

---

---

# Delaware Register of Regulations

---

---

Issue Date: June 1, 2009

Volume 12 - Issue 12, Pages 1453 - 1532

---

---

## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Governor:  
Executive Orders

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 May 15, 2009.

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

## CITATION TO THE DELAWARE REGISTER

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

12 **DE Reg.** 761-775 (12/01/08)

Refers to Volume 12, pages 761-775 of the *Delaware Register* issued on December 1, 2008.

---

## SUBSCRIPTION INFORMATION

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

---

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to § 1134 of this title.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

---

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

1455

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

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

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

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

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

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

---

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

| ISSUE DATE  | CLOSING DATE | CLOSING TIME |
|-------------|--------------|--------------|
| July 1      | June 15      | 4:30 p.m.    |
| 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.    |

---

## DIVISION OF RESEARCH STAFF

**Deborah A. Porter**, In terim Supervisor; **Judi Abbott**, Administrative Specialist I; **Jeffrey W. Hague**, Registrar of Regulations; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Administrative Specialist I; **Debbie Puzzo**, Research Analyst; **Don Sellers**, Printer; **Robert Lupo**, Printer; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Rochelle Yerkes**, Administrative Specialist II.

# TABLE OF CONTENTS

|                        |      |
|------------------------|------|
| Cumulative Tables..... | 1458 |
|------------------------|------|

---

## PROPOSED

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

|  |      |
|--|------|
| 103 Accountability for Schools, Districts and the State.....                         | 1467 |
| 501 State Content Standards.....   | 1476 |
| 502 Alignment of Local School District Curricula to the State Content Standards..... | 1477 |

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Medicaid and Medical Assistance

|  |      |
|--|------|
| Title XIX Medicaid State Plan Reimbursement Methodology for Medicaid Services..... | 1481 |
|--|------|

#### Division of Social Services

|   |      |
|---|------|
| <b>DSSM</b> 11003.7.8 Special Needs Children..... | 1502 |
|---|------|

### DEPARTMENT OF INSURANCE

|   |      |
|---|------|
| 1501 Medicare Supplement Insurance Minimum Standards..... | 1506 |
|---|------|

### DEPARTMENT OF STATE

#### Division of Professional Regulation

|                                     |      |
|-------------------------------------|------|
| 1700 Board of Medical Practice..... | 1506 |
|-------------------------------------|------|

#### Public Service Commission

|   |      |
|---|------|
| Regulation Docket No. 61: Adoption of Rules to Establish an Intrastate Gas Pipeline<br>Safety Compliance Program..... | 1508 |
|---|------|

---

## FINAL

### DEPARTMENT OF AGRICULTURE

#### Harness Racing Commission

|  |      |
|--|------|
| 501 Rules and Regulations, Section 10.0 Due Process and Disciplinary Action..... | 1513 |
|--|------|

#### Thoroughbred Racing Commission

|  |      |
|--|------|
| 1001 Thoroughbred Racing, Section 15.0 Medication; Testing Procedures..... | 1514 |
|--|------|

### DEPARTMENT OF LABOR

#### Division of Industrial Affairs

##### Office of Workers' Compensation

|  |      |
|--|------|
| 1341 Workers' Compensation Regulation..... | 1515 |
| 1342 Health Care Practice Guidelines.....  | 1515 |

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Fish and Wildlife

|   |      |
|---|------|
| 3540 Sharks and 3581 Spiny Dogfish, Closure of Fishery..... | 1517 |
|---|------|

### DEPARTMENT OF STATE

#### Division of Professional Regulation

|  |      |
|--|------|
| 3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers..... | 1525 |
|--|------|

---

# TABLE OF CONTENTS

---

1457

## GOVERNOR

### Executive Orders:

|  |      |
|--|------|
| Number 6; Creating a Complete Streets Policy.....  | 1527 |
| Number 7; Reducing Recidivism and Creating the Individual Assessment, Discharge and Planning Team (I-ADAPT)..... | 1528 |

---

## CALENDAR OF EVENTS/HEARING NOTICES

|   |      |
|---|------|
| <b>State Board of Education</b> , Notice of Monthly Meeting.....                      | 1530 |
| <b>Dept. of Health and Social Services</b>  |      |
| <b>Div. of Medicaid and Medical Assistance</b> , Notice of Public Comment Period..... | 1530 |
| <b>Div. of Social Services</b> , Notices of Public Comment Periods.....               | 1530 |
| <b>Dept. of Insurance</b> , Notice of Public Comment Period.....                      | 1531 |
| <b>Dept. of State, Div. of Professional Regulation</b>                                |      |
| Board of Medical Practice, Notice of Public Hearing.....                              | 1531 |
| <b>Public Service Commission</b> , Notice of Public Hearing.....                      | 1532 |

---

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

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

**DELAWARE HEALTH CARE COMMISSION**

|   |                        |
|---|------------------------|
| 102 Delaware Health Information Network Regulations on Participation..... | 12 DE Reg. 540 (Prop.) |
|   | 12 DE Reg. 979 (Final) |

**DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY**

|   |                       |
|---|-----------------------|
| 201 Delaware Manufactured Home Relocation Trust Fund Regulations..... | 12 DE Reg. 59 (Final) |
|---|-----------------------|

**DELAWARE RIVER BASIN COMMISSION**

|  |                        |
|--|------------------------|
| Water Code and Comprehensive Plan to Implement a Revised Water Audit Approach<br>to Identify and Control Water Loss.....               | 12 DE Reg. 275 (Prop.) |
| Water Quality Regulations, Water Code and Comprehensive Plan to Classify the<br>Lower Delaware River as Special Protection Waters..... | 12 DE Reg. 310 (Final) |

**DELAWARE SOLID WASTE AUTHORITY**

|  |                         |
|--|-------------------------|
| 501 Regulations of the Delaware Solid Waste Authority..... | 12 DE Reg. 375 (Prop.)  |
|  | 12 DE Reg. 1192 (Final) |

**DELAWARE STATE FIRE PREVENTION COMMISSION**

|  |                        |
|--|------------------------|
| Delaware State Fire Prevention Regulations, Part IX, Fire Service Standards.....   | 12 DE Reg. 6 (Prop.)   |
| Part VIII, Fire Department and Ambulance Company Administrative Standards<br>Chapter 1 .....                                     | 12 DE Reg. 278 (Prop.) |
|  | 12 DE Reg. 926 (Final) |
| Part IX, Fire Service Standards, Chapter 4, Minimum Requirements of the<br>Establishment of Fire Companies and Sub Stations..... | 12 DE Reg. 436 (Final) |

**DELAWARE VIOLENT CRIMES COMPENSATION BOARD**

|  |                         |
|--|-------------------------|
| 301 Violent Crimes Compensation Board Rules and Regulations..... | 12 DE Reg. 546 (Prop.)  |
|  | 12 DE Reg. 1150(Prop.)  |
|  | 12 DE Reg. 1193 (Final) |

**DEPARTMENT OF AGRICULTURE****Division of Animal Health and Food Products Inspection**

|                                    |                        |
|------------------------------------|------------------------|
| 304 Exotic Animal Regulations..... | 12 DE Reg. 388 (Prop.) |
|                                    | 12 DE Reg. 1017(Prop.) |

**Harness Racing Commission**

|   |                         |
|---|-------------------------|
| 501 Harness Racing Rules and Regulations, 6.0 Type of Races<br>and 8.0 Veterinary Practices, Equine Health Medication.....        | 12 DE Reg. 95 (Prop.)   |
|   | 12 DE Reg. 324 (Final)  |
|   | 12 DE Reg. 666 (Final)  |
| 501 Harness Racing Rules and Regulations, Section 7.0 Rules of the Race;<br>Section 10.0 Due Process and Disciplinary Action..... | 12 DE Reg. 554(Prop.)   |
|   | 12 DE Reg. 1074 (Final) |
|   | 12 DE Reg. 1256(Prop.)  |
| 501 Harness Racing Rules and Regulations, 9.0 Pari-Mutuel Wagering.....   | 12 DE Reg. 864(Prop.)   |
|   | 12 DE Reg. 1305(Final)  |

502 Delaware Standardbred Breeders' Fund Regulations, Sections  
4.0, 9.0 and 14.0..... 12 **DE Reg.** 1358(Prop.)

**Thoroughbred Racing Commission**

1001 Thoroughbred Racing, Section 8.0 Jockeys and Apprentice Jockeys  
Section 19.0 Hearings, Reviews and Appeals..... 12 **DE Reg.** 1403 (Final)

1001 Thoroughbred Racing Rules and Regulations, 11.0 Entries, etc..... 12 **DE Reg.** 394(Prop.)  
12 **DE Reg.** 667 (Final)

1001 Thoroughbred Racing Rules and Regulations, 13.0 Claiming Races..... 12 **DE Reg.** 201 (Final)

1001 Thoroughbred Racing, Section 15.0 Medication; Testing Procedures..... 12 **DE Reg.** 1360(Prop.)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

103 Accountability for Schools, Districts and the State..... 12 **DE Reg.** 202 (Final)

110 Teachers and Specialists Appraisal Process (Repeal)..... 12 **DE Reg.** 204 (Rep.)

112 Addendum to Teachers and Specialists Appraisal Process (Repeal)..... 12 **DE Reg.** 205 (Rep.)

115 School Level Administrator Appraisal Process (Repeal) ..... 12 **DE Reg.** 207 (Rep.)

220 Diversity..... 12 **DE Reg.** 894 (Prop.)  
12 **DE Reg.** 1203 (Final)

230 Promotion..... 12 **DE Reg.** 556 (Prop.)  
12 **DE Reg.** 932 (Final)

240 Recruiting and Training of Professional Educators for Critical Curricular  
Areas..... 12 **DE Reg.** 895 (Prop.)  
12 **DE Reg.** 1205 (Final)

245 Michael C. Ferguson Achievement Awards Scholarship..... 12 **DE Reg.** 398 (Prop.)  
12 **DE Reg.** 780 (Final)

255 Definitions of Public School, Private School and Nonpublic School..... 12 **DE Reg.** 108 (Prop.)  
12 **DE Reg.** 668 (Final)

258 Federal Programs General Complaint Procedures..... 12 **DE Reg.** 208 (Final)

275 Charter Schools ..... 12 **DE Reg.** 211 (Final)

410 Satellite School Agreements..... 12 **DE Reg.** 61 (Final)

502 Alignment of Local School District Curricula to the State Content Standards 12 **DE Reg.** 216 (Final)

505 High School Graduation Requirements and Diplomas..... 12 **DE Reg.** 401 (Prop.)  
12 **DE Reg.** 557 (Prop.)  
12 **DE Reg.** 934 (Final)

506 Policies for Dual Enrollment and Awarding Dual Credit..... 12 **DE Reg.** 110 (Prop.)  
12 **DE Reg.** 437 (Final)

525 Requirements for Career Technical Education Programs..... 12 **DE Reg.** 113 (Prop.)  
12 **DE Reg.** 439 (Final)  
12 **DE Reg.** 562 (Prop.)  
12 **DE Reg.** 936 (Final)

540 Driver Education..... 12 **DE Reg.** 281 (Prop.)  
12 **DE Reg.** 670 (Final)

603 Compliance with the Gun Free Schools Act..... 12 **DE Reg.** 9 (Prop.)  
12 **DE Reg.** 325 (Final)

605 Student Rights and Responsibilities ..... 12 **DE Reg.** 219 (Final)

608 Unsafe School Choice Option for Students in Persistently Dangerous  
Schools and for Students who have been Victims of a Violent Felony..... 12 **DE Reg.** 62 (Final)

611 Consortium Discipline Alternative Programs for Treatment of Severe  
Discipline Problems..... 12 **DE Reg.** 707 (Prop.)  
12 **DE Reg.** 1075 (Final)

612 Possession, Use or Distribution of Drugs and Alcohol..... 12 **DE Reg.** 406 (Prop.)  
12 **DE Reg.** 781 (Final)

615 School Attendance..... 12 **DE Reg.** 221 (Final)

618 School Safety Audit..... 12 **DE Reg.** 711 (Prop.)

# CUMULATIVE TABLES

|   |                         |
|---|-------------------------|
|   | 12 DE Reg. 1080 (Final) |
| 620 School Crisis Response Plans, Repeal of.....  | 12 DE Reg. 712 (Prop.)  |
|   | 12 DE Reg. 1081 (Final) |
| 621 District and School Emergency Preparedness Policy.....  | 12 DE Reg. 714 (Prop.)  |
|   | 12 DE Reg. 1082 (Final) |
| 716 Maintenance of Local School District and Charter School Personnel Records                     | 12 DE Reg. 116 (Prop.)  |
|   | 12 DE Reg. 443 (Final)  |
| 737 Tuition Billing for Special Schools and Programs.....   | 12 DE Reg. 566 (Prop.)  |
|   | 12 DE Reg. 940 (Final)  |
| 745 Criminal Background Check for Public School Related Employment.....                           | 12 DE Reg. 11 (Prop.)   |
|   | 12 DE Reg. 327 (Final)  |
| 746 Criminal Background Check for Student Teaching .....  | 12 DE Reg. 17 (Prop.)   |
|   | 12 DE Reg. 329 (Final)  |
|   | 12 DE Reg. 1025(Prop.)  |
|   | 12 DE Reg. 1306(Final)  |
| 881 Releasing Students to Persons Other Than Their Parent, Guardian or<br>Relative Caregiver..... | 12 DE Reg. 222 (Final)  |
| 901 Education of Homeless Children and Youth.....   | 12 DE Reg. 119 (Prop.)  |
|   | 12 DE Reg. 444 (Final)  |
| 915 James H. Groves High School .....   | 12 DE Reg. 63 (Final)   |
| 925 Children with Disabilities Subpart D.....   | 12 DE Reg. 569 (Prop.)  |
|   | 12 DE Reg. 1084 (Final) |
| 1105 School Transportation.....   | 12 DE Reg. 716 (Prop.)  |
|   | 12 DE Reg. 1086 (Final) |
| <b>Professional Standards Board</b>   |                         |
| 1502 Professional Growth Salary Increments.....   | 12 DE Reg. 572 (Prop.)  |
|   | 12 DE Reg. 942 (Final)  |
| 1506 Emergency Certificate.....   | 12 DE Reg. 1027(Prop.)  |
|   | 12 DE Reg. 1412 (Final) |
| 1510 Issuance of Initial License.....   | 12 DE Reg. 577 (Prop.)  |
|   | 12 DE Reg. 945 (Final)  |
| 1513 Denial of Licenses.....  | 12 DE Reg. 1031(Prop.)  |
|   | 12 DE Reg. 1307(Final)  |
| 1514 Revocation of Licenses and Certificates.....   | 12 DE Reg. 1035(Prop.)  |
|   | 12 DE Reg. 1307(Final)  |
| 1531 Middle Level English Language Arts Teacher.....  | 12 DE Reg. 332 (Final)  |
| 1532 Middle Level Mathematics Teacher.....  | 12 DE Reg. 333 (Final)  |
| 1533 Middle Level Science Teacher.....  | 12 DE Reg. 335 (Final)  |
| 1534 Middle Level Social Studies Teacher.....   | 12 DE Reg. 336 (Final)  |
| 1552 Career and Technical Specialist.....   | 12 DE Reg. 338 (Final)  |
| 1559 Trade and Industrial Education Teacher.....  | 12 DE Reg. 584 (Prop.)  |
|   | 12 DE Reg. 952 (Final)  |
| 1561 Bilingual Teacher.....   | 12 DE Reg. 339 (Final)  |
| 1562 English to Speakers of Other Languages (ESOL) Teacher.....                                   | 12 DE Reg. 341 (Final)  |
| 1572 Teacher of Students Who Are Gifted and Talented.....   | 12 DE Reg. 409 (Prop.)  |
|   | 12 DE Reg. 785 (Final)  |
| 1580 School Library Media Specialist.....   | 12 DE Reg. 901 (Prop.)  |
|   | 12 DE Reg. 1206 (Final) |
| 1597 Delaware Professional Teaching Standards.....  | 12 DE Reg. 904 (Prop.)  |
|   | 12 DE Reg.1208 (Final)  |

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### Division of Developmental Disabilities Services

|                                |                        |
|--------------------------------|------------------------|
| 2100 Eligibility Criteria..... | 12 DE Reg. 738 (Prop.) |
|--------------------------------|------------------------|

---

# CUMULATIVE TABLES

1461

---

## Division of Long Term Care Residents Protection

|  |                        |
|--|------------------------|
| 3201 Skilled and Intermediate Care Nursing Facilities..... | 12 DE Reg. 592 (Prop.) |
|  | 12 DE Reg. 960 (Final) |

## Division of Medicaid and Medical Assistance

|   |                         |
|---|-------------------------|
| <b>DSSM:</b> 14710 Income.....  | 12 DE Reg. 1153(Prop.)  |
|   | 12 DE Reg. 1416 (Final) |
| 14900 Enrollment in Managed Care.....   | 12 DE Reg. 446 (Final)  |
| 15120.2 Financial Eligibility.....  | 12 DE Reg. 1044(Prop.)  |
| 15120.2 Financial Eligibility.....  | 12 DE Reg. 1320(Final)  |
| 16230.1.2 Self-Employment Income.....   | 12 DE Reg. 1044(Prop.)  |
|   | 12 DE Reg. 1320(Final)  |
| 16500.1 Eligibility Requirements.....   | 12 DE Reg. 1044(Prop.)  |
|   | 12 DE Reg. 1322(Final)  |
| 17800 Medical Assistance During Transition to Medicare Program.....                   | 12 DE Reg. 270 (Emer)   |
|   | 12 DE Reg. 284 (Prop.)  |
|   | 12 DE Reg. 788 (Final)  |
| 17900 Medicaid for Workers with Disabilities.....                                     | 12 DE Reg. 446 (Final)  |
| 20320 Ownership of Real Property by Institutionalized Individuals.....                | 12 DE Reg. 1324(Final)  |
| 20700.6 - 20700.6.7, Attendant Services Waiver, Repeal of.....                        | 12 DE Reg. 740 (Prop.)  |
|   | 12 DE Reg. 1088 (Final) |
| 20800 Long Term Care - Acute Care Program (SSI).....                                  | 12 DE Reg. 123 (Prop.)  |
| 20810 Treatment of Couples in Medical Institutions.....                               | 12 DE Reg. 224 (Final)  |
| Pharmaceutical Services Program - Tamper-Resistant Prescription Pads.....             | 12 DE Reg. 20 (Prop.)   |
|   | 12 DE Reg. 342 (Final)  |
| 1915(c) Home and Community-Based Services Waiver for the Elderly<br>and Disabled..... | 12 DE Reg. 1362(Prop.)  |

## Title XIX Medicaid State Plan

|   |                         |
|---|-------------------------|
| Attachment 2.2-A, Page 18.....                      | 12 DE Reg. 284 (Prop.)  |
|   | 12 DE Reg. 788 (Final)  |
| Attachment 2.2-A, Page 23C.....                     | 12 DE Reg. 446 (Final)  |
| Attachment 2.6-A, Pages 12c through 12o.....        | 12 DE Reg. 446 (Final)  |
| Attachment 2.6-A, Supplement 6.....                 | 12 DE Reg. 284 (Prop.)  |
|   | 12 DE Reg. 788 (Final)  |
| Attachment 2.6-A, Supplement 8A, Page 2.....        | 12 DE Reg. 1153(Prop.)  |
|   | 12 DE Reg. 1416 (Final) |
| Attachment 2.6-A, Supplement 12, Page 2a            | 12 DE Reg. 1153(Prop.)  |
|   | 12 DE Reg. 1416 (Final) |
| Delaware Healthy Children Program (DHCP).....       | 12 DE Reg. 1153(Prop.)  |
|   | 12 DE Reg. 1416 (Final) |
| Medicaid Integrity Program, Page 79y (4.43).....    | 12 DE Reg. 226 (Final)  |
| School-Based Health Services, Attachment 3.1-A..... | 12 DE Reg. 228 (Final)  |
| Third Party Data Exchange.....                      | 12 DE Reg. 65 (Final)   |

## Division of Public Health

|  |                         |
|--|-------------------------|
| 4202 Control of Communicable and Other Disease Conditions, Section 7.6,<br>Hospital Acquired Infections..... | 12 DE Reg. 913 (Prop.)  |
|  | 12 DE Reg. 1418 (Final) |
| 4403 Free Standing Birthing Centers.....   | 12 DE Reg. 235 (Final)  |
| 4406 Home Health Agencies, Aide Only (Licensure).....  | 12 DE Reg. 412 (Prop.)  |
|  | 12 DE Reg. 1209(Final)  |
| 4410 Skilled Home Health Agencies Licensure.....   | 12 DE Reg. 412 (Prop.)  |
|  | 12 DE Reg. 1217(Final)  |

# CUMULATIVE TABLES

## Division of Social Services

|  |                         |
|--|-------------------------|
| <b>DSSM</b> 1000 Responsibility for the Administration of Delaware's Assistance Programs | 12 DE Reg. 126 (Prop.)  |
|  | 12 DE Reg. 453 (Final)  |
| 1003 Confidentiality.....  | 12 DE Reg. 126 (Prop.)  |
|  | 12 DE Reg. 453 (Final)  |
| 1003.4 Court Appointed Special Advocate.....   | 12 DE Reg. 743 (Prop.)  |
|  | 12 DE Reg. 1095 (Final) |
| 3006 TANF Employment and Training Program.....   | 12 DE Reg. 288 (Prop.)  |
|  | 12 DE Reg. 793 (Final)  |
| 5304.2 Nursing Facility Discharge Notice Hearings.....                                   | 12 DE Reg. 242 (Final)  |
| 5304.5 Jurisdiction for Hearings over Medicaid Program Services.....                     | 12 DE Reg. 242 (Final)  |
| 9007.1 Citizenship and Alien Status.....   | 12 DE Reg. 128 (Prop.)  |
|  | 12 DE Reg. 455 (Final)  |
| 9008 Residency.....  | 12 DE Reg. 1048(Prop.)  |
|  | 12 DE Reg. 1326(Final)  |
| 9029 Household Cooperation.....  | 12 DE Reg. 918 (Prop.)  |
| 9029 Household Cooperation.....  | 12 DE Reg. 1225 (Final) |
| 9044.1 Newly-Certified Households.....   | 12 DE Reg. 22 (Prop.)   |
|  | 12 DE Reg. 344 (Final)  |
| 9046 Definition of Resources.....  | 12 DE Reg. 744 (Prop.)  |
|  | 12 DE Reg. 1090 (Final) |
| 9049 Resources Excluded for Food Stamp Purposes.....                                     | 12 DE Reg. 744 (Prop.)  |
|  | 12 DE Reg. 1090 (Final) |
| 9060 Income Deductions.....  | 12 DE Reg. 135 (Prop.)  |
|  | 12 DE Reg. 462 (Final)  |
| 9064.4 Anticipating Expenses.....  | 12 DE Reg. 1051(Prop.)  |
|  | 12 DE Reg. 1329(Final)  |
| 9065 Calculating Net Income and Benefit Levels.....                                      | 12 DE Reg. 1051(Prop.)  |
|  | 12 DE Reg. 1329(Final)  |
| 9068.1 Certification Period Length.....  | 12 DE Reg. 135 (Prop.)  |
|  | 12 DE Reg. 462 (Final)  |
| 9085 Reporting Changes.....  | 12 DE Reg. 135 (Prop.)  |
|  | 12 DE Reg. 462 (Final)  |
| 9086 Mass Changes.....   | 12 DE Reg. 1051(Prop.)  |
|  | 12 DE Reg. 1329(Final)  |
| 9093 Electronic Benefit Transfer (EBT).....  | 12 DE Reg. 751 (Prop.)  |
|  | 12 DE Reg. 1092 (Final) |
| 11003.7.8 Special Needs Children.....  | 12 DE Reg. 1363(Prop.)  |
| 11006.4.1 Absent Day Policy.....   | 12 DE Reg. 1366(Prop.)  |

## Division of Substance Abuse and Mental Health

|  |                        |
|--|------------------------|
| 6001 Substance Abuse Facility Licensing Standards..... | 12 DE Reg. 464 (Final) |
|--|------------------------|

## DEPARTMENT OF INSURANCE

|  |                        |
|--|------------------------|
| 301 Audited Financial Reports [Formerly Regulation 50].....    | 12 DE Reg. 140 (Prop.) |
|  | 12 DE Reg. 480 (Final) |
| 305 Actuarial Opinion and Memorandum Regulation.....           | 12 DE Reg. 1367(Prop.) |
| 606 Proof of Automobile Insurance.....                         | 12 DE Reg. 23 (Prop.)  |
|  | 12 DE Reg. 346 (Final) |
| 803 Workers' Compensation Data Collection.....                 | 12 DE Reg. 610 (Prop.) |
|  | 12 DE Reg. 973 (Final) |
| 804 Workers' Compensation Provision of Services Contracts..... | 12 DE Reg. 920 (Prop.) |
| 1212 Valuation of Life Insurance Policies.....                 | 12 DE Reg. 1135(Emer.) |
|  | 12 DE Reg. 1157(Prop.) |

|   |   |
|---|---|
| 1215 Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve |   |
| Liabilities.....  | 12 <b>DE Reg.</b> 1146(Emer.)<br>12 <b>DE Reg.</b> 1167 (Prop.) |

|  |  |
|--|--|
| 1301 Internal Review, Arbitration and Independent Utilization Review of Health |  |
| Insurance Claims.....  | 12 <b>DE Reg.</b> 611 (Prop.)<br>12 <b>DE Reg.</b> 974 (Final) |

**DEPARTMENT OF LABOR**

**Division of Industrial Affairs**

|   |  |
|---|--|
| 1311 Office of Anti-Discrimination Rules and Regulations..... | 12 <b>DE Reg.</b> 158 (Prop.)<br>12 <b>DE Reg.</b> 797 (Final)   |
| 1341 Workers' Compensation Regulations.....                   | 12 <b>DE Reg.</b> 67 (Final)                                     |
| 1342 Health Care Practice Guidelines.....                     | 12 <b>DE Reg.</b> 1266 (Prop.)<br>12 <b>DE Reg.</b> 1266 (Prop.) |

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**Division of Air and Waste Management**

|  |  |
|--|--|
| 1101 Definitions and Administrative Principles, Section 2.0 Definitions.....   | 12 <b>DE Reg.</b> 1392(Prop.)                                    |
| 1138 Emission Standards for Hazardous Air Pollutants for Source Categories,<br>Section 9.0.....  | 12 <b>DE Reg.</b> 620 (Prop.)                                    |
| 1138 Emission Standards for Hazardous Air Pollutants for Source Categories,<br>Section 9.0.....  | 12 <b>DE Reg.</b> 1097 (Final)                                   |
| Section 11.0.....  | 12 <b>DE Reg.</b> 38 (Prop.)<br>12 <b>DE Reg.</b> 481 (Final)    |
| 1141 Limiting Emissions of Volatile Organic Compounds from Consumer and<br>Commercial Products, Sections 2.0 and 4.0.....                  | 12 <b>DE Reg.</b> 921 (Prop.)<br>12 <b>DE Reg.</b> 1333(Final)   |
| 1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation, Table 5-1.....   | 12 <b>DE Reg.</b> 1395(Prop.)                                    |
| 1147 CO <sub>2</sub> Budget Trading Program.....   | 12 <b>DE Reg.</b> 290 (Prop.)<br>12 <b>DE Reg.</b> 674 (Prop.)   |
| 1302 Regulations Governing Hazardous Waste.....  | 12 <b>DE Reg.</b> 413 (Prop.)<br>12 <b>DE Reg.</b> 808 (Final)   |
| 1302 Regulations Governing Hazardous Waste,<br>Part 261 - Identification and Listing of Hazardous Waste, Sections 261.4<br>and 261.39..... | 12 <b>DE Reg.</b> 1170(Prop.)<br>12 <b>DE Reg.</b> 1428 (Final)  |
| Part 262 - Standards Applicable to Generators of Hazardous Waste,<br>Section 262.21, Appendix and Manifest 8700-22.....                    | 12 <b>DE Reg.</b> 1170 (Prop.)<br>12 <b>DE Reg.</b> 1428 (Final) |
| Part 264 - Standards for Owners and Operators of Hazardous Waste<br>Treatment Storage and Disposal Facilities, Section 264.151.....        | 12 <b>DE Reg.</b> 1170 (Prop.)<br>12 <b>DE Reg.</b> 1428 (Final) |
| 1351 Delaware Regulations Governing Underground Storage Tank Systems,<br>Parts A through H.....  | 12 <b>DE Reg.</b> 1267 (Prop.)                                   |
| Administrative and Non-Substantive Changes in Regulations Governing the<br>Control of Air Pollution (State Implementation Plans).....      | 12 <b>DE Reg.</b> 29 (Prop.)<br>12 <b>DE Reg.</b> 347 (Final)    |

**Division of Fish and Wildlife**

|   |  |
|---|--|
| 3203 Seasons and Area Closed to Taking Horseshoe Crabs..... | 12 <b>DE Reg.</b> 423 (Prop.)<br>12 <b>DE Reg.</b> 975 (Final) |
| 3214 Horseshoe Crab Annual Harvest Limit.....               | 12 <b>DE Reg.</b> 423 (Prop.)<br>12 <b>DE Reg.</b> 975 (Final) |
| 3311 Freshwater Fisherman Registry.....                     | 12 <b>DE Reg.</b> 167 (Prop.)<br>12 <b>DE Reg.</b> 493 (Final) |

# CUMULATIVE TABLES

|  |                         |
|--|-------------------------|
| 3504 Striped Bass Possession Size Limit; Exceptions.....           | 12 DE Reg. 922 (Prop.)  |
|  | 12 DE Reg. 1228 (Final) |
| 3507 Black Sea Bass Size Limits; Trip Limits; Seasons; Quotas..... | 12 DE Reg. 1174(Prop.)  |
|  | 12 DE Reg. 1430 (Final) |
| 3511 Summer Flounder Size Limits; Possession Limits; Seasons.....  | 12 DE Reg. 1174(Prop.)  |
|  | 12 DE Reg. 1430 (Final) |
| 3541 Atlantic Sharks.....  | 12 DE Reg. 1283(Prop.)  |
| 3581 Spiny Dogfish, Closure of Fishery.....                        | 12 DE Reg. 1283(Prop.)  |
| 3567 Tidal Water Fisherman Registry.....                           | 12 DE Reg. 167 (Prop.)  |
|  | 12 DE Reg. 493 (Final)  |
| 3901 Wildlife, Sections 3.0, 5.0, 7.0, 8.0, 20.0 and 21.0 .....    | 12 DE Reg. 169 (Prop.)  |
|  | 12 DE Reg. 496 (Final)  |
| 3901 Wildlife, Section 19.0 Bald Eagle Protection (Withdrawn)..... | 12 DE Reg. 69 (Final)   |

## Division of Soil and Water Conservation

|   |                        |
|---|------------------------|
| 5103 Delaware Dam Safety Regulations..... | 12 DE Reg.1288 (Prop.) |
|---|------------------------|

## Division of Water Resources

|   |                        |
|---|------------------------|
| 7403 Regulations Governing the Pollution Control Strategy for the Indian River,<br>Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds.. | 12 DE Reg. 677 (Final) |
| 7404 Total Maximum Daily Load (TMDL) for Zinc in the Red Clay Creek, DE..   | 12 DE Reg. 425 (Prop.) |
|   | 12 DE Reg. 1230(Final) |

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### Division of State Police

|  |                        |
|--|------------------------|
| 3400 Board of Examiners of Constables, Sections 3.0 and 4.0.....   | 12 DE Reg. 629 (Prop.) |
|  | 12 DE Reg. 977 (Final) |
| 3400 Board of Examiners of Constables, Section 4.0 Employment..... | 12 DE Reg. 427 (Prop.) |
| 3400 Board of Examiners of Constables, Section 4.0 Employment..... | 12 DE Reg. 977 (Final) |

## DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

### Division of Family Services, Office of Child Care Licensing

|  |                        |
|--|------------------------|
| 103 Family Child Care Homes... ..      | 12 DE Reg. 810 (Final) |
| 104 Large Family Child Care Homes..... | 12 DE Reg. 810 (Final) |

## DEPARTMENT OF STATE

### Division of Professional Regulation

|   |                        |
|---|------------------------|
| 300 Board of Architects.....  | 12 DE Reg. 70 (Final)  |
| 400 Gaming Control Board, Regulations 401, 402, 403 and 404.....  | 12 DE Reg. 357 (Final) |
| 500 Board of Podiatry, Licenses (In-Training, Lapse/Renewal, Inactive).....                                   | 12 DE Reg. 817 (Final) |
| 1400 Board of Electrical Examiners, Sections 1.0 through 3.0, 5.0 through 7.0,<br>and 15.0.....               | 12 DE Reg. 73 (Final)  |
| 1700 Board of Medical Practice, Section 30.0 Patient Records; Fee Schedule<br>for Copies.....                 | 12 DE Reg. 1053(Prop.) |
| 2000 Board of Occupational Therapy Practice.....  | 12 DE Reg. 631 (Prop.) |
|   | 12 DE Reg. 1232(Final) |
| 2500 Board of Pharmacy, Sections 11 and 18.....   | 12 DE Reg. 48 (Prop.)  |
| 2600 Examining Board of Physical Therapists and Athletic Trainers.....  | 12 DE Reg. 53 (Prop.)  |
|   | 12 DE Reg. 503 (Final) |
| 2925 Real Estate Commission, Section 6.0, Program Criteria and Section 8.0,<br>Provider Responsibilities..... | 12 DE Reg. 74 (Final)  |
| 2930 Council on Real Estate Appraisers, Sections 2.0, 4.0 and 11.0.....                                       | 12 DE Reg. 753 (Prop.) |
| 3100 Board of Funeral Services.....   | 12 DE Reg. 633 (Prop.) |
|   | 12 DE Reg. 1335(Final) |
| 3300 Board of Veterinary Medicine.....  | 12 DE Reg. 761 (Prop.) |
|   | 12 DE Reg. 1233(Final) |

|   |                                |
|---|--------------------------------|
| 3500 Board of Examiners of Psychologists, Section 7.0 Supervised Experience ...                                       | 12 <b>DE Reg.</b> 636 (Prop.)  |
|   | 12 <b>DE Reg.</b> 1108 (Final) |
| 3500 Board of Examiners of Psychologists, Section 10.0 Continuing Education,<br>and Section 13.0 License Renewal..... | 12 <b>DE Reg.</b> 1397(Prop.)  |
| 3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid<br>Dispensers.....                           | 12 <b>DE Reg.</b> 1289(Prop.)  |
| 3800 Committee on Dietetics/Nutrition.....  | 12 <b>DE Reg.</b> 1179 (Prop.) |
| 3900 Board of Clinical Social Work Examiners, Section 4.0 Professional<br>Supervision.....                            | 12 <b>DE Reg.</b> 775 (Prop.)  |
|   | 12 <b>DE Reg.</b> 1435 (Final) |
| 5300 Board of Massage and Bodywork, Sections 1.0, 2.0 and 7.0.....  | 12 <b>DE Reg.</b> 75 (Final)   |
| 8800 Boxing and Combative Sports Entertainment.....   | 12 <b>DE Reg.</b> 637 (Prop.)  |
|   | 12 <b>DE Reg.</b> 1054(Prop.)  |
|   | 12 <b>DE Reg.</b> 1437 (Final) |
| Uniform Controlled Substance Act Regulations.....   | 12 <b>DE Reg.</b> 301(Prop.)   |

**Human Relations Commission**

|  |                               |
|--|-------------------------------|
| 1501 Equal Accommodations Regulations..... | 12 <b>DE Reg.</b> 179 (Prop.) |
| (Renumbered to 601)                        | 12 <b>DE Reg.</b> 505 (Final) |
| 1502 Fair Housing Regulations.....         | 12 <b>DE Reg.</b> 179 (Prop.) |
|  | 12 <b>DE Reg.</b> 814 (Final) |

**Office of the State Bank Commissioner**

|  |                               |
|--|-------------------------------|
| 2401 Mortgage Loan Originator Licensing..... | 12 <b>DE Reg.</b> 430 (Prop.) |
|  | 12 <b>DE Reg.</b> 818 (Final) |

**Public Service Commission**

|   |                                |
|---|--------------------------------|
| 3008 Rules and Procedures to Implement the Renewable Energy Portfolio<br>Standards Act (Opened August 23, 2005).....              | 12 <b>DE Reg.</b> 291 (Prop.)  |
|   | 12 <b>DE Reg.</b> 1110 (Final) |
| Docket No. 49: The Creation of a Competitive Market for Real Electric Supply<br>Service .....                                     | 12 <b>DE Reg.</b> 518 (Final)  |
| Docket No. 60: Integrated Resource Planning for the Provision of Standard Offer<br>Service by Delmarva Power & Light Company..... | 12 <b>DE Reg.</b> 1293(Prop.)  |
| Docket No. 61: Adoption of Rules to Establish an Intrastate Gas Pipeline Safety<br>Compliance Program.....                        | 12 <b>DE Reg.</b> 655 (Prop.)  |

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

|   |                               |
|---|-------------------------------|
| 2101 Freedom of Information Act (FOIA)..... | 12 <b>DE Reg.</b> 245 (Final) |
|---|-------------------------------|

**Division of Motor Vehicles**

|  |                                |
|--|--------------------------------|
| 2213 Emergency Vehicle Operators, Age of EVO Permit Holders..... | 12 <b>DE Reg.</b> 777 (Prop.)  |
|  | 12 <b>DE Reg.</b> 1114 (Final) |
| 2221 Use of Translators.....                                     | 12 <b>DE Reg.</b> 77 (Final)   |
| 2222 School Bus Driver Qualifications and Endorsements.....      | 12 <b>DE Reg.</b> 196 (Prop.)  |
|  | 12 <b>DE Reg.</b> 519 (Final)  |

**Division of Transportation Solutions**

|  |                               |
|--|-------------------------------|
| 2402 Manual on Uniform Traffic Control Devices,<br>Parts 1, 7, 8, and 9..... | 12 <b>DE Reg.</b> 79 (Final)  |
| 2402 Manual on Uniform Traffic Control Devices,<br>Parts 2, 3 and 6.....     | 12 <b>DE Reg.</b> 56 (Prop.)  |
|  | 12 <b>DE Reg.</b> 358 (Final) |
| 2402 Manual on Uniform Traffic Control Devices,<br>Parts 2, 6 and 9          | 12 <b>DE Reg.</b> 1401(Prop.) |

**EXECUTIVE DEPARTMENT**

**Delaware Economic Development Office**

|  |                        |
|--|------------------------|
| 454 Procedures Governing Delaware Tourism Grant Program..... | 12 DE Reg. 661 (Prop.) |
|  | 12 DE Reg. 978 (Final) |

**STATE BOARD OF PENSION TRUSTEES**

**The Delaware Public Employees' Retirement System**

|   |                        |
|---|------------------------|
| State Employees' Pension Plan, State Police Pension Plan, State Judiciary<br>Pension Plan, County Municipal Employees' Pension Plan, and County and<br>Municipal Police/Firefighter Pension Plan..... | 12 DE Reg. 359 (Final) |
|---|------------------------|

**STATE EMPLOYEES BENEFIT COMMITTEE**

|   |                        |
|---|------------------------|
| 2001 Group Health Care Insurance Eligibility and Coverage Rules | 12 DE Reg. 986 (Final) |
|---|------------------------|

**Symbol Key**

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

**Proposed Regulations**

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

---

**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b) and 14 Delaware Code, Chapter 16  
(14 **Del.C.** §122(b) & 14 **Del. C.** Ch. 16))  
14 **DE Admin. Code** 103

**Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****103 Accountability for Schools, Districts and the State****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

**B. Synopsis of Subject matter of the Regulation**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts to make corrections and updates to align with the State Accountability Plan provided to the U.S. Department of Education for NCLB and to align with current changes to the DSTP. Additionally, there were some technical clarification amendments.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 3, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact Criteria**

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure that all students receive an equitable opportunity to perform well on the DSTP.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses accountability not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses accountability not students' legal rights.

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

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

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

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 is no additional cost to the State and to the local school boards for compliance with the regulation.

## 103 Accountability for Schools, Districts and the State

### 1.0 Accountability

- 1.1 Accountability: All public schools, including charter schools, reorganized and career technical school districts and the state shall be subject to the calculation and reporting of Adequate Yearly Progress (AYP) as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq. Additionally, public schools, including charter schools, reorganized and career technical school districts shall be subject to the applicable rewards, sanctions and other accountability activities as prescribed in this regulation.

**7 DE Reg. 57 (07/01/03)**

**10 DE Reg. 89 (07/01/06)**

### 2.0 Adequate Yearly Progress (AYP)

- 2.1 Adequate Yearly Progress shall be determined by the Department of Education for all public schools, including charter schools, reorganized and career technical school districts and the State on an annual basis. In order for a public school, including a charter school, reorganized or career technical school district or the State to meet AYP, the aggregate student population and each subgroup of students as identified in ESEA, must meet or exceed the target for percent proficient using a confidence interval to be determined by the Department of Education in the state assessments of reading/language arts and mathematics; 95% of the students as an aggregate and within each subgroup must participate in the state assessments of reading/language arts and mathematics, and the respective entity must meet the requirements of the Other Academic Indicator(s) as defined in 2.6. In calculating the percent proficient each year, the state will average the most recent two years of percent proficient (including the current year's percent proficient) and compare the results to the current year percent proficient. The highest percent proficient score will be used to determine the school, district or State AYP status.

- 2.1.1 Adequate yearly progress shall include three levels: Above Target, Meets Target and Below Target.
- 2.1.1.1 Above Target shall mean that the school, district or State in the aggregate student population and for each subgroup exceeds the annual target in English language arts and mathematics for percent proficient as defined in 2.3 and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.
- 2.1.1.2 Meets Target shall mean that the school, district or State in the aggregate student population and for each subgroup meets the annual target in English language arts and mathematics with or without the application of a confidence interval for percent proficient as defined in 2.3 or meets the criteria of Safe Harbor defined in 2.5, and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.
- 2.1.1.3 Below Target shall mean that the school, district or State in the aggregate student population and for each subgroup did not meet the annual target in English language arts and mathematics through the application of a confidence interval for percent proficient as defined in 2.3 or does not meet the criteria of Safe Harbor defined in 2.5, or does not meet the criteria for participation as defined in 2.4 or does not meet the criteria of Other Academic Indicator(s) as defined in 2.6.
- 2.2 Full academic year for accountability:
- 2.2.1 For school accountability students enrolled continuously in the school from September 30 through May 31 of a school year including those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.
- 2.2.2 For district accountability students enrolled continuously in the district (but not necessarily the same school), from September 30 through May 31 of a school year, including those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.
- 2.2.3 For state accountability students enrolled continuously in the state (but not necessarily the same school or district) from September 30 through May 31 of a school year shall be considered enrolled for a full academic year.
- 2.3 Proficient: For accountability purposes students who score at Performance Level 3 (Meets the Standard) or above and who have met the requirements of a Full Academic Year as defined in 2.2 shall be deemed proficient. Students who score at Performance Level 2 or Level 1 who have met the requirements of a Full Academic Year as defined in 2.2 shall not meet the definition of proficient.
- 2.4 Participation Rate: For accountability purposes in school years 2002-2003 through 2004-2005, the participation rate for each subgroup, all public schools, including charter schools, districts, and the State, shall be the number of students who participate in the DSTP in grades 3,5, 8 and 10 divided by the number of students enrolled in these tested grades during the testing period. Beginning with the 2005-2006 school year the participation rate shall include the number of students who participate in the DSTP in grades 3 through 8 inclusive and grade 10 divided by the number of students enrolled in these tested grades during the testing period. Students exempted by 14 **DE Admin. Code** 101.9.0 shall be included in the participation rate calculation unless their medical condition prevents them from being in school during the testing period.
- 2.5 Safe Harbor: For accountability purposes if a school, district or the State fails to meet the target for percent proficient for a given subgroup or for the entity in aggregate, Safe Harbor provisions shall be examined for that group. When the percentage of students in a subgroup not meeting the definition of proficient decreases by at least 10% when compared to the previous year's data, the participation rate for the population is at least 95%, and the subgroup meets the requirements of the Other Academic Indicator(s) as defined in 2.6. the subgroup will have met AYP.
- 2.6 Other Academic Indicator(s):
- 2.6.1 High School: For AYP purposes, the Other Academic Indicator(s) shall be graduation rate as defined as the number of students in one cohort who started in the school, the district or the state in 9<sup>th</sup> grade and graduated four years later or in the time frame specified in the Individual

Education Program (IEP), excluding students who earn a GED certificate, divided by the same number plus those that have dropped out during the same four year period.

- 2.6.1.1 The statewide target for the high school Other Academic Indicator shall be a graduation rate of 90% by the school year 2013-2014. The statewide target for 2003-2004 shall be 75% and shall increase by 1.5% each year until 90% is reached in 2013-2014. Beginning with the school year 2002-2003, if the graduation rate is used for Safe Harbor purposes, the high school shall maintain its graduation rate or show positive progress when compared to the previous year or meet or exceed the statewide target for that school year.
- 2.6.1.2 A school that does not maintain its graduation rate or show positive progress from the previous year or meet or exceed the statewide target for that school year shall be considered as not meeting AYP for that year.
- 2.6.2 Elementary and Middle School: For AYP purposes, the Other Academic Indicator for elementary and middle schools shall be determined by improvement of the scores of the low achieving students, defined as students performing below Performance Level 3, in reading and mathematics combined or a decrease in the percent of students scoring at Performance Level 1 in reading and mathematics. The average scale score for the students who perform at Performance Level 1 and 2 in reading and mathematics combined shall be determined for the current and previous years. The scores from the current year will be compared to the previous year to determine if the school has shown progress. A confidence interval determined by the Department of Education shall be applied to the average scale scores when making this determination. Students included in this calculation shall have been in the school for a full academic year.
- 2.6.2.1 The statewide target for the elementary and middle school Other Academic Indicator shall be 0% of students scoring at Performance Level 1 in reading and mathematics by the school year 2013-2014. Beginning with the school year 2003-2004, when compared to the previous year, the school or subgroup, if used for Safe Harbor purposes, shall maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year.
- 2.6.2.2 An elementary or middle school that does not maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year shall be considered as not meeting AYP for that year.
- 2.6.3 For state and district accountability purposes, the state or a district shall be expected to meet the requirements in 2.6.1.2 and 2.6.2.2.
- 2.7 Annual Objective: The annual objectives for reading/language arts and mathematics shall be determined by the Department of Education and published annually. The annual objectives shall be the same for all schools, districts and subgroups of students.
- 2.8 Intermediate Target: There shall be seven intermediate targets with the first intermediate target occurring in the 2004-2005 school year. The second intermediate target shall occur in 2006-2007; the third in 2008-2009; the fourth in 2009-2010; the fifth in 2010-2011, the sixth in 2011-2012 and the seventh in 2012-2013. By the end of the school year 2013-2014, all students in all subgroups shall be proficient in reading/language arts and mathematics. The intermediate targets shall be calculated using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.
- 2.9 Starting Point: A single statewide starting point shall be calculated for reading/language arts and a single statewide starting point shall be calculated for mathematics using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.
- 2.10 Subgroup categories: For AYP purposes, subgroup categories shall be delineated as follows: 1) Children with Disabilities (as per IDEA); 2) Economically Disadvantaged Students, as determined by eligibility for free and reduced lunch program; 3) Students with Limited English Proficiency, as determined by the language proficiency assessment; and 4) Race and ethnicity, to be further divided into African American and Black, American Indian and Alaska Native, Asian and Pacific Islander,

Hispanic, and White. Such subgroup categories shall include all students eligible for the AYP calculation as further defined throughout this Chapter. The "All" categories shall include all students in the entity for which AYP is calculated and who meet all other eligibility criteria for the AYP calculation.

### 2.11 AYP Determinations

- 2.11.1 For each public school, including charter schools, reorganized and career technical school districts, and the State, AYP shall be calculated annually.
- 2.11.2 School AYP: In order to meet AYP, the school shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.
- 2.11.3 District AYP: In order to meet AYP, the district shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.
- 2.11.4 State AYP: In order to meet AYP, the state shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.
- 2.11.5 Under Improvement: A school or district shall be deemed Under Improvement if AYP is not met two consecutive years in the same content area of reading/language arts or mathematics for percent proficient or for participation rate, or if a school or district in the aggregate does not meet the requirements of the Other Academic Indicator(s) as defined in 2.6.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

### 3.0 Accountability School and Accountability District

- 3.1 For AYP purposes, the school or district to which a student's performance is assigned for a full academic year shall be the Accountability School or Accountability District. No student shall have his/her performance assigned to more than one Accountability School or Accountability District in a given school year.
  - 3.1.1 For a student enrolled in an intradistrict intensive learning center intradistrict special school, or intradistrict special school program operating within one or more existing school facilities, the district has the option of tracking the assessment scores of the students back to the school of residence or to the school or program that is providing the instruction. The school or program shall be the Accountability School. The district shall communicate its decision regarding this option to the State Department of Education by ~~May 15, 2006~~ May 15, 2010 and biannually thereafter. The option that the district decides for accountability purposes for one year must remain the same for the second year. Further provided, the State Department of Education will monitor the assignment of students to ensure students are appropriately assigned. For a student enrolled in interdistrict special schools or programs that have an agreement to serve students from multiple school districts, the special school that provides the instructional program shall be considered the Accountability School for that student. For district accountability purposes, the district of residence shall be the district to which these special school students are included for accountability.
  - 3.1.2 For a student enrolled in an alternative program pursuant to 14 **Del.C.** Ch.16 or the ~~Delaware Adolescent Program~~ program serving pregnant students pursuant to 14 **Del.C.** § 203, the Accountability School or District shall be the school/district that assigned such student to the

program or the school or district of residence. The time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School or District.

- 3.1.3 For a student who participates in a choice program the Accountability School or District shall be the school or district to which the student has choiced.
- 3.1.4 For accountability purposes, a school shall be considered a new school if: less than sixty percent of the students would have been enrolled in the same school together without the creation of the new school; or it is the first year of operation of a charter school; or two or more grade levels have been added to the school or to a charter school's charter.
- 3.1.5 If a school is determined not to be a new school, the school shall receive the accountability rating and related consequences of the school in which the majority of students would attend in that year.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

#### 4.0 Assessment Criteria

- 4.1 ~~For a student who takes a portion of the assessment more than once during the school year, the first score shall be included in the AYP calculation; however, provided a student takes a portion of the assessment because of state mandated summer school attendance in grades 3, 5, or 8 in reading, or grade 8 in mathematics, the highest of the student's scores shall be used to recalculate the AYP determination.~~
- 4.21 A student who tests with non aggregable conditions as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency* shall have his/her earned performance level included in the calculation of AYP.
- 4.32 For accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's scoring specifications or otherwise receives an invalid score shall be deemed as not meeting proficiency.
- 4.43 A student participating in alternate assessments shall have her/his earned performance level included in the AYP calculation consistent with the regulations as prescribed by the federal Elementary and Secondary Education Act (ESEA) 20 U.S. C.A. §6301 et seq. or Individuals with Disabilities Education Act (IDEA).
- 4.54 Schools with more than one tested grade shall receive a single accountability rating.
- 4.65 Student performance in a tested grade shall be apportioned in equal weights to each grade in a standards cluster, except that Kindergarten shall be weighted at 10% and grade 10 shall be weighted at 100%. Beginning with the school year 2005-2006 students in grades 4, 5, 6, 7, 8, and 10 will count 100%. Students in grade 3 will continue to be weighted to each grade in the K to 3 standards cluster.
- 4.76 ~~For AYP purposes the reading/language arts percent proficient shall be based on a combination of the reading and writing DSTP on 100% of the DSTP reading assessments. The reading percent proficient scores shall be weighted to count 90% and the writing percent proficient scores shall be weighted to count 10%.~~
- 4.87 For AYP purposes, the mathematics percent proficient shall be based on 100% of the DSTP mathematics assessment.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

#### 5.0 State Progress Determinations

- 5.1 Each school and district shall receive a State Progress Determination of Above Target, Meets Target or Below Target. The State Progress shall be determined by improvement in the composite score of the reading, mathematics, science and social studies DSTP assessments combined. The composite score range shall be from 25 to 125 and is determined by the following formula: Composite Score = 25 (reading score x reading weight) + (math score x math weight) + (science score x science weight) + (social studies score x social studies weight) where: Reading score = (5 x % of students in level 5 in reading) + (4 x % of students in level 4 in reading) + (3 x % of students in level 3 in reading) + (2 x % of

students in level 2 in reading) + (1 x % of students in level 1 in reading); Math score = (5 x % of students in level 5 in math) + (4 x % of students in level 4 in math) + (3 x % of students in level 3 in math) + (2 x % of students in level 2 in math) + (1 x % of students in level 1 in math)]; Science score = (5 x % of students in level 5 in science) + (4 x % of students in level 4 in science) + (3 x % of students in level 3 in science) + (2 x % of students in level 2 in science) + (1 x % of students in level 1 in science); Social Studies = (5 x % of students in level 5 in social studies) + (4 x % of students in level 4 in social studies) + (3 x % of students in level 3 in social studies) + (2 x % of students in level 2 in social studies) + (1 x % of students in level 1 in social studies). Each of the subject areas shall be weighted equally at 25%. A two year average of the composite score shall be used if it is higher than the current year's composite score.

- 5.1.1 Above Target shall mean that the school or district has a minimum composite score of 75.00 for the current year; or the school or district has demonstrated a growth of 6.00 or more points when comparing last year's composite score to the current year's composite score provided the composite score is 45.00 or more.
- 5.1.2 Meets Target shall mean that the school or district with a composite score of 61.00 or less than 75.00 in the current year, shall demonstrate a growth of 1.00 or more points when comparing last year's composite score to the current year's composite score. For a school or district with a composite score of 45.00 but less than 61.00 in the current year, the school or district shall demonstrate a growth of 2.00 or more points when comparing last year's composite score to the current year's composite score.
- 5.1.3 Below Target shall mean that the school or district has a composite score of less than 45.00; or the school or district does not meet the criteria of 5.2.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

## **6.0 Performance Classifications**

- 6.1 Schools and districts shall receive one of five levels of performance classification annually which shall be based on a combination of AYP determinations and State Progress determinations.
- 6.1.1 Superior: A school or district's performance is deemed excellent. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement and is a combination of Above Target for AYP and Above Target for State Progress or Above Target for AYP and Meets Target for State Progress or Meets Target for AYP and Above Target for State Progress.
- 6.1.2 Commendable: A school or district's performance is deemed above average. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement. Combinations of Above Target for AYP and Below Target for State Progress or Meets Target for AYP and Meets Target for State Progress shall be rated as Commendable. A school or district with a combination of Meets Target for AYP and Below Target for State Progress shall be determined Commendable for no more than one year; if this same combination exists for the school or district in the following year, the school or district shall be rated Academic Review.
- 6.1.3 Academic Review: A school or district's performance is deemed acceptable. Schools or districts in this category are not Under Improvement. Combinations of: Below Target for AYP and Above Target for State Progress; or Below Target for AYP and Meets Target for State Progress shall be rated as Academic Review for no more than one year; if the same combination exists for the school or district in the following year, the school or district shall be rated Academic Progress unless the provisions of 6.5 or 6.6 are met. A school or district with a combination of Below Target for AYP and Below Target for State Progress shall be rated as Academic Review unless the provisions of 6.5 and 6.6 are met.
- 6.1.4 Academic Progress: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.
- 6.1.5 Academic Progress Under Improvement: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall have met AYP for one year while the

school or district is Under Improvement. If a school or district was classified as Academic Watch the prior year, all accountability sanctions from that prior year remain in effect.

- 6.1.6 Academic Watch: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.
- 6.1.7 Academic Watch Under Improvement: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not have met AYP for two or more consecutive years in the same content area as described in 2.11.5 and shall be Under Improvement.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

## 7.0 Schools or Districts that are classified as Under Improvement

- 7.1 Accountability sanctions for schools that are classified as Under Improvement:
- 7.1.1 Under Improvement Year 1, a school shall review and modify its current School Improvement Plan outlining additional specific school improvement activities to be implemented beginning in this same year. A school designated as Title I shall ~~provide supplemental services to students according to the federal ESEA requirements~~ offer Federal ESEA Choice, unless otherwise approved by the U.S. Department of Education. ~~Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts or mathematics assessments.~~
- 7.1.2 Under Improvement Year 2, a school shall continue to review and modify the School Improvement Plan as needed. A school designated as Title I shall offer federal ESEA Choice. In addition a Title I school shall provide supplemental services according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts or mathematics assessments.
- 7.1.3 Under Improvement Year 3, a school shall continue with the activities as per 7.1.2. In addition, all schools shall be subject to corrective action as outlined by federal ESEA requirements. The district or school shall provide the corrective action plan to the Department for ~~approval~~ review.
- 7.1.4 Under Improvement Year 4, a school shall continue with the activities as per 7.1.3. In addition, the district or school shall develop a plan for restructuring as outlined by federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the school's performance and shall consult with the State Board of Education prior to making comment ~~for approval or non approval of~~ on the plan.
- 7.1.4.1 Any non charter school that plans to restructure into a charter school shall be considered a new charter applicant and be subject to the provisions, procedures and timelines as outlined in 14 **Del.C.** Chapter 5 and 14 **DE Admin. Code** 275.
- 7.1.4.2 A charter school, whether authorized by a local school district or the Department, that plans to restructure for purposes of the federal ESEA shall consider such restructuring as a major modification and be subject to the provisions, procedures, and timelines as outlined in 14 **Del.C.** Chapter 5 and 14 **DE Admin. Code** 275.
- 7.1.5 Under Improvement Year 5, a school shall continue with the activities as per ~~7.1.2~~ 7.1.4. In addition, the school shall implement the restructuring plan as outlined by federal ESEA requirements.
- 7.1.5.1 Any non charter school that has been approved by the Department to restructure into a charter school shall implement the restructuring plan as approved and shall be subject to the provisions, procedures and timelines as outlined in 14 **Del.C.** Chapter 5 and 14 **DE Admin. Code** 275.
- 7.1.5.2 A charter school, whether authorized by a local school district or the Department, that has been approved by the Department to restructure shall implement the restructuring plan as approved and shall be subject to the provisions, procedures, and timelines as outlined in 14 **Del.C.** Chapter 5 and 14 **DE Admin. Code** 275.

7.1.6 Under Improvement greater than Year 5, a school shall continue with the restructuring plan as per 7.1.5. In addition, the district and the Department shall monitor and support the school's restructuring.

7.2 Accountability sanctions for districts that are classified as Under Improvement:

7.2.1 Under Improvement Year 1, a district shall develop and implement a District Improvement Plan.

7.2.2 Under Improvement Year 2, a district shall evaluate and modify the District Improvement Plan and shall incorporate such plan into the Consolidated Application.

7.2.3 Under Improvement Year 3, a district shall continue with the activities outlined in 7.2.2. In addition the district shall develop a corrective action plan as outlined by Federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the district's performance and shall consult with the State Board of Education prior to making comment for ~~approval or non-approval of~~ on the plan.

7.2.4 Under Improvement Year 4, a district shall continue with the activities as outlined in 7.2.3. In addition the district and the Department of Education shall evaluate the corrective action plan and make appropriate modifications as needed.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

**12 DE Reg. 202 (08/01/08)**

## **8.0 Review Process**

8.1 A school or district may review school or district level data, including academic assessment data upon which the proposed classification is based. The school or district shall present statistical evidence or other substantive reasons why the classification should be changed before the final classification will be determined.

8.12 The school or district must file a written notice of review with the Secretary no later than 15 calendar days after receiving preliminary notification of its proposed classification. The request for review shall state with specificity the grounds for the review, and shall be signed by the principal or lead authority of the school, or the signature of the Superintendent of the district. This request for review shall include all supporting evidence and documentation and shall be clear and concise.

8.23 Upon receipt of a written notice of review, the Secretary shall refer the review to his or her designee.

8.23.1 The designee shall be responsible for bringing the review forward to the Review Advisory Committee. The Review Advisory Committee shall be composed of a minimum of three members and assigned by the Secretary.

8.23.2 The Review Advisory Committee shall conduct a review of the statistical evidence or other substantive reasons presented by the school or district.

8.23.3 The Review Advisory Committee shall make a recommendation to the Secretary about whether the proposed classification should remain as is or should be changed.

8.34 The Department of Education shall make a final determination within 30 calendar days from the written notice of review on the proposed classification of the school or district based on the evidence or other substantive reasons presented by the school or district.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

**10 DE Reg. 1795 (06/01/07)**

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 14 Delaware Code, Chapter 16  
(14 Del.C. §122(b) & 14 Del. C. Ch. 16))  
14 DE Admin. Code 501

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

#### 501 State Content Standards

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 501 State Content Standards. The amended regulation is part of the 5 year review process and provides for the ability of the Department with the consent of State Board of Education to develop the state content standards. Section 1.13 is being amended by replacing the statement "the Guidelines for the Selection of Instructional Materials" with 14 DE Admin Code 502 Alignment of Local School District Curricula to the State Content Standards and 14 DE Admin Code 503 Instructional Program Requirements in regard to instructional materials and curricula content being kept current and consistent. In addition, "Skilled and Technical Sciences Content Standards" was added as one of the areas where there is a content standards document developed.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 3, 2009 to Susan K. Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is part of the 5 year review process and provides for better coordination of instructional materials and content.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments to the regulation do not address health and safety issues.

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

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

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

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

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 is no additional cost to the state and to the local school boards of compliance with the regulation.

## 501 State Content Standards

### 1.0 Instructional Programs

1.1 Instructional programs offered in the public schools of Delaware shall be in alignment with the appropriate content standards documents. These documents are: English Language Arts Curriculum Framework, Mathematics Curriculum Framework, Science Curriculum Framework, Social Studies Curriculum Framework, Health Education Curriculum Framework and Assessment, Physical Education Content Standards, Visual and Performing Arts Content Standards, Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, World Language Curriculum Framework Content Standards, Technology Education Curriculum Framework Content Standards, Skilled and Technical Sciences Content Standards and the Family and Consumer Sciences Content Standards.

1.1.1 The content standards documents may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.1.2 Integration of the content standards shall be provided for within and across the curricula.

1.1.3 Instructional materials and curricula content shall be kept current and consistent with the ~~Guidelines for the Selection of Instructional Materials~~ provisions of 14 **DE Admin Code 502 Alignment of Local School District Curricula to the State Content Standards** and 14 **DE Admin Code 503 Instructional Program Requirements**.

1 DE Reg. 153 (8/1/97)

1 DE Reg. 729 (12/1/97)

4 DE Reg. 343 (8/1/00)

4 DE Reg. 850 (10/1/00)

4 DE Reg. 853 (11/1/00)

5 DE Reg. 865 (10/1/01)

8 DE Reg. 445 (9/1/04)

---

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 14 Delaware Code, Chapter 16  
(14 **Del.C.** §122(b) & 14 **Del. C.** Ch. 16))  
14 **DE Admin. Code 502**

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

### 502 Alignment of Local School District Curricula to the State Content Standards

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

## B. Synopsis of Subject matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards. The amended regulation is part of the 5 year review process. Changes were made in Section 8.1 to clarify the Subsequent Review of Alignment and the spelling of survey was corrected in the definitions.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 3, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

## C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will assist in assuring student achievement improves as it relates to curricula that is aligned with the state's content standards.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments to the regulation do not address health and safety issues.

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

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

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

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

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 is no additional cost to the state and to the local school boards of compliance with the regulation.

## 502 Alignment of Local School District Curricula to the State Content Standards

### 1.0 Purpose

- 1.1 The purpose of this regulation is to provide a process through which all Delaware school districts demonstrate the alignment of their local curricula with the State Content Standards in the content areas specified in the 14 **DE Admin. Code** 501.

### 2.0 Definitions

**"Alignment Index"** means a relational measure of alignment between the Survey of Enacted Curriculum in a specific content area and the state standards used for comparison. The Wisconsin Center for

---

Educational Research automatically calculates and reports the alignment index to schools and districts that use the surveys.

“**Content Map**” means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

“**Department**” means the Delaware Department of Education.

“**Grade Level Expectations**” means the documents created and officially released by the Delaware Department of Education for English language arts, mathematics, science, and social studies which detail student learning objectives in each content area for kindergarten through grade twelve.

“**Scope and Sequence**” means a curriculum plan, usually in chart form, with a range of instructional objectives and skills organized according to the successive levels at which they are taught.

“**Statewide Recommended Curriculum Frameworks**” means the Delaware Recommended Curriculum documents comprised of Academic Content Standards, Clarifications and Grade Level Expectations posted to the Delaware Department of Education website.

“**Survey of Enacted Curriculum (SEC)**” means the alignment survey sponsored by the Council of Chief State School Officers and the Wisconsin Center for Education Research. The SEC is a teacher survey tool based on scientifically based research which yields detailed information about the alignment of classroom instruction to state academic standards and state assessments. The survey is available for English language arts, mathematics, and science at the present time. A survey for social studies is in development. An analysis of results by grade level, school and district is completed by the Wisconsin Center for Educational Research with formal reports provided to the participating schools and districts.

“**Tile Chart**” means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

“**Unit Summative Assessment**” means a performance measure of skills and knowledge mastered by students at the end of a unit as a result of classroom instruction. Examples of unit assessment measures include but are not limited to teacher constructed unit tests and commercially published measures such as those provided by curriculum publishers.

### **3.0 Alignment Requirement**

- 3.1 All school districts shall provide evidence to the Department that their school district curricula are aligned with the State Content Standards. State Content Standards exist in English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, Physical Education, Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences. Content standards as developed by the Department in the future shall also be included under this section

**12 DE Reg. 216 (08/01/08)**

### **4.0 Use of the Statewide Recommended Curricula Frameworks**

- 4.1 School districts shall utilize the Statewide Recommended Curricula Frameworks including the State Content Standards, Content Area Clarifications and Grade Level Expectations as guides to the development or revision of their local curricula, syllabi, and Scope and Sequence in the content areas listed in 3.0.

### **5.0 Documentation of Curriculum Alignment**

- 5.1 Evidence of curriculum alignment to the State Content Standards shall be submitted to the Department no later than twelve (12) months following the official release by the Department of the Statewide Recommended Curriculum Frameworks in each content area.
- 5.2 Documentation of alignment of school district curriculum to the State Content Standards shall be submitted through evidence provided by the school districts on forms as developed and required by the Department.

- 5.3 Evidence of curriculum alignment submitted by school districts shall be subject to Department review during on site monitoring visits.

## 6.0 Criteria for the Evaluation of the Alignment

- 6.1 School districts shall be required to submit evidence of local curriculum alignment for English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, and Physical Education content areas for each grade cluster K to 2, 3 to 5, 6 to 8 and 9 to 12 from at least two of the permissible categories of evidence in 6.1.1 through 6.1.5. **One** of the two categories shall be the evidence described in 6.1.1. The second required category and any additional submitted evidence shall be selected by the district from categories 6.1.2 through 6.1.5. The school district may choose to vary the choice of the second category of evidence by grade cluster level. School districts shall be required to submit evidence of local curriculum alignment for Career and Technical Education content areas (Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences) from the permissible category of evidence in 6.1.6. Evidence of alignment to each standard in a given content area shall be submitted.
- 6.1.1 Category 1 is a narrative describing the local curriculum alignment evidence and the extent to which it addresses all student subgroups. For English language arts, mathematics, science and social studies, a required element of this narrative shall be an analysis of school district disaggregated student performance data on state assessments over the most recent three year period of available state assessment data.
- 6.1.2 Category 2 is the Grade level result (all teachers in at least one grade per grade cluster K to 2, 3 to 5, 6 to 8 and 9 to 12 of the Survey of Enacted Curriculum for the content area under consideration. The SEC results shall demonstrate an Alignment Index of .50 or higher, and include a graphic summary including either a Tile Chart or Content Maps.
- 6.1.3 Category 3 is three (3) units of study from a specific grade cluster, accompanied by the corresponding summative unit assessment and scoring rubric, and matrix table detailing applicable content standards, grade level expectations and course expectations for all students served in the grade cluster.
- 6.1.4 Category 4 is an external formal curriculum alignment report detailing a review of local instruction and documentation of standards alignment. The district is required to submit three (3) sample units and three (3) corresponding unit summative assessments, and a narrative detailing how all students served in the grade cluster receive standards aligned instruction. The district is required to submit the curriculum audit contractor's credentials.
- 6.1.5 Category 5 is a formative assessment benchmarking system with grade cluster Scope and Sequence, including three sample units from the grade cluster. The district is required to submit (1) a narrative detailing evidence of alignment of formative student assessment or assessments to the State Content Standards and (2) sample assessment items in the content area.
- 6.1.6 Category 6 is curriculum alignment evidence specific to Career and Technical Education content areas. Evidence for Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences shall be submitted as required through 14 **DE Admin. Code** 525 for Career and Technical Education.
- 6.2 Required documentation for specific student subpopulations
- 6.2.1 As part of its submitted evidence, the district shall make detailed comments on the extent to which any modification or enhancement of the instructional program for specific subgroups such as students with disabilities, gifted students, English language learners or any other special population of students is aligned to the State Content Standards in the content area where there have been modifications or enhancements.

**12 DE Reg. 216 (08/01/08)**

---

## 7.0 Participation of Building Level Staff

- 7.1 All school districts shall describe and document to the Department the method and the level of involvement in the alignment process by their building administrators, teachers and specialists.

## 8.0 Subsequent Review of Alignment

- 8.1 ~~Each district shall resubmit evidence of alignment with the State Content Standards on forms developed and required by the Department between three and five years from the initial approval and on a recurring cycle of three to five years as determined by the Department. Further provided, the~~ Each district shall be required to present evidence of curriculum alignment if there are major changes to a content area in the approved curricula. The district shall only be required to submit evidence of curriculum alignment in the affected content area. Further, districts placed under school improvement may be required to submit evidence of aligned curriculum in the assessed content area or areas which form the basis for the school improvement rating.

10 DE Reg. 344 (8/1/06)

10 DE Reg. 1583 (04/01/07)

---

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Reimbursement Methodology for Medicaid Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), with 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid State Plan to revise the reimbursement methodology for certain Medicaid services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by June 30, 2009.

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

### SUMMARY OF PROPOSED AMENDMENT

The purpose and effect of this proposal is to amend the Title XIX Medicaid State Plan to revise the reimbursement methodology for certain provider services to comply with proposed State budget legislation now under consideration.

#### Statutory Authority

- 42 CFR §440, Subpart A, *Definitions*;
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*; and,

- 42 CFR §447, *Payments for Services*.

**Background**

Pursuant to 42 CFR §447.205, Delaware Health and Social Services (DHSS), Division of Medicaid and Medicaid Assistance (DMMA) is required to give public notice of any significant proposed change in its methods and standards for setting payment rates for services.

**Summary of Proposed Amendments**

As a result of a State budgetary shortfall and to remain within the available Medicaid appropriation, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA) has determined that it is necessary to amend the state plan provisions governing the reimbursement for medically necessary services provided to eligible recipients. This action is necessary to ensure no increase in State expenditures resulting from changes in reimbursement rates for the Delaware Medical Assistance Programs (DMAP).

Effective April 1, 2009, DHSS/DMMA intends to amend the applicable provisions of the Title XIX Medicaid State Plan governing the reimbursement methodology for certain services to reduce the reimbursement rate. In accordance with 42 CFR §440.205, public notice was published before the proposed effective date of the change on March 31, 2009 in the two newspapers of widest circulation in the State, the News Journal (New Castle County, Kent County, Sussex County) and, the Delaware State News (Kent County), as follows:

For periods beginning on and after April 1, 2009, the following provider rates will be "Rolled Back" or "Frozen" at their pre-January 1, 2009 level.

The following significant changes are proposed:

**Inpatient Hospital Services:**

Inpatient hospital discharge rates for General Acute Care Hospitals will be "rolled back" to their pre-January 1, 2009 level. Such reduction shall remain in effect until further notice.

**Outpatient Hospital Services:**

Outpatient hospital rates that are paid based on a hospital specific fee schedule will be "rolled back" to their pre-January 1, 2009 level. Such reduction shall remain in effect until further notice.

**Private Nursing Facility Services:**

Private nursing facility services rates will be "rolled back" to their pre-January 1, 2009 level. Such reduction shall remain in effect until further notice.

**Pediatric Nursing Facility Services:**

Pediatric nursing facility services rates will be frozen at their pre-April 1, 2009 level. Such change shall remain in effect until further notice.

**Private Intermediate Care Facilities/Mentally Retarded (ICFs/MR):**

Private ICFs/MR rates will be "rolled back" to their pre-January 1, 2009 level. Such reduction shall remain in effect until further notice.

**Prescribed Pediatric Extended Care:**

Prescribed Pediatric Extended Care services rates will be frozen at their pre-April 1, 2009 level. Such change shall remain in effect until further notice.

In addition, effective for dates of service on and after April 1, 2009, the following describes how the providers will be impacted by deferred implementation of inflationary adjustments. The providers impacted by this inflationary deferral are:

**Outpatient Hospitals:**

Effective for dates of service April 1, 2009 and after, the percent of charges paid to each hospital shall be reduced by an amount for each hospital that will result in a net aggregate reduction in projected payments of 3%. Such deferred adjustment shall remain in effect until further notice.

**Community Pharmacies:**

---

Effective for dates of service April 1, 2009 and after, claims for drug ingredient costs reimbursed based on a percentage of the Average Wholesale Price (AWP) shall be reimbursed at AWP minus 16%. Such deferred adjustment shall remain in effect until further notice.

**Non-Traditional Pharmacies:**

Effective for dates of service April 1, 2009 and after, claims for drug ingredient costs reimbursed based on a percentage of the Average Wholesale Price (AWP) shall be reimbursed at AWP minus 18%. Such deferred adjustment shall remain in effect until further notice.

**Physicians:**

Effective for claims paid on or after April 1, 2009 claims that are based on the Medicare rate shall be reimbursed at 98% of the Medicare rate. Such deferred adjustment shall remain in effect until further notice.

**Laboratories:**

Effective for claims paid on or after April 1, 2009 claims that are based on the Medicare rate shall be reimbursed at 98% of the Medicare rate. Such deferred adjustment shall remain in effect until further notice.

**Dental:**

Effective for dates of service April 1, 2009 and after, dental claims reimbursed as a percent of charges shall be reimbursed at 80% of charges. Such deferred adjustment shall remain in effect until further notice.

**Ambulatory Surgical Centers:**

Effective for dates of service April 1, 2009 and after, ambulatory surgical centers shall be reimbursed at 95% of the Medicare rate. Such deferred adjustment shall remain in effect until further notice.

**Dialysis Centers:**

Effective for dates of service April 1, 2009 and after, dialysis centers shall be reimbursed at 85% of charges. Such deferred adjustment shall remain in effect until further notice.

The provisions of this amendment are contingent upon approval of the Centers for Medicare and Medicaid Services (CMS).

**DMMA PROPOSED REGULATION #09-21a**

**REVISIONS:**

ATTACHMENT 4.19-A

Page 1

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

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – INPATIENT HOSPITAL CARE**

**Reimbursement Principle**

Effective for discharges on or after July 1, 1994, the Delaware Medicaid Program will reimburse all acute care hospitals at prospective per discharge rates.

The prospective rates are set by accommodation type. Reimbursement rates have been set for two accommodation types: general services and nursery services. For each of these accommodation types, there are three components to the payment: operating payment per discharge, capital payment per discharge and medical education payment per discharge.

**Rate Setting Method – Operating Payment**

The base year is the Delaware hospitals' 1992 fiscal year. The operating payment per discharge for the base year was calculated by applying a cost-to-charge ratio to allowed charges from the Medicaid claims data. This allowed cost value was then divided by the total charges to obtain the operating payment per discharge.

The cost-to-charge ratio was identified from FY92 hospital cost reports; the categories of cost included in the cost-to-charge ratio are those related to routine services (including hospital-based physicians' costs and malpractice costs) and ancillary services.

The allowed charge data was taken from the FY92 Medicaid claims data for Delaware hospitals. Medicaid allowable hospital-specific charges as associated with inpatient revenue codes appropriate to the accommodation type were identified. The hospital-specific cost-to-charge ratio was applied to the allowed charges to obtain hospital-specific allowed costs for the accommodation type.

~~Effective July 1, 2006, the fiscal year/period for the reimbursement of Medicaid hospital services will be based on a fifteen month period. A rate adjustment will be made on July 1, 2006 and for every fifteen month period thereafter.~~

The total hospital-specific allowed costs for the accommodation type were then divided by the total number of discharges on the claims date for the accommodation type to obtain the hospital-specific operating payment per discharge in the base year.

ATTACHMENT 4.19-A

PAGE 2

## METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – INPATIENT HOSPITAL CARE (CONTINUED)

### Rate Setting Method – Capital Payment Per Discharge

For the capital payment per discharge, a hospital-specific prospective rate was calculated for each accommodation type based on a blended percentage of total costs for each hospital represented by capital. A hospital-specific capital percentage was calculated by dividing allowable capital costs for the hospital by total allowable costs for the facility as reported on each facility's FY92 cost report. A Statewide capital percentage was calculated by dividing total allowable capital costs for all Delaware hospitals by total allowable costs for all hospitals as reported on the cost report. The blended percentage is calculated by taking 75 percent of the hospital-specific capital percentage and 25 percent of the Statewide capital percentage. This blended percentage is then applied to the hospital opening rate per discharge to obtain the hospital capital per discharge rate.

### Rate Setting Method – Medical Education Payment Per Discharge

For the medical education payment per discharge, a hospital-specific prospective rate was calculated for each accommodation type based on the percentage of total costs for each hospital represented by medical education costs. A hospital-specific medical education percentage was calculated by dividing total medical education allowable costs for the hospital by allowable total costs for the facility as reported on each facility's FY92 cost report. This hospital-specific percentage is then applied to the hospital operating rate per discharge to obtain the hospital medical education per discharge rate.

### Rate Setting Method – Development of Implementation Year Operating Rates, Updates and Rebasing

The new inpatient rates will be implemented effective State FY95. The hospital-specific operating payments per discharge have been established for the implementation year by inflating the hospital-specific base year costs using the TEFRA target rate of increase limits published by HCFA. Base year costs were inflated from the midpoint of each hospital's base year to the midpoint in State fiscal year 1995.

ATTACHMENT 4.19-A

Page 3

## METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – INPATIENT HOSPITAL CARE (Continued)

---

**Rate Setting Methods - Development of Implementation Year Operating Rates, Updates and Rebasing (Continued)**

The implementation year rates will be updated in FY96 using published TEFRA inflation indices. Rates will be rebased using fiscal year 1994 claims and cost report data for implementation in State FY97.

Effective for admission dates on or after April 1, 2009, payment rates for inpatient hospital care will be adjusted to the rates that were in effect on December 31, 2008. Future rate adjustments will be suspended until further notice.

**Other Related Inpatient Reimbursement Policies**

Outliers - High cost outliers will be identified when the cost of the discharge exceeds the threshold of three times the hospital operating rate per discharge. Outlier cases will be reimbursed at the discharge rate plus 79 percent of the difference between the outlier threshold and the total cost of the case. Costs of the case will be determined by applying the hospital-specific cost to charge ratio to the allowed charges reported on the claim for discharge.

Effective January 1, 2006, any provider with a high cost client case (outlier) will receive an interim payment; that is, a payment prior to the discharge of that patient when the charge amount reaches the designated level. An interim payment will be made for that inpatient stay when the client's charges have reached twenty-five (25) times the general discharge rate of that facility, or when the client's stay is greater than sixty (60) days. Additional interim payments will be made when either of the outlier conditions for an interim payment is met again. The interim payment amount is based on the current reimbursement methodology used to pay outliers. Upon the discharge of the client, the facility will receive the balance of the payment that would have been paid if the case were paid in full at the time of discharge.

ATTACHMENT 4.19-A

PAGE 3a

**Transplants** - Transplant cases will be treated as outliers and, when appropriate, will be subject to the outlier payment policy. Organ acquisition costs will not be reimbursed separately, but will be included in the per discharge rate.

**Transfers/readmissions** - There will be no distinct payment policy for transfers/ readmissions between hospitals. These cases will be paid on a discharge basis. The PRO will conduct a periodic review to monitor these types of cases and determine that discharges are appropriate.

**Split bills** - For in-State cases and Out-of-State hospitals receiving per diem payment that span FY94 and FY95, the cost associated with the days in FY94 will be reimbursed using the current methodology. The full per-discharge rate will be paid for the days of care in FY95. Out of State hospitals who already use DRGs or a per discharge methodology will be paid the per discharge rate for all discharges on or after July 1, 1994.

ATTACHMENT 4.19-A

Page 4

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – INPATIENT HOSPITAL CARE  
(Continued)****Out-of-State Hospitals**

The operating, capital and medical education rates for acute care hospitals located outside of Delaware will be paid at the lowest Delaware rate for the hospital category to which they are assigned. Three categories of Delaware hospitals have been identified: urban, rural and major teaching. Out of state teaching hospitals are

defined as those facilities which are members of the Council of Teaching Hospitals. Out of state urban hospitals are defined as non-teaching hospitals located in a metropolitan statistical area (MSA) as identified by the U.S. Bureau of Census. Out of state rural hospitals are defined as non-teaching hospitals located outside a metropolitan statistical area "MSA" as defined by the U.S. Bureau of Census. Out-of-State specialty/rehab hospitals will be paid at the Medicaid rate established by the State in which they are located.

### **Disproportionate Share Hospital Payments**

In accordance with the provisions of Section 1923(b)(1)(A)(B) of the Social Security Act, the Delaware Medicaid Program will determine whether a hospital qualifies as "serving a disproportionate share of the poor".

Medicaid defines uncompensated care as the cost of services to Medicaid patients, less the amount paid by the State under the non-disproportionate share hospital payment provisions of the State Plan. The cost of services to uninsured patients (those who have no health insurance or source of third party payments) less the amount of payments made by these patients is included in the definition of uncompensated care. Any hospital meeting the definition of a disproportionate share hospital will receive payments in accordance with Section 1923(c)(3). Hospitals meeting the standard are entitled to receive payments of ninety percent (90%) of its uncompensated care amount.

Medicaid requires that the 1923(d)(3) provision of the Act be met, which states that any disproportionate share hospital have a Medicaid utilization rate of a least one percent (1%).

ATTACHMENT 4.19-A

PAGE 5

With the exceptions noted in 1923(d)(2)(A), Medicaid also requires that the 1923(d) provision of the Act be met, which states that any disproportionate share hospital have at least two (2) obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to individuals who are entitled to medical assistance for such services under the State Plan.

Medicaid requires that the payment adjustments received by all disproportionate share hospitals not exceed, in the aggregate, the established limits each Federal fiscal year as expressed in Section 1923(f) of the Act as published annually in the HCFA Federal Register. Medicaid also requires that the payment adjustments made to individual hospitals not exceed one hundred percent (100%) of their established limits for the State fiscal year as expressed in Section 1923(g) of the Act.

### **Hospitals With New Programs/Services**

For hospitals who begin a new medical education program for which there is no historical cost or claims data, the medical education payment will be paid at the average percentage for the Delaware teaching hospital category to which they are assigned. There are two categories of Delaware hospitals with regard to teaching: major teaching hospitals are defined as those facilities which are members of the Council of Teaching Hospitals. Minor teaching hospitals are all other hospitals in the state with a medical education program recognized by the Delaware Medicaid program.

### **Hospitals with other categories of new services can appeal their reimbursement rates using the appeals process.**

A.I. duPONT INSTITUTE OF THE NEMOURS FOUNDATION

#### **Reimbursement Principle**

Effective for discharges on or after January 1, 1995 the Medicaid Program will reimburse A.I. duPont Institute on the basis of prospective per discharge rates. Costs determined for A.I. duPont are hospital-specific but otherwise determined using the same methodology as the other acute care hospitals.

A.I. duPont's per discharge rate will be discounted by the Institute through agreement with the Medicaid agency, not to exceed the rate established for comparable care in Delaware's other large teaching hospital.

---

Rebasing and indexing of A.I. duPont's costs will be done on the same schedule as the other in-State acute care hospitals but specific to their fiscal year.

**DMMA PROPOSED REGULATION #09-21b****REVISIONS:**

ATTACHMENT 4.19-B

PAGE 1a

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT****STATE OF DELAWARE****METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - OUTPATIENT HOSPITAL CARE****Payment Methodology for Rate Periods Beginning January 1, 2009**

- A. Effective for dates of service on or after April 1, 2009, outpatient hospital care rates based on a hospital specific fee schedule will be adjusted to the rates that were in effect on December 31, 2008.
- B. Effective for dates of service on or after April 1, 2009, outpatient hospital care payments based on a percent of charges will be adjusted by an amount for each hospital that will result in a net aggregate reduction in projected payments of 3%.
- C. All future outpatient hospital care rate adjustments will be suspended until further notice.

**Reimbursement Principle**

Effective with the start of the provider's fiscal year on or after July 1, 1994, the Delaware Medicaid program will reimburse A.I. duPont/acute care hospitals for outpatient services using the following payment methods:

- Prospective rate for visit services provided in the emergency room, outpatient clinic and outpatient delivery/labor room
- Submitted charges converted to costs for stand alone services identified by revenue code
- Fee schedule allowances for laboratory services

The base year for the outpatient payment methodology is FY92. Medicaid claims data and hospital cost reports from FY92 served as the sources of data for calculation of the outpatient payment amounts.

~~The established rates and methodology for hospital outpatient reimbursement shall be reviewed annually by the Delaware Medicaid program and adjusted, as necessary.~~

**Rate Setting Method - Visit Services**

Visit services will be paid using a prospective flat rate. There are four types of visit services:

- Emergency
- Non-emergency
- Clinic
- Delivery/labor room

ATTACHMENT 4.19-B

PAGE 1b

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - OUTPATIENT HOSPITAL CARE****(Continued)****Rate Setting Method - Visit Services (Continued)**

Each type of visit service is defined by a set of outpatient revenue codes. In addition, emergency visit services must be associated with an ICD-9 diagnosis code defined as a "true emergency" by the Delaware Medicaid program.

The flat rate for each visit service is based on a blend of the following:

- 75 percent of the hospital-specific mean billed allowed cost for FY95 for the revenue codes associated with the visit category
- 25 percent of the statewide mean billed allowed cost for FY95 for the revenue codes associated with the visit category

The hospital-specific mean billed cost was calculated using allowed charges from the Medicaid base year claims data associated with the revenue codes for each visit category. Allowed charges were derived from the claims data on a per visit basis for each revenue type using FY92 claims data. The allowed charges per visit included allowed charges for a standard set of revenue codes that identified drugs and supplies associated with the visit service.

The allowed charges per visit were then converted to cost using a hospital-specific cost to charge ratio for ancillary services from the hospitals' FY92 cost reports. A hospital-specific mean billed allowed cost was calculated for each type of visit by taking the mean of all the per visit allowed costs for the hospital converted from the claims data. The Statewide billed cost was calculated by taking the mean of all the per visit allowed costs across all in-state hospitals, except A.I. duPont.

Both the hospital-specific mean and statewide mean costs were inflated to the midpoint of the base year to the midpoint to the implementation year (FY95) using the DRI Hospital Marketbasket.

ATTACHMENT 4.19-B

PAGE 1c

## METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - OUTPATIENT HOSPITAL CARE (Continued)

### Rate Setting Method - Stand-Alone Services

Stand-alone services encompass all other services provided in the outpatient setting that cannot be grouped into a visit category. A stand-alone service will be identified one of two ways:

- By revenue code
- By CPT code

Stand-alone services identified by revenue code will be paid using a hospital-specific cost-to-charge ratio for the revenue department. Each revenue code is assigned to a revenue department, based on the revenue departments listed in the hospital cost report. The cost to charge ratio for the revenue department was identified from the hospitals' FY92 cost reports and will be applied to the charges reported on the claim to obtain the payment amount for the revenue code.

Stand-alone services identified by HCPCS code will be paid using a fee schedule. Effective July 1, 1994, the only services to be identified using HCPCS codes are laboratory services included in the Medicare clinical laboratory fee schedule. These services will be reimbursed using the same methodology and fee schedule that is currently being used.

Effective for services provided on or after November 1, 1994, radiology services, identified by HCPCS code, will be reimbursed using a fee schedule.

### DMMA PROPOSED REGULATION #09-21c

#### REVISIONS:

ATTACHMENT 4.19-B

Page 14

---

## State/Territory DELAWARE

### Reimbursement for pharmaceuticals:

#### *Overview*

The Delaware Medical Assistance (DMAP) program will reimburse pharmaceuticals using the lower of

- The usual and customary charge to the general public for the product,
- The Estimated Acquisition Cost (EAC) which is defined for both brand name and generic drugs as follows:
  - For Traditional Pharmacies: AWP minus 14% 16% plus dispensing fee per prescription, effective for dates of service on or after April 1, 2009
  - For Non-Traditional Pharmacies: AWP minus ~~16%~~ 18% plus dispensing fee per prescription, effective for dates of service on or after April 1, 2009
- A State-specific maximum allowable cost (DMAC) and, in some cases, the Federally defined Federal Upper Limit (FUL) prices plus a dispensing fee.

Entities that qualify for special purchasing under Section 602 of the Veterans Health Care Act of 1992, Public Health Service covered entities, selected disproportionate share hospitals and entities exempt from the Robinson-Patman Price Discrimination Act of 1936 must charge the DMAP no more than an estimated acquisition cost (EAC) plus a professional dispensing fee. The EAC must be supported by invoice and payment documentation.

#### Dispensing Fee:

The dispensing fee rate is \$3.65. There is one dispensing fee per 30-day period unless the class of drugs is routinely prescribed for a limited number of days.

#### Definitions:

Delaware Maximum Allowable Cost (DMAC) - a maximum price set for reimbursement:

- for generics available from three (3) or more approved sources, or
- when a single source product has Average Selling Prices provided by the manufacturer that indicates the AWP is exaggerated, or
- if a single provider agrees to a special price.

Any willing provider can dispense the product.

<continued on page 14a>

ATTACHMENT 4.19-B

Page 14a

Federal Upper Limit (FUL) - The FUL is a federally defined price and constitutes the upper limit of reimbursement where a DMAC limit does not exist.

Non-Traditional Pharmacy - long term care and specialty pharmacies.

Traditional Pharmacy - retail independent and retail chain pharmacies.

#### Reimbursement Policy:

- Medicaid reimbursement is limited to only those drugs supplied from manufacturers that have a signed national agreement or an approved existing agreement under Section 1927(a) of the Social Security Act. Restrictions in drug coverage are listed on Page 5 Addendum of Attachment 3.1-A of this Plan.

Exceptions:

- Exceptions to the reimbursement of FUL and DMAC can be made if a physician certifies in their own handwriting that a specific brand is medically necessary. The medical necessity must be documented on a FDA Med-Watch form based on the client experiencing an adverse reaction.
- Other exceptions will be made if documentation provided demonstrates that the product can only be obtained at a higher rate.

**DMMA PROPOSED REGULATION #09-21d**

**REVISIONS:**

ATTACHMENT 4.19-B

Page 17

**State: DELAWARE**

**REIMBURSEMENT FOR FREE STANDING SURGICAL CENTER / AMBULATORY SURGICAL CENTER SERVICES**

Delaware Medicaid uses the reimbursement methodology and formula of the Medicare program, as described in Section 5243 of the Medicare Carriers Manual, in determining per diem rates for payment of Free Standing Surgical Centers (FSSCs) / Ambulatory Surgical Centers (ACS). Delaware Medicaid may reimburse at a percent of the Medicare calculated rate described above, up to 100% but no lower than 95%.

**DMMA PROPOSED REGULATION #09-21e**

**REVISIONS:**

ATTACHMENT 4.19-B

Page 19

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services are reimbursed as follows:

1. Screening services - fee-for-service.
2. Treatment services - fee-for-service.
3. Dental Treatment - reimburse ~~85%~~ 80% of billed charges for routine dental services for dates of service on or after April 1, 2009.

4. Specialized Dental Services - reimburse (a) a percentage of charges for non-orthodontic related services and (b) a flat fee-for-service for orthodontic related services.

a. Percentage of Charges for non-orthodontic services – Effective for dates of service on or after April 1, 2009. ~~The~~ the State pays ~~85%~~ 80% of billed charges for medically necessary non-orthodontic dental care, determined by: 1) the consideration that 65-70% of the usual & customary rate is nationally known to account for the dental provider's actual costs; and, 2) an allowance of an additional mark-up to permit a reasonable and fair profit and as incentive for providers to participate in the Medicaid Program in order to create adequate access to dental care.

b. Flat Fee-for-Service for orthodontic services – The State identifies three primary orthodontic related services that encompass orthodontic reimbursement: 1) Pre-orthodontic treatment visit; 2) Comprehensive orthodontic treatment of the adolescent dentition; and, 3) Periodic orthodontic treatment visit. Rates for each orthodontic service are determined by adopting the 75<sup>th</sup> percentile of orthodontic rates paid by the Division of Public Health Special Dental Program, which, compare favorably to commercial coverage and encourage provider participation and adequate access to orthodontic care. Care provided outside of these three services will be reimbursed at a percentage of charges. Medicaid reimbursement for these three orthodontic services will be the lower of the submitted charges or the established Medicaid rate.

---

**DMMA PROPOSED REGULATION #09-21f****REVISIONS:**

ATTACHMENT 4.19-D

Page 1

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES  
PROSPECTIVE REIMBURSEMENT SYSTEM  
FOR LONG TERM CARE FACILITIES  
STATE PLAN AMENDMENT 4.19-D**

Payment Methodology for Rate Periods Beginning January 1, 2009

- A. Notwithstanding any other provision of this section, the following adjustments will apply to reimbursement rates for all long term care facilities, except for state owned and operated facilities.
- B. Effective for dates of service on or after April 1, 2009, per diem rates for long term care facilities will be adjusted to the rates that were in effect on December 31, 2008.
- C. Future rate adjustments will be suspended until further notice.

**I. General Provisions****A. Purpose**

This plan establishes a reimbursement system for long-term care facilities that complies with federal requirements, including but not limited to:

- Requirements of the Omnibus Reconciliation Act of 1981 that nursing facility provider reimbursements be reasonable and adequate to assure an efficient and economically operated facility.
- The requirement that Medicaid payments in the aggregate do not exceed what would have been paid by Medicare based on allowable cost principles.
- Limitations on the revaluation of assets subsequent to a change of ownership since July 18, 1984.
- Requirements of the Omnibus Reconciliation Act of 1987 to establish one level of nursing care, i.e., Nursing Facility Care, to eliminate the designation of Skilled and Intermediate Care, and to provide sufficient staff to meet these requirements.
- The requirement to employ only nurse aides who have successfully completed a training and competency evaluation program or a competency evaluation program.

**B. Reimbursement Principles**

1. Providers of nursing facility care shall be reimbursed prospectively determined per diem rates based on a patient based classification system. Providers of ICF-MR and ICF-IMD services shall be reimbursed prospectively determined per diem rates.

ATTACHMENT 4.19-D

Page 2

2. The Delaware Medicaid Program shall reimburse qualified providers of long-term care based on the individual Medicaid recipient's days of care multiplied by the applicable per diem rate for that patient's classification less any payments made by recipients or third parties.

**II. Rate Determination for Nursing Facilities****A. Basis for Reimbursement**

Per Diem reimbursement for nursing facility services shall be composed of five prospectively determined rate components that reimburse providers for primary patient care, secondary patient care, support services, administration, and capital costs.

# PROPOSED REGULATIONS

The primary patient care component of the per diem rate is based on the nursing care costs related specifically to each patient's classification. In addition to assignment to case mix classifications, patients may qualify for supplementary primary care reimbursement based on their characteristics and special service needs. Primary care component reimbursement for each basic patient classification will be the same for each facility within a group. For the purpose of establishing rates, nursing facilities shall be divided into groups of like facilities for which a schedule of primary rates, including rate additions, is established for each group:

|              |   |
|--------------|---|
| Peer Group A | Private facilities in New Castle County and public facilities located in New Castle County at the discretion of the Medicaid Director               |
| Peer Group B | Private facilities in Kent and Sussex Counties and public facilities located in Kent and Sussex Counties at the discretion of the Medicaid Director |
| Peer Group C | Public facilities operated by the State of Delaware   |

Payment for the secondary, support, administrative, and capital costs comprise the base rate, and is unique to each facility. Provider costs are reported annually to Medicaid and are used to establish rate ceilings for the secondary, support, and administrative cost centers in each provider group.

The sections that follow provide specific details on rate computation for each of the five rate components.

## B. Rate Components

Payment for services based on the sum of five rate components. The rate components are defined as:

- **Primary Patient Care.** This cost center encompasses all costs that are involved in the provision of basic nursing care for nursing home patients and is inclusive of nursing staff salaries, fringe benefits, and training costs. All nurses' salaries, fringe benefits, and training for staff with duties that count towards the minimum staff requirements will be included in this cost center.

ATTACHMENT 4.19-D

Page 3

- **Secondary Patient Care.** This cost center encompasses other patient care costs that directly affect patient health status and quality of care and is inclusive of clinical consultants, social services, raw food, medical supplies, and non-prescription drugs, dietitian services, dental services (in public facilities only), and activities personnel.
- **Support Services.** This cost center includes costs for departments that provide supportive services other than medical care and is inclusive of dietary, operation and maintenance of the facility, housekeeping, laundry and linen, and patient recreation.
- **Administrative.** This category includes costs that are not patient related and is inclusive of owner/administrator salary, medical and nursing director salary (excluding such time spent in direct patient care), administrative salaries, medical records, working capital, benefits associated with administrative personnel, home office expenses, management of resident personal funds, and monitoring and resolving patient's rights issues.
- **Capital.** This category includes costs related to the purchase and lease of property, plant and equipment and is inclusive of lease costs, mortgage interest, property taxes and depreciation.

## C. Excluded Services

Those services to residents of private long term care facilities that are ordinarily billed directly by practitioners will continue to be billed separately and are not covered by the rate component categories. This includes prescription drugs, Medicare Part B covered services, physician services, hospitalization and dental services, laboratory, radiology, and certain ancillary therapies.

For public facilities, laboratory, radiology, prescription drugs, physician services, dental services, and ancillary therapies may be included in the per diem.

---

Costs of training and certification of nurse aides are billed separately by the facilities as they are incurred, and reimbursed directly by Medicaid.

ATTACHMENT 4.19-D

Page 4

**D. Primary Payment Component Computations**

The primary patient care rate component is based on a patient index system in which all nursing home patients are classified into patient classes. The lowest resource intensive clients are placed in the lowest class. The Department will assign classes to nursing home patients. Initial classification of patients occurs through the State's pre-admission screening program. These initial classifications will be reviewed by Department nurses within 31 to 45 days after assignment. Patient classification will then be reviewed at least twice a year. Facilities will receive notices from the Department concerning class changes and relevant effective dates.

1. In order to establish the patient classification for reimbursement, patients are evaluated and scored by Medicaid review nurses according to the specific amount of staff assistance needed in Activity of Daily Living (ADL) dependency areas. These include Eating, Mobility, Transfer, and Toileting. Potential scores are as follows:

0 - Independent

1 - Supervision (includes verbal cueing and occasional staff standby)

2 - Moderate assistance (requires staff standby/physical presence)

3 - Maximum Assistance

Patients receiving moderate or maximum assistance will be considered "dependent" in that ADL area. Patients receiving supervision will not be considered dependent. Reimbursement is determined by assigning the patient to a patient classification based on their ADL scores and the provision of any Clinical Care Items.

Each patient classification is related to specific nursing time factors. These time factors are multiplied by the 75<sup>th</sup> percentile nurse wage in each provider group to determine the per diem rate for each classification.

2. Patients receiving an active rehabilitative/preventive program as defined and approved by the Department shall be reimbursed an additional 20% of the primary care rate component.

To be considered for the added reimbursement allowed under this provision, a facility must develop and prepare an individual rehabilitative/preventive care plan. This plan of care must contain rehabilitative/preventive care programs as described

ATTACHMENT 4.19-D

Page 5

in a Department approved list of programs. The services must seek to address specific activity of daily living and other functional problems of the patient. The care plan must also indicate specific patient goals, and must have a physician's approval.

The Department will evaluate new facility-developed rehabilitative/preventive care plans during its patient classification reviews of nursing homes.

Interim provisional approval of plans can be provided by Department review nurses. When reviewed, the Department will examine facility documentation on the provision of rehabilitative/preventive services to patients with previously approved care plans as well as progress towards patient goals.

3. Patients exhibiting disruptive psychosocial behaviors on a frequent basis as defined and classified by the Department shall receive an additional 10 percent of the primary care rate component for the appropriate classification.

The specific psychosocial behaviors that will be considered for added reimbursement under this provision are those that necessitate additional nursing staff intervention in the provision of personal and nursing care. Such behaviors include: verbal and physically disruptive actions, inappropriate social behavior, non-territorial wandering, and any other similar patient problems as designated by the Department.

Facilities must have complete documentation on frequency of such behaviors in a patient's chart for the Department to consider the facility for added reimbursement under this provision. This documentation will be evaluated during patient classification reviews of a nursing home.

4. Patient classification rates are determined based on the time required to care for patients in each classification, and nursing wage, fringe benefit, and training costs tabulated separately for each facility peer group. Primary rates are established by the following methodology:

- Annual wage surveys and cost reports required of each provider are used to determine 75<sup>th</sup> percentile hourly nursing wages for Peer Groups A and B. For Peer Group C, wage surveys and cost reports are combined and treated as one facility prior to determining the 75<sup>th</sup> percentile.

ATTACHMENT 4.19-D

Page 6

The cost report used in the calculations will represent the fiscal year ending June 30th of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting, is from January 1 through December 31 for Peer Groups A and B, and October 1 through September 30 for Peer Group C.

This is calculated by first dividing total pay by total hours for each nursing classification (RN, LPN, Aide) in each facility, then arraying them to determine the 75<sup>th</sup> percentile within each provider group. Based on cost data from each provider group, hourly wage rates are adjusted to include hourly training and fringe benefit costs within each provider group.

- In each of the provider peer groups the rates are established in the same manner. The primary component of the Medicaid nursing home rate is determined by multiplying the 75<sup>th</sup> percentile hourly nursing wage for RNs, LPNs, and Aides by standard nursing time factors for each of the base levels of patient acuity.
- Providers will be reimbursed for agency nurse costs if their use of agency nurses does not exceed the allowable agency nurse cap determined each year by the Delaware Medicaid staff. Any nursing cost incurred in excess of the allowable cap will not be included in the nursing cost calculation.
- Within each of the patient classes, Medicaid provides "Incentive add-ons" to encourage rehabilitative and preventive programs. Rehabilitative and preventive services shall be reimbursed an additional 20% of the primary care rate component. Incentive payments discourage the deterioration of patients into higher classifications.
- Patients exhibiting disruptive psychosocial behaviors on a frequent basis as defined by the Department and are receiving an active psychosocial/preventive program as defined and approved by the Department shall be reimbursed an additional 10% of the primary care rate component.

ATTACHMENT 4.19-D

Page 7

- Patients receiving an active rehabilitative/preventive program and a psychosocial/preventive program as defined by the Department shall be reimbursed an additional 20% of the primary care rate component plus an additional 10% of the rehabilitative/preventive rate (32% of the primary care rate component).

#### E. Non-primary Rate Component Computations

Facility rates for the four non-primary components of secondary, support, administrative, and capital are computed from annual provider cost report data on reimbursable costs. Reimbursable costs are defined to be those that are allowable based on Medicare principles, according to HIM 15. Costs applicable to services, facilities,

---

and supplies furnished to a provider by commonly owned, controlled or related organizations shall not exceed the lower cost of comparable services purchased elsewhere.

The cost report used in the calculations will represent the fiscal year ending June 30<sup>th</sup> of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting is from January 1 through December 31 for Peer Groups A and B and October 1 through September 30 for Peer Group C.

- Individual allowable cost items from cost reports for each facility comprising the base rate component are summed and divided by patient days. For established facilities, the patient day amount used in this computation equals actual patient days or estimated days based on a 90 percent occupancy of Medicaid certified beds, whichever is greater. The day amount for new facilities<sup>1</sup> equals actual patient days for the period of operation, or estimated days based on a 75 percent occupancy of Medicaid certified beds, whichever is greater. This applies to cost centers comprising the basic rate.

The discussion that follows explains rate computation for the secondary, support, administrative and capital payment centers.

1. Secondary patient care rates are reimbursed according to the cost of care determined prospectively up to a calculated ceiling (115 percent of median per diem costs). Using the same facility peer grouping that was determined for the calculation of the primary care payment component, the following steps are required:

- Facilities are grouped into three peer groups – private facilities in New Castle County, private facilities in Kent and Sussex Counties, and public facilities.

ATTACHMENT 4.19-D

Page 8

- Individual allowable cost items from cost reports for each facility comprising the secondary care component are summed and divided by patient days. For established facilities, the patient day amount used in this computation equals actual patient days or estimated days based on a 90 percent occupancy of Medicaid certified beds, whichever is greater. The day amount for new facilities<sup>1</sup> equals actual patient days for the period of operation, or estimated days based on a 75 percent occupancy of Medicaid certified beds, whichever is greater.
- The median per diem cost is determined for each category of facility and inflated by 15 percent. The secondary care per diem assigned to a facility is the actual allowable cost up to a maximum of 115 percent of the median.

2. Support service component rates are determined in a manner that parallels the secondary component rate calculation process. However, the ceiling is set at 110 percent of median support costs per day for the appropriate category of facility. In addition, facilities, which maintain costs below the cap, are entitled to an incentive payment 25 percent of the difference between the facility's actual per day cost and the applicable cap, up to a maximum incentive of 5 percent of the cap amount.

\* "New facility" is defined as: (1) New construction built to provide a new service of either intermediate or skilled nursing care for which the existing facility has never before been certified, or (2) construction of an entirely new facility totally and administratively independent of an existing facility.

3. Administrative component rates are determined in a manner parallel to the secondary component. However, the ceiling is set at 105 percent of median costs per day. A facility is entitled to an incentive payment of 50 percent of the difference between its actual costs and the cap. The incentive payment is limited to 10 percent of the ceiling amount.

4. Capital component rates are determined prospectively and are subject to a rate floor and rate ceiling. The dollar amounts representing the 20th percentile of actual per diem capital cost (floor) and the 80th percentile of actual per diem capital cost (ceiling) are calculated. If the facility's costs are greater than or equal to the floor, and less than or equal to the ceiling, the facility's prospective rate is equal to its actual cost. If the facility's costs are below the floor, the prospective rate is equal to the lower of the floor or actual cost plus twenty-five percent of actual cost. If the facility's costs are greater than the ceiling, the prospective rate is equal to the higher of the

ceiling or ninety-five percent of actual cost. Costs associated with revaluation of assets of a facility will not be recognized.

ATTACHMENT 4.19-D

Page 9

The capital component is also subject to the occupancy standards as set forth in section II.E. of State Plan Amendment 4.19-D. The capital component rate is calculated on a statewide basis.

5. Where services are currently contracted by the nursing facility to a practitioner, additional services may be billed directly. These services are not covered by the rate component categories for private facilities, but may be included in the rate for public facilities. These services include therapies, physician services, dental services and prescription drugs.

#### F. Computation of Total Rate from Components

A facility's secondary, support, administrative, and capital payments will be summed and called its basic rate. The total rate for a patient is then determined by adding the primary rate for which a patient qualifies to the facility's basic rate component. The basic payment amount will not vary across patients in a nursing home. However, the primary payment will depend on a patient's class and qualification for added rehabilitative/preventive and/or psychosocial reimbursement.

#### G. OBRA '87 Additional Costs

##### 1. Nurse Aide Training and Certification

Providers of long-term care services will be reimbursed directly for the reasonable costs of training, competency testing and certification of nurse aides in compliance with the requirements of OBRA '87. The training and competency testing must be in a program approved by the Delaware Department of Health and Social Services, Division of Public Health. A "Statement of Reimbursement Cost of Nurse Aide Training" is submitted to the state by each facility quarterly.

Costs reported on the Statement of Reimbursement Cost are reimbursed directly and claimed by the State as administrative costs. They include:

- Costs incurred in testing and certifying currently employed nurse aides, i.e., testing fees, tuition, books, and training materials.
- Costs of providing State approved training or refresher training in preparation for the competency evaluation testing to employed nurse aides who have not yet received certification.

ATTACHMENT 4.19-D

Page 10

- Salaries of in-service instructors to conduct State approved training programs for the portion of their time involved with training, or fees charged by providers of a State approved training program.
- Costs of transporting nurse aides from the nursing facility to a testing or training site.

The following costs of nurse aide training are considered operational, and will be reported annually on the Medicaid cost report. These costs will be reimbursed through the Primary cost component of the per diem rate.

- Salaries of nurse aides while in training or competency evaluation.
- Costs of additional staff to replace nurse aides participating in training or competency evaluation.
- Continuing education of nurse aides following certification.

##### 2. Additional Nurse Staff Requirements

---

Additional nurse staff required by a nursing facility to comply with the requirements of OBRA '87 will be reimbursed under the provisions of the Delaware Medicaid Patient Index Reimbursement System (PIRS). This system makes no distinction between levels of care for reimbursement. Nursing costs are derived from average hourly wage, benefit, and training cost data provided on the Nursing Wage Survey submitted by each facility. Prospective rates for each patient acuity classification are calculated by these costs by the minimum nursing time factors. Although representative of actual costs incurred, these prospectively determined rates are independent of the number employed or the number of staff vacancies at any given time.

3. Additional Non-Nursing Requirements

The Delaware Medicaid reimbursement system will recognize the incremental costs of additional staff and services incurred by nursing facilities to comply with the mandates of OBRA '87. Prospective rate calculations will be adjusted to account for costs incurred on or after October 1, 1990.

ATTACHMENT 4.19-D

Page 11

Where services are currently contracted by the nursing facility to a practitioner, additional services may be billed directly. These services are not covered by the rate component categories (for private facilities, but may be included in the rate for public facilities.) These services include therapies, physician services, dental services, and prescription drugs.

A supplemental schedule to the Statement of Reimbursement Costs (Medicaid Cost Report) will be submitted by each facility to demonstrate projected staff and service costs required to comply with OBRA'87. For the rate year beginning October 1, 1990, facilities may project full year costs onto prior year reported actual costs to be included in the rate calculation.

The supplemental schedule will be used to project costs incurred for programs effective October 1, 1990 into the prospective reimbursement rates. Where nursing care facilities indicate new and anticipated staff positions, those costs will be included with the actual SFY '90 costs when calculating the reimbursement rates effective October 1, 1990.

Additional staff requirements include dietitian, medical director, medical records, activities personnel, and social worker.

H. Hold Harmless Provision

For the first year under the patient index reimbursement system the Department will have in effect a hold-harmless provision. The purpose of the provision is to give facilities an opportunity to adjust their operations to the new system. Under this provision, no facility will be paid less by Medicaid under the patient index system than it would have been paid had Federal Fiscal Year 1988 rates, adjusted by an inflation factor, been retained.

For the period October 1, 1990 to September 30, 1991, the Department will have in effect a hold-harmless provision with respect to capital reimbursement rates. The purpose of this provision is to give facilities an opportunity to adjust their operations to the new system. Under this provision, facilities will be paid the greater of the rate under the prospective capital rate methodology or the rate based on reimbursable costs. Beginning October 1, 1991, all facilities will be subject to the prospective capital rate methodology described in Section II, E.4.

I. Annual Rate Recalculation

1. Primary Payment Component

ATTACHMENT 4.19-D

Page 12

Rates for the primary patient care component will be rebased annually. Two sources of provider-supplied data will be used in this rate rebasing:

- An annual nursing wage and salary survey that the Department will conduct of all Medicaid-participating nursing facilities in Delaware.
- Nursing home cost report data on nurses' fringe benefits and training costs.

For Peer Groups A and B, the 75<sup>th</sup> percentile wages will be redetermined annually from the wage and salary survey, and the standard nurse time factors will be applied for each patient classification. The cost report and wage and salary survey will be for the previous year ending June 30. For Peer Group C, wage surveys and cost reports are combined and treated as one facility prior to determining the 75<sup>th</sup> percentile.

## 2. Non-Primary Payment Components

The payment caps for the secondary, support, and administrative components will be rebased every fourth year using the computation methods specified in Section E above. For the interim periods between rebasing, the payment caps will be inflated annually based on reasonable inflation estimates as published by the Department. Facility-specific payment rates for these cost centers shall then be calculated using these inflated caps and cost report data from the most recently available cost reporting period.

The capital floor and ceiling will be rebased annually.

## 3. Inflation Adjustment

Per Diem caps for primary, secondary, support and administrative cost centers will be adjusted each year by inflation indices. The inflation indices will be obtained from a recognized source and based on an appropriate index for the primary cost center and the following cost centers: secondary, support and administrative.

ATTACHMENT 4.19-D

Page 13

The inflation factors are applied to the actual nursing wage rates to compensate for the annual inflation in nursing costs. This adjustment is made before the nurse training and benefits are added and the wages are multiplied by the standard nurse time factors.

Examples of inflation indices that may be used includes but is not limited to:

1. Department of Economics, University of Delaware Health Care Index (or other similar university research centers' index).
2. U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index.
3. CMS Prospective Payment System-Skilled Nursing Facility Input Price Index.
4. CMS Excluded Hospital 2002 Input Price Index.
5. CMS Excluded Hospital with Capital Input Price Index.
6. CMS Rehabilitation, Psychiatric, and Long Term Care Hospital with Capital Input Price Index.

Cost center caps are used to set an upper limit on the amount a provider will be reimbursed for the costs in the secondary, support, and administrative cost centers. Initially, these caps are computed by determining the median value of the provider's actual daily costs, then adjusting upwardly according to the particular cost center. The Secondary cost center cap is 115% of the provider group median, and Administrative costs are capped at 105% of the median. Delaware Medicaid will recalculate non-primary cost center caps every fourth year. The next rebase will be for rates effective January 1, 2008 for Peer Groups A and B and October 1, 2007 for Peer Group C. In interim rate years, these cost center caps will not be recomputed. Instead, cost center caps will be adjusted by inflation factors. The inflation index provided by a recognized source will be applied to the current cap in each cost center in each provider group to establish the new cap. The actual reported costs will be compared to the cap. Facilities with costs above the cap will receive the amount of the cap.

ATTACHMENT 4.19-D

Page 14

**J. Medicare Aggregate Upper Limitations**

The State of Delaware assures CMS that in no case shall aggregate payments made under this plan, inclusive of DEFRA capital limitations, exceed the amount that would have been paid under Medicare principles of reimbursement. As a result of a change of ownership, on or after July 18, 1984, the State will not increase payments to providers for depreciation, interest on capital and return on equity, in the aggregate, more than the amount that would be recognized under section 1861(v)(1)(0) of the Social Security Act. Average projected rates of payment shall be tested against such limitations. In the event that average payment rates exceed such limitations, rates shall be reduced for those facilities exceeding Medicare principles as applied to all nursing facilities.

**III. Rate Determination ICF/MR and ICF/IMD Facilities**

Delaware will recalculate the prospective per diem rates for ICF/MRs and ICF/IMDs annually for the reimbursement year, January 1 through December 31 for Peer Groups A and B and October 1 through September 30 for Peer Group C. Within Peer Groups A, B, and C defined in section II.A., there are additional classifications of facilities that affect reimbursement. They are:

1. Public ICF/MR facilities of 8 beds or less.
2. Public ICF/MR facilities of greater than 8 beds.
3. Private ICF/MR facilities of 60 beds or less.
4. Public ICF/IMD facilities.

These facilities will fall into the peer group that matches their geographic location within the state. Facilities classified as ICF/MR or ICF/IMD shall be reimbursed their actual total per diem costs determined prospectively up to a ceiling. The ceiling is set at the 75<sup>th</sup> percentile of the distribution of costs of the facilities in each class.

An inflation factor (as described in II.L.3 above) will be applied to prior year's costs to determine the current year's rate.

**IV. Rate Reconsideration****A. Primary Rate Component**

Long-term care providers shall have the right to request a rate reconsideration for alleged patient misclassification relating to the Department's assignment of the case mix classification. Conditions for reconsideration are specified in the Department's nursing home appeals process as specified in the long-term care provider manual.

**1. Exclusions from Reconsideration**

ATTACHMENT 4.19-D

Page 15

Specifically excluded from patient class reconsiderations are:

- Changes in patient status between regular patient class reviews.
- Patient classification terminations, unless the loss of revenues for a month's period of alleged misclassification equals ten percent or more of the facility's Medicaid revenues in that month.

**2. Procedures for Filing**

Facilities shall submit requests for reconsiderations within sixty days after patient classifications are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as required by the Department.

**3. Patient Reclassifications**

Any reclassification resulting from the reconsideration process will become effective on the first day of the month following such reclassification.

**B. Non-Primary Rate Components**

Long-term care providers shall have the right to request a rate reconsideration for any alleged Department miscalculation of one or more non-primary payment rates.

Miscalculation is defined as incorrect computation of payment rates from provider supplied data in annual cost reports.

1. Exclusions from Reconsideration

Specifically excluded from rate consideration are:

- Department classification of cost items into payment centers.
- Peer-group rate ceilings.
- Department inflation adjustments.
- Capital floor and ceiling rate percentiles.

ATTACHMENT 4.19-D

Page 16

2. Procedures for Filing

Rate reconsiderations shall be submitted within sixty days after payment rate schedules are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as requested by the Department.

3. Rate Adjustments

Any rate adjustments resulting from the reconsideration process will take place on the first day of the month following such adjustment. Rate adjustments resulting from this provision will only affect the facility that had rate miscalculations. Payment ceilings and incentive amounts for other facilities in a peer group will not be altered by these adjustments.

C. Waiver of Requirements

The Director of the Division of Medicaid and Medical Assistance may waive, for a limited period, any provision of the State Plan related to "Methods and Standards for Establishing Payment Rates: Prospective Reimbursement System for Long Term Care Facilities", if a circumstance exists that could negatively affect the health, safety and welfare of residents in Delaware if the provision is not waived for a limited period related to the immediate crisis.

V. Reimbursement for Super Skilled Care

A higher rate will be paid for individuals who need a greater level of skilled care than that which is currently reimbursed in Delaware nursing facilities. For patients in the Super Skilled program the rate will be determined as follows:

A summary of each individual who qualified under the Medicaid program's criteria for a "Super Skilled" level of care will be sent to local nursing facilities, which have expressed an interest in providing this level of care. They will be asked to submit bids, within a specific time frame, for their per diem charge for caring for the individual. The Medicaid program will review the bids and select the one that most meets the needs of the patient at the lowest cost.

VI. Reporting and Audit Requirements

A. Reporting

ATTACHMENT 4.19-D

Page 17

All facilities certified to participate in the Medicaid program are required to maintain cost data and submit reports on the form and in the format specified by the Department. Such reports shall be filed annually. Cost

---

reports are due within ninety days of the close of the state fiscal year. All Medicaid participating facilities shall report allowable costs on a state fiscal year basis, which begins on July 1 and ends the following June 30. The allowable costs recognized by Delaware are those defined by Medicare principles.

In addition, all facilities are required to complete and submit an annual nursing wage survey on a form specified by the Department. All facilities must provide nursing wage data for the time periods requested on the survey form.

For patients in the Super Skilled program, annual Super Skilled bids will be considered the cost report for Super Skilled services. The nursing facility cost report must be adjusted to reflect costs associated with care for Super Skilled patients.

Failure to submit timely cost reports or nursing wage surveys within the allowed time periods when the facility has not been granted an extension by the Department, shall be grounds for suspension from the program. The Department may levy fines for failure to submit timely data as described in Section II.D. of the General Instructions to the Medicaid nursing facility cost report.

**B. Audit**

The Department shall conduct a field audit of participating facilities, in accordance with Federal regulation and State law. Both cost reports and the nursing wage surveys will be subject to audit.

Overpayments identified and documented as a result of field audit activities, or other findings made available to the Department, will be recovered. Such overpayments will be accounted for on the Quarterly Report of Expenditures as required by regulation.

Rate revisions resulting from field audit will only affect payments to those facilities that had an identified overpayment. Payment ceilings and incentive payments for other facilities within a peer group will not be altered by these revisions.

ATTACHMENT 4.19-D

Page 18

**C. Desk Review**

All cost reports and nursing wage surveys shall be subjected to a desk review annually. Only desk reviewed cost report and nursing wage survey data will be used to calculate rates.

**VII. Reimbursement for Out-of-State Facilities**

Facilities located outside of Delaware will be paid the lesser of the Medicaid reimbursement rate from the state in which they are located or the highest rate established by Delaware for comparably certified non-state operated facilities as specified above.

**VIII. Reimbursement of Ancillary Service**

For Peer Groups A and B:

Oxygen, physical therapy, occupational therapy, and speech therapy will be reimbursed on a fee-for-service basis. The rates for these services are determined by a survey of all enrolled facilities' costs. The costs are then arrayed and a cap set at the median rate. Facilities will be paid the lower of their cost or the cap. The cap will be recomputed every three years based on new surveys.

The Delaware Medicaid Program's nursing home rate calculation, the Patient Index Reimbursement System, complies with requirements found in the Nursing Home Reform Act and all subsequent revisions. A detailed description of the methodology and analysis used in determining the adjustment in payment amount for nursing facilities to take into account the cost of services required to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident eligible for benefits under Title XIX is found in Attachment A.

For Peer Group C:

Ancillary Services are included in the per diem reimbursement.

#### IX. Reimbursement for Pediatric Nursing Facility Care

Certain Medicaid-eligible children under the age of 21 years require facility-based nursing care and would be best served in a specialized pediatric nursing facility (that is, other than a traditional nursing facility). In order to qualify for this care, clients must be determined to require this level of care by the DMMA Medical Evaluation Team.

The level of reimbursement for each client will be based on the level of care determined by the DMMA Medical Evaluation Team. A per diem rate shall be established for each level of care based on reasonable costs for comparable DMMA services that have a demonstrated cost history and that serve a similar population, adjusted as necessary to reflect substantive differences in program operation. Rates for each level of care shall be computed for a base year and may be inflated each year thereafter using a nationally recognized inflation index. In addition to all nursing and operational costs, per diem rates are inclusive of all services, including but not limited to all therapies, supplies, non-custom durable medical equipment and over-the-counter (OTC) drugs required to treat the child's medical condition but do not include custom durable medical equipment for the individual use of a client or prescription ("legend product") drugs, which will be billed directly to Medicaid by the appropriate medical care provider in accordance with Medicaid policy. Clients assessed as requiring the higher level of care may also receive a supplemental per diem payment for ventilator care.

Eligible children in Pediatric Nursing Facilities located outside of Delaware are reimbursed at the lowest Delaware Pediatric Nursing Facility rate for each client category level to which they are assigned after being assessed by the DMMA Medical Evaluation Team.

---

### **DIVISION OF SOCIAL SERVICES**

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

#### **PUBLIC NOTICE**

#### **DSSM Food Supplement Program**

*Utility Expenses; Liquid Resources and Loans; Continuing Shelter Charges; Household Size; and, Verification Subsequent to Initial Certification*

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Utility Expenses; Liquid Resources and Loans; Continuing Shelter Charges; Household Size; and, Verification Subsequent to Initial Certification*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2009.

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

---

## SUMMARY OF PROPOSED CHANGES

The proposed changes described below amend Food Supplement Program (FSP) policies in the Division of Social Services Manual (DSSM) regarding *Utility Expenses; Liquid Resources and Loans; Continuing Shelter Charges; Household Size; and, Verification Subsequent to Initial Certification*.

### Statutory Authority

- 7 CFR §273.2(f)(1)(iii), *Utility Expenses*;
- 7 CFR §273.2(f)(1), *Mandatory Verification*;
- 7 CFR §273.2(f)(3), *State Agency Option*,
- 7 CFR §273.2(f)(1)(x), *Household Composition*; and,
- 7 CFR §273.2(f)(8), *Verification Subsequent to Initial Certification*.

### Summary of Proposed Changes

The purpose of the proposed changes is to simplify the verification process and remove rules not required by the federal Supplemental Nutrition Assistance Program (SNAP), as follows:

**DSSM 9032.3, *Utility Expenses*:** The change makes clear that staff only verify the utility that is needed to give the household the appropriate Standard Utility Allowance (SUA). Revised policy adds clarification that addresses utilities for unoccupied homes.

**DSSM 9032.8, *Liquid Resources and Loans*:** The change removes this verification which is not mandatory under federal guidelines. Therefore, DSSM 9032.8 is "Reserved". DSSM 9059 excludes loans which have to be repaid from counting as income. DSSM 9038 allows the Division of Social Services (DSS) to verify any information that is questionable.

**DSSM 9032.9, *Continuing Shelter Charges*:** The change corrects the text that this section applies only to initial certifications, not recertifications.

**DSSM 9032.11, *Household Size*:** The change removes this requirement to verify household size which is not mandated by federal rules. Therefore, DSSM 9032.11 is "Reserved". DSSM 9038 allows DSS to verify any information that is questionable.

**DSSM 9038, *Verification Subsequent to Initial Certification*:** The change relaxes the verification rules for recertification to more align them with federal rules.

## DSS PROPOSED REGULATIONS #09-20

### REVISIONS:

#### 9032.3 Utility Expenses

~~If a household wishes to claim expenses for an unoccupied home, verify the actual utility expenses in every case and do not use the standard utility allowance.~~

~~For those households entitled to the heating/cooling or limited standard utility allowance as specified in DSSM 9060, verify that the household actually incurs a utility expense, although there is no need to verify the amount of the expense.~~

~~Do not verify more than one utility, except for the limited utility allowance, unless questionable in accordance with DSSM 9033.~~

~~For those households entitled to the one utility standard, verify the actual amount of the utility at each application and recertification.~~

Verify only the utility (or utilities) needed for the household to receive one of the four Standard Utility Allowances.

#### Heating and Cooling SUA

- Verify the electric bill for air conditioning, or
- Verify the utility that provides the heat.

## Limited SUA

- : Verify only two utilities (non-heat and non-cooling).

## One Utility SUA

- : Verify the one utility (non-heat, non-cooling and non-phone).

## Phone SUA

- : Verify the phone expense.

## Utilities for Unoccupied Homes per 9060 F(4)

- : Verify the actual expenses for the unoccupied home.
- : If the household has utility expenses at both homes, give the appropriate SUA.
- If the household has utility expenses only at the unoccupied home, the SUA is not permitted. Combine the actual utility expenses with the shelter costs.

### *(Break In Continuity of Sections)*

#### **9032.8 Liquid Resources and Loans**

~~When verifying whether funds are exempt as a loan, a legally binding agreement is not required. A statement signed by both parties which indicates that the payment is a loan and must be repaid will be sufficient verification. However, if the household receives payments on a recurrent or regular basis from the same source but claims the payments are loans, also require that the provider of the loan sign a statement which states that repayments are being made or that payments will be made in accordance with an established repayment schedule. **Reserved**~~

#### **9032.9 Continuing Shelter Charges**

~~Verify shelter costs at initial application, at recertification, and when shelter expense change if allowing the expense could potentially result in a deduction expenses if the expense is a potential deduction.~~

### *(Break In Continuity of Sections)*

#### **9032.11 Household Size**

~~Verification will be accomplished through a collateral contact or readily available documentary evidence. Any documents which reasonably establish household size must be accepted and no requirement for a specific type of document may be imposed.~~

~~Examples of acceptable documentary evidence which the applicant may provide include, but are not limited to, school records, draft cards, census records, marriage records, or those examples listed in DSSM 9032.7.~~

~~Factors involving household composition will not be verified unless questionable in accordance with DSSM 9033.~~

~~For example, a client applied for a family size of six. He provides the birth certificates or social security numbers for each member. Household size is verified. No other verifications are needed.~~

~~If a client applied for six members and his/her lease indicates eight people live there, household size is questionable. Staff then need to ask for a collateral statement or landlord form **Reserved**~~

### *(Break In Continuity of Sections)*

#### **9038 ~~Verification Subsequent to Initial Certification~~ Verification for Recertifications and Interim Changes [273.2(f)(8)] [7 CFR 273.2(f)(8)]**

~~A. Recertification Verify all income at each recertification. Verify shelter and utility expenses at each recertification. Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25 shall also be verified at recertification. Do not verify total medical expenses claimed by households which are unchanged or have changed by \$25 or less, unless the information is incomplete, inaccurate, inconsistent, or outdated.~~

~~Verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of actual payments made to nonhousehold members for households eligible for the child support deduction. Verify unchanged child support payments only if questionable.~~

~~Verify newly obtained Social Security Numbers at recertification according to procedures outlined in DSSM 9032.5.~~

~~Other information which has changed may be verified at recertification. Do not verify unchanged information unless the information is incomplete, inaccurate, inconsistent, or outdated.~~

~~Changes—Changes reported during the certification period are subject to the same verification procedures as apply at initial certification. Verify all changes in income. Verify all changes in shelter and utility expenses. Do not verify total medical expenses unless the information is incomplete, inaccurate, inconsistent, or outdated.~~

~~Guidelines for determining if information is outdated:~~

- ~~• Expenses billed monthly—no more than 3 months old~~
- ~~• Expenses billed quarterly—no more than 6 months old~~
- ~~• Expenses billed seasonally—no more than 1 year old~~
- ~~• Expenses billed annually—no more than 1 year old.~~

~~For individuals who are satisfying the ABA-WD work requirements by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State, the individuals' work hours shall be verified.~~

A. At recertification, verify:

- ~~• All income.~~
- ~~• Shelter costs when the household moves or reports a change of more than \$25.~~
- ~~• Utility expenses if the household moves or reports a change.~~
- ~~• Unreported or new medical expenses.~~
- ~~• Monthly allowable medical expenses that have changed by more than \$25.~~
- ~~• Changes in the legal obligation to pay child support, the obligated amount, and the amount of actual payments made to non-household members.~~
- ~~• Newly obtained Social Security Numbers.~~
- ~~• Work hours for individuals who are satisfying the ABAWD work requirements.~~
- ~~• Other information that has changed if questionable.~~

Do not verify:

- ~~• Monthly allowable medical expenses that are unchanged or have changed by \$25 or less, unless the information is incomplete, inaccurate, inconsistent, or more than 12 months old.~~
- ~~• Unchanged child support payments, unless questionable.~~
- ~~• Unchanged information unless the information is incomplete, inaccurate, inconsistent, or more than 12 months old.~~

B. For changes reported during the certification period, verify:

- ~~• The same information as verified at initial certification.~~
- ~~• All income.~~
- ~~• Shelter and utility expenses if the household reports a change.~~

Do not verify:

- ~~• Total recurring medical expenses unless the information is incomplete, inaccurate, inconsistent, or more than 12 months old.~~

---

**PROPOSED REGULATIONS**

---

**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Sections 314 and 1111 (18 **Del.C.** §§314 and 1111)  
18 **DE Admin. Code** 305

**PUBLIC NOTICE****1501 Medicare Supplement Insurance Minimum Standards**

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to proposed Department of Insurance Regulation 1501 relating to Medicare Supplement Insurance Minimum Standards. The docket number for this proposed amendment is 1120.

The purpose of the proposed amendment to regulation 1501 is to update the existing regulation with respect to federal statutory law. The text of the proposed amendment is reproduced in the June 2009 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday July 6, 2009, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to [mitch.crane@state.de.us](mailto:mitch.crane@state.de.us).

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

**1501 Medicare Supplement Insurance Minimum Standards**

---

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**BOARD OF MEDICAL PRACTICE**

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 **Del.C.** §1713(a)(12))  
24 **DE Admin. Code** 1700

**PUBLIC NOTICE**

The Delaware Board of Medical Practice ("the Board") has proposed changes to its rules and regulations regarding the supervision of physician assistants. The proposal amends regulation 16.0 as permitted by 24 **Del.C.** §1771(e) and (i) by creating a new subsection 16.2 that enables the Board of Medical Practice to increase the number of physician assistants that may be supervised by one supervising physician upon written application and a finding by the Board of good cause. The existing subsection 16.2 has been renumbered to 16.3.

A public hearing will be held on July 21, 2009 at 3:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Practice, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

---

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

## 1700 Board of Medical Practice

### *(Break In Continuity of Sections)*

#### 16.0 Definition of Direct Supervision of Physicians' Assistants

- 16.1 **"Supervision"** as that term is used in 24 Del.C. §1703(e)(7) is interpreted by the Board of Medical Practice as requiring that the supervising physician be physically present on the premises and immediately available, in person, for consultation and assistance. Provided, however, that nothing in this interpretation shall in any way interfere with currently valid nursing practices.
- 16.2 No supervising physician may supervise more than 2 physician assistants unless granted an exemption by the Board. As provided in 24 Del. C. §1771 (e) and (i) the Board may increase or decrease the number of physician assistants being supervised. The Board may issue an exemption to increase the number of physician assistants supervised by a physician upon written application filed by the supervising physician demonstrating good cause for the request. Requests for exemption will be considered on a case by case basis. The requesting physician has the burden of demonstrating that the granting of an exemption will not endanger the public health, safety, or welfare.
- 16.23 Any physician desiring to supervise an assistant who will perform acupuncture upon a patient shall make a medical evaluation of the patient and determine that acupuncture treatment is medically appropriate prior to the commencing of any acupuncture treatment by a physician's assistant. Such evaluation will be made on the patient's initial contact with the physician without referral. A physician's assistant employed by a physician for the purpose of administering an acupuncture treatment to patients shall not administer such treatment unless an initial evaluation by the physician has been made. In addition, no subsequent acupuncture treatments of a patient shall occur unless the physician has requested such treatment. No physician shall supervise a physician's assistant who administers acupuncture treatment to patients unless the physician is proficient in the field of acupuncture and has assured himself that the physician's assistant is also proficient in the administration of acupuncture treatment. A physician's assistant who administers acupuncture treatment to patients at the direction of a physician shall administer such treatment only within the physical confines of the physician's office at such times when the physician is physically present on the premises and immediately available for consultation.

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

**1700 Board of Medical Practice**

# PROPOSED REGULATIONS

## PUBLIC SERVICE COMMISSION

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

### PUBLIC NOTICE

|   |                              |
|---|------------------------------|
| IN THE MATTER OF THE ADOPTION OF RULES TO   |                              |
| ESTABLISH AN INTRASTATE GAS PIPELINE SAFETY |                              |
| COMPLIANCE PROGRAM PURSUANT TO              | PSC REGULATION DOCKET NO. 61 |
| 26 DEL.C. CH. 8, SUBCHAPTER II              |                              |
| (OPENED OCTOBER 7, 2008)                    |                              |

### ORDER NO. 7559

**AND NOW**, this 5<sup>th</sup> day of May, 2009, the Commission determines and orders the following:

1. On October 7, 2008, the Commission entered PSC Order No. 7458, which promulgated proposed Regulations Governing Safety of Gas Transmission and Distribution Systems (the "Proposed Regulations"). The Commission promulgated the Proposed Regulations as a result of the enactment of 26 **Del.C.** § 821 (authorizing the Commission to make and enforce rules required by the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601)). See also 26 **Del.C.** § 209(a).

2. As required by the Administrative Procedures Act, the Proposed Regulations were published in the *Delaware Register*. A notice regarding the Proposed Regulations was also published in *The News Journal* and the *Delaware State News* newspapers and delivered to each public utility owning or operating any gas transmission or distribution systems in Delaware.

3. Following the promulgation and publication of the Proposed Regulations, Commission Staff has been working with various parties on revisions to the Proposed Regulations. Attached hereto as "Exhibit B" is a revised set of Proposed Regulations produced as a result of these discussions. Based upon the recommendation of Staff, the Commission determines that the revised Proposed Regulations shall be considered as a new proposal subject to the notice requirements of 29 *Del.C.* § 10118(c) and all other requirements of subchapter II of Chapter 101 of Title 29. See 29 **Del.C.** § 10118(c).

Now, Therefore, it is Hereby Ordered by the Affirmative Vote of Not Fewer than Three Commissioners:

1. That, pursuant to 26 **Del.C.** §§ 209(a) and 821, and 29 **Del.C.** §§ 10111 *et seq.*, the Commission promulgates revised Regulations Governing Safety of Gas Transmission and Distribution Systems ("Revised Proposed Regulations").

2. That the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* the Revised Proposed Regulations and the notices attached hereto as Exhibits "A" and "B" respectively.

3. That the Secretary shall cause the notice attached hereto as Exhibit "A" to be sent by U.S. mail to all utilities which own and/or operate any gas transmission or distribution system in Delaware and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

4. 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:

Arnetta McRae, Chair

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

## NOTICE OF COMMENT PERIOD ON PROPOSED REVISED REGULATIONS CONCERNING GAS PIPELINE SAFETY AND GAS TRANSMISSION AND DISTRIBUTION SYSTEMS, INCLUDING THE COMMISSION'S JURISDICTION TO MAKE AND ENFORCE RULES REQUIRED BY THE FEDERAL GAS PIPELINE SAFETY ACT OF 1968, AS AMENDED

The Delaware General Assembly has enacted legislation granting the Delaware Public Service Commission ("Commission") the authority to make and enforce rules required by the federal Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program relating to the regulation of intrastate gas pipeline transportation. The new legislation is found at 26 **Del.C.** § 821.

In order to comply with the new legislation, on or about October 7, 2008, the Commission promulgated regulations, containing twelve sections, intended to govern the safety of the gas transmission and distribution systems, which are subject to the Commission's jurisdiction (the "Proposed Regulations"). The Proposed Regulations and a notice regarding the Proposed Regulations were published in the Delaware Register of Regulations, Vol. 12, Issue 5, pp. 655-60 (11/1/08).

Following publication of the Proposed Regulations, the Commission Staff and certain interested parties have made various substantive revisions to the Proposed Regulations. Accordingly, the Commission entered PSC Order No. 75 59, requiring that the revised Proposed Regulations be re-published for public comment. The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the revised Proposed Regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before June 30, 2009.**

The revised Proposed Regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4<sup>th</sup> Floor, 820 North French Street, Wilmington, Delaware 19801.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 736-7500 (Text Telephone also). Inquiries can also be sent by Internet e-mail to [karen.nickerson@state.de.us](mailto:karen.nickerson@state.de.us).

### 8000 Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program

(Opened October 7, 2008)

#### **1.0 Definitions**

Unless otherwise defined herein, all capitalized terms and phrases shall have the meanings given those terms and phrases in applicable sections of Chapter 601 of Title 49 of the United States Code and the Code of Federal Regulations, Title 49, Parts 190, 191, 192, 193, 198 and 199, as may be amended and revised (collectively the "Federal Regulations").

"Commission" means the Delaware Public Service Commission.

"Corrective Action Orders" refers to those orders referenced in 49 U.S.C. § 60112(d).

"Federal Regulations" shall have the meaning ascribed above.

"Gas Leakage Survey" means a survey of gas facilities as defined in Sections 192.706 and 192.723 of the Federal Regulations.

---

# PROPOSED REGULATIONS

---

“Leak Classification and Action Criteria” means a procedure by which leakage indication of gas can be graded and controlled.

“Operator” means an “underground pipeline facility operator”, as defined in 26 Del. C. § 80 2(11). Notwithstanding the foregoing, “Operator” shall not include any operator of a Pipeline facility that transports hazardous liquid or only petroleum gas or petroleum gas/air mixtures to – (i) fewer than ten (10) customers, if no portion of the facility is located in a public place, or (ii) a single customer, if the facility is located entirely on the customer’s premises (no matter if a portion of the facility is located in a public place).

“Regulated Facilities” shall include both Pipeline facilities and any LNG facility.

“Regulations” shall refer to the regulations set forth herein.

“Staff” shall mean the staff of the Commission.

## **2.0 Regulations**

- 2.1 The minimum standards governing the design, construction, fabrication, installation, inspection, reporting, testing, operation, maintenance, protection, and the safety aspects of operation and maintenance of Regulated Facilities shall be those standards set forth in Parts 191, 192 and 193 of the Federal Regulations, as applicable.
- 2.2 The minimum standards governing the drug and alcohol testing required of operators of Regulated Facilities shall be those standards set forth in Part 199 of the Federal Regulations.
- 2.3 The conversion of Liquefied Natural Gas to a gaseous state and subsequent injection into a Pipeline facility shall be done in a manner which does not reduce the level of odorization within the system to below that required by Part 192 of the Federal Regulations.
- 2.4 All Operators shall conduct Gas Leak Surveys in accordance with and at such intervals as are provided under the Federal Regulations.
- 2.5 Each Operator conducting Gas Leak Surveys shall, for a minimum of seven (7) years, maintain records of leaks detected during the Surveys. Such records shall be available for inspection by the Staff, subject to the provisions of 26 Del. C. § 213, to the extent applicable
- 2.6 Each Operator shall identify a Leak Classification and Action Criteria applicable to the Pipeline facilities it operates in Delaware, which classification and criteria shall be consistent with the Federal Regulations. Each Operator shall institute and maintain on a continuing basis, records that identify any leaks discovered on the Pipeline facilities it operates, which records shall include, at a minimum, the location, date of discovery, classification under the Operator’s Leak Classification and Action Criteria, and the steps taken in response to such leaks.
- 2.7 Cast-iron pipe in sizes 4-inch and smaller shall not be installed in Pipeline facilities beginning thirty (30) days after approval of these Regulations. This requirement shall not be construed to require replacement of any such pipe installed prior to such time.
- 2.8 Notwithstanding anything contained in these Regulations to the contrary, the Commission shall have no authority to enforce any of these Regulations as they pertain to interstate Pipeline facilities.

## **3.0 Delegation of Authority**

With respect to the enforcement of these Regulations, the Commission and Staff shall have the authority to investigate the methods and practices of Operators; to require that Operators maintain and file reports, records and other information; to enter upon and to inspect the property, buildings, plants and offices of Operators; to inspect books, records, papers and documents of Operators; and to enforce these Regulations as provided herein.

## **4.0 Informal Disposition of Potential Violation**

When an evaluation of an Operator’s records or Regulated Facilities indicate that the Operator is or may be violating these Regulations, Staff shall provide the Operator with prompt notice of the potential violation, at which point Staff may informally discuss the potential violation with the Operator. Any documentation or physical evidence necessary to support an allegation of non-compliance may be

obtained during the inspection. Timely corrective action may be taken by the Operator of the facilities where a potential violation exists, thus correcting the potential violation without further action.

## **5.0 Written Formal Notice of Potential Violation**

After evidence of a potential violation is collected and a violation report written, notice and opportunity to respond will be afforded the Operator by a letter from Staff providing the Operator with copies of all relevant documentation, including the written violation reports, notifying the Operator of the results of the on-site evaluation and specifically citing the provision of the applicable Regulation(s) the Operator is alleged to be violating. The operator must respond in writing within thirty (30) days from receipt of such violation notice, unless the Operator and Staff otherwise agree.

## **6.0 Response Options Open to Operators**

6.1 The Operator, in responding to the violation notice, may:

6.1.1 Submit a written plan to Staff specifying actions that the Operator will take to correct the violation, a schedule for completion of each action step, and a final date of completion. If Staff accepts the corrective plan submitted by the Operator, the violation shall be deemed resolved.

6.1.2 Request an informal conference with Staff. Upon request for an informal conference, Staff will establish a date, time, and location for the conference. During the conference, Staff will review the violation report with the Operator to identify corrective actions in an effort to reach a mutually acceptable resolution of the alleged violation. If this effort fails, Staff may refer the alleged violation to the Commission for formal action.

## **7.0 Commission Action**

7.1 If the violation is referred to the Commission for formal resolution, the Commission may, pursuant to procedures established under rules and regulations, take action available under applicable law, including, but not limited to, the following:

7.1.1 The Commission may seek injunctive relief in a court of competent jurisdiction;

7.1.2 The Commission, as the agent of the Administrator as set forth in the Federal Regulations, may issue the civil penalties set forth in 49 U.S.C. § 60122(a) and subpart B of Part 190 of the Federal Regulations; and

7.1.3 The Commission may order an Operator to take corrective action.

## **8.0 Corrective Action Orders**

8.1 If the Commission finds that a Regulated Facility is hazardous (a "Hazardous Facility") to life or property, the Commission may issue a Corrective Action Order requiring the Operator to take immediate corrective action, which may include:

8.1.1 Suspended or restricted use of the Hazardous Facility;

8.1.2 Physical inspection;

8.1.3 Testing;

8.1.4 Repair;

8.1.5 Replacement; or

8.1.6 Other appropriate action.

8.2 The Commission shall give the Operator written notice and an opportunity for a hearing before issuance of a Corrective Action Order unless the Commission or its Staff determines there is a serious and imminent threat to life, property, or the environment, in which case, the Commission or its designated hearing examiner may issue an emergency Corrective Action Order. If the Corrective Action Order is issued without a prior hearing, the Commission shall give the Operator written notice and an opportunity for a hearing before the Commission or its designated hearing examiner as soon as possible after the issuance of the Corrective Action Order.

**9.0 Exceptions**

The Operator may take exceptions from the decision of the hearing examiner as provided by Delaware law or the Rules of Practice of the Commission. After receipt of the exceptions, the Commission or Staff may investigate further and hold a public hearing on the matter within a reasonable time.

**10.0 Granting of Federal Regulation Waivers**

- 10.1 Upon application by an Operator, the Commission may grant a waiver from compliance with the Federal Regulations, subject to review by the Office of Pipeline Safety Regulation of the United States Department of Transportation.
  - 10.2 Waivers may be granted for particular circumstances where it is inappropriate for an Operator to follow a regulation of general applicability.
  - 10.3 Before granting a waiver, the Commission must give notice and opportunity for written comments and a public hearing, unless the Commission finds that notice is impracticable, unnecessary, not in the public interest, or that an emergency exists.
  - 10.4 If the Commission finds a requested waiver is consistent with gas pipeline safety and is otherwise justified, the waiver may be issued under appropriate terms and conditions with a statement of the reasons for granting the waiver.
  - 10.5 If the Commission finds a requested waiver is inconsistent with gas pipeline safety or is otherwise unjustified, the request must be denied, and the applicant notified of the reasons for denial.
  - 10.6 The Commission must give the Office of Pipeline Safety Regulation of the United States Department of Transportation written notice of each waiver at least sixty (60) days before it becomes effective. Each notice of waiver must provide the following information:
    - 10.6.1 The name, address, and telephone number of the applicant;
    - 10.6.2 The safety standards involved;
    - 10.6.3 A description of the Regulated Facilities involved; and
    - 10.6.4 The justification for the waiver, including the reasons why the standards are not appropriate and why the waiver is consistent with gas pipeline safety.
-

**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 stricken through]**~~ indicates language deleted at the time the final order was issued.

**Final Regulations**

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

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

---

**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

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

**ORDER**

Pursuant to 29 Del. C. § 10118 and 3 Del. C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on May 5, 2009, the Commission makes the following findings and conclusions:

**Summary of the Evidence**

The Commission posted public notice of the proposed amendments to DH RC Rule 10 in the April 1, 2009 *Register of Regulations* (Volume 12, Issue 10) and for two consecutive weeks in April in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 10 in its entirety after Rules Committee review.

The Commission received no written comments. The Commission held a public hearing on May 5, 2009, in which no public comments were made.

**Findings of Fact and Conclusions**

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

The effective date of this Order will be ten (10) days from the publication of this Order in the Register of Regulations on May 1, 2009.

IT IS SO ORDERED this 5<sup>th</sup> day of May, 2009.

Beverly H. (Beth) Steele, Chairman  
Robert (Breezy) Brown, Commissioner  
George P. Staats, Commissioner  
Mary Ann Lambertson, Commissioner  
Kenneth Williamson, Commissioner

\* Please note that no changes were made to the regulation as originally proposed and published in the April 2009 issue of the *Register* at page 1256 (12 DE Reg. 1256). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Harness Racing Commission Rules and Regulations**

---

**THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005; 29 Delaware Code,  
Section 4815(b)(3)(c)(3)  
(3 Del.C. §10005; 29 Del.C. §4815(b)(3)(c)(3))  
3 DE Admin. Code 1001

**ORDER**

Pursuant to 29 Del.C. § 10108(c) and 3 Del.C. § 10103, the Delaware Thoroughbred Racing Commission issues this Order adopting amendments to Section 15 of the rules and regulations by amending existing Rule 15.14 to allow conditional use of shock wave therapy, extracorporeal shock wave therapy, or radial pulse wave therapy treatments.

**Summary of the Evidence**

1. As required, public notice was given by publication of the proposed amendments in the News Journal and Delaware State News.
2. A public hearing held on May 12, 2009, at 10:00 AM, in the Horseman's Office at Delaware Park, 777 Delaware Park Blvd., Wilm., DE, where members of the public were given the opportunity to offer comments.
3. Anyone wishing to receive a copy of the proposed regulations were able to obtain a copy from the Thoroughbred Racing Commission, 777 Delaware Park Blvd., Wilm., DE.
4. Copies also published on line at the Register of Regulations website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).
5. Persons wishing to submit written comments were able to forward these to the attention of Mr. John F. Wayne, Executive Director, Thoroughbred Racing Commission, 777 Delaware Park Blvd., Wilm., DE 19804.
6. The final date to receive written comments was 10:00 AM on May 12, 2009.

**Findings of Fact and Conclusions**

1. The commission concludes the proposed rules be adopted as proposed.

2. The effective date of this Order will be ten (10) days from the publication of this Order in the Register of Regulations on June 1, 2009.

IT IS SO ORDERED this 12th day of May 2009.

Bernard J. Daney, Chairman

W. Duncan Patterson, Secretary/Commissioner

Debbie Killeen, Commissioner

Edward Stegemeier, Commissioner

Henry James Decker, Commissioner

\* Please note that no changes were made to the regulation as originally proposed and published in the May 2009 issue of the *Register* at page 1360 (12 DE Reg. 1360). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Thoroughbred Racing Commission Rules and Regulations**

---

## DEPARTMENT OF LABOR

### DIVISION OF INDUSTRIAL AFFAIRS

#### OFFICE OF WORKERS' COMPENSATION

Statutory Authority: 19 Delaware Code, Section 2322B (19 Del.C. §2322B)

### ORDER

A public meeting was held on May 4, 2009, to receive public comments relating to revised Fee Schedule Instructions and Guidelines ("Instructions"), Physicians and Employers Forms ("Forms"), Utilization Review ("UR"), and the adoption of a 6<sup>th</sup> additional Practice Guideline ("Cervical PG") by the Delaware Department of Labor. The members of the Health Care Advisory Panel ("HCAP") present recommend that the Secretary of Labor adopt this proposal as it was published in the Register of Regulations, Volume 12, Issue 10 (April 2009).

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

##### Exhibits Admitted:

Exhibit 1 – News Journal Affidavit of publication of notice of public meeting.

Exhibit 2 – Delaware State News Affidavit of publication of notice of public meeting.

Exhibit 3 – Written comments submitted by *Medtronic* prior to the public meeting.

No further written comments were received by the Delaware Department of Labor. After the Panel concluded with their introductions, the public was invited to share their comments.

The following comments were made during the public meeting.

##### Fee Schedule Instructions:

First, Mr. Richard Stokes commented on proposed Administrative Regulations 4.23.1 Multiple Procedures. Mr. Stokes commented that other states do not pay 100% for multiple procedures. Most other states use a graduated fee schedule for multiple procedures.

After his comment about the forms, Dr. Andrew Gelman asked the panel why the HCAP removed the “Durable Medical Equipment” section from the Fee Schedule Instructions. HCAP Chair, Dr. Bruce Rudin, pointed out that the “Durable Medical Equipment” section was not deleted, but moved to a different place in the document.

**Cervical Practice Guideline:**

Second, Dr. Steven Edell, Radiologist, provided comments about his concerns that the cervical practice guideline required injured workers to only receive high field MRIs as the initial MRI. He pointed out that the American College of Radiology does not distinguish between high and low field MRIs. HCAP Chair, Dr. Bruce Rudin clarified that Administrative Regulation 4.1.1 for the cervical practice guideline was not intended to only allow high field MRIs for the initial MRI. Dr. Rudin asked Dr. Edell to let the HCAP know if he experienced problems with payers denying his bills based on that incorrect interpretation. The HCAP would then consider clarifying the cervical practice guideline regarding MRIs. Ms. Carmichael provided Dr. Edell with a copy of section 4.1.1.

**Forms:**

Third, Dr. Andrew Gelman commented that he personally completed over 200 physicians forms, but only receive 2 forms back from employers. He was concerned the forms were not being used by the employer to return the injured worker to work.

**Utilization Review:**

No Public Comment.

The Panel voted:

- (1) Unanimously to recommend approval of the Fee Schedule Instructions revisions;
- (2) Unanimously to recommend approval of the Cervical Practice Guideline;
- (3) Unanimously to recommend approval of the Physicians and Employers Forms revisions; and
- (4) Unanimously to recommend approval of the Utilization Review revisions.

Therefore the HCAP agreed to submit and recommend the revisions to the Fee Schedule Instructions and Guidelines, Forms, Utilization Review, and the addition of the Cervical Practice Guideline for adoption by the Delaware Department of Labor.

**RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION**

The HCAP is persuaded that the proposals are consistent with administering the statutory directives in the workers’ compensation law.

**RECOMMENDATION**

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 4<sup>th</sup> day of May, 2009.

HEALTH CARE ADVISORY PANEL

|                         |  |
|-------------------------|--|
| Bruce Rudin, M.D. Chair | George B. Heckler, Esquire, Vice-Chair |
| Marcia Dewitt           | Walter Power, M.D.                     |
| Glenn Brown             | Josette Covington, M.D.                |
| James Downing, M.D.     | Barry Bakst, D.O.                      |

---

|                     |                |
|---------------------|----------------|
| Richard Heffron     | Wayne Collison |
| Douglas Briggs, D.C |                |

## DECISION AND EFFECTIVE DATE

Having reviewed and considered the record and recommendations of members of the Health Care Advisory Panel to adopt revisions of the Fee Schedule Instructions and Guidelines, Forms, Utilization Review, and add the Cervical Practice Guideline. The Fee Schedule Instructions and Guidelines, Forms, Utilization Review, and add the Cervical Practice Guideline are hereby adopted by the Delaware Department of Labor and made effective **June 1, 2009**.

## TEXT AND CITATION

The Fee Schedule Instructions and Guidelines, Forms, Utilization Review, and add the Cervical Practice Guideline notice appeared in the Register of Regulations, Volume 12, Issue 10 (April 1, 2009). The Fee Schedule Instructions and Guidelines, Forms, Utilization Review, and add the Cervical Practice Guideline are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the department's website: [www.delawareworks.com](http://www.delawareworks.com).

### DEPARTMENT OF LABOR

John McMahon, Secretary of Labor

\* Please note that no changes were made to the regulation as originally proposed and published in the April 2009 issue of the *Register* at page 1266 (12 DE Reg. 1266). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1341 Workers' Compensation Regulation**  
**1342 Part F Cervical Treatment Guideline**

---

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 Del.C. §903(e)(2)(a))  
**7 DE Admin. Code 3541; 3581**

Secretary's Order No.: 2009-F-0015

**3540 Sharks and 3581 Spiny Dogfish**

Date of Issuance: May 15, 2009

Effective Date of the Amendment: June 11, 2009

### I. Background:

A public hearing was held on Thursday, April 23, 2009, at 6:30 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department") Division of Soil and Water Conservation's Lewes Field Facility, 901 Pilottown Road, Lewes, Delaware to receive comment on proposed amendments to the Delaware Tidal Fin fish Regulations for both Atlantic Sharks and Spiny Dogfish. The purposes of the aforementioned

proposed amendments are (1) to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission ("ASMFC")'s Interstate Fishery Management Plan for Atlantic Coastal Sharks ("Coastal Sharks Plan"), and (2) to liberalize commercial requirements in concert with the most recent revisions to the ASMFC's Interstate Fishery Management Plan for Spiny Dogfish ("Spiny Dogfish Plan").

The Coastal Sharks Plan mirrors requirements for shark fishing in federal waters by requiring all coastal states from Virginia to New Jersey to prohibit recreational and commercial landings of ten (10) shark species – silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerheads, great hammerhead, and smooth hammerhead – from May 15 through July 15. Under this Plan, Delaware and all other states must prohibit recreational and commercial landings of sandbar sharks year-round, except for those commercial fishermen who hold a valid sandbar shark research permit issued by the National Marine Fisheries Service ("NMFS").

It should be noted that, at the time that the Department first submitted this proposed regulatory amendment promulgation to the Delaware Register of Regulations, smooth dogfish (*Mustelus canus*) was one of the species included as part of the ASMFC Coastal Sharks Plan, and as such was assigned proposed daily harvest limits under the aforementioned federal plan. However, the inclusion of smooth dogfish in this plan was recently re-considered by the ASMFC at their monthly meeting held on May 6, 2009 (at the request of North Carolina). As a result, the ASMFC has proposed an addendum to formally delete this species from its Coastal Shark Plan. Final action on this addendum is expected as early as August 2009. Based upon the ASFMC's actions in August, the Department may then initiate new regulatory amendment promulgations with regard to the smooth dogfish at that time, so that Delaware's regulations with regard to this particular species (i.e., daily harvest limits, etc.) will mirror those ASFMC guidelines. Thus, while the Department is going forward with some of the proposed amendments to Delaware Tidal Fish Regulation 3541 concerning Atlantic Sharks (i.e., to correct minor grammatical errors and add clarifying language to provide a better understanding of this regulation for Delaware anglers), most of the language specifically pertaining to daily harvest limits for smooth dogfish (*Mustelus canus*) is being formally withdrawn by the Department at this time, and will be re-addressed at a later date in a new regulatory promulgation, pending the future actions of the ASMFC as it pertains to this particular species.

The proposed amendments to the spiny dogfish regulation are based on the ASMFC's Addendum II to the Spiny Dogfish Plan. With regard to spiny dogfish, the ASMFC coast-wide commercial quota for this species has been liberalized to twelve (12) million pounds per year, to be allocated among a Northern Region, a Southern Region, and North Carolina. The Southern Region, which includes Delaware, is allocated twenty-six (26) percent of the annual quota. Once the quota in the Southern Region is projected to have been reached, the commercial landing, harvest, and possession of spiny dogfish for commercial purposes will be prohibited for the remainder of the year.

The daily landing limit for any Delaware commercial foodfishing license holder will be three thousand (3,000) pounds of spiny dogfish, except for those taking spiny dogfish from federal waters or for any Delaware fisherman selling spiny dogfish to a federally-permitted dealer, in which case federal possession and landing limits apply, including federal closures on the possession and landing of spiny dogfish. Any Delaware commercial fisherman in possession of a federal permit must abide by the most restrictive spiny dogfish landing limits, whether they are federal or state. It should be noted that there are no recreational limits on spiny dogfish at this time, as the limits are only applicable to commercial fishermen.

The Department has the statutory basis and legal authority to act with regard to these promulgations, pursuant to 7 Del.C. §§903(e)(2)(a) and 903(f). No other Delaware regulations are affected by these proposals.

A few comments were received by the Department from members of the public regarding these proposed regulatory amendments, both at the time of the public hearing held on April 23, 2009, and during the post-hearing phase of this promulgation. Department personnel in the Division of Fish and Wildlife provided oral answers to all questions raised by the public in a thorough and timely manner. The Department provided proper notice of the hearing as required by law. Afterwards, Hearing Officer Lisa A. Vest prepared her Hearing Officer's Report dated May 12, 2009, which is attached and expressly incorporated into this Order regarding this matter, and submitted the same to the Secretary for review and consideration.

**II. Findings:**

The Department has provided a reasoned analysis and a sound basis in the record to support the issuance of the final regulations proposed in this matter. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would bring Delaware into compliance with federal guidelines for the management of both Atlantic sharks and spiny dogfish, consistent with federal management plans and state jurisdiction;
7. Due to the ASMFC having proposed deleting the harvest and possession limits on the smooth dogfish species from their Atlantic Coastal Shark plan on May 6, 2009, all proposed promulgation language specifically pertaining to daily harvest limits for smooth dogfish (*Mustelus canus*) is being formally withdrawn by the Department at this time, and will be re-addressed at a later date in a new regulatory amendment promulgation as needed, pending the future actions of the ASMFC as it pertains to this particular species, so that Delaware's regulations with regard to this particular species will mirror those ASMFC guidelines;
8. Due to the ASMFC having proposed deleting the aforementioned gill net requirements from its Coastal Shark Plan at this time, all proposed language pertaining to the same is being formally withdrawn by the Department at this time, and will be re-addressed at a later date in a new regulatory amendment promulgation as needed, pending the future actions of the ASMFC as it pertains to this issue, so that Delaware's regulations with regard to this matter will mirror those ASMFC guidelines;
9. Promulgation of the remaining proposed amendments to Delaware Tidal Finfish Regulation 3541 concerning Atlantic Sharks will correct minor grammatical errors which currently exist, and will add clarifying language to provide a better understanding of this regulation for Delaware anglers;
10. The Department has reviewed both of these proposed regulatory amendments in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
11. The Department's aforementioned proposed amendments to Delaware's regulations concerning both Atlantic sharks and spiny dogfish, as published in the April 1, 2009 *Delaware Register of Regulations* (and as revised as noted herein) and as set forth in Attachment "A" of the aforementioned Hearing Officer's Report, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, both should be 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*;
12. The Department shall submit the proposed regulations (again, as revised as noted herein) as final regulations to the Delaware Register of Regulations for publication in its next available issue, and shall provide written notice to the persons affected by the Order; and that
13. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

**III. Order:**

Based on the record developed, as reviewed in the Hearing Officer's Report dated May 12, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendments, as revised, to Delaware Tidal Finfish Regulation 3541 for Atlantic Sharks and Regulation 3581 for Spiny Dogfish be promulgated in final form in the customary manner and established rule-making procedure required by law.

**IV. Reasons:**

The promulgation of Delaware Tidal Finfish Regulations for both Atlantic sharks and spiny dogfish will bring Delaware into compliance with federal guidelines for the management of these species, since both come under both federal and state jurisdiction with regard to the harvest management of the same. It is incumbent upon Delaware to be in compliance with the Commission's plan, not only to avoid federal sanctions against Delaware and its fisheries, but to protect these species with these conservation measures to ensure that both Atlantic sharks and spiny dogfish will continue to be found in Delaware waters in the future.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 **Del.C.** §§903(e)(2)(a) and 903(f).

David S. Small, Acting Secretary

**3540 Sharks****3541 Atlantic Sharks**

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

## 1.0 Definitions:

**"Fillet"** shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

**"Land or Landing"** shall mean to put or cause to go on shore from a vessel.

~~**"Large mesh gill nets" shall mean any gill net with mesh of five inches or more stretched measure.**~~

**"Management Unit"** shall mean any of the non-sandbar large coastal species, small coastal species, pelagic species, ~~smooth dogfish (*Mustelus canus*),~~ and prohibited species of sharks or parts thereof defined in this regulation. **[Smooth dogfish (*Mustelus canus*), although they are a species of shark, are not presently part of the management unit as defined above, and are not subject to minimum size or daily harvest restrictions. They are subject to the provisions of Regulation 3541, Sections 3.0 and 4.0]**

**"Non-Sandbar Large Coastal Species"** shall mean any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*

Scalloped hammerhead, *Sphyrna lewini*

Smooth hammerhead, *Sphyrna zygaena*

~~**[White shark, *Carcharodon carcharias*]**~~

Nurse shark, *Ginglymostoma cirratum*

Blacktip shark, *Carcharhinus limbatus*

Bull shark, *Carcharhinus leucas*

Lemon shark, *Neqaprion brevirostris*

~~Sandbar shark, *Carcharhinus plumbeus*~~

Silky shark, *Carcharhinus falciformis*

Spinner shark, *Carcharhinus brevipinna*

Tiger shark, *Galeocerdo cuvieri*

**“Pelagic Species”** shall mean any of the following species of sharks or parts thereof:

Porbeagle shark, *Lamna nasus*

Shortfin mako, *Isurus oxyrinchus*

Blue shark, *Prionace glauca*

Oceanic whitetip shark, *Carcharhinus longimanus*

Thresher shark, *Alopias vulpinus*

**“Prohibited Species”** shall mean any of the following species of sharks or parts thereof:

Basking shark, *Cetorhinidae maximus*

White shark, *Carcharodon carcharias*

Bigeye sand tiger, *Odontaspis noronhai*

Sand tiger, *Odontaspis taurus*

Whale shark, *Rhincodon typus*

Bignose shark, *Carcharhinus altimus*

Caribbean reef shark, *Carcharhinus perezi*

Dusky shark, *Carcharhinus obscurus*

Galapagos shark, *Carcharhinus galapagensis*

Narrowtooth shark, *Carcharhinus brachyurus*

Night shark, *Carcharhinus signatus*

Atlantic angel shark, *Squatina dumerili*

Caribbean sharpnose shark, *Rhizoprionodon porosus*

Smalltail shark, *Carcharhinus porosus*

Bigeye sixgill shark, *Hexanchus vitulus*

Sevengill shark, *Heptranchias perlo*

Sixgill shark, *Hexanchus griseus*

Longfin mako, *Isurus paucus*

Bigeye thresher, *Alopias superciliosus*

**"Sandbar shark"** shall mean *Carcharhinus plumbeus*

**"Shore fishing"** shall mean any fishing that does not take place on board a vessel. The terms "shore fishing" and "shore angler" are synonymous.

**"Small Coastal Species"** shall mean any of the following species of sharks or parts thereof:

Bonnethead, *Sphyrna tiburo*

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*

Blacknose shark, *Carcharhinus acronotus*

Finetooth shark, *Carcharhinus isodon*

### 3 DE Reg. 1088 (2/1/00)

- 2.0 It shall be unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.
- 3.0 It shall be unlawful for any person to possess the fins from any shark in the management unit prior to landing said shark unless said fins are naturally attached to the body of said shark.
- 4.0 It shall be unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated ~~and the head removed~~ prior to landing said shark, but the head, tail, and fins must remain naturally attached to the carcass, except that commercial fishermen may eviscerate and remove the head of any shark reduced to possession, but the tail and fins must remain attached to the carcass.
- 5.0 It shall be unlawful to release any shark in the management unit in a manner that will not ensure said sharks maximum probability of survival.
- 6.0 It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one non-prohibited shark per trip from among those species in the management unit, regardless of the number of people on board the vessel. In addition each recreational angler fishing from a vessel may harvest and possess one bonnethead, [and] one Atlantic sharpnose, and one smooth dogfish shark per trip in the management unit except that two Atlantic sharpnose sharks also may be on board in addition to the one shark in the management unit.

### 1 DE Reg. 345 (10/1/97)

### 3 DE Reg. 1088 (2/1/00)

### 8 DE Reg. 1718 (6/1/05)

- 7.0 It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any ~~large coastal shark, any small coastal shark or any pelagic shark~~

~~in non-prohibited shark from among those species in~~ the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce. **[Further, it shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-sandbar large coastal sharks, small coastal sharks, or pelagic sharks in excess of current federal daily harvest limits administered by the National Marine Fisheries Service.]**

- 8.0 It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.
- 9.0 It shall be unlawful for the operator of any vessel without a commercial foodfishing license to have on board said vessel any ~~large coastal shark, any pelagic shark or any small coastal shark~~ non-prohibited shark from among those species in the management unit that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes), with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no minimum size limit applies.

**3 DE Reg. 1088 (2/1/00)**

**1 DE Reg. 850 (1/1/98)**

**1 DE Reg. 1005 (2/1/98)**

- 10.0 It shall be unlawful for any ~~person~~ shore angler without a commercial foodfishing license to take and reduce to possession any ~~large coastal shark, any small coastal shark or any pelagic shark~~ non-prohibited shark from among those species in the management unit less than 54 inches, with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no size limit applies.
- 11.0 It shall be unlawful for any ~~person~~ shore angler without a commercial foodfishing license to take and reduce to possession more than one ~~large coastal shark, small coastal shark or pelagic shark~~ non-prohibited shark from among those species in the management unit per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, **[and]** one additional Atlantic sharpnose ~~[shark, and one additional smooth dogfish]~~ per day.

**8 DE Reg. 1718 (6/1/05)**

- 12.0 It shall be unlawful for any recreational or commercial fisherman to possess silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead sharks from May 15 through July 15, regardless of where the shark was caught. Fishermen who catch any of these species in federal waters may not transport them through Delaware state waters during the aforementioned closed season.
- 13.0 It shall be unlawful for any recreational or commercial fisherman to land or possess any sandbar sharks, except for a commercial fisherman in possession of a valid sandbar shark research permit issued by the National Marine Fisheries Service. There must be a qualified observer aboard any vessel that lands and possesses sandbar sharks fishing under the auspices of a valid federal research permit.
- 14.0 It shall be unlawful for any Delaware recreational or commercial fisherman to land or possess any species of shark in state waters that is illegal to catch or land or possess in federal waters. [Presently it is unlawful for recreational fishermen to take and possess silky sharks in federal waters at any time of the year.]

15.0 The Department may grant anyone permission to take and possess sharks that would otherwise be illegal to take and possess when used for display and/or research purposes. Applicants will need a current State of Delaware scientific collecting permit. Applicants must annually report the number, weight, species, location caught, and gear used for each shark collected for research or display purposes, and the annual disposition of said sharks throughout the life of each shark so taken. The Division reserves the right to place limits on or deny any request to take prohibited species of sharks under the auspices of a scientific collecting permit.

~~[16.0 It shall be unlawful for any commercial fisherman to possess or land sharks while using any single large mesh gill net that exceeds 2,735 yards in length in Delaware jurisdictional waters, and it shall be unlawful for any commercial fisherman to possess or land sharks from large mesh gill nets that have been untended for more than two hours at a time in Delaware jurisdictional waters.]~~

### 3580 Spiny Dogfish

#### 3581 Spiny Dogfish; ~~[Closure of Fishery]~~

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish, *Squalus acanthias*, in Delaware except in those sizes, seasons, and quantities permitted in accordance with the most recent version of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Spiny Dogfish as amended, or federal law administered by the National Marine Fisheries Service, whichever is more restrictive. It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish after the Atlantic States Marine Fisheries Commission approved allocation for the region which includes Delaware has been reached during any given year. It shall be unlawful to commercially harvest, land or possess spiny dogfish taken from federal waters during any time when adjoining federal waters are closed to the taking of spiny dogfish. It shall be unlawful for any commercial fisherman to take, land or possess more than 3,000 pounds of spiny dogfish per day from Delaware waters, with a day being defined as 24 hours. Further, it shall be unlawful for any Delaware commercial fisherman to be in possession of spiny dogfish taken from federal waters in excess of the federal daily landing limit. It shall be unlawful for any person to possess the fins from any spiny dogfish prior to landing said spiny dogfish unless said fins are naturally attached to the body of said spiny dogfish. All spiny dogfish landed in Delaware for commercial purposes must be reported through the normal state reporting system.

4 DE Reg 1859 (5/1/01)

10 DE Reg. 1724 (05/01/07)

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

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

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

#### ORDER

The Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers (“the Board”) was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §3706(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §3706(a)(1), the Board has proposed a number of revisions to its rules and regulations. Specifically, the Board proposes amendments to Rule 8.0, which addresses the continuing education requirements for licensees. Rule 8.2.2 is amended to increase the number of required continuing education hours for each of the three professions regulated by the Board. Single-licensed and dual-licensed individuals will be required to complete 30 continuing education hours every 2 years and triple-licensed individuals will be required to complete 45 hours. If approved, this change will go into effect for the license renewal period beginning August 1, 2009 and ending July 31, 2011.

Rule 8.2.2.6 is amended to clarify that an extension of time within which to complete continuing education or a waiver of the continuing education requirements may be granted upon a showing of hardship, but such request must be submitted prior to expiration of the license.

The Rules pertaining to online renewal and attestation have been revised for greater clarity. Rules 8.2.6, 8.2.7, 8.2.8, 8.2.9 and 8.2.10 have been added to provide a detailed explanation of the continuing education audit process. Finally, Rule 8.2.11 expressly gives the Board the authority to conduct hearings and impose the full range of sanctions available under 24 **Del.C.** §3716 when licensees fail to comply with the continuing education requirements.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the *Delaware Register of Regulations*, Volume 12, Issue 10 on April 1, 2009.

#### Summary of the Evidence and Information Submitted

A public hearing on the proposed rule revisions was held on May 13, 2009. No written or verbal comments were submitted.

#### Findings of Fact

The Board carefully reviewed and considered the proposed rule revisions.

The proposed amendments strengthen continuing education standards and give the Board express authority to sanction licensees who do not comply with those standards. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

The Board finds that adopting the amended rules and regulations as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

**Decision and Effective Date**

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

**Text and Citation**

The text of the revised rules and regulations remains as published in the Delaware *Register of Regulations*, Volume 12, Issue 10 on April 1, 2009.

**IT IS SO ORDERED** this 13th day of May 2009 by the Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.

Illene Courtright, President  
Dr. Mary Ann Connolly-Gaskin, Secretary  
Dr. Michael Michelli  
Dr. Cynthia Parker  
Carol Guilbert  
Regina Bilton  
Dr. Jennifer Xenakes  
George Christensen  
Maisha Britt

\* Please note that no changes were made to the regulation as originally proposed and published in the April 2009 issue of the *Register* at page 1289 (12 DE Reg. 1289). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**3700 Board Of Speech/language Pathologists, Audiologists And Hearing Aid Dispensers**

---

STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER  
NUMBER SIX**

April 24, 2009

**TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES**  
**RE: CREATING A COMPLETE STREETS POLICY**

**WHEREAS**, walking is the most fundamental mode of physical transportation; and

**WHEREAS**, bicycling promotes healthier lifestyles; and

**WHEREAS**, walking and bicycling are simple fitness activities that can prevent disease, improve physical health and assist in fostering mental well-being; and

**WHEREAS**, by walking and bicycling you help to reduce greenhouse gas emission by reducing the time you spend in your car; and

**WHEREAS**, my administration, along with the Delaware Department of Transportation, promotes the walkability and bicycle friendliness of communities through principles such as context sensitive design, mobility-friendly design, mixed-use and infill developments; and

**WHEREAS**, the Delaware Department of Transportation has developed user friendly design standards for pedestrian, bicycle, and transit facilities; and

**WHEREAS**, the Delaware Department of Transportation has the opportunity to create and improve transportation facilities for all users by implementing these principles and standards through its projects; and

**WHEREAS**, the Advisory Council on Pedestrian Awareness and Walkability and the Delaware Bicycle Council serve as advisors to the Delaware Department of Transportation; and

**WHEREAS**, a Complete Streets Policy means deliberately planning, designing, building, and maintaining streets for all modes of transportation;

**NOW, THEREFORE, I, JACK A. MARKELL**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. The Delaware Department of Transportation ("DeIDOT") shall enhance its multi-modal initiative by creating a Complete Streets Policy that will promote safe access for all users, including pedestrians, bicyclists, motorists and bus riders of all ages to be able to safely move along and across the streets of Delaware;
2. The Delaware Bicycle Council, the Advisory Council on Pedestrian Awareness and Walkability, and the Elderly & Disabled Transit Advisory Council shall assist DeIDOT with this endeavor;
3. A Complete Streets Policy should:
  1. Solidify DeIDOT's objective of creating a comprehensive, integrated, connected transportation network that allows users to choose between different modes of transportation;
  2. Establish that any time DeIDOT builds or maintains a roadway or bridge, the agency must whenever possible accommodate other methods of transportation.
  3. Focus not just on individual roads, but changing the decision-making and design process so that all users are considered in planning, designing, building, operating and maintaining all roadways;
  4. Recognize that all streets are different and user needs should be balanced in order to ensure that the

solution will enhance the community;

5. Apply to both new and retrofit projects, including planning, design, maintenance, and operations for the entire right-of-way;

6. Ensure that any exemption to the Complete Streets Policy is specific and documented with supporting data that indicates the basis for the decision;

7. Direct the use of the latest and best design standards as they apply to bicycle, pedestrian, transit and highway facilities;

4. DelDOT, with the assistance of the advisory councils, shall create the Policy and deliver it the Governor for consideration no later than September 30, 2009.

**Jack A. Markell**  
Governor

---

**EXECUTIVE ORDER  
NUMBER SEVEN**

**May 15, 2009**

**TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES**

**RE: REDUCING RECIDIVISM AND CREATING THE INDIVIDUAL ASSESSMENT, DISCHARGE AND PLANNING TEAM (I-ADAPT)**

**WHEREAS**, a critical element of reducing crime is reducing the number of repeat offenders; and

**WHEREAS**, about 97 percent of offenders in Delaware prisons will be released back into society, and currently, 57 percent serve more than one year with an average length of stay of 20.8 months, 24 percent serve less than one year with an average length of stay of 63.1 days and 19 percent are in detention status; and

**WHEREAS**, it costs about \$33,000 a year to incarcerate one inmate, and prisons are 20 times more costly than probation; and

**WHEREAS**, over the next two years approximately 2,800 sentenced adult inmates will be released from Delaware's prisons, and approximately 70 percent will be on some form of community-based supervision; and

**WHEREAS**, recently released inmates can face a number of problems that could lead them back to criminal activity, such as homelessness, a lack of job skills, limited education, lack of transportation to get to work and trouble finding work because of their criminal history; and

**WHEREAS**, by working together among state agencies and community organizations, the Department of Correction could gather all the necessary information to develop individualized re-entry plans for each inmate based on their specific situation;

**NOW, THEREFORE, I, JACK A. MARKELL**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby ORDER that:

- The comprehensive plan to reduce recidivism, as presented by the Department of Correction, the Delaware State Housing Authority, the Department of Labor, the Department of Education, the Department of Health and Social Services and the Department of Services for Children, Youth and Their Families, is hereby adopted.
- A Cabinet-level team shall be established to oversee implementation and further development of the comprehensive plan, and provide advice and input to the Governor on reducing recidivism and promoting effective re-entry policies. This team shall include the Commissioner of the Department of Correc-

tion, the Director of the Delaware State Housing Authority and the Secretaries of the Department of Labor, the Department of Education, the Department of Health and Social Services and the Department of Services for Children, Youth and Their Families. The Cabinet-level team shall be led by a chairperson chosen by the group. The chairperson will serve for a one-year term before the position rotates to another member of the group.

- The Cabinet-level team shall appoint such working groups that are necessary to effectively and efficiently implement the comprehensive plan, and shall include members of the community that have relevant experience and insight.
- The Cabinet-level team shall lead the creation of an Individual Assessment, Discharge and Planning Team (I-ADAPT), which shall assist in implementing the approved comprehensive plan to reduce recidivism by coordinating efforts among State agencies and community organizations to assist offenders who are to be released back into society. The chairperson of the Cabinet-level team shall report to the Governor periodically, but no less than once a calendar quarter, on the implementation of the comprehensive plan and the status of the I-ADAPT process.
- I-ADAPT shall consist of one or more representatives from the Department of Correction, the Delaware State Housing Authority, the Department of Labor, the Department of Education, and the Department of Health and Social Services, representatives from faith-based and other community organizations, and an ex-offender. When appropriate, the members of I-ADAPT may appoint a representative from the Department of Services for Children, Youth and Their Families to assist in their efforts. I-ADAPT will be led by a chairperson chosen by the group. The chairperson will serve for a one-year term before the position rotates to another member of the group. The Governor shall appoint the ex-offender and representatives from faith-based and other community organizations.
- Members of I-ADAPT shall:
  - (a) Increase availability and access to services within five identified re-entry pillars – Housing, Employment, Human Services, Education and Community Integration – through streamlining current processes and utilizing existing resources.
  - (b) Create a standardized process for documenting offenders' entry to and release from the Department of Correction, identifying gaps in the services provided and opportunities for improvement.
  - (c) Develop a re-entry Memorandum of Understanding, which may be amended or supplemented from time-to-time, between and among State government agencies to enhance and streamline the delivery of necessary services in a manner that requires clear expectations and accountability.
  - (d) Implement an accountability system that will annually monitor the plan's successes, detail opportunities for improvement, and assist in the development and implementation of best practices.
  - (e) Work to equip individuals released from custody with the tools needed to succeed in the community.
  - (f) Build a continuum of custody, care, and control for all offenders who are under a community-based supervision sentence, and especially those offenders who are discharged from the custody of the Department of Correction.
  - (g) Identify how state agencies and the community can work together to improve offender accountability and to require personal responsibility for achieving self-sufficiency.
  - (h) Divide into five teams – Statewide Oversight, City of Wilmington, New Castle County, Kent County and Sussex County – for the purpose of focusing available resources in each of those areas.
  - (i) Strive to improve public safety by reducing recidivism by 50 percent within a five-year period and decreasing re-victimization in our communities.

**Jack A. Markell,**  
**Governor**

---

---

**CALENDAR OF EVENTS/HEARING NOTICES**

---

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

The State Board of Education will hold its monthly meeting on Thursday, June 18, 2009 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

---

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

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

**PUBLIC NOTICE****Reimbursement Methodology for Medicaid Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), with 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid State Plan to revise the reimbursement methodology for certain Medicaid services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by June 30, 2009.

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

---

**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE****DSSM Food Supplement Program**

*Utility Expenses; Liquid Resources and Loans; Continuing Shelter Charges; Household Size; and, Verification Subsequent to Initial Certification*

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Utility Expenses; Liquid Resources and Loans; Continuing Shelter Charges; Household Size; and, Verification Subsequent to Initial Certification*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program &

---

Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2009.

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

---

## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Sections 314 and 1111 (18 **Del.C.** §§314 and 1111)  
18 **DE Admin. Code** 305

### **PUBLIC NOTICE**

#### **1501 Medicare Supplement Insurance Minimum Standards**

INSURANCE COMMISSIONER KAREN WELD IN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to proposed Department of Insurance Regulation 1501 relating to Medicare Supplement Insurance Minimum Standards. The docket number for this proposed amendment is 1120.

The purpose of the proposed amendment to regulation 1501 is to update the existing regulation with respect to federal statutory law. The text of the proposed amendment is reproduced in the June 2009 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday July 6, 2009, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to [mitch.crane@state.de.us](mailto:mitch.crane@state.de.us).

---

## **DEPARTMENT OF STATE**

### **DIVISION OF PROFESSIONAL REGULATION**

#### **BOARD OF MEDICAL PRACTICE**

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 **Del.C.** §1713(a)(12))  
24 **DE Admin. Code** 1700

### **PUBLIC NOTICE**

The Delaware Board of Medical Practice ("the Board") has proposed changes to its rules and regulations regarding the supervision of physician assistants. The proposal amends regulation 16.0 as permitted by 24 **Del.C.** §1771(e) and (i) by creating a new subsection 16.2 that enables the Board of Medical Practice to increase the number of physician assistants that may be supervised by one supervising physician upon written application and a finding by the Board of good cause. The existing subsection 16.2 has been renumbered to 16.3.

A public hearing will be held on July 21, 2009 at 3:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware

Board of Medical Practice, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

---

**PUBLIC SERVICE COMMISSION**

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

**PUBLIC NOTICE**

The Delaware General Assembly has enacted legislation granting the Delaware Public Service Commission ("Commission") the authority to make and enforce rules required by the federal Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program relating to the regulation of intrastate gas pipeline transportation. The new legislation is found at 26 Del.C. § 821.

In order to comply with the new legislation, on or about October 7, 2008, the Commission promulgated regulations, containing twelve sections, intended to govern the safety of the gas transmission and distribution systems, which are subject to the Commission's jurisdiction (the "Proposed Regulations"). The Proposed Regulations and a notice regarding the Proposed Regulations were published in the Delaware Register of Regulations, Vol. 12, Issue 5, pp. 655-60 (11/1/08).

Following publication of the Proposed Regulations, the Commission Staff and certain interested parties have made various substantive revisions to the Proposed Regulations. Accordingly, the Commission entered PSC Order No. 75 59, requiring that the revised Proposed Regulations be re-published for public comment. The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the revised Proposed Regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before June 8, 2009.**

The revised Proposed Regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4<sup>th</sup> Floor, 820 North French Street, Wilmington, Delaware 19801.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 736-7500 (Text Telephone also). Inquiries can also be sent by Internet e-mail to [karen.nickerson@state.de.us](mailto:karen.nickerson@state.de.us).