require either significant enhancements to the commenter's existing legacy claims payment systems that lack such capability, or the implementation of new systems, both of which will involve budgeting for the cost of the enhancement and time to develop and implement the revised systems. This commenter suggested that subsection 5.2.1 be revised as follows:

5.2.1 The insurance carrier ~~shall~~may allow a claimant to choose to receive the payment by check or by electronic payment; and . . .

The Department's intention was to make electronic payment optional. The Department is revising subsection 5.2.1 accordingly.

Proposed new subsection 5.2.2 provides that an electronic payment can be made by any means so long as the payee does not incur an electronic fee. Several of the commenters objected to this requirement as impractical. One commenter offered that this would require insurers to know the billing practices of any banking institution the payee chooses and pointed out that "with 6,799 federally insured banks in the United States this would be a daunting task." This commenter opined that the burden of this decision should rest with the individual making it, namely, the claimant. Two commenters suggested that the clause "or other electronic transaction method for which the payee incurs or may incur any transaction fees" be stricken and that the following language be added to the regulation as proposed new subsections 5.5.3 and 5.5.4:

5.5.3 When using an electronic payment method, insurance carrier shall not use an institution or issuer to pay claims that imposes charges and/or fees upon the claimant that reduce the claim payment amount in any way, nor shall the insurance carrier itself impose any such charges or fees upon the claimant.

5.5.4 Fees that may be incurred due to the claimant's election of certain means to access the funds, such as fees charged by the claimant's bank to accept a wire transfer, or fees for multiple ATM withdrawals charged by the claimant's bank under the terms of the claimant's account, or fees charged by the financial institution used by the claimant to access monies (such as ATM fees charged by banks other than the bank in which the claimant has an account), shall not be considered a prohibited fee that reduces the claim payment amount.

Another commenter suggested that Subsection 5.2.2 be revised as follows:

5.2.2 If the payee chooses to receive an electronic payment, the payment may be by prepaid card or other electronic transaction method. For electronic, prepaid card or other electronic payment methods, the insurer cannot impose any charges or fees to the claimant nor use an institution or issuer to pay claims that imposes charges or fees to the claimant that reduce the claim payment.

The Department has determined to address these commenters' concerns by revising subsection 5.2.2 as suggested.

One commenter objected to the usage of "insurance carrier" in subsection 6.1 and in Section 7.0 opining that such usage extends the Department's administrative authority to assess interest and fines to entities not under its statutory authority such as building contractors and body shop estimators.

As discussed above, the Department has determined to substitute all references to "insurance carrier" with the statutorily defined term "person."

One commenter objected to the proposed effective date of the regulatory amendments as 11 days after publication because the "compressed timeline" may present significant challenges for small insurers, self-insured entities, or previously unregulated entities who have little or no experience with electronic payment.

Since the Department is revising the proposed regulation to make clear that payment through electronic means is voluntary, this concern is no longer ripe and, therefore, the Department will not be amending the proposed effective date of the regulatory amendments.

In response to the comments received, the Department is re-proposing the amendments with revisions that address the commenters' concerns as discussed above.

#### **D. Notice and Public Comment**

The Department does not plan to hold a public hearing on the re-proposed amendments to Regulation 903.

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The amendments as re-proposed appear below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 31<sup>st</sup> day, July, 2020. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Docket 4233-2019  
1351 West North St., Ste. 101  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

**\*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/july2020/proposed/24 DE Reg 32RFA 07-01-20.pdf>

## 903 Prompt Payment of Settled Claims

### 1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311, 520, 2304(16), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

### 2.0 Scope

This regulation ~~will apply~~ applies to all ~~insurers~~ persons that settle claims either pursuant to a legal action or otherwise.

### 3.0 Purpose

The purpose of this regulation is to ~~ensure prompt payment of claims pursuant to the settlement of claims by insurance carriers~~ set forth requirements for prompt payment of settled insurance claims by persons as required by 18 **Del.C.** §2304(16)(f).

### 4.0 Definitions

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

“Claimant” means a person covered under an insurance policy or a representative designated by such person and who is entitled to make claims on that person’s behalf including that person’s legal representative, but does not include any provider or other third party who has provided services to a claimant.

“Commissioner” means the Commissioner of the Delaware Department of Insurance.

“Person” shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society and other legal entity engaged in the business of insurance, including agents, brokers and adjusters. Person shall also mean medical service plans and hospital service plans as defined in 18 **Del.C.** §6302. For purposes of this regulation, medical hospital service plans shall be deemed to be engaged in the business of insurance.

# PROPOSED REGULATIONS

## ~~4.05.0~~ Prompt Payment

- 5.1 Under 18 Del.C. §2304(16)(f), persons are required in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. A person shall make prompt payment of a claim that has settled. For the purpose purposes of this regulation regulation, prompt payment is defined as remittance of the check or electronic payment within 30 days from any one of the following dates:
- 5.1.1 the The date of agreement, memorialized in writing on which a settlement agreement is fully executed, including the settlement of a case prior to a hearing but pursuant to an action filed in court;
- 5.1.2 The date a final order is issued by the court;
- 5.1.3 The date that all of claimant's documentation has been received and investigation of the claim is complete; or
- 5.1.4 unappealed The last day by which an arbitration award may be appealed as provided in applicable appellate court rules, when neither party to the arbitration has elected to file an appeal.
- 5.2 Payment shall be made in accordance with the following:
- 5.2.1 The person may allow a claimant to choose to receive the payment by check or by electronic payment;
- 5.2.2 If the claimant chooses to receive an electronic payment, the person shall not:
- 5.2.2.1 Use an institution or issuer to pay claims that imposes charges or fees upon the claimant that reduce the claim payment amount in any way; or
- 5.2.2.2 Impose any charges or fees upon the claimant in connection with the electronic payment;
- 5.2.3 For purposes of subsection 5.2 of this regulation, a fee that may be incurred by the claimant due to the claimant's election of certain means to access the funds, including but not limited to the following, shall not be considered a prohibited fee that reduces the claim payment amount:
- Fees charged by the claimant's bank to accept a wire transfer;
  - Fees for multiple ATM withdrawals charged by the claimant's bank under the terms of the claimant's account; or
  - Fees charged by the financial institution used by the claimant to access monies (such as ATM fees charged by banks other than the bank in which the claimant has an account); and
- 5.2.4 Notwithstanding anything in this regulation to the contrary, payments for settled workers compensation claims shall be made in the form required by 19 Del.C. §2344.

## 5.0 Settlement of Claims

- 5.1 ~~The language in 18 Del.C. §2304 (16)(f) requires good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. The aforementioned section also applies in those instances where a case is settled prior to a hearing but pursuant to an action filed in court. Once liability has been resolved and an amount agreed upon, or ordered by the court, or awarded by an arbitration panel, the carrier is required to make prompt payment.~~

## 6.0 ~~Procedure and Penalties for Failure to Remit Prompt Payment of a Settled Claim~~

- 6.1 ~~In the event that an insurance carrier does not remit prompt payment pursuant to this regulation and if the Department has determined determines that said carrier a person has done so failed to remit prompt payment of a settled claim as required by 18 Del.C. §2304(16)(f) and this regulation in bad faith and with such frequency as to indicate a general business practice, the Department shall may file an administrative action against the carrier pursuant to person in accordance with 18 Del.C. §323 and the Administrative Procedures Act. The commissioner If the Commissioner finds after a hearing that the person has violated 18 Del.C. §2304(16)(f) and this regulation, the Commissioner may take all of the following actions:~~

- 6.1.1 Award interest to the claimant in an amount equal to the prime rate of interest plus 3% on the amount of the claim, which shall be calculated from the applicable date the claim was settled or ordered, in an amount equal to the prime rate of interest plus 3%, listed in subsection 5.1 of this regulation.
- 6.1.2 Fine the ~~insurer~~ person according to the provisions outlined in 18 ~~Del.C. §329, §329~~ and impose other such penalties as provided in 18 ~~Del.C. §520~~.
- 6.1.3 Fine any ~~person(s)~~ person involved with the claim ~~and/or~~ or settlement according to the provisions outlined in 18 ~~Del.C. §2308(a)(1)~~.

## 7.0 General Business Practice

- 7.1 Within a ~~36-month~~ 36-month period, three instances of a ~~carrier's~~ person's failure to make prompt payment, as defined in ~~section 4.0 above~~ Section 5.0 of this regulation, shall give rise to a rebuttable presumption that the ~~insurer~~ person is in violation of 18 ~~Del.C. §2304 (16)(f)~~.
- 7.2 The ~~36-month~~ 36-month period established in ~~section 7.1 above~~ subsection 7.1 of this regulation shall be measured from the applicable date the amount was agreed upon, ordered by the court, or awarded by arbitration as set forth in subsection 5.1 of this regulation.

## 8.0 Separability

- ~~8.1~~ If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected and shall remain valid.

## 9.0 Causes of Action and Defenses

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against ~~an insurer~~ a person or ~~its~~ the person's representative based upon a violation of 18 ~~Del.C. §2304(16)~~. In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 ~~Del.C. §2304(16)~~.

## 10.0 Effective Date

This regulation shall become effective 30 days after publication in the *Delaware Register of Regulations*. The amendments to this regulation shall become effective on the eleventh day after publication of a final order signed by the Commissioner adopting the amendments into this regulation.

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## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

### 2600 EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

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

### PUBLIC NOTICE

### 2600 Examining Board of Physical Therapists and Athletic Trainers

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

Revisions to Section 14.0, pertaining to telehealth, are designed to increase patient access to physical therapy and athletic training services. Subsection 14.2.4.4 has been stricken to permit all evaluations, including initial evaluations, re-evaluations and scheduled discharges, to be performed via telehealth. Subsection 14.2.4.5 has

been stricken to permit supervisory visits to be performed via telehealth. Finally, amendments to subsection 1.2 provide that supervising physical therapists may conduct supervision either in person or by telehealth.

A public hearing will be held on July 28, 2020 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at [danielle.cross@delaware.gov](mailto:danielle.cross@delaware.gov).

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be **August 12, 2020** which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

**\*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/july2020/proposed/24 DE Reg 37RFA 07-01-20.pdf>

## 2600 Examining Board of Physical Therapists and Athletic Trainers

### 1.0 Definitions

#### 1.1 Consultation (24 Del.C. §2612)

- 1.1.1 Consultation in direct access. A licensed health practitioner who has been granted prescriptive authority must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made electronically, including but not limited to text and email, by telephone, fax, in writing, or in person. There is nothing in these Rules and Regulations or in the Physical Therapy Law that limits the number of consultations the Physical Therapist can make on the patient's behalf. The consult should be with the patient's personal licensed health practitioner. If the patient does not have a personal licensed health practitioner, the Physical Therapist is to offer the patient at least three licensed health practitioners from which to choose. The referral to a licensed health practitioner after the initial thirty day period must not be in conflict with 24 Del.C. §2616(a)(8) which deals with referral for profit. If no licensed health practitioner consult has been made in this initial thirty day period, treatment must be terminated and no treatment may be resumed without a licensed health practitioner consult.
- 1.1.2 Consultation with written prescription from a licensed health practitioner. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made electronically, including but not limited to text and email, by telephone, fax, in writing, or in person.

#### 1.2 Direct Supervision

##### *(Break in Continuity Within Section)*

- 1.2.3 Direct supervision in relation to a Physical Therapist Assistant with one (1) year or more experience means that the supervising Physical Therapist must see the ~~patient~~ patient, in person or by telehealth, at least once every sixth treatment day, and the Physical Therapist Assistant must receive ~~on-site, face to face supervision~~ supervision, in person or by telehealth, at least once every twelfth treatment day. The initial evaluation counts as a "treatment day." When not providing direct supervision on the premises, the supervising Physical Therapist must have at least one (1) year clinical experience and must be available and accessible by telecommunications to the Physical Therapist Assistant during all working hours of the Physical Therapist Assistant.
- 1.2.4 Direct supervision in relation to an Athletic Trainer treating an injury not defined as an 'athletic injury,' which must be a musculoskeletal disorder if seen for physical therapy, when the Athletic Trainer has one (1) year or more experience, means that the supervising Physical Therapist must see the ~~patient~~ patient, in person or by telehealth, at least once every sixth treatment day, and the Athletic Trainer must receive ~~on-site, face to face supervision~~ supervision, in person or by

telehealth, at least once every twelfth treatment day. The initial evaluation counts as a "treatment day." When not providing direct supervision on the premises, the supervising Physical Therapist must have at least one (1) year clinical experience and must be available and accessible by telecommunications to the Athletic Trainer during all working hours of the Athletic Trainer.

***(Break in Continuity Within Section)***

- 1.2.7 Direct supervision in relation to an Athletic Trainer with one (1) year or more experience, who is treating a non-athletic injury, means that an Athletic Trainer must receive ~~on-site~~, face to face ~~supervision~~ supervision, in person or by telehealth, at least once every fifth treatment day or once every three weeks, whichever occurs first. The Supervising Physical Therapist must have at least one (1) year experience. The Supervising Physical Therapist must be available and accessible by telecommunications to the Athletic Trainer during all working hours.
- 1.2.8 At any given time, a Physical Therapist shall not supervise more than: 2 Physical Therapist Assistants; or 2 Athletic Trainers; or 1 Physical Therapist Assistant and 1 Athletic Trainer. ~~While a Physical Therapist may supervise up to two Physical Therapist Assistants, only one of those Physical Therapist Assistants may be off-site.~~

***(Break in Continuity of Sections)***

**14.0 Telehealth (29 Del.C. §2602(13))**

***(Break in Continuity Within Section)***

- 14.2 The Physical Therapist, Athletic Trainer or Physical Therapist Assistant (referred to as "licensee" for the purpose of this regulation) who provides treatment through telehealth shall meet the following requirements:

***(Break in Continuity Within Section)***

14.2.2 Informed consent

- 14.2.2.1 Before services are provided through telehealth, the licensee shall obtain written, informed consent from the patient, or other appropriate person with authority to make health care treatment decisions for the patient. For the purpose of this subsection, written consent includes an electronic signature. At minimum, the informed consent shall inform the patient and document acknowledgement of the risk and limitations of:

***(Break in Continuity Within Section)***

14.2.4 Competence and scope of practice

- 14.2.4.1 The licensee shall be responsible for determining and documenting that telehealth is an appropriate level of care for the patient.
- 14.2.4.2 The licensee shall comply with the Board's law and rules and regulations and all current standards of care requirements applicable to onsite care.
- 14.2.4.3 The licensee shall limit the practice of telehealth to the area of competence in which proficiency has been gained through education, training and experience.
- 14.2.4.4 ~~All evaluations, including initial evaluations, and re-evaluations and scheduled discharges shall be performed face to face and not through telehealth.~~
- 14.2.4.5 ~~Subject to the supervision requirements of subsection 1.2, every other supervisory visit may be performed via telehealth with the other alternating visit performed face to face.~~
- 14.2.4.6 ~~14.2.4.4~~ The licensee shall document in the file or record which services were provided by telehealth.

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

**<http://regulations.delaware.gov/register/july2020/proposed/24 DE Reg 37 07-01-20.htm>**

# PROPOSED REGULATIONS

## PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))

### PUBLIC NOTICE

#### 8002 Rules to Establish an Excavation Damage Prevention Program

IN THE MATTER OF THE ADOPTION  
OF RULES TO ESTABLISH AN  
EXCAVATION DAMAGE PREVENTION  
PROGRAM  
(OPENED OCTOBER 22, 2019)

PSC DOCKET NO. 19-0713  
(REGULATION DOCKET NO. 8002)

### NOTICE OF PROPOSED RULEMAKING

TO: ALL EXCAVATORS, OPERATORS OF UNDERGROUND UTILITY LINES AND OTHER INTERESTED PERSONS

The Delaware Public Service Commission ("Commission") proposes to issue regulations governing its enforcement of the *Underground Utility Damage Prevention and Safety Act*, which is codified at 26 Del. C. §§ 801-813.

You can review the proposed regulations in the July 1, 2020 *Delaware Register of Regulations*. You can also review the Order and the proposed regulations in the Commission's electronic filing system DelaFile at <http://delafile.delaware.gov/> and for docket number input 19-0713. If you wish to obtain written copies of the Order and proposed regulations, please contact the Commission at (302) 736-7500. Copies in excess of the first 20 pages are \$0.10 per page. Payment is expected at the time of copying (if you wish the copies to be mailed) or at the time the copies are retrieve (if you wish to retrieve them in person).

Pursuant to 29 Del. C. § 10118(a), written comments on the proposed regulations will be accepted until **Monday, August 3, 2020**. They can be filed electronically in DelaFile at <http://delafile.delaware.gov/> by completing the Public Comment form located under Public Links. Written comments can also be mailed to Samantha Hemphill, Public Service Commission, 861 Silver Lake Boulevard, Suite 100, Dover, DE 19904, or emailed to her at [samantha.hemphill@delaware.gov](mailto:samantha.hemphill@delaware.gov) with the subject line "Docket No. 19-0713."

### ORDER NO. 9595

**AND NOW**, this 3<sup>rd</sup> day of June 2020, the Delaware Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, on August 29, 2018, the Governor of Delaware signed into law Senate Bill 189 (with Senate Amendment 2), thereby amending the *Underground Utility Damage Prevention and Safety Act* ("Damage Prevention Act"), which is codified at 26 Del. C. §§ 801-813;<sup>1</sup> and

**WHEREAS**, the new law (1) requires operators of underground utility lines to notify the Commission of any facilities damage caused by excavation resulting in damages exceeding \$3,000 (other than underground pipeline operators, who must report all excavation damage to facilities) and (2) directs the Attorney General and the Commission to review the notifications of excavation damage, or of any failure to perform an act required by the Damage Prevention Act, to determine any violations by operators, excavators or Delaware's approved notification center, Utilities Service Protection of Delmarva, Inc. (commonly known as "Miss Utility"); and

**WHEREAS**, the new law authorizes the Attorney General or the Commission to impose penalties appropriate to the circumstances and gravity of the violation according to the guidelines provided by 26 Del. C. § 810(1) and (2); and

<sup>1</sup> Subchapter II of Chapter 8 authorizes the Commission to establish its pipeline safety compliance program, which is enforced through regulations promulgated by the Commission in 2009 and codified at 26 Del. Admin. C. § 8001. See PSC Regulation Docket No. 61.



**WHEREAS**, in January 2019, Commission Staff ("Staff") established a notification process for excavation damage and potential violations of the Damage Prevention Act and began reviewing such notifications; and

**WHEREAS**, on October 22, 2019, by Order No. 9471, the Commission opened this docket to promulgate regulations governing the enforcement of the *Damage Prevention Act* and directed Staff to schedule and conduct meetings with interested stakeholders to discuss the content of the regulations and to provide the Commission with proposed regulations no later than June 3, 2020; and

**WHEREAS**, in compliance with that Order, Staff drafted proposed regulations, met by videoconference on April 2, 2020 with interested stakeholders regarding the draft, and accepted written comments until April 27, 2020; and

**WHEREAS**, as a result of that teleconference and after consideration of all input from the various interested parties, and in compliance with Order No. 9471, Staff has produced a final draft of the proposed regulations for consideration by the Commission, a copy of which is attached as "Exhibit A" hereto; and

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE  
VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. That, for the reasons set forth above, and pursuant to 26 *Del. C.* § 209(a) and 29 *Del. C.* §§ 10111-10118, the Commission proposes to promulgate the *Rules to Establish an Excavation Damage Prevention Program* ("Regulations") attached hereto as Exhibit "A," which, once adopted, will govern the Commission's enforcement of the *Underground Utility Damage Prevention and Safety Act*, which is codified at 26 *Del. C.* §§ 801-813.

2. That, pursuant to 29 *Del. C.* §§ 1133 and 10115(a), the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the July 1, 2020 edition of the *Delaware Register of Regulations*.

3. That the Commission Secretary shall publish the Notice of Proposed Rulemaking, attached as Exhibit "B" hereto, in the *News Journal* and the *Delaware State News* by July 1, 2020. The notice shall also be sent to the Delaware Registrar of Regulations for publication on July 1, 2020 in the *Delaware Register of Regulations*.

4. That pursuant to 29 *Del. C.* §§ 10115(a) and 10116, the Commission allows persons or entities to submit written comments on or before Monday, August 3, 2020.

5. That pursuant to 26 *Del. C.* § 502 and 29 *Del. C.* §§ 10116 and 10117, the Commission designates Glenn Kenton as Hearing Examiner in this matter and authorizes him to organize, classify, and summarize all materials, evidence, and testimony filed in this docket, to schedule and conduct upon due notice a public hearing, and to thereafter file a Report with proposed findings and recommendations concerning the proposed Regulations on the basis of the materials, evidence, and testimony submitted.

6. That, if the Commission receives no material objections to the proposed Regulations by the August 3, 2020 deadline for public comment, then the Commission may, upon further order, revoke its delegation of this matter to the Hearing Examiner and, instead, schedule and conduct, upon due notice, a public hearing directly before the Commission.

7. That the Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

/s/ Dallas Winslow, Chairman

/s/ Manubhai "Mike" Karia, Commissioner

/s/ Joann T. Conaway, Commissioner

/s/ Kim Drexler, Commissioner

/s/ Harold Gray, Commissioner

ATTEST: Matt Hartigan, Acting Secretary

**\*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/july2020/proposed/24 DE Reg 40RFA 07-01-20.pdf>

**8002 Rules to Establish an Excavation Damage Prevention Program**

(Opened October 22, 2019)

**1.0 Purpose and Scope**

This regulation establishes the Delaware Public Service Commission's enforcement program for violations of the Underground Utility Damage Prevention and Safety Act, which is codified at 26 **Del.C.** Ch. 8, Subchapter I ("Damage Prevention Act"). The Damage Prevention Act may be viewed online at this address: <https://delcode.delaware.gov/title26/c008/sc01/index.shtml>

**2.0 Definitions**

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

**"Approved notification center"** means Utilities Service Protection of Delmarva, Inc.

**"Commission"** means the Delaware Public Service Commission.

**"Designer"** means any architect, engineer or other person, acting either as an employer or employee, who prepares a drawing for a construction or other project which requires excavation or demolition.

**"Excavator"** means any person, including those acting either as an employer or employee, intending to perform or performing excavation or demolition work.

**"Operator"** means any person who furnishes or transports materials or services by means of a utility line.

**"Regulation"** means the regulations set forth herein.

**"Respondent"** means the operator, designer, excavator, or approved notification center who is the subject of a notice of probable violation.

**"Staff"** means the staff of the Commission.

**"Underground pipeline facility"** means a buried pipeline facility used in the transportation of gas, such as propane and natural gas, or liquid petroleum products.

**"Utility line"** means any item of personal property which shall be buried or placed below ground or submerged for use in connection with the storage or conveyance of water, sewage, electronic, cable television, telephonic or telegraphic communications, electric energy, oil, petroleum products, gas or other substances, and shall include, but not be limited to, pipes, sewers, conduits, cables, fiber optic conductors, valves, lines, wires, manholes, vaults, attachments and those portions of poles, pylons or other supports below ground or submerged.

**"Working day"** means every day, except Saturday, Sunday and state, federal and recognized operator holidays.

**3.0 Duties of Operators**

- 3.1 Operators shall comply with the requirements of 26 **Del.C.** §803. Operators of underground pipeline facilities shall also comply with the requirements of 26 **Del.C.** §804.
- 3.2 When providing notice of excavation damage to the Commission pursuant to 26 **Del.C.** §803(9) and (10), operators must complete the Commission's "Underground Facility Damage Report," which can be accessed via the Commission's website at this address: <https://depssc.delaware.gov/underground-facility-damage-report/>. Operators may provide photographic evidence by email to [DOSPSC\\_DAMAGES@delaware.gov](mailto:DOSPSC_DAMAGES@delaware.gov).
- 3.3 Operators of utility lines shall comply with the requirements of 26 **Del.C.** §803(9) by providing notice to the Commission within 15 working days, or as soon as practicable thereafter if notification cannot be provided within 15 working days, of any excavation damage to utility lines which results in damage as defined in 26 **Del.C.** §802(2)c (i.e.: "the complete or partial severance of any utility line") exceeding \$3,000. An operator's uncertainty regarding whether the damage exceeds \$3,000 will not justify a delay in notification beyond 15 working days. If, after reporting excavation damage under subsection 3.3, an operator determines that the damage did not exceed \$3,000, the operator may notify staff by

replying to the email notification provided by staff under Section 7.0, with an updated accounting of the actual damages. After receiving such notice, staff will not consider the damage to be reportable and will not consider such damage when evaluating whether multiple, similar violations by a respondent warrant the issuance of an NOPV under subsection 7.1.3.

- 3.4 Operators of underground pipeline facilities shall comply with the requirements of 26 Del.C. §803(10) by providing notice to the Commission as soon as practicable of any facilities damage caused by excavation which results in damage as defined in 26 Del.C. §802(2) to gas distribution and transmission lines, oil and petroleum products distribution and transmission lines, or dangerous materials, product lines or steam lines.

## **4.0 Duties of Designers**

Designers shall comply with the requirements of 26 Del.C. §805.

## **5.0 Duties of Excavators**

- 5.1 Excavators shall comply with the requirements of 26 Del.C. §806.
- 5.2 In addition to the requirement in 26 Del.C. §806(a)(8) that excavators notify operators immediately of any damage to the operator's utility lines, excavators shall call 911 when they cause or discover a release from an underground pipeline facility.
- 5.3 Excavators may also provide notice of excavation damage or of any observed violations of the Excavation Damage Act to the Commission by completing the Commission's "Underground Facility Damage Report", which can be accessed via the Commission's website at this address: <https://dep.sc.delaware.gov/underground-facility-damage-report/>. Excavators may provide photographic evidence by email to [DOSPSC\\_DAMAGES@delaware.gov](mailto:DOSPSC_DAMAGES@delaware.gov).

## **6.0 Duties of the Approved Notification Center**

The approved notification center shall comply with the requirements of 26 Del.C. §807(b) and to operate in accordance with the Federal Pipeline Safety Regulations codified at 49 C.F.R. §198.39, et. seq.

## **7.0 Enforcement Procedures**

- 7.1 Upon receiving notice of excavation damage, staff shall provide email notification to the person reporting the damage that it has received the filing. Staff shall review each notification of excavation damage to determine any violations by operators, excavators or the approved notification center, and may take the following actions (if warranted):
- 7.1.1 Citation: Upon determining that a probable violation of a provision of this regulation has occurred, staff may issue a citation in writing to a respondent, notifying the respondent of the results of the on-site evaluation (if applicable) and identifying specific provisions of this regulation or the Damage Prevention Act alleged to have been violated. Unless staff and the respondent otherwise agree, the respondent shall reply in writing within 30 days of receipt of the citation. In responding to the citation, the respondent may submit a written plan to staff specifying actions that the respondent will take to correct the alleged violation, a schedule for completion of each action step, and a final date of completion. The respondent may also request an informal conference with staff in an effort to reach a mutually acceptable resolution of the alleged violation. If staff accepts the corrective plan submitted by the respondent, the citation will be deemed resolved without the need for further escalation to a warning letter or a notice of probable violation.
- 7.1.2 Warning letter: Upon determining that a probable violation or violations of this regulation has occurred or is continuing, staff may issue a warning letter notifying the respondent of the probable violation and advising respondent to correct it, if it is correctable, and comply henceforth, or be subject to enforcement procedures under this regulation. Staff shall: provide the respondent with copies of all relevant documentation, including the citation (if applicable) and any written violation reports; notify the respondent of the results of the on-site evaluation (if applicable); and identify the specific provisions of this regulation or the Damage Prevention Act alleged to have been violated.

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## PROPOSED REGULATIONS

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Unless staff and the respondent otherwise agree, the respondent shall reply in writing within 30 days of receipt of the warning letter. In responding to the warning letter, the respondent may submit a written plan to staff specifying actions that the respondent will take to correct the alleged violation, a schedule for completion of each action step, and a final date of completion. Respondent may also request an informal conference with staff in an effort to reach a mutually acceptable resolution of the alleged violation. If staff accepts the corrective plan submitted by the respondent, the warning letter will be deemed resolved without the need for further escalation to a notice of probable violation.

### 7.1.3 Notice of Probable Violation

7.1.3.1 If staff has reason to believe that a material violation of this regulation has occurred, or if the respondent has failed to complete the agreed upon corrective action plan after relating to a citation or a warning letter, or if the respondent has multiple, similar violations, Staff may commence an enforcement proceeding by issuing a notice of probable violation (NOPV).

7.1.3.2 The NOPV shall include the following:

7.1.3.2.1 A listing of the provisions of this regulation or the Damage Prevention Act which the respondent is alleged to have violated, a description of the evidence on which the allegations are based, and copies of all relevant documentation, including a copy of any written violation reports and citation or citations or warning letter or letters, if applicable;

7.1.3.2.2 Notice of the response options available to the respondent under subsection 7.3 of this regulation;

7.1.3.2.3 If a penalty is proposed, the amount of the proposed penalty and the maximum penalty for which the respondent may be liable; and

7.1.3.2.4 A proposed consent order pursuant to subsection 7.4 of this regulation.

7.1.3.3 An NOPV may be amended at any time prior to the issuance of a final order. If an amendment includes any new material allegations of fact or proposes an increased penalty, the respondent shall have another opportunity to respond under subsection 7.3 of this regulation.

7.2 Service. Service of the citation, warning letter, or NOPV shall only be complete upon service on the respondent's registered agent by U.S. Postal Service first class mail delivery or to a person designated by the respondent to receive service from staff by either U.S. Postal Service or by email. Staff shall serve citations, warning letters, or NOPVs by U.S. Postal Service first class mail delivery and to a person designated by the respondent to receive service from the Commission to those respondents who have requested both methods of service.

### 7.3 Respondent's Options

7.3.1 Within 30 days after receipt of an NOPV, the respondent shall respond in one of the following ways:

7.3.1.1 Sign the consent order and return it with payment of any proposed penalty.

7.3.1.2 Submit a written explanation, information, or other material in response to the allegations contained in the NOPV.

7.3.1.3 Request an informal conference with staff. Upon request for an informal conference, staff will establish a date, time, and location for the conference. At the informal conference, the respondent shall have the right to be represented by an attorney or other person and shall have the right to present relevant evidence. Any evidence that staff may have which indicates that the respondent may have violated this regulation shall be made available to the respondent, who shall have the opportunity to rebut this evidence, either at the informal conference, in writing within twenty days following the informal conference, or by other mutually agreed to arrangements.

7.3.1.4 In responding to the NOPV, the respondent may submit a written plan to staff specifying actions that the respondent will take to correct the alleged violation, a schedule for

completion of each action step, a final date of completion, and payment of any proposed penalty. If staff accepts the corrective plan submitted by the respondent, staff and respondent may propose a consent order to the Commission in accordance with subsection 7.4.

7.3.2 Failure of the respondent to respond in accordance with subsection 7.3.1.1, 7.3.1.2, or 7.3.1.3 shall constitute a waiver of the respondent's right to contest the allegations in the NOPV and authorizes the Commission, upon 30 days' notice to the respondent, to find the facts to be as alleged in the NOPV and to issue a final order under subsection 7.5 of this regulation. Prior to the Commission's issuance of a final order under this subsection, the respondent may submit a written plan to the Commission specifying actions that the respondent will take to correct the alleged violation, a schedule for completion of each action step, a final date of completion, and payment of any proposed penalty. If the Commission accepts the corrective plan submitted by the respondent, the Commission may issue a consent order in accordance with subsection 7.4.

## 7.4 Consent Orders

7.4.1 Notwithstanding any other provision to the contrary, the Commission may at any time resolve an outstanding NOPV with a consent order. A consent order shall be signed by the respondent to whom it is issued, or a duly authorized representative, and shall indicate agreement with the terms thereof. A consent order need not constitute an admission that the respondent committed the violation.

7.4.2 A consent order is a final order of the Commission having the same force and effect as a final order issued pursuant to subsection 7.5 of this regulation.

7.4.3 A consent order shall include an express waiver of appeal or judicial review rights that might otherwise attach to a final order of the Commission.

7.4.4 A consent order may include, but is not limited to, corrective action, assessment of a penalty, and mandatory education or training.

## 7.5 Final order

7.5.1 If staff and the respondent do not agree to a consent order, the Commission will open a docket and conduct an evidentiary hearing (either directly or by its designee) pursuant to the *Rules of Practice and Procedure of the Delaware Public Service Commission*, codified at 26 **DE Admin. Code** 1001. After the conclusion of the hearing, the Commission shall issue a final order that includes the following:

7.5.2 A statement of findings and determinations on all material issues; and

7.5.3 If a penalty is assessed, the amount of the penalty and the procedures for payment of the penalty.

## 7.6 Assessment of Penalties

7.6.1 Except as provided in subsection 7.6.2, whoever, by action or inaction, violates a provision of this regulation shall, for the first offense, be fined not less than \$100 nor more than \$500. For each subsequent like offense, such person shall be fined not less than \$200 nor more than \$1,000 for each violation.

7.6.2 Operators of underground pipeline facilities, excavators, and the approved notification center shall, upon violation of any applicable requirements of 49 C.F.R. Part 198, Subpart C [49 C.F.R. §198.31 et seq.], be subject to civil penalties not to exceed \$10,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed \$500,000 for any related series of violations.

7.6.3 In determining the amount of the fine, the Commission shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on the ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the fine, and such other matters as justice may require.

7.6.4 No penalties provided for in subsection 7.6 of this regulation shall apply to any excavation or demolition done by the owner of a private residence when such excavation or demolition is made entirely on the land on which the private residence is situated and provided there is no

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## PROPOSED REGULATIONS

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encroachment on any operator's rights-of-way or easement. However, this exemption shall not affect the civil liability of such private residence owner pursuant to 26 Del.C. §811.

7.7    Payment of Penalties

7.7.1    Payment of a penalty under this regulation shall be made by check or money order to the "State of Delaware" and sent to the Secretary of the Commission, 861 Silver Lake Blvd., Cannon Building, Suite 100, Dover, Delaware 19904.

7.7.2    If a respondent fails to pay the full amount of a penalty assessed in a final order within 30 days after receipt of the final order, the Commission may refer the case to the Attorney General with a request that an action to collect the assessed penalty be brought in any court of competent jurisdiction.

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## Symbol Key

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

## Final Regulations

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

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

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## DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))  
3 **DE Admin. Code** 1001

### ORDER

### 1001 Thoroughbred Racing Rules and Regulations

Date: June 12, 2020

#### Amendments to Regulations of the Thoroughbred Racing Commission

The Thoroughbred Racing Commission ("Commission") issues this Order to take effect ten (10) days after the publication of this Order in the *Delaware Register of Regulations*:

1. Pursuant to its statutory authority, the Commission proposed for adoption revisions to the Commission's Rules to amend Rule 13 by amending Rule 13.20 to change the minimum days since last race from 180 to 120, amend Rule 15 by adding new Rule 15.1.3.1.3 relating to Foreign Substances to allow electrolytes to be administered to a horse within twenty four hours prior to the scheduled post time for the first race subject to certain provisions, new Rule 15.28 relating to Bisphosphonates, new Rule 15.29 relating to Non-Steroidal Anti-Inflammatory Drugs, new Rule 15.30 relating to Intra-articular Joint Injections, and new Rule 15.31 relating to Stacking of Corticosteroids. Other regulations issued by the Thoroughbred Racing Commission are not affected by this Order.

2. A copy of the proposed regulations was published in the April 1, 2020 edition of the *Delaware Register of Regulations* and has been available for inspection in the office of the Commission at 777 Delaware Park Boulevard, Wilmington, Delaware 19804 during regular office hours.

3. The Commission did not receive any written comments on the proposed regulations during the 30 day period following publication of the proposed regulations on April 1, 2020 and approved the regulations for publication as final at its meeting on May 20, 2020.

4. THEREFORE, IT IS ORDERED, that the proposed regulations are adopted and shall become effective July 11, 2020, after publication of the final regulation in the *Delaware Register of Regulations*.

Delaware Thoroughbred Racing Commission

By: W. Duncan Patterson, Chairman

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2020 issue of the *Register* at page 806 (23 DE Reg. 806). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1001 Thoroughbred Racing Rules and Regulations**

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**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 1571

**REGULATORY IMPLEMENTING ORDER**

**1571 Special Education Teacher of Students with Disabilities**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education (“Department”), developed amendments to 14 DE Admin. Code 1571 Special Education Teacher of Students with Disabilities. The regulation concerns the requirements for a Special Education Teacher of Students with Disabilities Standard Certificate pursuant to 14 Del.C. §1220. The proposed amendments include clarifying changes to Section 1.0; adding defined terms to Section 2.0; clarifying the requirements for issuing a Special Education Teacher of Students with Disabilities Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Special Education Teacher of Students with Disabilities Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Special Education Teacher of Students with Disabilities Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Notice of the proposed regulation was published in the *Register of Regulations* on April 1, 2020. The Professional Standards Board received written submittals from J. Todd Webb, Chairperson of the State Council for Persons with Disabilities (“SCPD”), Ann C. Fisher, Chairperson of the Governor’s Advisory Council for Exceptional Citizens (“GACEC”), and Jennifer August concerning the proposed amendments to the regulation.

SCPD and GACEC each commented that it is unclear whether the conduct listed in subsection 3.2 describes the only investigations where the Department will not act on an application or if the conduct listed represents examples. In addition, SCPD and GACEC commented that the Professional Standards Board does not prescribe specific professional development for educators and it is possible that an educator with a Special Education Teacher of Students with Disabilities Standard Certificate will not actually participate in any professional development related to the certification. SCPD and GACEC recommended that the Department consider whether including requirements for renewal of this standard certificate is warranted “given the vulnerability of the population served.” SCPD and GACEC also recommended that Section 8.0 be removed from the regulation because



educators with a Special Education Teacher of Students with Disabilities Standard Certificate are responsible for educating “our most vulnerable students and those most in need of exceptional teachers.”

Ms. August, a licensed, registered, and board-certified art therapist, recommended that the definition of “Educator” in Section 2.0 be changed so that it “will not allow educators to ‘practice’ other related [but-elsewhere-licensed] professional support services.” She further commented that the regulation “should define that ‘other related professional services,’ ‘Professional Development,’ and continuing education/internally-issued ‘certificates’ do not create licensure exceptions or craft unqualified permissions by regulation.”

## II. FINDINGS OF FACTS

On May 7, 2020, the Professional Standards Board considered the written submittals. The Professional Standards Board clarified the language of subsection 3.2 in response to SCPD’s and GACEC’s comment. In accordance with 29 **Del.C.** §10118(c), the Professional Standards Board’s Chairperson determined the changes to subsection 3.2 are not substantive and, as a result, the Professional Standards Board is not required to repropose the changes.

Additionally, the Professional Standards Board found that the proposed subsection 6.2, which provides that the Special Education Teacher of Students with Disabilities Standard Certificate is not renewed, is consistent with the statute concerning standard certificates. The statute, 14 **Del.C.** §1220(a), provides that the “Department shall issue a standard certificate to an applicant who . . . has acquired the prescribed knowledge, skill, or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.” 14 **Del.C.** Ch. 12 does not authorize the Department to renew a standard certificate once it has been issued, which is different from a continuing license that may be renewed for five years if an educator has completed 90 clock-hours of approved professional development (14 **Del.C.** §1212). The Professional Standards Board found that subsection 5.1 of the regulation concerning continuing licenses (14 **DE Admin. Code** 1511) provides that “[a]t least one half of the required hours [forty-five (45) hours every five (5) years] for educators shall be in activities that relate to the educator’s work with students or staff.” Moreover, one criterion for determining if a professional development activity is acceptable for clock-hour credit is that a professional development activity address “one of the standards for the educator’s area of the profession” (14 **DE Admin. Code** 1511-5.4.2.3). The Board found that, with recommendations from the Professional Development and Associated Compensation Committee, it can work with the Department to address the broader question of whether to change the current system for professional development in the future.

The Professional Standards Board found that the proposed Section 8.0, Secretary of Education Review, is an important tool that is available for all certifications by statute (14 **Del.C.** §1224).

In addition, the Professional Standards Board found that the definition of “Educator” in Section 2.0 of the regulation is consistent with the definition of “educator” in the statute (14 **Del.C.** §1202(6)), which has been in effect since June 30, 2005. The Professional Standards Board further found there are standard certificate regulations that certify an educator who provides other related professional support services in Delaware public schools to practice in a particular area such as school nurse, school counselor, school psychologist, school social worker, reading specialist, and library media specialist. The Professional Standards Board also found that Special Education Teacher of Students with Disabilities Standard Certificate certifies an educator to instruct students with disabilities and does not create an exception.

Except for the non-substantive change to subsection 3.2, the Professional Standards Board determined that further changes in response to the written submittals were not necessary and voted to propose 14 **DE Admin. Code** 1571 Special Education Teacher of Students with Disabilities, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education’s approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are 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** 1571 Special Education Teacher of Students with Disabilities.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1571 Special Education Teacher of Students with Disabilities subject to the State Board of Education’s approval.

Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1571 Special Education Teacher of Students with Disabilities attached hereto as Exhibit "A" is hereby amended.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1571 Special Education Teacher of Students with Disabilities adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1571 Special Education Teacher of Students with Disabilities in the Administrative Code of Regulations for the Department.

#### V. EFFECTIVE DATE OF ORDER

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 21<sup>st</sup> day of May, 2020.

#### Department of Education

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

Approved this 21<sup>st</sup> day of May, 2020.

#### State Board of Education

/s/ Whitney Townsend Sweeney, President

/s/ Vincent Lofink

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

/s/ Provey Powell, Jr.

/s/ Nina Lou Bunting

/s/ Wali W. Rushdan, II

Candace Fifer (absent)

**\*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

#### 1571 Special Education Teacher of Students with Disabilities

#### 1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Special Education Teacher of Students with Disabilities (Category).

1.1.1 This ~~certification~~ Certification is required for an ~~educator within the Delaware public school system~~ Educator whose primary assignment is teaching children with disabilities in grades K to 12 in Delaware public schools.

1.1.1.1 The Early Childhood Exceptional Children Special Education Teacher ~~certification~~ Standard Certificate may be used for grades K to grade 2 in lieu of Special Education Teacher of Students with Disabilities ~~certification~~ Standard Certificate.

1.1.1.2 ~~Teachers of Students Who Are Deaf or Hard of Hearing Certification; and Teacher of Students with Visual Impairments Certification; and Teacher of Students with Autism or Students with severe Intellectual Disabilities Certification shall be used for grades K to 12 when the teacher's primary assignment is serving the special population designated within those category certifications. The Teacher of Students with Autism or with Severe Intellectual Disabilities Standard Certificate, Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate, and Teacher of Students with Visual Impairments Standard Certificate shall be used when the teacher's primary assignment providing instruction to the category of students designated within those category certifications.~~

- 1.1.2 This ~~certification~~ Certification is a category ~~certificate~~ Standard Certificate and does not certify an ~~educator~~ Educator to practice in a particular area or teach a particular subject. A category ~~certification~~ Standard Certificate only establishes that an ~~educator~~ Educator has met the prescribed ~~education, knowledge, skill, or education or skill~~ education, knowledge, skill, or education or skill to instruct ~~the a~~ a particular category of students ~~specified~~. This ~~certification~~ Certification is limited to the ~~specific~~ specific category of teaching students ~~with disabilities~~ Students with Disabilities.
- 1.1.3 ~~Subject or area certification also required:~~ An Educator shall hold at least one content area Standard Certificate.
- 1.1.3.4 ~~A category certificate may not be issued alone and an educator shall hold at least one subject or area certification.~~
- 1.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

## 2.0 Definitions

- 2.1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2.2 The following words and terms, when used in this regulation, have the following meaning ~~unless the context clearly indicates otherwise:~~

**"Certification"** means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.

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

**"Educator"** means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

**"Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

**"15 Credits or the Equivalent in Professional Development"** means college credits or an equivalent number of hours with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a Regionally Accredited college or university or other Department-approved provider.

**"Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Major or Its Equivalent"** means a minimum of thirty (30) semester hours of coursework in a particular content area.

**"Passing Score"** means a minimum score as established by the Standards Board, in consultation with the Department, and with the approval of the State Board of Education.

**"Professional Development"** means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and/or perspectives; and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

**"Regionally Accredited"** means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of

education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

**“Standard Certificate”** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

**“Standards Board”** means the Professional Standards Board established pursuant to 14 Del.C. §1201.

**“Students with Disabilities”** means the same as "Child with a Disability" as provided in 14 Del.C. §3101(2).

**“Valid and Current License or Certificate”** means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

### 3.0 **Issuance of a Standard Certificate**

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as for Special Education Teacher of Students with Disabilities to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; ~~or a Limited Standard, or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; 2003 and meets the requirements set forth in Section 4.0 of this regulation; or~~
  - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; Has met the requirements for licensure and holds a Valid and Current License or Certificate in special education or teaching students with disabilities.~~
  - 3.1.3 ~~Holds a Standard Certificate in a subject or area; and~~
  - 3.1.4 ~~Has satisfied the additional requirements in this regulation.~~
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Special Education Teacher of Students with Disabilities Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the ~~alleged conduct involves allegations of~~ **allegations include but are not limited to conduct such as** Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation’s resolution.

### 4.0 **Additional Requirements Prescribed Education, Knowledge, and Skill Requirements**

- 4.1 An educator shall also have satisfied one of the following additional education requirements:
- 4.1.1 ~~Holding a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent, in special education or students with disabilities, from a National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate standards; or~~
  - 4.1.2 Completion of a minimum of fifteen (15) credits or their equivalent in professional development as approved by the Department, with a focus in special education or in students with disabilities in the following content areas:
    - 4.1.2.1 ~~Diagnosis and Instruction for Reading / Literacy (3 credits);~~
    - 4.1.2.2 ~~Education Evaluation and IEP Development (3 credits);~~
    - 4.1.2.3 ~~Curriculum and Instruction in Special Education (3 credits);~~
    - 4.1.2.4 ~~Applied Behavior Analysis (3 credits); and~~

4.1.2.5 One of the following areas:

- 4.1.2.5.1 ~~Legislation, Policy & Procedures/ Special Issues in Special Education (3 credits);~~
- 4.1.2.5.2 ~~Transitions from Secondary Special Education or Secondary Transition Planning (3 credits);~~
- 4.1.2.5.3 ~~Collaborative Teaming in Special Education (3 credits); or~~
- 4.1.2.5.4 ~~Assistive Technology (3 credits).~~

4.1 An applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.

4.1.1 An applicant shall have satisfied one of the following education requirements:

- 4.1.1.1 Obtained and currently maintain an Exceptional Needs Specialist certificate from the National Board for Professional Teaching Standards; or
- 4.1.1.2 Earned a bachelor's, master's, or doctoral degree from a Regionally Accredited college or university with a Major or Its Equivalent in special education or teaching students with disabilities from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach students with disabilities as provided in 14 Del.C. §§1260 – 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in special education; or
- 4.1.1.5 Earned a bachelor's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 15 Credits or the Equivalent in Professional Development with a focus in special education or in students with disabilities in the following areas:
  - 4.1.1.5.1 Diagnosis and Instruction for Reading / Literacy (3 credits);
  - 4.1.1.5.2 Education Evaluation and IEP Development (3 credits);
  - 4.1.1.5.3 Curriculum and Instruction in Special Education (3 credits);
  - 4.1.1.5.4 Applied Behavior Analysis (3 credits); and
  - 4.1.1.5.5 One of the following areas:
    - 4.1.1.5.5.1 Legislation, Policy & Procedures/ Special Issues in Special Education (3 credits);
    - 4.1.1.5.5.2 Transitions from Secondary Special Education or Secondary Transition Planning (3 credits);
    - 4.1.1.5.5.3 Collaborative Teaming in Special Education (3 credits); or
    - 4.1.1.5.5.4 Assistive Technology (3 credits).

4.1.2 The applicant shall have achieved on the *Praxis* Subject Assessment – Special Education: Core Knowledge and Applications (ETS Test Code # 5354) a Passing Score of 151.

## 5.0 ~~Past Certification Recognized Application Requirements~~

~~The Department shall recognize a Standard Certificate Exceptional Children Special Education Teacher or other valid equivalent Special Education Certification including Exceptional Children Special Education – Elementary and Exceptional Children Special Education – Secondary issued before July 1, 2016. A teacher holding such a Standard Certificate issued by the Department before July 1, 2016 shall be considered certified to instruct classes to students with disabilities.~~

5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with application for an Initial License, and the applicant shall also provide all required documentation for the License.

5.2 The following documentation is required with the application for a Special Education Teacher of Students with Disabilities Standard Certificate:

- 5.2.1 Evidence of obtaining an Exceptional Needs Specialist certificate from the National Board for Professional Teaching Standards, if applicable.
- 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
- 5.2.2.1 Electronic transcripts may be submitted by the applicant's Employing Authority or Regionally Accredited college or university.
- 5.2.2.2 Sealed paper transcripts may be submitted by the applicant, the applicant's Employing Authority, or the applicant's Regionally Accredited college or university.
- 5.2.2.3 The Department will not accept copies of transcripts.
- 5.2.3 Evidence of completing the equivalent of 15 Credits or the Equivalent in Professional Development, as provided in subsection 4.1.1.5, if applicable.
- 5.2.4 Official score on the *Praxis* Subject Assessment as provided in subsection 4.1.2.
- 5.2.5 Additional documentation as required by the Department.
- 5.3 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate in special education or teaching students with disabilities, the following documentation is required in the application for a Special Education Teacher of Students with Disabilities Standard Certificate:
- 5.3.1 An official copy of the educator license or certificate from another state or jurisdiction.
- 5.3.2 Additional documentation as required by the Department.

## **6.0 Effective Date Validity of a Standard Certificate**

Section 4.0 of this regulation shall be effective on July 1, 2016.

- 6.1 A Special Education Teacher of Students with Disabilities Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A Special Education Teacher of Students with Disabilities Standard Certificate is not subject to renewal.

## **7.0 Disciplinary Action**

- 7.1 An Educator's Special Education Teacher of Students with Disabilities Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's Special Education Teacher of Students with Disabilities Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

## **8.0 Secretary of Education Review**

The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Special Education Teacher of Students with Disabilities Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Special Education Teacher of Students with Disabilities Standard Certificate but whose effectiveness is documented by the local school district or charter school.

## **9.0 Past Certificate Recognized**

The Department shall recognize a Special Education Teacher of Students with Disabilities Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to instruct Students with Disabilities.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 11002

### ORDER

#### Child Care Subsidy Program Terms

#### 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 term definitions. 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 January 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2020 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, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend section 11002.9 of the Division of Social Services Manual regarding Child Care, specifically, to update term definitions.

#### Statutory Authority

- 45 CFR 98.2
- 45 CFR 98.40

#### Background

DSS is revising the terms and definitions for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant (CCDBG) Act, which mandated new eligibility requirements for child care assistance. DSS has changed the formatting of the policy so that the policy is clear, concise, and easy to understand.

#### Purpose

The proposed rule defines Child Care Subsidy Program terms.

#### 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 January 31, 2020.

#### Fiscal Impact Statement

DSS amended DSSM 11002.9 to clarify the text and formatting of the existing policy, including adding new program terms and removing program terms that are no longer applicable. This policy is currently in place and there are no financial responsibilities associated with the Child Care Subsidy Program Terms policy.

#### Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the January 2020 *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 term definitions, is adopted and shall be final effective July 11, 2020.

6/15/2020

Date of Signature

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

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

**Child Care Subsidy Program Terms**

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**DEPARTMENT OF INSURANCE**

**OFFICE OF THE COMMISSIONER**

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

18 DE Admin. Code 1319

**REGULATORY IMPLEMENTING ORDER**

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

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

In the May 1, 2020 edition of the *Register of Regulations* at 23 DE Reg. 922, the Commissioner of the Delaware Department of Insurance (Commissioner) published a notice of intent to amend Regulation 1319 Arbitration of Disputes between Carriers and Primary Care and Chronic Care Management Providers to strike subsection 4.7.1 concerning payment of arbitration fees and replace it with a new provision that tracks the requirements of 18 Del.C. §333(g) and (h). The Department also proposed to make grammatical changes to the regulation as needed.

The Delaware Code authority for the regulation is 18 Del.C. §§311, 3342B, and 3556A and in accordance with 29 Del.C. Ch. 101.

The Department solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 Del.C. §10118(a). The Department did not hold a public hearing on the proposal.

The Department received no comments on the proposal.

**II. FINDINGS OF FACTS**

1. The proposed amendments to Regulation 1319 Arbitration of Disputes between Carriers and Primary Care and Chronic Care Management Providers update and clarify requirements concerning arbitration program fees and make needed grammatical edits throughout the regulation.

2. The Department met the public notice requirements of the Administrative Procedures Act.

3. The Commissioner finds that it is appropriate to adopt the amendments to 18 DE Admin. Code 1319 as proposed in the May 1, 2020 *Register of Regulations* and in accordance with this Final Order, for the reasons set



forth in this Final Order and in the proposal with one additional change. Section 9.0 is amended to state that the adopted amendments will become effective on July 11, 2020.

### III. DECISION TO ADOPT THE PROPOSED AMENDMENTS TO REGULATION 1319

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt the proposed amendments to 18 **DE Admin. Code** 1319.

### IV. EFFECTIVE DATE OF ORDER

The actions referred to hereinabove were taken by the Commissioner pursuant to 18 **Del.C.** §§311, 3342B, and 3556A and in accordance with 29 **Del.C.** Ch. 101 on the date indicated below. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*. The effective date of the Regulation shall be as stated in the text of the Regulation.

#### IT IS SO ORDERED.

The 15<sup>th</sup> day of June, 2020.

Trinidad Navarro  
Commissioner, Delaware Department of Insurance

## 1319 Arbitration of Disputes between Carriers and Primary Care and Chronic Care Management Providers

### 1.0 Purpose and Statutory Authority

- 1.1 The purpose of this regulation is to implement 18 **Del.C.** §§3342B and 3556A, which require health insurance carriers to submit to arbitration any dispute with a provider regarding a carrier's final reimbursement decision for primary care and chronic care management services.
- 1.2 This ~~Regulation~~ regulation is promulgated pursuant to 18 **Del.C.** §§311, 3342B, and 3556A and 29 **Del.C.** Ch. 101. This ~~Regulation~~ regulation should not be construed to create any cause of action not otherwise existing at law.

### 2.0 Definitions

**"Carrier"** or **"insurance carrier"** means any entity that provides health insurance in this State. "Carrier" includes an insurance company, health service corporation, health maintenance organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

**"Chronic care management"** means the services in the Chronic Care Management Services program, as administered by the Centers for Medicare and Medicaid Services, and includes Current Procedural Terminology ("CPT") codes 99487, 99489, and 99490.

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

**"Medicare"** means the federal Medicare Program (U.S. Public Law 89-87, as amended) [42 U.S.C. § 64-1395 et seq. 42 USCS, Ch. 7, XVIII USCS].

**"Primary care"** means health care provided by a primary care provider.

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

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

### 3.0 Notice of Final Reimbursement Decision

- 3.1 A carrier shall notify a provider, in writing, of a carrier's final decision regarding reimbursement for an individual claim, procedure or service, if the decision does not authorize reimbursement of the provider's charge in accordance with 18 Del.C. §§3342B and 3556A. Such notice may be separate from or a part of the written notice of the carrier's decision.
- 3.2 Any notice given to a provider pursuant to subsection 3.1 shall:
- 3.2.1 Be in writing; and
- 3.2.2 Give the provider notice of the provider's right to arbitration through the Department's arbitration program, by including, at a minimum, the following language:

"You have the right to seek review of our decision regarding the amount of your reimbursement. The Delaware Insurance Department provides claim arbitration services which are in addition to, but do not replace, any other legal or equitable right you may have to a review of this decision or any right of review based on your contract with us. You can contact the Delaware Insurance Department for information about arbitration by calling the Arbitration Secretary at 302-674-7322 or by sending an email to: [DOI-arbitration@delaware.gov](mailto:DOI-arbitration@delaware.gov). All requests for arbitration must be filed within 60 days from the date you receive this notice; otherwise, this decision will be final."

### 4.0 Arbitration Procedures

- 4.1 Provider Petition for Arbitration.
- 4.1.1 A provider or ~~his or her~~ a provider's authorized representative may request that the Department review a carrier's final reimbursement decision through arbitration by complying with ~~all of~~ the following requirements:
- 4.1.1.1 Complete in full the Department's standard Petition for Arbitration form, which may be downloaded from the Department's website;
- 4.1.1.2 Attach to the completed Petition for Arbitration all supporting documentation;
- 4.1.1.3 Include a filing fee in the form of a check that is made payable to the Department of Insurance, which shall be in the amount of \$75 and which shall be maintained by the Department in a special fund identified as the "Arbitration Fund";
- 4.1.1.4 File the original and one copy of the Petition for Arbitration and the appropriate filing fee with the Department, at the following address:
- Delaware Department of Insurance  
ATTN: Arbitration Secretary  
1351 West North Street, Suite ~~404~~, 101  
Dover, DE 19904
- 4.1.1.5 Ensure that the Petition for Arbitration is timely submitted so that it is received by the Department no later than 60 days after the provider received the carrier's final reimbursement decision.
- 4.1.2 A provider who requests Department review under subsection 4.1.1 shall also:
- 4.1.2.1 Send a copy of the ~~Petition~~ petition and supporting documentation to the carrier by certified mail, return receipt requested; and
- 4.1.2.2 Deliver to the Department a ~~Proof~~ proof of ~~Service~~ service confirming that a copy of the ~~Petition~~ petition was sent to the carrier by certified mail, return receipt requested.
- 4.1.3 The Department may refuse to accept any ~~Petition~~ petition that is not timely filed or does not otherwise meet the criteria for arbitration.
- 4.2 Carrier Response to Petition for Arbitration

- 4.2.1 Within 20 days of receipt of the Petition for Arbitration, the carrier shall deliver to the Department an original and one copy of a ~~Response~~ response to the Petition for Arbitration, to which it shall attach all supporting documents or other evidence.
- 4.2.2 At the time of delivering the ~~Response~~ response to the Department, the carrier shall also:
- 4.2.2.1 Send a copy of the ~~Response~~ response and supporting documentation to the provider or ~~his or her~~ the provider's authorized representative by first class U.S. mail, postage prepaid; and
- 4.2.2.2 Deliver to the Department a ~~Proof~~ proof of ~~Service~~ service confirming that a copy of the ~~Response~~ response was mailed to the health care provider or ~~his or her~~ the health care provider's authorized ~~representative.~~ representative; and
- 4.2.2.3 Deliver to the Department a \$75.00 filing fee, which shall be maintained by the Department in the Arbitration Fund.
- 4.2.3 The Department may return any non-conforming ~~Response~~ response to the carrier.
- 4.3 Appointment of Arbitrator
- 4.3.1 Upon receipt of a petition filed in proper form, the Department shall assign an ~~Arbitrator~~ arbitrator.
- 4.3.2 The ~~Arbitrator~~ arbitrator shall be of suitable background and experience to decide the matter in dispute and shall not be affiliated with any of the parties or with the patient whose care is at issue in the dispute.
- 4.4 Summary Disposition of Petition by the Arbitrator
- 4.4.1 An ~~Arbitrator~~ arbitrator may summarily dispose of a ~~Petition~~ petition if:
- 4.4.1.1 The carrier fails to timely deliver a ~~Response~~ response; or
- 4.4.1.2 The ~~Arbitrator~~ arbitrator determines that the ~~Petition~~ petition is meritless on its face or that the subject of the ~~Petition~~ petition is not appropriate for arbitration under this regulation.
- 4.4.2 If the carrier fails to timely respond to a Petition for Arbitration, the Department may, after verifying proper service and with written notice to the parties, assign the matter to the next scheduled ~~Arbitrator~~ arbitrator for summary disposition.
- 4.4.2.1 The ~~Arbitrator~~ arbitrator may determine the matter ~~in the nature of~~ by issuing a default judgment after establishing that the ~~Petition~~ petition is properly supported and was properly served on the carrier.
- 4.4.2.2 The ~~Arbitrator~~ arbitrator may allow the re-opening of the matter to prevent a manifest injustice. A carrier must make a request for re-opening no later than fifteen days after notice of the default judgment.
- 4.4.3 If the ~~Arbitrator~~ arbitrator determines that the subject of the ~~Petition~~ petition is not appropriate for arbitration under this regulation or is meritless on its face, the ~~Arbitrator~~ arbitrator may summarily dismiss the ~~Petition~~ petition and provide notice of such dismissal to the parties.
- 4.5 Arbitration Hearing
- 4.5.1 The ~~Arbitrator~~ arbitrator shall schedule the matter for a hearing in a timeframe that will allow the ~~Arbitrator~~ arbitrator to render a written decision within 45 days after the delivery to the Department of the Petition for Arbitration. The ~~Arbitrator~~ arbitrator shall give notice of the arbitration hearing date to the parties at least 10 days prior to the hearing. The parties are not required to appear and may rely on the papers delivered to the Department.
- 4.5.2 Testimony at the arbitration hearing is to be limited, to the maximum extent possible, to statements by each party in which they are afforded the opportunity to explain their view of the previously submitted evidence and to answer any questions posed by the ~~Arbitrator~~ arbitrator.
- 4.5.3 If the ~~Arbitrator~~ arbitrator allows any testimony in addition to that provided for in subsection 4.5.2 of this regulation, the ~~Arbitrator~~ arbitrator shall allow brief cross-examination or other response by the opposing party.
- 4.5.4 The ~~Delaware Uniform Rules of Evidence~~ "Delaware Uniform Rules of Evidence" will be used for general guidance but will not be strictly applied.

- 4.5.5 Because the testimony may involve evidence relating to personal health information that is confidential and protected by state or federal laws from public disclosure, the arbitration hearing shall be closed to the public.
- 4.5.6 The ~~Arbitrator~~ arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone, in or outside of the parties' presence, for information the ~~Arbitrator~~ arbitrator deems necessary to resolve the matter.
- 4.5.7 The ~~Arbitrator~~ arbitrator shall consider the matter based on the submissions of the parties and information otherwise obtained by the ~~Arbitrator~~ arbitrator in accordance with this regulation. The ~~Arbitrator~~ arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties that has not been provided to the opposing party with at least five days notice, except claims of a continuing nature that are set out in the filed papers.

#### 4.6 Arbitrator's Written Decision

- 4.6.1 The ~~Arbitrator~~ arbitrator shall render ~~his or her~~ the arbitrator's decision in writing and shall mail a copy of the decision to each of the parties and to the Department within 45 days of the filing of the ~~Petition~~ petition.
- 4.6.2 If the ~~Arbitrator~~ arbitrator determines that the carrier's final reimbursement decision provides reimbursement to the provider in an ~~amount that is not sufficient,~~ insufficient amount, the carrier shall reimburse the provider in the amount that the ~~Arbitrator's~~ arbitrator's decision so determines, within 45 days from the date of the ~~Arbitrator's~~ arbitrator's decision.

#### 4.7 Arbitration Costs

- 4.7.1 ~~The Arbitrator shall charge to the parties the cost of the arbitration, which the Arbitrator shall bill at the Arbitrator's actual time spent and direct expenses incurred to conduct the arbitration. Department shall pay the arbitrator \$100 for each arbitration, which shall be payable from the Arbitration Fund.~~
- 4.7.2 ~~The Arbitrator may allocate to each party a percentage of the Arbitrator's costs to conduct the arbitration.~~
- 4.7.3 The ~~Arbitrator~~ arbitrator may award to the health care provider the filing fee, if the health care provider is the prevailing party in the arbitration.

### 5.0 Carrier Recordkeeping and Reporting Requirements

- 5.1 A carrier shall maintain written or electronic records for five years after completion of each arbitration case, documentation of each ~~Petition~~ petition for Arbitration including, at a minimum, the following information:
- 5.1.1 The date the ~~Petition~~ petition was filed;
- 5.1.2 The name and identifying information of the health care provider on whose behalf the ~~Petition~~ petition was filed;
- 5.1.3 A general description of the reason for the ~~Petition~~ petition; and
- 5.1.4 The date and description of the arbitration decision or other disposition of the ~~Petition~~ petition.
- 5.2 A carrier shall file with its annual report to the Department the total number of ~~Petitions~~ petitions for Arbitration filed, with a breakdown showing:
- 5.2.1 The total number of final reimbursement decisions upheld through arbitration; and
- 5.2.2 The total number of final reimbursement decisions reversed through arbitration.

### 6.0 Non-Retaliation

A carrier shall not terminate or in any way penalize a provider with whom it has a contractual relationship and who exercises the right to file a ~~Petition~~ petition for Arbitration, solely on the basis of such filing.

### 7.0 Confidentiality of Health Information

Nothing in this ~~Regulation~~ regulation shall supersede any federal or state law or regulation governing the privacy of health information.

## 8.0 Computation of Time

- 8.1 In computing any period of time prescribed or allowed by this ~~Regulation~~ regulation, the day of the act or event after which the designated period of time begins to run shall not be included.
- 8.2 The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the Department is closed, in which event the period shall run until the end of the next day on which the Department is open.
- 8.3 When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation.
- 8.4 As used in this section, "legal holidays" means those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

## 9.0 Effective Date and Expiration Date

This ~~Regulation~~ regulation shall become effective upon adoption and shall expire on August 29, 2021, unless otherwise readopted, with or without amendments. The amendments to this regulation shall become effective ~~14~~ **days after publication of a final order of adoption July 11, 2020**.

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 **Del.C.** §6010(a) & (c))  
7 **DE Admin. Code** 1124

Secretary's Order No.: 2020-A-0017

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1124:  
Section 26 - Gasoline Dispensing Facility Stage I Vapor Recovery and  
Section 36 - Vapor Emission Control at Gasoline Dispensing Facilities**

Date of Issuance: June 11, 2020

Effective Date of the Amendment: July 11, 2020

### 1124 Control of Volatile Organic Compound Emissions

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

### Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments to 7 DE Admin. Code 1124: Section 26 - *Gasoline Dispensing Facility Stage I Vapor Recovery* and Section 36 - *Vapor Emission Control at Gasoline Dispensing Facilities* ("Amendments"). Specifically, the Department proposes Amendments to update requirements for gasoline dispensing facilities ("GDFs"): (1) to require all GDF's to decommission existing Stage II vapor recovery systems in light of the redundancy of on-board refueling vapor recovery canisters that exist in vehicles starting with model year 1998, (2) to remove the requirement that new GDFs must install Stage II systems, and (3) to update Stage I requirements to ensure all GDFs remain well controlled. The proposed amendments will also require regulated GDFs to monitor a vapor-tight status of gasoline storage tanks by performing annual pressure decay tests or by installing a continuous pressure monitoring ("CPM") system.

Pursuant to 7 *Del.C.* §6010(a) and (c), the Department is also proposing revisions to the Delaware State Implementation Plan ("SIP"), entitled *Decommissioning Stage II Vapor Recovery Systems and Requiring Stage I*

*Enhanced Vapor Recovery Systems at Gasoline Dispensing Facilities.* The objectives of the revised SIP are to analyze the regulatory impacts of the Amendments on Delaware's emissions of volatile organic compounds ("VOC") and to demonstrate that the Amendments meet the anti-backsliding requirements of the federal Clean Air Act ("CAA"), Sections 182(b)(2) and 110(l).

Since 1993, Delaware has required GDFs with a throughput of greater than 10,000 gallons of gasoline to install Stage I and Stage II vapor recovery systems ("VRS") to control gasoline vapor emissions. A Stage I VRS controls gasoline vapor emissions by collecting gasoline vapors displaced during the delivery of gasoline from a fuel tank truck to the GDF's underground storage tank ("UST") or aboveground storage tank ("AST") and returns the collected vapors into the delivery truck's fuel tank. A Stage II VRS collects gasoline vapors displaced during the transfer of gasoline from a UST or AST to the vehicle's gasoline tank and returns the collected vapors to the UST or AST.

To further control gasoline vapor emissions during the refueling process, the United States' automobile manufacturers were required to install on-board refueling vapor recovery ("ORVR") systems on new vehicles in 1998. An ORVR system is a vehicle's fuel vapor emission control system that captures VOCs during vehicle refueling. While Stage II and ORVR systems are both effective for controlling gasoline vapor emissions during the refueling process, these two systems are incompatible. When a Stage II-equipped GDF refuels an ORVR-equipped vehicle, the ORVR system will force the Stage II's vacuum pump to pull fresh air into the UST or AST, causing vapor pressure growth in the storage tanks, leading to additional vapor emissions from the USTs or ASTs, especially when those tanks are not vapor-tight. Due to the incompatibility of the two vapor recovery systems, the United States Environmental Protection Agency ("EPA") issued a final rule in May 2012 to waive Section 182(b)(3) Stage II requirements (77 FR 28772). This rule allowed states in the ozone transport region to remove Stage II vapor recovery requirements, provided the overall emissions do not increase without the use of a Stage II system.

Pursuant to the May 2012 EPA final rule, the Department revised 7 DE Admin. Code 1124: Section 36.0- *Vapor Emission Control at Gasoline Dispensing Facilities* ("2015 Stage II Regulation"). The 2015 Stage II Regulation allowed the option for a GDF to decommission their Stage II system or continue the use of a Stage II system for an unspecified trial period. The 2015 Stage II Regulation also removed the requirement for new GDF's to install a Stage II system upon construction. Non-Stage II GDFs were then required to maintain their gasoline UST or AST vapor-tight by installing one of the California Air Resources Board ("CARB") approved Stage I enhanced vapor recovery ("EVR") systems. To monitor the proper function of the Stage I EVR system, the non-Stage II GDFs were further required to (1) install a CPM system, or (2) perform an annual pressure decay test and follow other testing requirements as defined in the 2015 Stage II Regulation.

The Department's Division of Air Quality ("DAQ") assessed the impacts of the Stage II-ORVR incompatibility on Delaware's GDF refueling emissions using the methods provided in the 2012 EPA guidance document entitled "*Guidance on Removing Stage II Gasoline Vapor Program from State Implementation Plans and Assessing Comparable Measures.*" The Department's DAQ analyses calculated that in 2017, Delaware reached a point where ORVR systems provided a 30.7% greater emission reduction benefit than the Stage II systems provided. The incremental emissions benefit (the calculation of the state-wide emission control gain from a Stage II system as the ORVR technology phases in) decreased to -0.7% at the midpoint of 2017. It is estimated that by 2021, the Stage II-ORVR incompatibility will lead to an emission increase of 30.87 tons in the ozone season (May – September) or 71.13 tons per year. The Department finds that the removal of Stage II systems at Delaware GDFs is necessary to avoid excess emissions and to maintain Delaware's ozone air quality.

In 2019, the Department convened a review committee consisting of representatives from the regulated community (i.e., GDFs' owners or operators), testing companies, regional organizations of the gasoline distribution industry, environmental organizations, and regulatory agencies. The review committee met 4 times from May to August 2019 to discuss solutions to the incompatibility of Stage II and ORVR systems, as well as the impacts to the regulated community. At the conclusion of said meetings, the review concluded with the proposed Amendments herein.

The purpose of the Amendments are: (1) to finalize the deadline for decommissioning all Stage II systems in Delaware, (2) to implement necessary requirements for GDFs to ensure that gasoline vapor emissions are well-controlled at both existing and new GDFs, and (3) to provide flexibilities for adopting new and revised requirements for GDFs. To establish an effective connection between Section 26 and Section 36 of the Regulations, the Department also proposes revisions to the Stage I regulations *Gasoline Dispensing Facility Stage I Vapor Recovery* so that the GDFs in Delaware will be subject to the relevant Stage I EVR system requirements and testing of Section 36.

Pursuant to CAA Section 184(b)(2) and Section 110(l), the Department also proposes revisions to Delaware's SIP to demonstrate that the Amendments will result in a decrease of emissions, thus satisfying the CAA anti-backsliding requirements. As Delaware is in the ozone transport region, the Department proposes a plan that shall not increase VOC emissions and shall not contribute to violations of the 2015 Ozone National Ambient Air Quality Standards established by the EPA. The Delaware SIP analyses projects that the decommissioning of Stage II systems by December 31, 2021, and installing Stage I EVR systems by December 31, 2025, will: (1) avoid incompatibility VOC emission of 71 tons in 2021, (2) provide 58 tons of VOC emission reduction after 2025, and (3) total 129 tons of long term VOC emission reductions for attaining and maintain the ozone air quality.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del.C.* §6010(a) and (c).

The Department published its initial proposed regulation Amendments in the December 1, 2019 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on January 8, 2020. There were six (6) members of the public in attendance at the public hearing, four (4) of which provided verbal comment. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on January 23, 2020, with additional written comments received by the Department.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the close of the Record, and at the request of presiding Hearing Officer Theresa Newman, the Department's Division of Air Quality staff prepared a Technical Response Memorandum ("TRM"). The TRM responds to the comments received by the Department in this matter and provides a thorough discussion with regard to concerns of the Amendments.

The Department's experts in the Division of Air Quality concluded that by decommissioning Stage II systems and implementing CARB approved Stage I EVR systems, VOC gasoline vapors will be reduced, and will ultimately help decrease adverse health effects to at-risk populations from ground level ozone. Based on a 98% control efficiency of an approved Stage I EVR system, the Department expects 9 tons of VOC emission reductions during the ozone season and a 21 tons of VOC emission reductions annually by 2021. Furthermore, by 2026 the Department expects more than 58 tons of VOC emission reductions on an annual basis. The Department believes that by requiring an approved CARB complete system, there will be cost savings for GDFs due to fewer leaks and less shutdown time for a station.

The Department also believes that by adopting CARB Executive Orders by reference in Section 36 of this Amendment, it will alleviate additional certifications and testing procedures that would be an unnecessary cost to the gasoline industry within Delaware. Moreover, the testing and certification procedures would be redundant to the CARB certification process that is already established. Pursuant to the updates of the CARB Executive Orders, the Department will modify relevant provisions as needed.

Hearing Officer Theresa Newman prepared her report dated May 7, 2020 ("Report"), which expressly incorporated the Department's proposed Amendments into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

## Reasons and Conclusions

Based on the record developed by the Department's experts in the Division of Air Quality, and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 DE Admin. Code 1124: Section 26 - *Gasoline Dispensing Facility Stage I Vapor Recovery* and Section 36 - *Vapor Emission Control at Gasoline Dispensing Facilities*, are well-supported. I further find that the Department's Air Quality experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings

in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on January 8, 2020, and during the 15 days subsequent to the hearing (through January 23, 2020), before making any final decision;

4. Promulgation of the proposed amendments to 7 DE Admin. Code 1124: Section 26 - *Gasoline Dispensing Facility Stage I Vapor Recovery* and Section 36 - *Vapor Emission Control at Gasoline Dispensing Facilities*, will enable the Department to update requirements: (1) to require all GDF's to decommission existing Stage II vapor recovery systems in light of the redundancy of on-board refueling vapor recovery canisters that exist in vehicles starting with model year 1998, (2) to remove the requirement that new GDFs must install Stage II systems, and (3) to update Stage I requirements to ensure all GDFs remain well controlled;

5. The Department has reviewed the proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* §104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;

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

7. The Department's proposed regulatory Amendments, as initially published in the December 1, 2019 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving the proposed Amendments as final regulatory to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

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

**1124 Control of Volatile Organic Compound Emissions**

## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

### 2930 COUNCIL ON REAL ESTATE APPRAISERS

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))  
24 **DE Admin. Code** 2930

### ORDER

### 2930 Council on Real Estate Appraisers

On April 1, 2020 the Delaware Board of Real Estate Appraisers published proposed changes to its regulations in the Delaware Register of Regulations, Volume 23, Issue 10. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the Register of Regulations and two Delaware newspapers, a public hearing was held on April 21, 2020 at a regularly scheduled meeting of the Board of Real Estate Appraisers to receive verbal comments regarding the Board's proposed amendments to its regulations.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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



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

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

## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 24 Del. C. § 4006 (a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having reviewed no public comments, the Board finds no reason not to amend the regulations as proposed.

## DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 24 Del.C. § 4006 (a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware Register of Regulations on April 1, 2020. The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations, pursuant to 29 Del. C. § 10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 19th day of May, 2020.

### DELAWARE BOARD OF REAL ESTATE APPRAISERS

/s/ Earl Timmons

/s/ Marilyn Berman

/s/ Christopher Schneider

/s/ Kevin Gillis

/s/ James Barczewski

/s/ Scott Brown

/s/ Patricia Ennis

/s/ Kimberly Holiday-Hopkins

**\*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2020 issue of the *Register* at page 846 (23 DE Reg. 846). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2930 Council on Real Estate Appraisers**

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### DIVISION OF PROFESSIONAL REGULATION

### 3100 BOARD OF FUNERAL SERVICES

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

## ORDER

### 3100 Board of Funeral Services

On March 1, 2020 the Delaware Board of Funeral Services published proposed changes to its regulations in the Delaware Register of Regulations, Volume 23, Issue 9. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the Register of Regulations and two Delaware newspapers, a public hearing was held on March 24, 2020 at a regularly scheduled meeting of the Board of Funeral Services to receive verbal comments regarding the Board's proposed amendments to its regulations.

# FINAL REGULATIONS

## SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

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

## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 24 Del. C. § 3105 (a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having reviewed no public comments, the Board finds no reason not to amend the regulations as proposed.

## DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 Del.C. § 3105 (a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware Register of Regulations on March 1, 2020. The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations, pursuant to 29 Del. C. § 10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 26th day of May, 2020.

### DELAWARE BOARD OF FUNERAL SERVICES

/s/ Nicholas Piccollelli, President

/s/ S. Keith Parsell

/s/ Harvey Smith, Jr.

Jane Hovington (absent)

/s/ Vance Daniels, Sr.

Weston E. Nellius (absent)

William Torbert (absent)

**\*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2020 issue of the *Register* at page 742 (23 DE Reg. 742). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3100 Board of Funeral Services**

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

The State Board of Education will hold its monthly meeting on July 16, 2020 at a location to be determined.

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**DEPARTMENT OF INSURANCE**  
**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE****903 Prompt Payment of Settled Claims**

In the March 1, 2020 edition of the *Register of Regulations* at 23 **DE Reg.** 730 and again in the April 1, 2020 edition of the *Register of Regulations* at 23 **DE Reg.** 831, the Commissioner of the Delaware Department of Insurance (Commissioner) published a notice of intent to amend Regulation 903 Prompt Payment of Settled Claims to:

- Allow insurance carriers to pay settled insurance claims other than claims that are subject to the Workers Compensation Statute at 19 **Del.C.** §2344 by electronic means; and
- Make grammatical and formatting edits throughout the regulation.

The authority for the proposed amendments is 18 **Del.C.** §§311, 520, 2304(16), and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

The Department solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 **Del.C.** §10118(a) and for an additional 30 days at the discretion of the Department. The Department did not hold a public hearing on the proposal.

The Department received comments from nine commenters, which are on file with the Department. Two commenters endorsed the Department's proposed amendments wholesale. The other seven commenters offered comments that suggested substantive changes that require further public comment.

The Department does not plan to hold a public hearing on the re-proposed amendments to Regulation 903. The amendments as re-proposed may be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 31<sup>st</sup> day, July, 2020. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Docket 4233-2019  
1351 West North St., Ste. 101  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE****2600 Examining Board of Physical Therapists and Athletic Trainers**

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

Revisions to Section 14.0, pertaining to telehealth, are designed to increase patient access to physical therapy and athletic training services. Subsection 14.2.4.4 has been stricken to permit all evaluations, including initial

evaluations, re-evaluations and scheduled discharges, to be performed via telehealth. Subsection 14.2.4.5 has been stricken to permit supervisory visits to be performed via telehealth. Finally, amendments to subsection 1.2 provide that supervising physical therapists may conduct supervision either in person or by telehealth.

A public hearing will be held on July 28, 2020 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at [danielle.cross@delaware.gov](mailto:danielle.cross@delaware.gov).

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be **August 12, 2020** which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

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**PUBLIC SERVICE COMMISSION**  
**PUBLIC NOTICE**

**8002 Rules to Establish an Excavation Damage Prevention Program**

TO: ALL EXCAVATORS, OPERATORS OF UNDERGROUND UTILITY LINES AND OTHER INTERESTED PERSONS

The Delaware Public Service Commission ("Commission") proposes to issue regulations governing its enforcement of the *Underground Utility Damage Prevention and Safety Act*, which is codified at 26 Del. C. §§ 801-813.

You can review the proposed regulations in the July 1, 2020 *Delaware Register of Regulations*. You can also review the Order and the proposed regulations in the Commission's electronic filing system DelaFile at <http://delafire.delaware.gov/> and for docket number input 19-0713. If you wish to obtain written copies of the Order and proposed regulations, please contact the Commission at (302) 736-7500. Copies in excess of the first 20 pages are \$0.10 per page. Payment is expected at the time of copying (if you wish the copies to be mailed) or at the time the copies are retrieve (if you wish to retrieve them in person).

Pursuant to 29 Del. C. § 10118(a), written comments on the proposed regulations will be accepted until **Monday, August 3, 2020**. They can be filed electronically in DelaFile at <http://delafire.delaware.gov/> by completing the Public Comment form located under Public Links. Written comments can also be mailed to Samantha Hemphill, Public Service Commission, 861 Silver Lake Boulevard, Suite 100, Dover, DE 19904, or emailed to her at [samantha.hemphill@delaware.gov](mailto:samantha.hemphill@delaware.gov) with the subject line "Docket No. 19-0713."

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