
Delaware Register of Regulations

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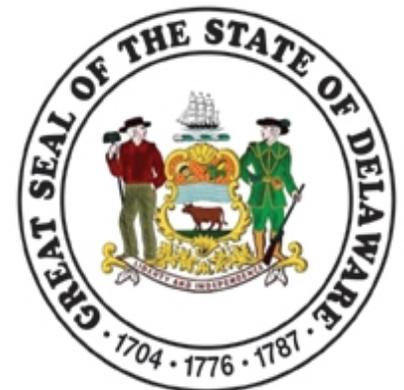


IN THIS ISSUE:

Regulations:
Emergency
Proposed
Final

Governor:
Appointments

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, 2012.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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

15 **DE Reg.** 24-47 (07/01/11)

Refers to Volume 15, pages 24-47 of the *Delaware Register* issued on July 1, 2011.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

1633

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 16	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 17	4:30 p.m.
November 1	October 15	4:30 p.m.

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TABLE OF CONTENTS

Cumulative Tables.....	1636
------------------------	------

EMERGENCY

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Fish and Wildlife

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.....	1645
---	------

PROPOSED

DEPARTMENT OF AGRICULTURE

Food Products Inspection Section

301 Food Products Inspection.....	1649
-----------------------------------	------

Harness Racing Commission

501 Harness Racing Rules and Regulations, Section 6.2, Overnight Events.....	1650
--	------

DEPARTMENT OF EDUCATION

Office of the Secretary

275 Charter Schools.....	1652
--------------------------	------

Professional Standards Board

1570 Early Childhood Special Education Teacher.....	1665
---	------

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Social Services

DSSM: 6100 through 6111 - Transitional Resources to Relative Caregivers.....	1670
---	------

1003.6 Determining Income Eligibility.....	1674
--	------

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1125 Requirements for Preconstruction Review.....	1676
---	------

Division of Fish and Wildlife

3531 Tautog; Size Limits, Creel Limits and Seasons.....	1677
---	------

DEPARTMENT OF STATE

Division of Professional Regulation

Gaming Control Board

101 Regulations Governing Bingo.....	1679
--------------------------------------	------

102 Regulations Governing Raffles.....	1679
--	------

103 Regulations Governing Charitable Gambling Other Than Raffles.....	1679
---	------

104 Regulations Governing Texas Hold'em Poker.....	1679
--	------

1100 Board of Dentistry and Dental Hygiene.....	1699
---	------

1700 Board of Medical Licensure and Discipline, Section 14.0, Renewal of Registration.....	1705
--	------

2930 Board of Real Estate Appraisers.....	1707
---	------

FINAL

DEPARTMENT OF EDUCATION

Office of the Secretary

750 Support Personnel Salary Supplements for Additional Training.....	1711
---	------

1001 Participation in Extra Curricular Activities.....	1714
--	------

TABLE OF CONTENTS

1635

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Diamond State Health Plan Plus - Provisions: DSSM 14920, 17913, 20100, 20110 & 25110.....	1716
Home and Community-Based Services Waiver Provisions: DSSM 20700, 20710, 20720, 20740 and 20760.....	1718
Title XIX Medicaid State Plan, Estate Recovery and Managed Care.....	1721

Division of Public Health

4455 Delaware Regulations Governing a Detailed Plumbing Code.....	1724
4470 State of Delaware Medical Marijuana Code.....	1728

Division of Social Services

DSSM: 11003.7 Child Care Subsidy Program Income Eligible Child Care.....	1759
---	------

DEPARTMENT OF LABOR

Division of Industrial Affairs

1341 Workers' Compensation Regulations.....	1761
---	------

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1131, Low Enhanced Inspection & Maintenance Program (LEIM) and the associated Plan for Implementation (PFI).....	1762
---	------

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Office of the Secretary

101 Regulations Governing the Relief from Disabilities Board.....	1764
102 Regulations Governing Security Systems and Protective Services: False Alarms.....	1765

DEPARTMENT OF STATE

Division of Professional Regulation

1700 Board of Medical Licensure and Discipline, Sections 16.0, 21.0 and 25.0.....	1766
1770 Respiratory Care Practice Advisory Council.....	1768
5200 Board of Examiners of Nursing Home Administrators.....	1770

EXECUTIVE DEPARTMENT

Office of Management and Budget

Promoting, Maintaining and Controlling the Public Use of the Legislative Mall.....	1771
--	------

GOVERNOR'S OFFICE

Governor's Appointments.....	1774
------------------------------	------

CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Agriculture, Food Products Inspection Section; Harness Racing Commission, Notices of Public Comment Periods.....	1777
State Board of Education, Notice of Monthly Meeting.....	1777
Dept. of Health and Social Services, Div. of Social Services, Notices of Public Comment Periods..	1777 - 1778
Dept. of Natural Resources and Environmental Control, Div. of Air Quality; Div. of Fish and Wildlife, Notices of Public Hearings	1778 - 1779
Dept. of State, Div. of Professional Regulation, Notices of Public Hearings.....	1779 - 1781

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 NATIONAL GUARD

Policies and Procedures Regarding FOIA Requests..... 15 **DE Reg.** 813 (Final)

DELAWARE SOLID WASTE AUTHORITY

501 Regulations of the Delaware Solid Waste Authority..... 15 **DE Reg.** 6 (Prop.)
15 **DE Reg.** 637 (Final)

DELAWARE STATE HOUSING AUTHORITY**Office of the Director**

Policies and Procedures Regarding FOIA Requests..... 15 **DE Reg.** 817 (Final)

DEPARTMENT OF AGRICULTURE**Harness Racing Commission**

501 Harness Racing Rules and Regulations, Subsection 3.5, Horse Identifier/
Equipment Checker..... 15 **DE Reg.** 1532(Prop.)
Subsections 7.1.4 and 8.3.5.9.4..... 15 **DE Reg.** 956 (Prop.)
Subsection 8.3.7..... 15 **DE Reg.** 58 (Final)
15 **DE Reg.** 255 (Prop.)
15 **DE Reg.** 1322(Final)
502 Delaware Standardbred Breeders' Fund Regulations..... 15 **DE Reg.** 638 (Final)

Office of the Secretary

Policies and Procedures Regarding FOIA Requests..... 15 **DE Reg.** 822 (Final)

Plant Industries Section

801 Regulations for Noxious Weed Control..... 15 **DE Reg.** 1533(Prop.)
803 Rules and Regulations for the Control and Suppression of the White Pine
Blister Rust..... 15 **DE Reg.** 185 (Prop.)

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations..... 15 **DE Reg.** 263 (Prop.)
15 **DE Reg.** 520 (Final)
15 **DE Reg.** 1239(Prop.)
15 **DE Reg.** 1584(Final)
1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations..... 15 **DE Reg.** 60 (Final)
15 **DE Reg.** 1107(Prop.)
15 **DE Reg.** 1243(Prop.)
15 **DE Reg.** 1585(Final)

DEPARTMENT OF EDUCATION**Office of the Secretary**

106A Teacher Appraisal Process Delaware Performance Appraisal System
(DPAS II) Revised..... 15 **DE Reg.** 21 (Prop.)
15 **DE Reg.** 124 (Prop.)
15 **DE Reg.** 409 (Prop.)
15 **DE Reg.** 833 (Final)
15 **DE Reg.** 1245(Prop.)
15 **DE Reg.** 1586(Final)

107A Specialist Appraisal Process Delaware Performance Appraisal System
(DPAS II) Revised..... 15 **DE Reg.** 29 (Prop.)
15 **DE Reg.** 132 (Prop.)
15 **DE Reg.** 417 (Prop.)

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	15 DE Reg. 835 (Final) 15 DE Reg. 1254(Prop.) 15 DE Reg. 1595(Final)
108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	15 DE Reg. 36 (Prop.) 15 DE Reg. 139 (Prop.) 15 DE Reg. 424 (Prop.) 15 DE Reg. 836 (Final) 15 DE Reg. 1259(Prop.) 15 DE Reg. 1596(Final)
245 Michael C. Ferguson Achievement Awards Scholarship.....	15 DE Reg. 265 (Prop.) 15 DE Reg. 639 (Final)
247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars.....	15 DE Reg. 1262(Prop.) 15 DE Reg. 1597(Final)
290 Approval of Educator Preparation Programs.....	15 DE Reg. 146 (Prop.) 15 DE Reg. 642 (Final)
294 Data Governance.....	15 DE Reg. 1536(Prop.)
505 High School Graduation Requirements and Diplomas.....	15 DE Reg. 62 (Final)
525 Requirements for Career and Technical Education Programs.....	15 DE Reg. 188 (Final) 15 DE Reg. 718 (Prop.) 15 DE Reg. 1147(Final)
701 Unit Count.....	15 DE Reg. 68 (Final)
750 Support Personnel Salary Supplements for Additional Training.....	15 DE Reg. 1401(Prop.)
775 New Teacher Hiring Date Reporting	15 DE Reg. 43 (Prop.) 15 DE Reg. 337 (Final)
815 Physical Examinations and Screening.....	15 DE Reg. 432 (Prop.) 15 DE Reg. 838 (Final) 15 DE Reg. 958 (Prop.)
852 Child Nutrition.....	15 DE Reg. 586 (Prop.)
885 Safe Management and Disposal of Chemicals in the Delaware Public School System.....	15 DE Reg. 1002(Final) 15 DE Reg. 592 (Prop.)
910 Delaware General Educational Development (GED) Endorsement.....	15 DE Reg. 1008 (Final) 15 DE Reg. 339 (Final)
922 Children With Disabilities Subpart A, Purposes and Definitions.....	15 DE Reg. 351 (Final)
923 Children With Disabilities Subpart B, General Duties and Eligibility of Agencies	15 DE Reg. 352 (Final)
925 Children With Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	15 DE Reg. 354 (Final)
926 Children With Disabilities Subpart E, Procedural Safeguards for Parents and Children.....	15 DE Reg. 355 (Final)
927 Children With Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information.....	15 DE Reg. 356 (Final)
928 Children With Disabilities Subpart G, Use and Administration of Funds....	15 DE Reg. 1404(Prop.)
1001 Participation in Extra Curricular Activities.....	15 DE Reg. 268 (Prop.)
1004 Standards for School Buses Placed in Production on or After 1/1/2012..	15 DE Reg. 69 (Final)
1006 Delaware Interscholastic Athletic Association (DIAA).....	15 DE Reg. 72 (Final)
1007 DIAA Sportsmanship.....	15 DE Reg. 74 (Final)
1008 DIAA Junior High and Middle School Interscholastic Athletics.....	15 DE Reg. 75 (Final)
1009 DIAA High School Interscholastic Athletics.....	15 DE Reg. 650 (Final)
1104 Standards for School Buses Placed in Production on or After January 1, 2012.....	15 DE Reg. 826 (Final)
Policies and Procedures Regarding FOIA Requests.....	

Professional Standards Board	
1505 Standard Certificate.....	15 DE Reg. 718 (Prop.)
1506 Emergency Certificate.....	15 DE Reg. 1148(Final) 15 DE Reg. 728 (Prop.)
1597 Delaware Professional Teaching Standards.....	15 DE Reg. 1150(Final) 15 DE Reg. 1538(Prop.)
1598 Delaware Professional Development Standards.....	15 DE Reg. 77 (Final) 15 DE Reg. 1109(Prop.) 15 DE Reg. 1599(Final)
DEPARTMENT OF FINANCE	
Division of Unclaimed Property	
Practices and Procedures for Appeals of Determinations of the Audit Manager	15 DE Reg. 959 (Prop.) 15 DE Reg. 1323(Final)
Practices and Procedures for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property.....	15 DE Reg. 965 (Prop.) 15 DE Reg. 1330(Final)
Office of the Secretary	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 841 (Final)
DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Long Term Care Residents Protection	
3102 Long Term Care Discharge and Impartial Hearing Procedures.....	15 DE Reg. 1405(Prop.)
3201 Skilled and Intermediate Care Nursing Facilities.....	15 DE Reg. 79 (Final) 15 DE Reg. 192 (Final)
3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants.....	15 DE Reg. 192 (Final) 15 DE Reg. 269 (Prop.) 15 DE Reg. 1010 (Final) 15 DE Reg. 1264(Prop.)
3225 Assisted Living Facilities (Formerly Regulation No. 63).....	15 DE Reg. 81 (Final) 15 DE Reg. 192 (Final) 15 DE Reg. 594 (Prop.) 15 DE Reg. 1156(Final)
3230 Rest (Residential) Home Regulations.....	15 DE Reg. 192 (Final)
3301 Group Home Facilities for Persons with AIDS.....	15 DE Reg. 192 (Final)
3310 Neighborhood Homes for Persons with Developmental Disabilities.....	15 DE Reg. 968 (Prop.) 15 DE Reg. 1477(Final)
3315 Rest (Family) Care Homes.....	15 DE Reg. 192 (Final)
3320 Intensive Behavioral Support and Educational Residences (IBSER).....	15 DE Reg. 600 (Prop.) 15 DE Reg. 1603(Final)
Division of Medicaid and Medical Assistance	
Amendments relating to the use of respectful language as required by 78 Del. Laws, c. 180.....	15 DE Reg. 202 (Final)
Diamond State Health Plan Plus 1115 Demonstration Waiver Amendment	15 DE Reg. 45 (Prop.)
Diamond State Health Plan Plus - DSSM: 14920, 17913, 20100, 20100 and 25110	15 DE Reg. 1408(Prop.)
Reimbursement Methodology for Certain Medicaid Services.....	15 DE Reg. 734 (Prop.) 15 DE Reg. 1160(Final)
State Residency.....	15 DE Reg. 46 (Prop.) 15 DE Reg. 362 (Final)
Title XIX Medicaid State Plan:	
Asset Verification System.....	15 DE Reg. 435 (Prop.) 15 DE Reg. 845 (Final)
Attachment 3.1-A, Page 7, Concurrent Hospice Care for Children Under 21 Years.....	15 DE Reg. 661 (Final)

Comprehensive Medicaid Coverage of Tobacco Cessation Services for Pregnant Women and All Medicaid Beneficiaries.....	15 DE Reg. 656 (Final)
Concurrent Hospice Care for Children Under 21 Years.....	15 DE Reg. 272 (Prop.)
Diamond State Health Plan Plus 1115 Demonstration Waiver Amendment	15 DE Reg. 666 (Final)
Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Dental Services.....	15 DE Reg. 968 (Prop.)
Estate Recovery and Managed Care.....	15 DE Reg. 1333(Final)
Freestanding Birth Center Services.....	15 DE Reg. 1412(Prop.)
Home and Community-Based Services Waiver Provisions: DSSM : 20700, 20700, 20710, 20720, 20740 and 20760	15 DE Reg. 1414(Prop.)
Medicaid Eligibility Conditions and Requirements.....	15 DE Reg. 1548(Prop.)
Medicaid Nonpayment and Reporting Requirements for Provider Preventable Conditions.....	15 DE Reg. 276 (Prop.)
Medicaid Provider Screening and Enrollment.....	15 DE Reg. 664 (Final)
Medicaid State Plan Governing Payments for Disproportionate Share Hospital.....	15 DE Reg. 1273(Prop.)
Qualified Long-Term Care Insurance Partnership Program.....	15 DE Reg. 1609(Final)
Section 4.17 Adjustments or Recoveries.....	15 DE Reg. 1265(Prop.)
Section 4.44 Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States.....	15 DE Reg. 1613(Final)
Tobacco Cessation Services.....	15 DE Reg. 621 (Prop.)
Program of All Inclusive Care for the Elderly (PACE).....	15 DE Reg. 1014 (Final)
Payment Error Rate Measurement (PERM).....	15 DE Reg. 84 (Final)
DSSM 14370 Coverage of Emergency Services and Labor and Delivery.....	15 DE Reg. 1020 (Final)
14540 Estate Recovery Protections.....	15 DE Reg. 620 (Prop.)
Division of Public Health	
4202 Control of Communicable and Other Disease Conditions.....	15 DE Reg. 737 (Prop.)
4304 Pre-Hospital Advanced Care Directive.....	15 DE Reg. 1163(Final)
4402 Regulations for Adult Day Care Facilities.....	15 DE Reg. 211 (Final)
4405 Free Standing Surgical Centers.....	15 DE Reg. 220 (Final)
4406 Home Health Agencies - Aide Only (Licensure).....	15 DE Reg. 971 (Prop.)
4410 Skilled Home Health Agencies (Licensure).....	15 DE Reg. 220 (Final)
4447 Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation (Hand Labor).....	15 DE Reg. 220 (Final)
4451 Body Art Establishments.....	15 DE Reg. 154 (Prop.)
4453 Cosmetology and Barbering.....	15 DE Reg. 521 (Final)
4455 Delaware Regulations Governing a Detailed Plumbing Code.....	15 DE Reg. 521 (Final)
4457 Regulations Governing the Manufacture and Sale Of Ice	15 DE Reg. 282 (Prop.)
4460 Mattresses, Pillows and Bedding.....	15 DE Reg. 677 (Final)
4462 Public Drinking Water Systems.....	15 DE Reg. 155 (Prop.)
4469 Personal Assistance Services Agencies.....	15 DE Reg. 526 (Final)
State of Delaware Medical Marijuana Code.....	15 DE Reg. 526 (Final)
	15 DE Reg. 1422(Prop.)
	15 DE Reg. 156 (Prop.)
	15 DE Reg. 527 (Final)
	15 DE Reg. 156 (Prop.)
	15 DE Reg. 528 (Final)
	15 DE Reg. 1423(Prop.)
	15 DE Reg. 220 (Final)
	15 DE Reg. 1424(Prop.)

Division of Social Services

Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal.....	15 DE Reg. 469 (Prop.)
Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal.....	15 DE Reg. 1045(Final)
General Assistance, Refugee Cash Assistance Program Relating to Civil Unions	15 DE Reg. 1113(Prop.)
DSSM 2011 Benefit Restorations for Cash Assistance and Food Stamps.....	15 DE Reg. 1498(Final)
2027 Disqualification of Individuals Convicted of Drug Related Offenses	15 DE Reg. 450 (Prop.)
5000 Fair Hearing Provisions.....	15 DE Reg. 1025 (Final)
5001 Fair Hearings; General Purpose.....	15 DE Reg. 1277(Prop.)
5100 Legal Base.....	15 DE Reg. 1616(Final)
5200 Statewide Fair Hearings.....	15 DE Reg. 973 (Prop.)
5311 Notifying Appellants and Others of Hearings.....	15 DE Reg. 1343(Final)
5312 Responding to Fair Hearing Requests.....	15 DE Reg. 86 (Final)
5400 Fair Hearing Requirements.....	15 DE Reg. 86 (Final)
5500 Decisions by the Final Hearing Authority.....	15 DE Reg. 86 (Final)
5501 Corrective Payments.....	15 DE Reg. 973 (Prop.)
5502 Public Access to Hearing Decisions.....	15 DE Reg. 973 (Prop.)
5600 Admission of Hearsay Evidence.....	15 DE Reg. 1343(Final)
5601 Rule of Legal Residuum.....	15 DE Reg. 973 (Prop.)
5602 Exclusionary Rules of Evidence.....	15 DE Reg. 1343(Final)
5603 Official Notice.....	15 DE Reg. 973 (Prop.)
5604 Protocol.....	15 DE Reg. 1343(Final)
5605 Requests for Continuance.....	15 DE Reg. 973 (Prop.)
5606 Recusation.....	15 DE Reg. 1343(Final)
5607 Demeanor of Evidence.....	15 DE Reg. 973 (Prop.)
9076 Treatment of Income and Resources of Certain Non-Household Members.....	15 DE Reg. 1343(Final)
9093 Electronic Benefit Transfer (EBT).....	15 DE Reg. 451 (Prop.)
11002.9 Definitions and Explanation of Terms.....	15 DE Reg. 454 (Prop.)
11003.4 Cooperating with Child Support.....	15 DE Reg. 222 (Final)
11003.7 Child Care Subsidy Program Income Eligible Child Care.....	15 DE Reg. 1551(Prop.)
11006.5.1 Terminating Providers.....	15 DE Reg. 92 (Final)

Division of Substance Abuse and Mental Health

6002 Mental Health Patients' Grievance Procedure.....	15 DE Reg. 283 (Prop.)
---	------------------------

Office of the Secretary

Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 849 (Final)
--	------------------------

DEPARTMENT OF INSURANCE

1314 Health Premium Consumer Comparison.....	15 DE Reg. 164 (Prop.)
	15 DE Reg. 740 (Prop.)
	15 DE Reg.1164(Final)

DEPARTMENT OF JUSTICE

Division of Securities

Rules and Regulations Pursuant to the Delaware Securities Act.....	15 DE Reg. 529 (Final)
--	------------------------

Fraud and Consumer Protection Division

103 Consumer Protection Unit Administrative Enforcement Proceedings.....	15 DE Reg. 166 (Prop.)
--	------------------------

Victim’s Compensation Assistance Program Advisory Council

301 Victims’ Compensation Assistance Program Rules & Regulations.....	15 DE Reg. 175 (Prop.)
	15 DE Reg. 678 (Final)

DEPARTMENT OF LABOR

Division of Industrial Affairs

1331 Industrial Accident Board Regulations.....	15 DE Reg. 287 (Prop.)
	15 DE Reg. 854 (Final)
1341 Workers’ Compensation Regulations.....	15 DE Reg. 365 (Final)
	15 DE Reg.1167(Final)
	15 DE Reg.1437(Prop.)

Office of the Secretary

Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 856 (Final)
--	------------------------

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air and Waste Management

Proposed Revision to Delaware’s 2008 State Implementation Plan For Attainment of the PM _{2.5} Annual National Ambient Air Quality Standard - Attainment Demonstration.....	15 DE Reg. 742 (Prop.)
	15 DE Reg.1171(Final)
1124 Control of Volatile Organic Compound Emissions, Sections 12.0, 19.0, 20.0 and 22.0.....	15 DE Reg. 532 (Final)
1125 Requirements for Preconstruction Review.....	15 DE Reg.1169(Final)
1131 Low Enhanced Inspection & Maintenance Program and Plan for Implementation.....	15 DE Reg. 1278(Prop.)
1138 Emission Standards for Hazardous Air Pollutants for Source Categories	15 DE Reg. 176 (Prop.)
	15 DE Reg. 861 (Final)
1144 Control of Stationary Generator Emissions.....	15 DE Reg. 303 (Prop.)
1302 Regulations Governing Hazardous Waste (RGHW).....	15 DE Reg. 471 (Prop.)
	15 DE Reg. 864 (Final)
7201 Regulations Governing the Control of Water Pollution, Section 9.8 Regulations Governing the Discharges from the Application of Pesticides to Waters of the State.....	15 DE Reg.1216(Emer.)

Division of Fish and Wildlife

3531 Tautog; Size Limits, Creel Limits and Seasons.....	15 DE Reg. 317 (Prop.)
	15 DE Reg.1177(Final)
3536 Fish Pot Requirements.....	15 DE Reg. 533 (Final)
3552 Spanish Mackerel Size Limit and Creel Limit.....	15 DE Reg.1280(Prop.)
3553 River Herring Creel Limit.....	15 DE Reg. 627(Prop.)
	15 DE Reg.1179(Final)
3900 Wildlife	15 DE Reg. 747 (Prop.)
	15 DE Reg. 1505(Final)

Division of Parks and Recreation

9202 Regulations Governing Natural Areas and Nature Preserves.....	15 DE Reg. 94 (Final)
--	-----------------------

Division of Waste and Hazardous Substances

1375 Delaware Regulations Governing Hazardous Substance Cleanup.....	15 DE Reg.1559(Prop.)
--	-----------------------

CUMULATIVE TABLES

Division of Water Resources

7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.....	15 DE Reg. 1439(Prop.)
7201 Regulations Governing the Control of Water Pollution, 9.5 The Concentrated Animal Feeding Operation (CAFO).....	15 DE Reg. 177(Prop.)
7201 Regulations Governing the Control of Water Pollution, 9.5 The Concentrated Animal Feeding Operation (CAFO).....	15 DE Reg. 679(Final)
Division of Watershed Stewardship	
5101 Sediment and Stormwater Regulations.....	15 DE Reg. 1119(Prop.)
Office of the Secretary	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 864(Final)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

1300 Board of Examiners of Private Investigators & Private Security Agencies	15 DE Reg. 484 (Prop.)
	15 DE Reg. 766 (Prop.)
	15 DE Reg. 875 (Final)
	15 DE Reg. 1181(Final)
	15 DE Reg. 1281(Prop.)
	15 DE Reg. 1617(Final)
5500 Bail Enforcement Agents.....	15 DE Reg. 768 (Prop.)
	15 DE Reg. 1356(Final)
Regulations Governing Community Firearm Recovery Programs.....	15 DE Reg. 682 (Final)
Office of the Secretary	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 877 (Final)
Regulations Governing Community Firearm Recovery Programs.....	15 DE Reg. 319 (Prop.)
Regulations Governing Security Systems and Protective Services: False Alarms	15 DE Reg. 1441(Prop.)
Regulations Governing Statewide Authorized Tamper Resistant Prescription Forms	15 DE Reg. 535 (Final)
	15 DE Reg. 1357(Final)
Regulations Governing The Relief From Disabilities Board.....	15 DE Reg. 1286(Prop.)

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

Division of Management and Support Services

501 Procedures for Drug Testing Certain Employees.....	15 DE Reg. 1047 (Final)
Office of the Secretary	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 881 (Final)

DEPARTMENT OF STATE

Division of Professional Regulation

Gaming Control Board

101 Regulations Governing Bingo	15 DE Reg. 48 (Prop.)
	15 DE Reg. 367 (Final)
	15 DE Reg. 1290(Prop.)
	15 DE Reg. 1618(Final)
102 Regulations Governing Raffles	15 DE Reg. 50 (Prop.)
	15 DE Reg. 368 (Final)
103 Regulations Governing Charitable Gambling Other Than Raffles.....	15 DE Reg. 491 (Prop.)
	15 DE Reg. 886 (Final)
104 Regulations Governing Texas Hold 'Em Poker.....	15 DE Reg. 495 (Prop.)
	15 DE Reg. 886 (Final)
200 Board of Landscape Architecture.....	15 DE Reg. 774 (Prop.)
	15 DE Reg. 443(Prop.)
300 Board of Architecture.....	15 DE Reg. 1121(Prop.)
	15 DE Reg. 1620(Final)

1100 Board of Dentistry and Dental Hygiene.....	15 DE Reg. 628 (Prop.) 15 DE Reg. 777 (Prop.) 15 DE Reg. 1131(Prop.) 15 DE Reg. 1183(Final) 15 DE Reg. 1359(Final) 15 DE Reg. 1621(Final)
1400 Board of Electrical Examiners.....	15 DE Reg. 370 (Final) 15 DE Reg. 1560(Prop.)
1700 Board of Medical Licensure and Discipline.....	15 DE Reg. 498 (Prop.) 15 DE Reg. 537 (Final) 15 DE Reg. 1184(Final) 15 DE Reg. 1293(Prop.)
1770 Respiratory Care Practice Advisory Council.....	15 DE Reg. 52 (Prop.) 15 DE Reg. 543 (Final) 15 DE Reg. 1132(Prop.) 15 DE Reg. 1137(Prop.)
1790 Acupuncture Advisory Council.....	15 DE Reg. 180 (Prop.)
1799 Genetic Counselor Advisory Council.....	15 DE Reg. 545 (Final)
1900 Board of Nursing, Sections 1.0, 2.0, 3.0, 4.0, 6.0, 7.0, 9.0, 10.0, 14.0	15 DE Reg. 53 (Prop.) 15 DE Reg. 685 (Final) 15 DE Reg. 1294(Prop.) 15 DE Reg. 1622(Final)
2500 Board of Pharmacy.....	15 DE Reg. 321 (Prop.) 15 DE Reg. 1507(Final) 15 DE Reg. 1570(Prop.) 15 DE Reg. 99 (Final)
Subsection 5.1.13.....	15 DE Reg. 887 (Final)
2600 Examining Board of Physical Therapists.....	15 DE Reg. 183 (Prop.) 15 DE Reg. 1054 (Final)
2700 Board of Registration for Professional Land Surveyors.....	15 DE Reg. 781 (Prop.) 15 DE Reg. 1361(Final)
2900 Real Estate Commission.....	15 DE Reg. 1185(Final) 15 DE Reg. 1449(Prop.)
2925 Real Estate Commission Education Committee.....	15 DE Reg. 1455(Prop.)
2930 Council on Real Estate Appraisers.....	15 DE Reg. 888 (Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	15 DE Reg. 322 (Prop.) 15 DE Reg. 1055(Final) 15 DE Reg. 1294(Prop.) 15 DE Reg. 1510(Final)
3100 Board of Funeral Services.....	15 DE Reg. 1300(Prop.)
3300 Board of Veterinary Medicine.....	15 DE Reg. 793 (Prop.) 15 DE Reg. 1362(Final)
3500 Board of Examiners of Psychologists.....	15 DE Reg. 371 (Final)
3600 Board of Registration of Geologists.....	15 DE Reg. 502 (Prop.) 15 DE Reg. 1456(Prop.) 15 DE Reg. 53 (Prop.) 15 DE Reg. 373 (Final)
Hearing Aid Dispensers	15 DE Reg. 1579(Prop.)
3900 Board of Clinical Social Work Examiners.....	15 DE Reg. 374 (Final)
4400 Delaware Manufactured Home Installation Board.....	15 DE Reg. 224 (Final)
5100 Board of Cosmetology and Barbering.....	15 DE Reg. 983 (Prop.)
5200 Board of Examiners of Nursing Home Administrators.....	15 DE Reg. 1581(Prop.)
5300 Board of Massage and Bodywork.....	15 DE Reg. 506 (Prop.)
8500 Rules and Regulations Regarding Mandatory Information to be Supplied to the State Bureau of Identification.....	15 DE Reg. 1363(Final) 15 DE Reg. 986 (Prop.)
8800 Boxing and Combative Sports Entertainment Rules and Regulations.....	15 DE Reg. 1366(Final)

Uniform Controlled Substances Act Regulations.....	15 DE Reg. 577(Emer.) 15 DE Reg. 891 (Final)
Office of the Secretary	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 901 (Final)
Office of the State Bank Commissioner	
103 Freedom of Information Act Requests.....	15 DE Reg. 100 (Final)
1114 Alternative Franchise Tax.....	15 DE Reg. 1187(Final)
1201 Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 1056(Final)
Public Service Commission	
1009 Regulations Implementing the Water Utility Distribution System Improvement Charge ("DSIC") & the Utility Facility Relocation Charge ("UFRC")...	15 DE Reg. 1301(Prop.) 15 DE Reg. 1623(Final)
1202 Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 1063(Final)
3001 Rules for Certification and Regulation of Electric Suppliers.....	15 DE Reg. 102 (Final)
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standards Act.....	15 DE Reg. 508 (Prop.) 15 DE Reg. 308(Prop.) 15 DE Reg. 1625(Final)
DEPARTMENT OF TECHNOLOGY AND INFORMATION	
Office of the Secretary	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 906 (Final)
DEPARTMENT OF TRANSPORTATION	
Division of Motor Vehicles	
2217 Driver License and Identification Card Application Procedures for Delaware Compliant & Delaware Non-Compliant Identification Documents	15 DE Reg. 322 (Prop.) 15 DE Reg. 687 (Final)
2287 Public Carrier Regulations.....	15 DE Reg. 55 (Prop.) 15 DE Reg. 550 (Final)
Division of Planning and Policy	
2306 Crash Data Release.....	15 DE Reg. 795 (Prop.) 15 DE Reg. 1192(Final)
2309 Standards and Regulations for Subdivision Streets and State Highway Access.....	15 DE Reg. 56 (Prop.) 15 DE Reg. 551 (Final)
Division of Transportation Solutions	
2402 Delaware Manual on Uniform Traffic Control Devices.....	15 DE Reg. 106 (Final)
Office of the Secretary	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 910 (Final)
EXECUTIVE DEPARTMENT	
Delaware Economic Development Office	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 920 (Final)
Office of Management and Budget	
Disability Insurance Program Rules and Regulations.....	15 DE Reg. 799 (Prop.) 15 DE Reg. 1367(Final)
Environmentally Preferred Purchasing Policy.....	15 DE Reg. 1469(Prop.)
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 925 (Final)
Promoting, Maintaining and Controlling the Public Use of the Legislative Mall.	15 DE Reg. 1474(Prop.)
STATE EMPLOYEE BENEFIT COMMITTEE	
2001 Group Health Care Insurance Eligibility and Coverage Rules.....	15 DE Reg. 225 (Final) 15 DE Reg. 1071 (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.

Emergency Regulations

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

§ 10119. Emergency regulations.

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

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

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

Statutory Authority: 7 Delaware Code, Sections 903(h)

(7 **Del.C.** §903(h))

7 DE Admin. Code 3507

Secretary's Order No.: 2012-F-0019

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

AUTHORITY

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is adopting amendments to Tidal Finfish Regulation 3507 without prior notice or public hearing to assure that Delaware's recreational black sea bass season is consistent with the Federal recreational black sea bass season and to avoid the actual and imminent danger to this fishing resource and its associated businesses. 7 **Del.C.** §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish.

REASON FOR THE EMERGENCY ORDER

If Delaware does not use an emergency order to open its recreational black sea bass season on May 19, 2012, the date the Federal recreational black sea bass season will open, Delaware's recreational black sea bass season will open on May 22, 2012 as previously established through the normal regulatory process. This will prevent Delaware anglers from fishing the crucial first three days of the Federal black sea bass season, causing an economic danger to our fishing resource businesses, such as charter boats, bait shops and tackle dealers that depend on this fishing resource.

A black sea bass management region extending from Delaware through North Carolina is formally recognized by Addendum XXI of the Atlantic States Marine Fisheries Commission's summer flounder, scup, and black sea bass Interstate Fisheries Management Plan, approved in 2011, and was delineated based on shared biological and fishery characteristics among the states in this region. Delaware's black sea bass regulations, as per the management plan, are kept consistent with Federal regulations. Consequently, Delaware's rule-making process begins when the Federal measures are published. The Federal rule opening the recreational black sea bass season in Federal waters was published today, May 18, 2012 and will open Federal waters on May 19, 2012. Delaware's normal regulatory process takes four months, so Delaware will not be able to maintain consistency with Federal regulations unless an emergency order is issued to open our black sea bass recreational fishery on May 19, 2012. All other states in our management region have already stated their intent to open their seasons on May 19, 2012, thus Delaware anglers and associated businesses will be denied this angling and economic opportunity if Delaware does not also open its season on May 19, 2012.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect at 12:01 a.m. on May 19 and shall remain in effect for 90 days.

PETITION FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware, 19901.

ORDER

It is hereby ordered, the 18th day of May 2012 that the above referenced amendment to Tidal Finfish Regulation 3507 (12.0), a copy of which is hereby attached, are adopted pursuant to 7 **Del.C.** §903(h) and supported by the evidence contained herein.

Collin P. O'Mara, Secretary
Department of Natural Resources
And Environmental Control

3500 Tidal Finfish Bass (Striped Bass; Black Sea Bass)

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

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

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.

6 DE Reg. 1230 (3/1/03)

6 DE Reg. 1360 (4/1/03)

12 DE Reg. 1430 (05/01/09)

14 DE Reg. 1382 (06/01/11)

- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.
- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.
- 1 DE Reg.1767 (5/1/98)**
- 2 DE Reg. 1900 (4/1/99)**
- 3 DE Reg. 1088 (2/1/00)**
- 4 DE Reg. 1665 (4/1/01)**
- 4 DE Reg. 1859 (5/1/01)**
- 5 DE Reg. 2142 (5/1/02)**
- 6 DE Reg. 348 (9/1/02)**
- 6 DE Reg. 1230 (3/1/03)**
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.
Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned an equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:
- 9.1 A maximum of one transfer per year per person.
- 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
- 10.1 A maximum of one transfer per year per person.
- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each day's landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01a.m. January 1, and ending midnight May 24~~18~~, and beginning at 12:01 a.m. October 12 and ending mid-night October 31.

12.1 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

7 DE Reg. 1575 (5/1/04)

6 DE Reg. 1230 (3/1/03)

8 DE Reg. 1488 (4/1/05)

9 DE Reg. 1759 (5/1/06)

11 DE Reg. 1662 (06/01/08)

14 DE Reg. 113 (08/01/10)

Symbol Key

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Proposed Regulations

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

DEPARTMENT OF AGRICULTURE FOOD PRODUCTS INSPECTION SECTION

Statutory Authority: Statutory Authority: 3 Delaware Code, Section 8708(8) (3 **Del.C.** §8708(8))
3 **DE Admin. Code** 301

PUBLIC NOTICE

The Delaware Department of Agriculture's Food Products Inspection Section ("the Department") proposes to amend Regulation 3.1 of its existing Regulations (see 3 **DE Admin. Code** 301) to ensure that all meat, poultry, and egg product inspections in Delaware as well as its methods of slaughter are in compliance with current federal regulatory requirements as they are found in the Code of Federal Regulations, and as they may be amended from time to time, and so as to satisfy U.S. Department of Agriculture officials that Delaware is enforcing inspection standards that are "at least equal to" those imposed and enforced under the relevant federal acts mandated by 3 **Del.C.** §8707(6).

Public comments concerning the proposed amendment to Regulation 3.1 may be submitted in writing to Andrea Jackson, Administrator, Food Products Inspection, at 2320 S. DuPont Highway, Dover, DE 19901, on or before July 2, 2012.

301 Food Products Inspection

1.0 Authority

- 1.1 These proposed amendments to existing Delaware regulations as well as the adoption of new regulations governing meat, poultry, and egg products inspection and the humane slaughtering of livestock are promulgated pursuant to the Department's authority specifically set forth in Section 8708(8) of Title 3 of the **Delaware Code**.

11 **DE Reg. 1622 (06/01/08)**

2.0 Purpose

- 2.1 The purpose of these proposed regulations is to re-establish the standards and procedures for the meat, poultry, and egg product inspection programs of Delaware as well as Delaware's humane

slaughtering of livestock procedures so that they shall be equal to those imposed by the Federal Meat Inspection Act, the Federal Poultry Inspection Act, the Federal Egg Products Inspection Act and the Federal Humane Methods of Slaughter Act with respect to operations occurring within the State of Delaware.

11 DE Reg. 1622 (06/01/08)

3.0 Substantive Provisions

- 3.1 The Department adopts and incorporates by reference herein the rules, regulations, definitions and standards of the U.S. Department of Agriculture governing meat and meat products inspection, poultry products inspection, voluntary inspection of poultry, egg and egg products inspection and humane methods for slaughtering animals as they ~~are currently written and which are found~~ appear, and as they may be amended from time to time, at Title 9 of the Code of Federal Regulations, at Subchapters A, E, and I of Title 9, Parts 301 through 592, Parts 301 through 592, excluding Parts 390 and 391, of the Code of Federal Regulations.

5 DE Reg. 1902 (4/1/02)

11 DE Reg. 1622 (06/01/08)

HARNES RACING COMMISSION

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

PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 Del.C. §10005, proposes to change its Rule 6.2.2.2 to add at the end of the second sentence the words “except when written Delaware Owned or Bred Preferred.” The Commission will hold a public hearing on the proposed rule change at Harrington Raceway on August 14, 2012 at 10:15 am.

Written comments should be sent to Hugh J. Gallagher, Executive Director of the Delaware Harness Racing Commission, Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations*.

The proposed changes are for the purpose of updating the Rules and to more accurately reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.html

A copy is also available for inspection at the Harness Racing Commission office.

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

6.0 Types of Races

6.1 Types of Races Permitted

In presenting a program of racing, the racing secretary shall use exclusively the following types of races:

6.1.1 Overnight events which include:

6.1.1.1 Conditioned races;

6.1.1.2 Claiming races;

6.1.1.3 Preferred, invitational, handicap, open or free-for-all races;

6.1.2 Added money events which include:

6.1.2.1 Stakes;

6.1.2.2 Futurities;

- 6.1.2.3 Early closing events; and
- 6.1.2.4 Late closing events
- 6.1.3 Match races
- 6.1.4 Qualifying Races (See Rule 7.0 -- "Rules of the Race")
- 6.1.5 Delaware-owned or bred races as specified in 3 **Del.C.** §10032
- 6.2 Overnight Events
 - 6.2.1 General Provisions
 - 6.2.1.1 For the purpose of this rule, overnight events shall include conditioned, claiming, preferred, invitational, handicap, open, free-for-all, or a combination thereof.
 - 6.2.1.2 Condition sheets must be available to participants at least 18 hours prior to closing declarations to any race program contained therein.
 - 6.2.1.3 A fair and reasonable racing opportunity shall be afforded both trotters and pacers in reasonable proportion from those available and qualified to race.
 - 6.2.1.4 Substitute races may be provided for each race program and shall be so designated on condition sheets. A substitute race may be used when a regularly scheduled race fails to fill.
 - 6.2.1.5 Regularly scheduled races or substitute races may be divided where necessary to fill a program of racing, or may be divided and carried over to a subsequent racing program, subject to the following:
 - 6.2.1.5.1 No such divisions shall be used in the place of regularly scheduled races which fill.
 - 6.2.1.5.2 Where races are divided in order to fill a program, starters for each division must be determined by lot after preference has been applied, unless the conditions provide for divisions based upon age, performance, earnings or sex may be determined by the racing secretary.
 - 6.2.1.5.3 However, where necessary to fill a card, not more than three races per day may be divided into not more than three divisions after preference has been applied. The divisions may be selected by the racing secretary. For all other overnight races that are divided, the division must be by lot unless the conditions provide for a division based on performance, earnings or sex.
 - 6.2.2 Conditions
 - 6.2.2.1 Conditions may be based only on:
 - 6.2.2.1.1 horses' money winnings in a specified number of previous races or during a specified previous time;
 - 6.2.2.1.2 horses' finishing positions in a specified number of previous races or during a specified period of time;
 - 6.2.2.1.3 age, provided that no horse that is 15 years of age or older shall be eligible to perform in any race except in a matinee race;
 - 6.2.2.1.4 sex;
 - 6.2.2.1.5 number of starts during a specified period of time;
 - 6.2.2.1.6 special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada;
 - 6.2.2.1.7 horse's race condition in a specified number of previous races or during a specified period of time;
 - 6.2.2.1.8 claiming price in a horse's last one to three previous races;
 - 6.2.2.1.9 Delaware-owned or bred races as specified in 3 **Del.C.** §10032; or
 - 6.2.2.1.10 any one or more combinations of the qualifications herein listed.
 - 6.2.2.2 Conditions shall not be written in such a way that any horse is deprived of an opportunity to race in a normal preference cycle. Where the word preference is used in a condition, it shall not supersede date preference as provided in the rules except when written

PROPOSED REGULATIONS

- Delaware Owned or Bred Preferred. Not more than three also eligible conditions shall be used in writing the conditions for overnight events.
- 6.2.2.3 The Commission may, upon application from the racing secretary, approve conditions other than those listed above for special events.
- 6.2.2.4 In the event there are conflicting published conditions and neither one nor the other is withdrawn by the Association, the one more favorable to the declarer shall govern.
- 6.2.2.5 For the purpose of eligibility, a racing season or racing year shall be the calendar year. All races based on winnings will be programmed as Non-Winners of a multiple of \$100 plus \$1 or Winners over a multiple of \$100. Additional conditions may be added. When recording winnings, gross winnings shall be used and cents shall be disregarded. In the case of a bonus, the present value of the bonus shall be credited to the horse as earnings for the race or series of races for which it received the bonus. It shall be the responsibility of the organization offering the bonus to report the present value of the bonus to the United States Trotting Association in a timely manner.
- 6.2.2.6 Records, time bars shall not be used as a condition of eligibility.
- 6.2.2.7 Horses must be eligible when declarations close subject to the provision that:
- 6.2.2.7.1 Wins and winnings on or after the closing date of declarations shall not be considered;
- 6.2.2.7.2 Age allowances and eligibility shall be according to the age of the horse on the date the race is contested.
- 6.2.2.7.3 In mixed races, trotting and pacing, a horse must be eligible under the conditions for the gait at which it is stated in the declaration the horse will perform.
- 6.2.2.8 When conditions refer to previous performances, those performances shall only include those in a purse race. Each dash or heat shall be considered as a separate performance for the purpose of condition races.
- 6.2.2.9 In overnight events, on a half mile racetrack there shall be no trailing horses. On a bigger racetrack there shall be no more than one trailing horse. At least eight feet per horse must be provided the starters in the front tier.
- 6.2.2.10 The racing secretary may reject the declaration to an overnight event of any horse whose past performance indicates that it would be below the competitive level of other horses declared to that particular event.

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

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 275

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

275 Charter Schools

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

275 Charter Schools. The amendments reflect the process for Performance Reviews as well as other amendments to align with specific Delaware Code revised during the 146th General Assembly.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **July 5, 2012** 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 is intended to 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 does not specifically address students receiving an equitable education but does address the operation and review of charter schools.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not specifically address student health and safety but does address the operation and review of charter schools.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not specifically address students' legal rights but does address the operation and review of charter schools.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation preserves the necessary authority and flexibility of the decision making at the local board and school level as delineated in Delaware Code.

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 is not intended to place unnecessary reporting or administrative requirements or mandates upon the decision makers at the local board or school level.

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The regulation is consistent with Delaware Code.

275 Charter Schools

1.0 Purpose and Effect

1.1 The purpose of these regulations is to provide rules to govern the implementation of 14 **Del.C.** Ch. 5 (hereafter, the "Charter School Law") develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing, including:

1.1.1 Agency commitment and capacity;

1.1.2 Application process and decision-making;

1.1.3 Performance-based accountability;

1.1.4 Ongoing oversight and evaluation; and

1.1.5 Renewal and revocation decision-making.

- 1.2 These regulations establish the requirements for applying for a charter to operate a public school, and for opening and operating the school, when a charter is granted by the Department of Education with the approval of the State Board of Education.
- 1.3 These regulations affect students who attend Charter Schools, the parents and other caregivers of these students, the directors, staff administrators and boards of the Charter Schools, and the students, staff, administrators and boards of the reorganized school districts of the State.
- 1.4 These regulations shall bind all Charter Schools and are incorporated into all charters approved by, or transferred to the Department with the consent of the State Board.

6 DE Reg. 274 (9/1/02)

12 DE Reg. 211 (08/01/08)

2.0 Definitions

- 2.1 The following definitions apply for purposes of interpreting the Charter School Law and these regulations:

“Accountability Committee”: Any Charter School Accountability Committee established by the Department to review and report to the Department as provided in Sections 511 and 515 of the Charter School Law.

“Applicant”: A legal entity organized under the Delaware General Corporation Law that has applied to the Department for, but not yet received, a charter to operate a charter school, or the renewal or modification of such a charter, as the context indicates.

“Audit”: An informal financial, programmatic, or compliance audit of a charter school.

“Charter Holder”: The legal entity organized under the Delaware General Corporation Law to which a charter is issued by the Department with the approval of the State Board.

“Charter School”: A non home based full time public school that is operated in an approved physical plant under a charter granted by, or transferred to the Department with the approval of the State Board for the personal physical attendance of all students.

~~“DSTP”~~: ~~The Delaware Student Testing Program or successor statewide assessment program established at 14 Del.C. §151, et.seq., and, as the context requires, the assessments administered pursuant to the program.~~

“Delaware Comprehensive Assessment System (DCAS)” means the statewide assessment used to measure student achievement of the Delaware academic content standards, including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities.

“Department”: The Delaware Department of Education.

“Financial Audit”: The audit required to be conducted pursuant to 14 Del.C. 513(a).

“First Instructional Day”: The first day a Charter School is open with students in attendance.

“Formal Review”: The lawful investigation of a Charter School to determine whether the school is violating the terms of its charter. Formal reviews may include, but are not limited to, on site visits, inspection of educational records and other documents, and interviews of parents, Charter School employees and others with knowledge of the school’s operations and educational programs.

“Founding Board of Directors”: The Board of Directors of an Applicant at the time the original application for a charter is filed with the Department.

“Highly successful charter school”: A charter school with sustained high levels of student achievement and sustained financial stewardship. A highly successful charter school is one which has been in operation for at least three years and which, during the three years prior to filing a charter application in Delaware, has a combined student performance which exceeds the statewide average student performance in the state in which the highly successful charter school is located based upon that state’s performance score or measure on its statewide assessment for purposes of the Elementary and Secondary Education Act of 1965 (ESEA) or any reauthorization thereof. In addition, during the same three year period the school must have had no adverse financial findings and

successfully completed any required financial audits in the state in which it is located, and be able to demonstrate that it will be economically viable.

“Parent”: The natural or adoptive parent, or the legal guardian, of a student enrolled in the charter school. “Parent” also includes individuals authorized to act as Relative Caregivers under the provisions of 14 **Del.C.** §202(e)(2).

“Performance Agreement”: The document which describes the academic performance expectations, identifies economic viability requirements, defines organizational responsibilities, and outlines accountability of the Charter School. An approved charter school application serves as the basis for the performance agreement, which is for a specified term and as prescribed by the Department with the assent of the State Board of Education. The Performance Agreement is enforceable as part of the school’s charter.

“Performance Framework”: A rubric based tool established by the Department with the assent of the State Board of Education, as amended from time to time, which contains the details, utilizing multiple measures, used by the Department to assess compliance with the Performance Agreement in the areas of academic performance, economic viability, organizational responsibilities and accountability of the Charter School. The completed frameworks will be provided to the Charter School Accountability Committee, Secretary and State Board of Education to inform their decision making for renewals, modifications and formal reviews.

“Performance Review”: Reserved The process by which the Charter’s School’s compliance with its Performance Agreement is evaluated annually to inform renewal, major modification and formal review decisions. Compliance with the charter and the Performance Agreement, as assessed through the Performance Frameworks, is the basis for the Performance Review. Review and results will be reported in the Department’s annual report.

“Renewal”: The approval of an application to continue operating an existing Charter School for an additional five year period, available after the school has been in operation for four years. Renewal decisions are based on the criteria set forth in 14 **Del.C.** §512, and informed by a Charter School’s compliance with its Performance Agreement as evaluated by the Performance Frameworks.

“Secretary”: The Secretary of the Delaware Department of Education.

“State Assessment System” means the statewide assessment used to measure student achievement of the Delaware academic content standards including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities, and other assessments such as, but not limited to, the National Assessment for Educational Progress (NAEP), a college readiness assessment, an assessment for English Language Learners (ELL), a norm-referenced assessment that may be administered or required as determined by the Department of Education.

“State Board”: The Delaware State Board of Education.

6 DE Reg. 274 (9/1/02)

7 DE Reg. 928 (1/1/04)

12 DE Reg. 211 (08/01/08)

3.0 Application Process

- 3.1 Application Deadlines: Applications to establish new Charter Schools must be submitted to the Department between November 1st and December 31st for schools preparing to admit students the first day of school of the second school year thereafter, unless otherwise agreed upon by the authorizer and the applicant to allow the applicant to serve students who would otherwise be displaced because of the closure of an existing charter school.
- 3.2 All applications, whether for an original charter, a modification of a charter or the Renewal of a charter, shall be made on forms approved by the Department.
- 3.3 The Department may require a criminal background check on any person involved in the preparation of an application, whether for an original charter, a major modification or a charter Renewal, and on any person involved in the development of the proposed Charter School.

- 3.4~~3~~ An original and ten (10) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered; an electronic copy shall also be submitted at the same time either as an attachment to an e-mail message or by electronic portable storage. The electronic copy shall be identical in all respects to the original application. Incomplete applications, or applications received after the deadline, will not be considered.
- 3.5~~4~~ All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.
- 3.6~~5~~ An application is not complete unless all of the following requirements are met:
- 3.6~~5~~.1 All questions on the application form are answered.
- 3.6~~5~~.2 All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is received.
- 3.7~~6~~ No application for a new Charter School will be accepted by the Department in any year in which the Department with the approval of the State Board has decided not to accept applications; except for an application submitted by a Highly Successful Charter Operator for the purpose of operating a charter school at a site of and serving students currently attending a charter school whose charter has been revoked, has not been renewed, or whose charter is on formal review and whose Board of Directors has agreed to abandon their charter.
- 3.8~~7~~ Applications will not remain pending from year to year. Applications that do not result in the issuance of a charter must be resubmitted in full in subsequent years to be considered in subsequent years.
- 3.9~~8~~ The State Board of Education may designate one or more of its members to sit as nonvoting members of the Accountability Committee.
- 3.40~~9~~ In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter, the renewal of a charter, or the formal review of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the performance framework (not applicable for new applications), the preliminary and final report of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee's final report and any written or electronic comments received at or before any such public hearing. In the case of the renewal, major modification, or formal review of a charter, the record ~~may~~ shall also include performance documentation generated during the term of the charter or related to the subject of the formal review, including but not limited to, compliance with the school's Performance Agreement, audits and performance reviews, student testing data, and parent complaint documentation. No other evidence shall be considered. Written and electronic comments must be received by the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.
- 3.10 Applicants and Charter Holders shall make the financial disclosures relating to ownership and financial interest as required by 14 Del.C. §511(o). A charter school founder or member of a charter school board has a "financial interest" in the charter school if that person receives compensation in excess of \$5,000.00 from the charter school in any calendar year. Compensation means money, thing of value, or any other economic benefit of any kind or nature whatsoever conferred on or received by a charter school founder or member of a charter school board. "Ownership" shall have the meaning commonly ascribed to it as appropriate in context.

6 DE Reg. 274 (9/1/02)

12 DE Reg. 211 (08/01/08)

4.0 Standards and Criteria for Granting Charter

4.1 Applicant Qualifications

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- 4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:
- 4.1.1.1 Research based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.
 - 4.1.1.2 Business management, including but not limited to accounting and finance.
 - 4.1.1.3 Personnel management.
 - 4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.
 - 4.1.1.5 At risk populations and children with disabilities, including but not limited to students eligible for special education and related services.
 - 4.1.1.6 School operations, including but not limited to facilities management.
- 4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.
- 4.1.3 The Applicant's bylaws must be submitted with the application and must demonstrate that:
- 4.1.3.1 ~~The Charter Holder's board of directors will include a certificated teacher employed as a teacher at the Charter School and a Parent of a currently enrolled student of the school no later than the school's First Instructional Day, further provided a single individual shall not represent both the certified teacher and parent role on the board~~ At the time at which the school commences its instructional program and all times thereafter, the board of directors of the charter holder must include a Delaware certified teacher employed as a teacher at a charter school operated by the Applicant in Delaware and also include at least one parent of a student enrolled in a charter school operated in Delaware by the charter holder; further provided a single individual shall not represent both the certified teacher and parent role on the board;
 - 4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.
 - 4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 **Del.C.** Ch. 100 in conducting the Charter School's business.
- 4.2 ~~Student Performance~~ Requirements
- 4.2.1 Minimum Requirements
- 4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 **Del.C.** §§151, 152, 153, 154, and 157 and the Department's implementing rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program or any successor statewide assessment program including without limitation those relating to the State Assessment System.
 - 4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the applicable assessments administered pursuant to the ~~Delaware Student Testing Program (DSTP)~~ State Assessment System, and a timetable for accomplishment of those goals.
 - 4.2.1.3 ~~The Applicant must agree and certify that the Charter School's average student performance on the DSTP assessments in each content area will meet or exceed the statewide average student performance of students in the same grades for each year of test administration, unless the student population meets the criteria established in Section 4.2.2.~~ If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the State Assessment System, the application and performance agreement must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional

PROPOSED REGULATIONS

indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the State Assessment System.

4.2.1.4 Following charter approval, but not later than a date established by the Department, the Applicant must enter into a Performance Agreement approved by the Department with the assent of the State Board, which shall address the organizational, academic and financial performance expectations of the Applicant during the term of the charter. The Department, with the assent of the Board, shall establish and publish a Performance Framework which shall be used to assess the school's compliance with its Performance Agreement. Nothing contained herein shall be interpreted to relieve an applicant of its obligation to comply with any approval criteria or requirement set forth in 14 Del.C. Ch. 5. The Department shall conduct annual audits using the Performance Framework to ensure ongoing compliance with the school's Performance Agreement.

4.2.1.5 For an Applicant proposing to serve students at risk of academic failure, the school's Performance Agreement shall specify what, if any, portion of the Performance Framework shall or shall not apply to the school, or whether the Performance Framework shall be modified to more appropriately measure the performance of the school.

4.2.2 Special Student Populations

~~4.2.2.1 An Applicant for a charter proposing enrollment preferences for students at risk of academic failure shall comply with the minimum performance goals established in Subsections 4.2.1.2 and 4.2.1.3. This requirement shall be waived where the Applicant demonstrates to the satisfaction of the Department and State Board that the Charter School will primarily serve at risk students and will apply performance goals and timetables which are appropriate for such a student population.~~

~~4.2.2.2 An Applicant for a charter proposing an enrollment preference other than a preference for students at risk of academic failure shall comply with the Section. 4.2.1. In addition, the Department, with the approval of the State Board, may require such an Applicant to establish and apply additional and higher student performance goals consistent with the needs and abilities of the student population likely to be served as a result of the proposed enrollment preferences.~~

~~4.2.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the DSTP, the application must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the DSTP.~~

4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 Del.C. §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;

- 4.3.2.2 Prior successful implementation of the program; and
- 4.3.2.3 The Charter School's adherence to professionally accepted models of student development.
- 4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.
 - 4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 **Del.C.** Ch. 31 and with 14 **DE Admin. Code** 925, specifically including a plan for having a continuum of educational placements available for children with disabilities.
 - 4.3.3.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.
 - 4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.
 - 4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.
- 4.4 Economic Viability.
 - 4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start up period prior to the opening of the school.
 - 4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.
 - 4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.
 - 4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. "Major contracts" shall include, without limitation, the school's contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1st of the year in which the school proposes to open and August 1st of each year thereafter. Contracts for the lease or purchase of real property, or the construction or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary certificate of occupancy for the school premises no later than June 15th of the year in which the school proposes to open.
 - 4.4.5 *Reserved*
- 4.5 Attendance, Discipline, Student Rights and Safety
 - 4.5.1 The application must include a draft "Student Rights and Responsibilities Manual" that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.
 - 4.5.1.1 The "Student Rights and Responsibilities Manual" must comply with the Gun Free Schools Act of 1994 (20 U.S.C.A. §8921) and Department Regulation ~~878~~ 605.
 - 4.5.1.2 The application must include a plan to distribute the "Student Rights and Responsibilities Manual" to each Charter School student at the beginning of each school year. Students

who enroll after the beginning of the school year shall be provided with a copy of the "Student Rights and Responsibilities Manual" at the time of enrollment.

- 4.5.2 The application must include the process and procedures the Charter School will follow to comply with the following laws:
- 4.5.2.1 14 **Del.C.** Ch. 27 and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.
 - 4.5.2.2 11 **Del.C.** Ch. 85 and applicable 14 **Del.C.** §511(p), and Department regulations regarding criminal background checks for public school related employment.
 - 4.5.2.3 14 **Del.C.** §4112 and applicable Department regulations regarding the reporting of school crimes.
 - 4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.
 - 4.5.2.5 The provision of free and reduced lunch to eligible students pursuant to any applicable state or federal statute or regulation.
- 4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. Except as otherwise required in this regulation, the Applicant must either agree and certify that the services of at least one (1) full time nurse will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate and comparable plan for providing for the health and safety of its students. Any such plan must include the Charter School's policies and procedures for routine student health screenings, for administering medications to students (including any proposed self administration), for monitoring chronic student medical conditions and for responding to student health emergencies. Any applicant which receives funding equivalent to the funding provided to school districts for one or more school nurses shall provide its students the full time services of a corresponding number of registered nurses.

6 DE Reg. 274 (9/1/02)

7 DE Reg. 928 (1/1/04)

9 DE Reg. 1752 (5/1/06)

12 DE Reg. 211 (08/01/08)

5.0 Nature of Charter

- 5.1 When granted, a charter is an authorization for the Charter Holder to open and operate a Charter School in accordance with the terms of the charter, including the terms of any conditions placed on the charter by the Department with the approval of the State Board.
- 5.1.1 It is the responsibility of the Charter Holder to notify the Department in writing of its compliance with any time frames or other terms or conditions contained in or imposed on the charter. The Department may require the Charter Holder to produce satisfactory evidence, including written documentation, of compliance.
- 5.2 Compliance with the charter, including compliance with the terms of any conditions placed on the charter, is a condition precedent to the authority to open and operate the Charter School. Failure to comply with the terms of the charter and any conditions placed on the charter, including deadlines, operates as a forfeiture of the authority to open the Charter School regardless of previous approval. These regulations are incorporated into and made a part of each charter approved by the Department with the consent of the State Board. A Charter School's failure to comply with these regulations may be treated as a failure on the part of the school to comply with its charter.

6 DE Reg. 274 (9/1/02)

6.0 Funding

- 6.1 The Department may withhold State and local funding from a Charter Holder not in compliance with the terms of the charter being funded, including compliance with any conditions placed on such charter.
- 6.2 The Department may withhold State and local funding from a Charter Holder while one or more of its charters is under formal review.
- 6.3 State and local funding of any charter on probationary status will be released in accordance with the terms of the probation.
- 6.4 Federal funding for a Charter Holder and under the control of the Department will be disbursed according to the laws, regulations and policies of the federal program providing the funding and the terms of any applicable federal grant approval including state requirements.

6 DE Reg. 274 (9/1/02)

7.0 Reserved Financial Audit

After July 1st of each year, each Charter Holder shall contract to have an audit of the business and financial transactions, records, and accounts of the school, in a form and manner satisfactory to the Department, and shall provide the audit results to the Department.

6 DE Reg. 274 (9/1/02)

8.0 Enrollment Preferences, Solicitations and Debts**8.1 Enrollment Preferences**

- 8.1.1 An Applicant to establish a new Charter School shall indicate in its application whether children of the Charter School's founders will be given an enrollment preference. If a founders' preference will be given, the application shall include the standard adopted by the Founding Board of Directors to determine the founders. The standard used to determine the founders shall be consistent with the requirements of Section 506(b)(4) of the Charter School Law. If the application is approved, the Charter Holder shall provide the Department with the identity of its founders no later than March 1 immediately preceding the First Instructional Day.

8.2 Solicitations.

- 8.2.1 Any person or entity soliciting contributions, gifts or other funding on behalf of or for the benefit of an existing or potential Charter School shall notify the person or entity solicited that enrollment of an individual student in the Charter School is not contingent on, or assured by, any such contribution, gift or other funding.
- 8.2.2 Written notices of fund raising activities for the benefit of a Charter School must contain the following statement: "The [name of school] is a public school. Contributions and gifts are not required for admission to the school and will in no way affect or improve a student's opportunity for admission."

8.3 Debts

- 8.3.1 Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.

6 DE Reg. 274 (9/1/02)

7 DE Reg. 928 (1/1/04)

9.0 Modifications of Charters

- 9.1 A charter holder may apply to the Department for a modification of the charter following the granting of the charter.
- 9.2 The application shall be submitted on a form approved by the Department and shall specify the exact modification requested and describe the need for the modification.
- 9.3 The standards for deciding a modification application shall be as provided in Section 4.0 of these regulations for the original grant of the charter.

- 9.4 The following are considered applications for a new charter and shall not be processed or considered as a modification application:
- 9.4.1 An application to collectively change the mission, goals for student performance and educational program of the charter school; or
 - 9.4.2 An application, at any time before the First Instructional Day, to offer educational services at a site other than the site approved as part of the school's charter, when the charter has previously been amended to change the school's site; or
 - 9.4.3 An application to replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter holder at any time before the First Instructional Day.
- 9.5 An application for a major or minor charter modification may not be filed while a school's charter is on formal review, except where the Secretary determines that the requested modification is unrelated to the reason the school's charter has been placed on formal review or where the modification addresses the reason the school was placed on formal review provided the modification is filed before the preliminary report is approved by the Accountability Committee.
- 9.6 A charter shall not be modified to permit a charter school's first instructional day to occur later than the third September 15th after the date the charter is originally granted. In the event that the first instructional day does not occur by that date, the charter shall be deemed forfeited and the authority to open and operate a charter school expired. Further, no charter shall be modified to permit a charter school to obtain a certificate of occupancy, either temporary or final, for all or any part of the premises to be occupied by the school, later than June 15 immediately preceding the authorized opening date of the school.
- 9.7 An increase or decrease of up to 5% in a charter school's current authorized enrollment shall not be considered a modification of the school's charter. Any modification application to increase or decrease a charter school's current authorized enrollment by more than 5% must be filed between November 1st and December 31st and, if approved, shall be effective the following school year.
- 9.8 Major modifications.
- 9.8.1 A major modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which would:
 - 9.8.1.1 Replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter school at anytime on or after the First Instructional Day; or
 - 9.8.1.2 Alter enrollment preferences; or
 - 9.8.1.3 Result in an increase or decrease in the school's total authorized enrollment of more than 15%, provided further the major modification request must be filed between November 1st and December 31st and, if approved, shall be effective the following school year; or
 - 9.8.1.4 Alter grade configurations; or
 - 9.8.1.5 At any time after the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, except where such change is the unavoidable result of a loss by fire or other "casualty" as that term is defined in *Black's Law Dictionary*; or
 - 9.8.1.6 At any time before the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, provided that the charter has not previously been amended to change the school's site; or
 - 9.8.1.7 Alter any two of the following: the school's mission, goals for student performance, or educational program; or
 - 9.8.1.8 Alter the charter school's performance agreement with the Department; or
 - 9.8.1.9 Alter the charter school's charter to satisfy the provisions of "restructuring" as prescribed in the federal Elementary and Secondary Education Act of 1965 (ESEA) or any reauthorization thereof.

9.8.1.10 Transfer of the charter, and of oversight of that charter school, from another authorizer to the Department, before the expiration of the charter term, shall be made by filing a written petition with the Department, on a form approved by the Department, by the public charter school or its original authorizer. The Department will approve a transfer only where the Charter School is fully in compliance with the current terms of its charter and any applicable rules, regulations and statutes. The Department may impose conditions upon the transfer in order to ensure continuing compliance with the approval criteria and the regulations of the Department.

9.9 Minor modifications.

9.9.1 A minor modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which is not a major modification. Minor modifications include, but are not limited to:

9.9.1.1 Changes to the name of either the charter school or charter holder; or

9.9.1.2 The first extension of any deadline imposed on the charter school or charter holder by thirty (30) working days or less (or by 15 calendar days in the case of the First Instructional Day); or

9.9.1.3 ~~Changes in the standards or assessments used to judge student performance (other than the State standards or the assessments administered pursuant to the DSTP); or~~

9.9.1.43 In the case of a charter school which is open with students in attendance, offering educational services at a site other than, or in addition to, the site approved as part of the school's charter, when use of the approved site has unavoidably been lost by reason of fire or other casualty as that term is defined in *Black's Law Dictionary*; or

9.9.1.5 ~~Changes to alter not more than one of the following: the school's mission, goals for student performance, or educational program; or~~

9.9.1.64 An increase or decrease in the school's total authorized enrollment of more than 5%, but not more than 15%, provided further the minor modification request must be filed between November 1st and December 31st and, if approved, shall be effective the following school year; or

9.9.1.75 Alter, expand or enhance existing or planned school facilities or structures, including any plan to use temporary or modular structures, provided that the applicant demonstrates that the school will maintain the health and safety of the students and staff and remain economically viable as provided in 4.4 above; or

9.9.1.86 Any change in the school's agreement with an educational management organization other than as set forth in 9.4.3 and 9.8.1.1 above; or

9.9.1.97 A change to the current authorized number of hours, either daily or annually, devoted to actual school sessions. Regardless of any proposed change, the school shall maintain the minimum instructional hours required by 14 **Delaware Code**; or

9.9.1.108 A change in the terms of the current site facilities arrangements including, but not limited to, a lease to a purchase or a purchase to a lease arrangement; or

9.9.2 The Secretary may decide the minor modification application based on the supporting documents supplied with the application unless the Secretary finds that additional information is needed from the applicant.

9.9.3 The Secretary may refer a minor modification request to the Accountability Committee for review if the Secretary determines, in her/his sole discretion, that such review would be helpful in her/his consideration of the application. If the Secretary refers a minor modification application to the Accountability Committee, she/he may decide the application based on any report from the Committee and the supporting documents related to the application. The applicant for a minor modification shall be notified if the minor modification request has been forwarded to the Accountability Committee. The applicant may be asked to provide additional supporting documentation.

- 9.9.4 The Secretary may deny a minor modification request if the supporting documentation is incomplete or insufficient provided the applicant has been advised additional information was needed
- 9.9.5 Upon receiving an application for a minor modification, the Secretary shall notify the State Board of the application and her/his decision on whether to refer the application to the Accountability Committee.
- 9.9.6 The meeting and hearing process provided for in Section 511(h), (i) and (j) of the Charter School Law shall not apply to a minor modification application even where the Secretary refers the application to the Accountability Committee.
- 9.9.7 Decisions for minor modifications to a charter shall be decided by the Secretary, with the concurrence of the State Board of Education, within 30 working days from the date the application was filed, unless the timeline is waived by the Secretary and the applicant, or in any case where the Secretary, in the sole discretion of the Secretary, deems that it would be beneficial to either refer the matter to the Accountability Committee or to seek advice from the State Board prior to deciding the matter.

6 DE Reg. 274 (9/1/02)

9 DE Reg. 387 (09/01/05)

12 DE Reg. 211 (08/01/08)

10.0 Renewals

- 10.1 Charters are granted for an initial period of 4 years of operation and are renewable every 5 years thereafter.
- 10.2 Renewals are only available to the current Charter Holder and may not be used to transfer a charter to a different legal entity.
- 10.3 Charters shall be renewed only if the school receives a satisfactory ~~P~~performance ~~R~~review. Performance reviews shall be conducted by the Department using the Performance Framework approved by the Department with the assent of the State Board.
- 10.4 The Department shall conduct annual performance reviews based on the Performance Framework. The Department shall provide the results of the Performance Review to the school.

6 DE Reg. 274 (9/1/02)

7 DE Reg. 928 (1/1/04)

9 DE Reg. 387 (9/1/05)

11.0 Public Hearings

- 11.1 Any public hearing conducted by the Department pursuant to the provisions of the Charter School Law shall be conducted as a joint public hearing with the State Board of Education.

6 DE Reg. 274 (9/1/02)

9 DE Reg. 1752 (5/1/06)

12.0 Background Checks

In addition to the criminal background check and Child Protection Registry check required by law to be provided during the application process, whenever a new member shall be elected to the board of directors of a charter school, the school shall promptly provide the name and mailing address of such new member to the Department of Education, Charter School Office; the newly elected member of the board shall, within 45 days of election to the board, provide the Department of Education with any authorization necessary to conduct the Child Protection Registry check and with a copy of that member's criminal background check.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1570

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

1570 Early Childhood Special Education Teacher

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1570 Early Childhood Special Education Teacher. It is necessary to amend this regulation in order to facilitate proper and current formatting trends. There are no changes in certification requirements other than clarifying the requirements for those educators who seek this certification as their first Standard Certificate and those adding this Standard Certificate to one or more previously issued on their license. This regulation sets forth the requirements for an Early Childhood Exceptional Children Special Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday July 2, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street Suite 2, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

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

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

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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 amended regulation? 14 Del.C. requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1570 Early Childhood Exceptional Children Special Education Teacher

4.0 Content

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Early Childhood Teacher Special Education (Birth to Grade 2).~~

2.0 Definitions

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

~~“**Certification**” means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.~~

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

~~“**Educator**” means a person licensed and certified by the State under 14 Del.C. §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board approved by the State Board. The term ‘educator’ does not include substitute teachers.~~

~~“**Examination of Content Knowledge**” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.~~

~~“**Fifteen (15) Credits or Their Equivalent in Professional Development**” means college credits or an equivalent number of hours, with one (1) credit equating fifteen (15) hours, taken either as part of a degree program or in addition to it, from a regionally accredited college or university or a professional development provided approved by the employing school district or charter school.~~

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

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

~~“**Major or Its Equivalent**” means a minimum of thirty (30) semester hours of course work in a particular content area.~~

~~“**NASDTEC**” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.~~

~~“**NCATE**” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.~~

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

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

~~“**State Board**” means the State Board of Education of the State pursuant to 14 Del.C. §104.~~

~~“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.~~

3-0 Standard Certificate

~~The Department shall issue a Standard Certificate as a Early Childhood Teacher Special Education, Birth to Grade 2 to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:~~

- ~~3-1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
 - ~~3-1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or~~
 - ~~3-1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Early Childhood Special Education; or~~
 - ~~3-1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or~~
 - ~~3-1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after September 11, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and~~
 - ~~3-1.5 A minimum of fifteen (15) credits in early childhood special education from a regionally accredited college or university, as more specifically set forth in 3.1.5.1 through 3.1.5.5. With approval of a Committee comprised of the candidate's principal or other designated school administrator, a higher education representative who teaches one of the approved courses, and a DOE representative, other verifiable professional experiences may be substituted for no more than nine (9) of the required credits:
 - ~~3-1.5.1 Atypical Infants and Toddlers;~~
 - ~~3-1.5.2 Emergent Literacy in Reading and Writing;~~
 - ~~3-1.5.3 Assessment of Young Children;~~
 - ~~3-1.5.4 Differentiated Instruction for Young Children; and~~
 - ~~3-1.5.5 Consultation or Working with Families; and~~~~~~
- ~~3-2 For applicants applying after December 31, 2005, where a PRAXIS™ II examination in the area of the Standard Certificate requested is applicable and available, achieved a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or~~
- ~~3-3 Met the requirements for licensure and holding a valid and current license or certificate from another state in Early Childhood Special Education;
 - ~~3-3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or~~~~
- ~~3-4 Met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.~~

4.0 Multiple Certificates

Educators may hold certificates in more than one area.

5.0 Application Requirements

An applicant for a Standard Certificate shall submit:

- 5.1 Official transcripts; and
- 5.2 Official scores on the Praxis II examination if applicable and available; or
- 5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or
- 5.4 An official copy of the out of state license or certification, if applicable.
- 5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

6.0 Application Procedures for License Holders

If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.

7.0 Effect of Regulation

This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.

8.0 Present Preschool Exceptional Children Teachers Protected

Those teachers authorized to teach classes of preschool exceptional children prior to April 20, 1978 on the basis of a standard exceptional children teaching License and who have the recommendation of the local district superintendent shall be authorized to continue in such a teaching assignment in the district where the assignment was authorized. Authorization to teach in this circumstance does not constitute a License transferable to any other school district.

9.0 Validity of a Standard Certificate

A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14-DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

10.0 Secretary of Education Review

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

10 DE Reg. 696 (10/01/06)

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Early Childhood Exceptional Children Special Education Teacher. This certification is for Birth to Grade 2, however, certification as an Exceptional Children Special Education Teacher may also be used in K to grade 2.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an Early Childhood Exceptional Children Special Education Teacher to an educator who has met the following:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
 - 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

- 4.1 An Educator must also have met the following:
 - 4.1.1 If the educator is applying for their first Standard certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5.1 the required 15 credits or their equivalent in professional development required in 14 **DE Admin. Code** 3.1.5.1 that must be satisfactorily completed for this standard certificate must at a minimum include the following areas:
 - 4.1.1.1 Atypical Infants and Toddlers (3 credits)
 - 4.1.1.2 Emergent Literacy in Reading and Writing (3 credits)
 - 4.1.1.3 Assessment of Young Children (3 credits)
 - 4.1.1.4 Differentiated Instruction for Young Children (3 credits)
 - 4.1.1.5 Consultation or Working with Families (3 credits)
 - 4.1.2 If the educator is applying for their second or subsequent Standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the following areas:
 - 4.2.1.1 Atypical Infants and Toddlers (3 credits)
 - 4.2.1.2 Emergent Literacy in Reading and Writing (3 credits)
 - 4.2.1.3 Assessment of Young Children (3 credits)
 - 4.2.1.4 Differentiated Instruction for Young Children (3 credits)
 - 4.2.1.5 Consultation or Working with Families (3 credits)

PROPOSED REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Transitional Resources to Relative Caregivers

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

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, 2012.

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

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding *Transitional Resources to Relative Caregivers*.

Statutory Authority

- 31 Delaware Code, Section 356, *Kinship Care Program*
- 45 CFR §205.10, *Hearings*
- Social Security Act §404, *Use of Grants*

Background

The Kinship Care Program provides assistance for relative caregivers during the 180-day transition period when a child first moves into the non-parent caregiver's home (relative caregivers are non-parental relatives, such as grandparents or aunts and uncles, who take on the responsibility of caring for a relative child). The program assists in meeting immediate needs for clothing, shelter, health, safety, and educational supplies.

Financing of the program is provided by the Delaware General Assembly and is limited to available funds. The program is provided through a partnership between the Division of State Service Centers, the Division of Social Services, and the Division of Services for Aging and Adults with Physical Disabilities.

Summary of Proposed Changes

DSSM 6100 through DSSM 6111, ~~Relative Caregivers' (Non-Parent) Transitional Resource Program Providing Transitional Resources to Relative Caregivers~~: The name of the section is being changed to more accurately indicate the content of the policy. All policy sections are reformatted and reworded for clarity and ease of readability. Applicable federal and state citations are also added to the policy section.

DSS PROPOSED REGULATION #12-19

REVISION:

~~6100 Relative Caregivers' (Non-Parent) Transitional Resource Program.~~

~~6101 Purpose~~

The Relative Caregivers' (Non-Parent) Transitional Resource Program is established to assist non-parent caregivers during the transition period when a child initially moves into the non-parent caregiver's home. The child(ren)'s parent cannot reside with the caregiver. This program assists caregivers in meeting the child's immediate need for clothing, shelter, health, safety and educational supplies.

6402 Funding Limitations

Funding for the Relative Caregivers' (Non-Parent) Transitional Resource Program is limited to funds appropriated by the General Assembly. Though caregivers may meet the eligibility requirements and have a need for the service, this does not guarantee that DHSS will provide the service. DHSS reserves the right to limit, where appropriate, services based on available resources and funding.

6403 Eligibility

Applicants must meet the following eight criteria to receive assistance from the Relative Caregivers' (Non-Parent) Transitional Resource Program:

1. Relationship The child is living with a relative within the 5th degree of relationship (DSSM 3004).
2. Age The child is less than 18 years of age.
3. Residence Applicants must reside in Delaware to be eligible for benefits. Persons including the homeless (those with no fixed address or not living in a permanent dwelling) who currently live in Delaware and plan to stay, regardless of the length of time they have been here, meet the residency requirement.
4. Time Limitation The child has been living in caregiver(s)' home less than or equal to 90 days.
5. Income The income of the caregiver cannot exceed 200% of the Federal Poverty Level based on the household size. The caregiver's household includes the caregiver and his/her children. The income of the child moving in with the caregiver and any siblings (or half siblings) who also reside in the home is not counted.
6. Resources Eligibility will be determined without regard to the child or caregiver['s'][(s)] resources.
7. Citizenship The child is a citizen or lawfully admitted alien.
8. Need The child's need is for one or more of the covered services.

6404 Verification Requirements

1. The following items will be verified:
 - a. The identity of the caregiver (s) making application for the Relative Caregivers' (Non-Parent) Transitional Resource Program.
 - b. Alien status.
 - c. The child's income.
 - d. Caregivers have the option of presenting estimates from a vendor for the needed services or receipts itemizing the expenditures for the needed service. See 6406 listing conditions for caregiver reimbursements.
2. The following items will be accepted by declaration, the caregiver is not required to provide verification:
 - a. The date of birth of the child(ren).
 - b. The relationship of family members.
 - c. Delaware residency.
 - d. Time limitation.
 - e. Citizenship.

6405 Vendor Payments

When the caregiver elects to verify the cost of needs services by presenting estimates, payments are made by check payable to the vendor of the needed items/services.

6406 Reimbursements to Caregivers

- Reimbursement will be made to the caregiver(s) when the following three conditions are met:
- a. The purchase(s) are made after the application for the Relative Caregivers' (Non-Parent) Transitional Resource Program.
 - b. The purchases received prior approved by DHSS staff.
 - c. The caregiver(s) presents verification of the purchase(s).

~~6107 Benefit Limitations-~~

~~The maximum benefit is \$500 per child per transition period per year. The year starts with the date benefits were provided by Relative Caregivers' (Non Parent) Transitional Resource Program.~~

~~6108 Items/Service Covered~~

~~The Relative Caregivers' (Non Parent) Transitional Resource Program payment is made to meet the needs arising from the child's moving into the caregiver's residence. Payments may be used for items and/or services such as but not limited to:~~

- ~~1. Clothing for the child.~~
- ~~2. Furniture such as beds, chairs, dressers.~~
- ~~3. Bed linens, blankets, towels.~~
- ~~4. School supplies such as notebooks, pencils, calculators, etc.~~
- ~~5. Items which directly foster child health or safety such as a car seat or infant monitor.~~
- ~~6. Supplies~~

~~6109 Items/Service Not Covered~~

~~-will not be made for recreational electronic equipment such as personal computers, televisions, or stereos.~~

~~6110 Relationship to Other Programs~~

- ~~1. Emergency Assistance and other programs administered by DHSS~~

~~The Relative Caregivers' (Non Parent) Transitional Resource Program exists in addition to the Emergency Assistance Program and other programs administered by DHSS. Payments made from the Relative Caregivers' (Non Parent) Transitional Resource Program will not limit Emergency Assistance Program payments or payments made by other programs administered by DHSS. Payment made by the Emergency Assistance Program or payments made by other programs administered by DHSS will not limit Relative Caregivers' (Non Parent) Transitional Resource Program payments.~~

- ~~2. Child Care Programs~~

~~Relative Caregivers' (Non Parent) Transitional Resource Program payments do not count as income in the child care programs.~~

- ~~3. Food Stamp Program~~

~~Relative Caregivers' (Non Parent) Transitional Resource Program payments do not count as income in the Food Stamp Program.~~

- ~~4. Cash Assistance Program~~

~~Relative Caregivers' (Non Parent) Transitional Resource Program payments do not count as income in the cash assistance programs (TANF, GA).~~

~~[When determining eligibility for other programs, DHSS has discretion not to count benefits under the Relative Caregivers' (Non Parent) Transitional Resource Program.]~~

~~6114 Client Notices and Fair Hearing Practice and Procedures~~

~~See Division of Social Services Manual Section 5000.~~

~~6100 Providing Transitional Resources To Relative Caregivers~~

~~31 Del.C. §356, SSA §404~~

~~This policy applies when a non-parent relative needs assistance to provide for the needs of a child who has moved into the home within the last 180 days. Payments made by the Program are disregarded for the Emergency Assistance Program, Division of Social Services cash assistance programs, the Food Supplement Program, and the Child Care Subsidy Program.~~

~~Refer clients to the Division of State Service Centers to receive services.~~

~~6101 RESERVED~~

6102 RESERVED**6103** Determining Eligibility

31 Del.C. §356, SSA §404

1. Applicants Must Meet Financial Criteria

Applicants must meet the following financial criteria.

A. Income.

1. The income of the household cannot exceed 200% FPL for the household size. Count only the income of the caregiver and the caregiver's spouse. The household size is the caregiver, caregiver's spouse and the caregiver's children under age 18.

2. Do not count the income of the child moving into the home and any siblings (or half-siblings) who also reside in the home.

B. Resources are excluded.

2. Applicants Must Meet Technical Criteria

Applicants must meet the following technical criteria.

A. Relationship. The child is living with a relative within the 5th degree of relationship, as defined by DSSM 3004.

Exception: The parent cannot live in the home with the caregiver.

B. Age. The child is less than 18 years of age.

C. Residence. Applicants live in Delaware. Persons who currently live in Delaware and plan to stay, including the homeless, meet the residency requirement.

D. Time Limitation. The child has been living in the caregivers home less than or equal to **180** days.

E. Citizenship. The child is a citizen or a lawfully admitted alien.

F. Need. The child has need for one or more of the covered services.

3. Applicants Must Verify Eligibility Factors

The following eligibility factors must be documented.

A. Household income.

B. The identity of the caregiver(s)

C. Alien status of the child

D. Cost of needed services. Caregivers have the option of presenting estimates from a vendor for the needed services or receipts itemizing the expenditures for the needed service. See DSSM 6108 listing conditions for caregiver reimbursements.

The following eligibility factors are accepted by declaration.

A. Age. The date of birth of the child(ren).

B. Relationship. The relationship of family members

C. Delaware residency

D. Time limitation

E. Citizenship of the child

6104 RESERVED**6105** RESERVED**6106** RESERVED**6107** RESERVED**6108** Making Payments For Covered Services

31 Del.C. §356, SSA §404

PROPOSED REGULATIONS

This policy applies to Kinship Care Transitional Resource Program recipients. Payments made by the Program are disregarded for the Emergency Assistance Program, Division of Social Services cash assistance programs, the Food Supplement Program, and the Child Care Subsidy Program.

There is no guarantee services will be provided. DHSS reserves the right to limit services based on available resources and funding.

1. DSSC May Pay the Vendors

Caregivers may elect to verify the cost of needed services by presenting estimates to Division of State Service Centers (DSSC) staff. In these instances payments are made by check payable to the vendor.

2. DSSC May Reimburse the Caregivers

The caregiver may be reimbursed when the following conditions are met:

- A. The purchase(s) are made after application for the Kinship Care Transitional Resource Program
- B. The purchases were approved in advance by DSSC staff
- C. The caregiver provides verification of the purchase(s).

3. Benefit Amounts Are Limited

The maximum benefit is \$500 per child per transition period per year. The year starts with the date benefits were provided by the Kinship Care Transitional Resource Program.

4. Covered Items/Services Are Limited

The Kinship Care Transitional Resource Program payment is made to meet the needs arising from the child's moving into the caregiver's home. Payments may be used for items and/or services such as but not limited to:

- A. Clothing for the child.
- B. Furniture such as beds, chairs, dressers
- C. Bed linens, blankets, towels
- D. School supplies such as notebooks, pencils, calculators, etc.
- E. Items which directly foster child health or safety such as a car seat or infant monitor
- F. Supplies

<u>Exception: Recreational electronic equipment such as personal computers, televisions, or stereos is not covered.</u>

6111 Fair Hearing Practice and Procedures

45 CFR 205.10

Applicants and recipients have the right to request a fair hearing if they disagree with any Kinship Care Transitional Resource Program decision made by the Division of State Service Centers. See DSSM section 5000. The Division of Social Services Hearing Office will schedule and conduct the fair hearings.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Child Care Subsidy Program Determining Income Eligibility

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and

Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining Income Eligibility*.

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, 2012.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Summary of Proposed Changes

DSSM 11003.6, ~~Income Limits~~ *Determining Income Eligibility*: The name of the section is being changed to more accurately indicate the content of the policy. This policy section is reformatted and clarifying language is also provided to make the rules easier to understand and follow. Specifically, this regulatory action adds the statement that families that are referred by and active with the Delaware Division of Family Services (DFS) are exempt from the income requirements. This exemption has long been in practice and is also found in DSSM 11003.9.2. The applicable federal citation is also added to the policy section.

DSS PROPOSED REGULATION #12-24

REVISION:

11003.6 Income ~~Limits~~ *Determining Income Eligibility*

45 CFR 98.20

~~To be eligible for child care services, a family is to have gross income equal to or less than 200 percent of the current federal poverty level for a family of equal size. This income requirement typically applies to all income eligible child care programs. Refer to the most current Cost of Living Adjustment Administrative Notice for current rates.~~

This policy applies to applicants for and recipients of child care assistance.

1. Gross Income Is Capped

Gross monthly income must be equal to or less than 200% of the Federal Poverty Limit for the family size.

2. Income Requirement

The income requirement applies to all income eligible child care programs.

<u>Exception: Families referred by and active with the Division of Family Services do not have to meet the income limit.</u>
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PROPOSED REGULATIONS

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

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1125

**REGISTER NOTICE
SAN #2012-05****1. TITLE OF THE REGULATION:**

7 DE Admin. Code 1125, Requirements for Preconstruction Review.

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

The Department proposes to revise Section 1.9 "Definitions" of 7 DE Admin. Code 1125 to clarify the definition of "Subject to Regulation". This language was added to 1125 as part of the December 2010 revisions made to implement the EPA's greenhouse gas tailoring rule. This new language can be read to provide that Prevention of Significant Deterioration (PSD) review is required only for pollutants that are emitted in major amounts. This proposed change will clarify that a major source for any pollutant subject to regulation under the CAA is subject to PSD review for all pollutants emitted at greater than the significance level. The December 2010 revisions were submitted to the EPA as a revision to Delaware's State Implementation Plan (SIP). This clarification is necessary to enable the EPA to approve this SIP revision.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60.

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

None.

6. NOTICE OF PUBLIC COMMENT:

The Department will hold a public hearing on these proposed amendments on Monday, June 25, 2012 beginning at 6:00 pm in the Richardson and Robbins Building auditorium, located at 89 King's Highway in Dover. Interested persons may submit comments in writing to Gene Pettingill, Division of Air Quality, 715 Grantham Lane, New Castle DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. PREPARED BY:

Gene Pettingill (302-324-4245)
May 9, 2012

1125 Requirements for Preconstruction Review

02/11/12 xx/xx/xx

1.0 General Provisions

***** (Break in Continuity within Section) *****

1.9 Definitions - For the purposes of this regulation

"Subject to Regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by EPA, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has

taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that GHG shall not be subject to regulation except as follows:

- (a) Beginning January 2, 2011, the pollutant GHG shall be subject to regulation if:
- The stationary source is a new major stationary source for any pollutant subject to regulation under the CAA that is not GHG and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or
 - The stationary source is an existing major stationary source for any pollutant subject to regulation under the CAA that is not GHG and also will have an emissions increase of ~~that pollutant~~ any pollutant subject to regulation under the CAA that is not and an emissions increase of 75,000 tpy CO₂e or more; and, in addition,
- (b) Beginning July 1, 2011, the pollutant GHG also shall be subject to regulation:
- At a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e; or
 - At an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.

The term emissions increase, as used above, shall mean that both a significant emissions increase and a significant net emissions increase occur.

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

1125 Requirements for Preconstruction Review

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(b) and 903(e); (7 Del.C., §§901(b) & 903(e))

7 DE Admin. Code 3531

REGISTER NOTICE
SAN #2012-07

1. TITLE OF THE REGULATION:

3531 Tautog; Size Limits, Creel Limits and Seasons

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

The purpose of this action is to amend the tautog (*Tautoga onitis*) regulations, with possible changes to the season, size and creel limits. Delaware was previously mandated to modify its tautog regulations by the Atlantic States Marine Fisheries Commission for the 2012 fishing season to achieve a 53% reduction in harvest. The mandate was to reduce harvest by 53% as required under Addendum VI to the Interstate Fisheries Management Plan for Tautog (Plan). However, an error was identified and corrected in the 2011 stock assessment. Although the stock continues to be overfished and overfishing is occurring, the updated 2011 assessment indicates that the required reduction in exploitation should be 39%. The ASMFC Tautog Management Board has approved modifications to state proposals to achieve the updated reduction target. As such, Delaware proposes to modify its existing regulations to allow for less restrictive management measures consistent with a 39% reduction in exploitation. This may include changes to the tautog size limits, creel limits and/or seasons. It is anticipated that these regulations will remain in place for three to five years.

Two options were developed and are being considered to achieve the required 39% reduction in tautog

PROPOSED REGULATIONS

landings. These options will serve as the basis for the proposed regulatory change and are presented in the tables below.

Option 1

Season	Creel Limit	Size Limit (TL)
Jan 1 - Mar 31	5	15 inches
Apr 1 - May 11	3	15 inches
Jul 17 - Aug 31	5	15 inches
Sep 29 - Dec 31	5	15 inches

Option 2

Season	Creel Limit	Size Limit (TL)
Jan 1 - Mar 31	8	16 inches
Apr 1 - May 11	3	16 inches
Jul 1 - Aug 31	8	16 inches
Sep 29 - Dec 31	8	16 inches

It should be noted that the species continues to be susceptible to overfishing due to its slow growth, late maturity and spawning site fidelity. Spawning stock biomass has remained at low levels for the last decade. Current fishing mortality (F) is estimated at 0.25. Addendum VI to the Plan established a target F of 0.15 to initiate stock rebuilding and end overfishing.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

§901(b), § 903(e) (2)a, Title 7 Delaware Code

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to the tautog regulation will be open June 1, 2012. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on June 22, 2012 beginning at 7 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

David E. Saveikis, Director

3531 Tautog

- 1.0 Notwithstanding the provisions of 7 Del.C. §939, it shall be unlawful for any person to possess any tautog, *Tautoga onitis*, less than ~~sixteen (16)~~ [TBD] in total length.
- 2.0 Notwithstanding the provisions of 7 Del.C. §§938, 939, it shall be unlawful for any person to possess more than ~~five (5)~~ [TBD] tautog during the period beginning at 12:00 a.m. on January 1 and ending at 11:59 p.m. on March 31, and during the period beginning at 12:00 a.m. on ~~July 17~~ [TBD] and ending at

11:59 p.m. on August 31, and during the period beginning at 12:00 a.m. on September 29 and ending at 11:59 p.m. on December 31, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

3.0 Notwithstanding the provisions of 7 **Del.C.** §§938, 939, it shall be unlawful for any person to possess more than three (3) tautog during the period beginning at 12:00 a.m. on April 1 and ending at 11:59 p.m. on May 11, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

4.0 Notwithstanding the provisions of subsections 1.0, 2.0 and 3.0 of this regulation, it shall be unlawful for any person to possess any tautog during the period beginning at 12:00 a.m. on May 12 and ending at 11:59 p.m. on July 16 [TBD] and during the period beginning at 12:00 a.m. on September 1 and ending at 11:59 p.m. on September 28, except in said person's personal abode or temporary or transient place of lodging.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Gaming Control Board

Statutory Authority: 28 Delaware Code, Section 1122 (28 **Del.C.** §1122)
10 **DE Admin. Code** 101, 102, 103 & 104

PUBLIC NOTICE

101 Regulations Governing Bingo; 102 Regulations Governing Raffles; 103 Regulations Governing Charitable Gambling Other Than Raffles; 104 Regulations Governing Texas Hold'em Poker

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Delaware Gaming Board will seek public comments on the issue of whether its current rules should be amended. Amendments to 10 **DE Admin. Code** 101 will correct various typographical errors and to eliminate references to specific statutory sections which may soon be changed. A new section will also be added to show that bingo events may not be conducted at a charitable gaming vendor's facility.

The definition of "raffle" in 10 **DE Admin. Code** 102 will be amended to make it clear that a raffle with a series of drawings over six months will be charged a single fee for the entire six months, and also make it clear that chances in such a raffle may be purchased throughout the six month period. It will also be amended to make it clear that one must be 18 years old to participate in a raffle. A new section 2.2 will make it clear that the sponsoring organization must handle the money in all raffles and there can be no third party payor, such as PayPal. Another new section 3.8 will indicate that houses or other buildings may not be the prize offered in a raffle. A new Rule 3.9 will make it clear that no raffle tickets may be sold until the charitable organization has been licensed to conduct the raffle. Various statutory references will also be deleted.

Amendments will also be made to 10 **DE Admin. Code** 103 to change certain words and to delete statutory references. A new section 6.4 will also be added to this section to require that when new ownership takes over a charitable gaming vendor, the new owner must submit a valid Delaware business license. The charitable organization with a license to conduct an event using that vendor must inform the Board that it is aware of the ownership change and will continue with the event with the new owners. In addition, an amendment to Rule 3.1.6 in this section will make it clear that no tip cups may be placed on a table because tips are not permitted at charitable gaming events. While tips are not allowed, donations to the charitable organization are permitted, to be placed in bowls or cups near the entrance to the game where it will be accessible to the member in charge.

Statutory references will also be deleted from 10 **DE Admin. Code** 104.

Persons wishing to present their views regarding this matter may do so at a public hearing to be held on Thursday, July 5, 2012 at a meeting of the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon

Building, Suite 203, Dover, DE 19904. Persons may also submit responses in writing by the close of business on or before June 30, 2012 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

C. Summary of Proposal

These amendments will correct certain language used in the rules and delete references to specific statutes, as such statutes may be changed by pending legislation. They will also add certain new rules to require that bingo not be held at a charitable gaming vendor's facility, to indicate that a single fee payment is sufficient to cover a raffle that will last for several months, to indicate that tickets may be purchased for such a raffle throughout the six month period, to indicate that no third party payors such as PayPal can be used in selling raffle tickets, to indicate that a house or other building may not be offered as a prize in any raffle, to make clear that one permitted to have a raffle taking place for a period of six months need only pay a single licensing fee, to make it clear that no raffle tickets may be sold until the charitable organization has been licensed to conduct the raffle, to require a new owner of a third party vendor to submit a valid Delaware business license to the Board, to require a charitable organization conducting an event with a third party vendor which changes ownership to inform the Board that is aware of the change and will continue with the event with the new owner, to make it clear that while donations may always be made to the charitable organization, the receptacle for donations should be located near the entrance and no cups may be placed on the tables, either for tips or for donations.

101 Regulations Governing Bingo

1.0 Definitions

"Bingo" A game of chance played for prizes with cards bearing numbers or other designations, five or more in one line, the holder covering numbers as objects similarly numbered are drawn from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers on such a-card.

"Bingo Statute" The statutory law concerning bingo, as contained in ~~28 Del.C., §1101 et. seq~~ Title 28 of the Delaware Code.

"Board" The Delaware Gaming Control Board.

"Color Coded" A different color for each of the five letters of the word "BINGO."

"Cookie Jar Bingo" A game of chance in which players pay a set fee into a cookie jar or other container and receive a number which entitles the player to a chance to win the total funds in the cookie jar or container. At the start of the event, a bingo number shall be drawn which shall serve as the "cookie jar number." That number shall be posted for all players to see. During the games played on that occasion, if a player achieves bingo when the cookie jar number is drawn, the player shall win the funds in the cookie jar or container. If no one achieves bingo when the cookie jar number is drawn, the funds in the jar shall not be awarded. An organization may not otherwise offer a cookie jar game and may not designate the last game of the night or any other particular game as a cookie jar game at which the funds will be awarded without a person achieving bingo when the cookie jar number is drawn. The fee to play a cookie jar bingo game must be collected separately and such fee may not be included in the fee to play regular bingo games or in any other fee.

Any amounts in any cookie jar bingo games shall not be included in any prize money limitations contained in these rules. An organization may not have more than two cookie jar bingo pots at any one time. The first jar must be awarded before a third jar can be started. If two cookie jar pots each contain the maximum amount of money allowed by law, the first jar must be awarded at the same event at which the second jar reaches the allowable maximum. If the first jar has not been awarded by the final game of the night, a special final bingo game of "full card" or "black out" bingo using a separate, single card, shall be played and the jar will be won by the first person who covers all spaces on their entire card.

The fees for cookie jar bingo shall be collected at the beginning of the event and added to the jar or jars before the first number is drawn. If at the beginning of an event when players pay their fee, one jar contains the maximum (up to \$1,000) and the second jar would go over the maximum if the fees are

added, the fees shall be held and not placed in the second jar at that time. When the first jar is then won, the second jar shall be filled to a total of the maximum and the remaining fee moneys shall be placed in a new jar.

The organization conducting the bingo event may choose any amount up to \$1,000 for each cookie jar. The organization shall post the amount available to be won in the cookie jar and also clearly announce to the players the amount available to be won in the cookie jar.

“Districts” Those districts mentioned in Article II, 9§17A of the Delaware Constitution.

“Equipment” The receptacle and color coded numbered objects to be drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address systems, tables, chairs, and other articles essential to the operation, conduct and playing of bingo.

“Game” The game of bingo.

“Instant Bingo” A game of chance played with sealed or covered cards which must be opened in some fashion by the holder such that the cards reveal instantly whether the holder has won a prize. This type of game includes but is not limited to games commonly known as “rip-offs” or “Nevada pull-tabs.”

“Member in Charge” A bona fide, active member of the "Qualified Organization" in charge of, and primarily responsible for the conduct of the game on each occasion.

“Occasion” A single gathering or session at which a series of successive bingo games (regular, special, or otherwise) is played, not to exceed forty (40) in number.

“Proceeds” The gross income received from all activities engaged in or on occasion when bingo is played, less only, such actual expenses incurred as are authorized in the Bingo Statute and these Rules and Regulations.

“Qualified Organization” A volunteer fire company, veterans organization, religious or charitable organization, or fraternal society that is operated in a manner so as to come within the provisions of Section 170 of the U.S. Secretary of the Treasury.

“Week” means a seven day period beginning on Sunday and ending on Saturday.

2.0 Applications For Bingo License

- 2.1 Original applications shall be filed upon:
 - 2.1.1 the first application of an organization for a license;
 - 2.1.2 after the first application and upon a subsequent change in the organization's charter or bylaws; or
 - 2.1.3 in the event of a subsequent application after a prior refusal, suspension, or revocation by the Board.
- 2.2 Supplemental applications for bingo licenses shall be filed in all instances except those covered by the original application. All promotional give-away events, as defined under ~~28 Del.C. §1139(h)(2)~~ Title 28 of the Delaware Code, must be listed on an applicant's application for licensure, giving the dates of the promotional give-away events. If the event is not listed on the application, no promotional give-away event can be conducted.
- 2.3 All original and supplemental applications shall be filed with the Secretary of the Board at least six (6) weeks prior to the date of the occasion.
 - 2.3.1 An application must be submitted in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding to approve or deny the application.
- 2.4 No applications (original or supplemental) shall be accepted unless the applicant, at the time of the filing, attaches a check or money order for the full amount of the fees payable by law for each occasion requested. In the event an application is refused by the Board, the application fees shall be refunded in full to the applicant. There shall be a license fee of \$15 for each occasion on which bingo is conducted under a license.

- 2.5 No application shall be received by the ~~Commission Board~~ unless it clearly shows that the applicant is located in and seeks to conduct the game in a district which has approved the licensing of bingo by referendum, and on premises owned or regularly leased by the applicant. If the applicant desires to conduct games on premises specially leased for the occasion, a separate written request therefor (together with supporting reasons) shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of games on specially leased premises. Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensee's records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.
- 2.6 Bingo games may not be held at a facility owned by a charitable gaming vendor.

3.0 Bingo Licenses

- 3.1 Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.
- 3.2 The Board may issue a license only after it determines that:
- 3.2.1 The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.
- 3.2.2 The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.
- 3.2.3 The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.
- 3.2.4 The proceeds are to be disposed of as provided in the State Constitution and statutes.
- 3.2.5 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.
- 3.3 The license shall be issued. The original thereof shall be transmitted to the applicant.
- 3.4 If the findings and determinations of the ~~Commission Board~~ are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.
- 3.5 In the event of a request for an amendment of a license, the request shall be promptly submitted to the ~~Commission Board~~ in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The ~~Commission Board~~ may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The ~~Commission Board~~ may require the payment of an additional license fee before granting the request. The licensee shall be notified of the ~~Commission's Board's~~ action by appropriate communication, so that the licensee will not be unduly inconvenienced.
- 3.6 No license shall be effective for a period of more than one year from the date it was issued.
- 3.7 No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.
- 3.8 No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.
- 3.9 No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July, 14, 1998 whose license lapses for six (6) months or more due to non-renewal or suspension or

any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).

- 3.10 The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.
- 3.11 When bingo is conducted in conjunction with a carnival, festival, or similar event scheduled for more than one day, the game may be played up to every night of the event and shall be considered a single event for purposes of the rule allowing one event per week for those licensed after July 10, 1998 or ten events per month for those licensed before July 10, 1998.

4.0 Conduct of Bingo

- 4.1 The officers of a licensee shall designate a bona fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he or she is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.
- 4.1.1 Neither the member in charge of conducting the event, nor any other member of the sponsoring organization who is assisting in conducting the event or otherwise working at the event shall be permitted to play the bingo games.
- 4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 1:30 p.m. and the operation of a function shall be limited to six hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.
- 4.3 No person under the age of eighteen (18) may participate in any bingo game. No person under the age of 18 shall be permitted to participate in any instant bingo game. Persons between the ages of 16 through 18 may conduct or assist in conducting the bingo game and persons over the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.
- 4.4 No organization licensed prior to enactment of 71 **Del. Law** 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 4.5 The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.
- 4.6 No prize in an amount or value greater than \$250 shall be offered or given in any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,250. The amount of the prize in each bingo game shall be announced at the start of the game. At the end of each game, there will be an announcement of the total number of winners and the amount paid to each. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The

value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. Holiday dates means those holiday dates officially recognized by the State of Delaware as holidays. However, a licensee may offer inducements, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.

- 4.7 Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), only one licensed organization may hold bingo games in a licensed organization's building during any given week.
- 4.8 No alcoholic beverages shall be permitted in the room from the time the bingo hall opens until the conclusion of the last bingo game of the occasion.
- 4.9 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.
- 4.10 All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played.
- 4.11 When more than one player is found to be the winner on the call of the same number in the same game, the designated prize shall be divided as equally as possible; and when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other.
- 4.12 The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects drawn shall be essentially equal as to size, shape, weight, and balance, and as to all other characteristics that may control their selection, and all shall be present in the receptacle before each game is begun. All numbers shall be announced so as to be visible or audible to all players present.
- 4.13 The particular arrangement of numbers required to be covered in order to win the game shall be clearly described and announced to the players immediately before each game is begun.
- 4.14 No arrangement of numbers shall be required to be covered in order to win the game other than the following:
- 4.14.1 one unspecified horizontal row;
 - 4.14.2 one unspecified vertical row;
 - 4.14.3 one unspecified full diagonal row;
 - 4.14.4 one unspecified row (horizontal, vertical, or diagonal);
 - 4.14.5 Two or more of the foregoing, forming a specified arrangement;
 - 4.14.6 The entire card;
 - 4.14.7 Four corners;
 - 4.14.8 Eight spaces surrounding the free space.
 - 4.14.9 Any other configuration or shape on the card established by an organization, provided the players are informed of the shape needed to win before play commences.
- 4.15 Within the limits contained in ~~28 Del.C. §1132(b)~~ Title 28 of the **Delaware Code**, alternate prizes may be offered depending upon the number of calls within which bingo is reached, provided the application for the bingo license and the license so specify.
- 4.16 Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge on the occasion, but if such member is also the announcer, then in the immediate presence of an officer of the licensee.

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- 4.17 No licensee shall conduct more than forty (40) games on a single occasion.
 - 4.18 In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.
 - 4.19 Within the limits contained in ~~28 Del.C. §1132(6)~~ Title 28 of the **Delaware Code**, the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.
 - 4.20 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.
 - 4.21 Any local rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.
 - 4.22 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.
 - 4.23 A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.
 - 4.24 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.
 - 4.25 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.

5.0 Reports After the Function

- 5.1 When no game is held on a date a licensee is authorized to hold such game, a report to that effect shall be filed with the Board.
- 5.2 Within 5 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by ~~28 Del.C. §1140(a)~~ Title 28 of the **Delaware Code**.
- 5.3 If a licensee fails to timely file a report or if a report is not properly verified, or not fully, accurately, and truthfully completed, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

6.0 Suspension and Revocation of Licenses

- 6.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for a hearing thereon. The ~~Commission Board~~ may stop the operation of a game pending hearing, in which case the hearing must be held within five (5) days after such action.
- 6.2 When suspension or revocation proceedings are begun before the ~~Commission Board~~, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision and of the effective date of the suspension or revocation.
- 6.3 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.
- 6.4 Upon finding of the violation of these rules and regulations or the Bingo Statute, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties which may be imposed, declare the violator ineligible to conduct a game of bingo and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility

may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

7.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

102 Regulations Governing Raffles

These regulations shall apply to any raffle conducted under ~~28 Del.C. §1130~~ Title 28 of the **Delaware Code** in which the value of the prize or prizes to be awarded is \$5,000 or more or in which the ticket price is more than \$5.00 for a single drawing for prizes, or more than \$15.00 for a series of drawings for prizes occurring on a periodic schedule exceeding one month. These regulations are issued pursuant to the authority granted the Delaware Gaming Control Board in ~~28 Del.C. §1122(2)~~ Title 28 of the **Delaware Code**.

1.0 Definitions

“Board” The Delaware Gaming Control Board.

“Prize” Any item or items chosen by a Sponsoring Organization as the subject of a raffle, which the organization announces it will award to a person selected by chance from among those purchasing tickets to the raffle.

“Qualified Member” For the purposes of eligibility to participate in managing or otherwise assisting in the operation of raffle, a person is a bona fide member of the licensed organization only when he or she:

Has become a member prior to the commencement of the function and such membership was not dependent upon, or in any way related to the payment or consideration to participate in, any gambling activity; and

Has held full and regular membership status in the licensed organization for a period of not less than three (3) consecutive months prior to the subject function; and

Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the licensed organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and

Has met all other conditions required by the licensed organization for membership and is in all respects a member in good standing at the time of the subject function; and

Is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her sponsoring organization, or to which his or her own organization is auxiliary, when he or she meets all of the standards set out above respecting his or her own organization.

“Raffle” A form of lottery in which a number of persons buy one or more chances attempting to win the same prize. Any game such as so called "Nevada cards" or "pull cards" where the amount of the prize is determined by the contents of the ticket purchased are not raffles.

An organization may conduct a raffle which will not be completed in one night. An organization may sell a chance good for an extended period of time with a series of drawings, with a chance to win a prize multiple times during that period, ~~provided all chances are sold at the same time and chances may be purchased throughout the period of the raffle. The payment of a single fee with the application shall be sufficient for the entire six month period.~~ However, any such raffle must first be approved by the Board.

No one under the age of 18 shall be permitted to participate in a raffle.

“Related Party” Includes:

An officer, director, or trustee (or an individual having powers or responsibilities similar to those of officers, directors, or trustees) of the organization.

A spouse other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance; a child including legally adopted children; grandchildren; parents; and grandparents of parties described in (a) above.

A corporation, trust, estate or partnership more than 35% of which is owned or held by any of the preceding.

“Sponsoring Organization” Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

13 DE Reg. 1355 (04/01/10)

2.0 Disclosure

- 2.1 In any raffle conducted pursuant to ~~28 Del.C. §1130~~ Title 28 of the Delaware Code, the sponsoring organization must disclose the following information on the raffle ticket itself:
- 2.1.1 A full and fair description of the prize;
 - 2.1.2 The appraised value of the prize;
 - 2.1.3 If there is a minimum number of tickets to be sold, what the minimum is and the procedure to be employed to secure a refund in the event the minimum is not reached;
 - 2.1.4 The drawing date for the raffle;
 - 2.1.5 The exact nature of the charitable purpose for which the proceeds will be used.

2.2 The charitable organization is responsible for the handling of all monies, bookkeeping and receipts in a raffle. The Board will not approve on-line raffles or raffles involving third party payers, such as PayPal or similar entities.

3.0 Obligations of the Sponsoring Organization

- 3.1 If for any reason the raffle is not completed and a prize is not awarded on the scheduled drawing date, the sponsoring organization must take all steps necessary to notify ticket purchasers of that fact and return all money received from ticket purchasers within thirty days.
- 3.2 Members, employees and their immediate family members may purchase raffle tickets, but may not sell raffle tickets to members of their immediate family. The sale of tickets alone shall not constitute the promotion and operation of a raffle for purposes of this section. Nothing in this section prohibits the award of a prize to a person for selling a winning ticket.
- 3.3 The sponsoring organization shall take such steps as are necessary under the circumstances to insure that each ticket purchaser has a chance to be selected as the prize winner and that prize winner is selected in an entirely random manner.
- 3.4 In cases where the sponsoring organization purchases the prize from a third party, the Board may require that the sponsoring organization arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no applicable licensing requirement, from a person qualified to render such appraisals.
- 3.5 If the sponsoring organization purchases a prize from a related party, the price to be paid must be at cost or substantially less than the appraised value of the prize.
- 3.6 No sponsoring organization or its employees, members, agents or servants, shall give away tickets to a raffle without receiving the full established price for them unless all members of the public have an equal chance to receive bonus chances or books of chances when buying a certain number of chances or books of chances.
- 3.7 The sponsoring organization shall structure the raffle in such a way that it may reasonably be anticipated that the sponsoring organization will retain a percentage of the gross proceeds which is reasonable under the circumstances and shall retain all of the net proceeds (gross proceeds minus the direct expenses of the raffle) for the purpose specified in their application under ~~28 Del.C. §1130~~ Title 28 of the Delaware Code.
- 3.8 A raffle may not offer a house or other property as a prize.

3.9 No tickets for a raffle may be sold prior to the charitable organization receiving the permission of the Board to conduct the raffle through a permit or license.

4.0 Record Keeping, Financial Control

- 4.1 A record keeper shall be designated from among the members of the organization as defined in **1.0 "Qualified Member"** and shall have been a member for a minimum of two (2) years prior to the commencement of the raffle. The record keeper or his designee shall be responsible for the keeping and distribution of raffle tickets to be sold, the safekeeping of paid-for and completed ticket stubs, and the maintenance of the records prescribed by this section during and after the completion or suspension of the raffle for a period of at least two years.
- 4.2 The raffle ticket shall have at least two parts, one of which is to be retained by the purchaser, and the other to be retained by the record keeper. The record keeper's part must at a minimum contain the purchaser's name, address, and telephone number. All such parts shall be imprinted with sequential serial numbers commencing with the numeral "1" through the maximum number of tickets to be sold.
- 4.3 The record keeper shall maintain and periodically update as the need arises, the following types of records:
- 4.3.1 all documents, bills of sale, agreements, appraisals or other documents concerning the purchase of the article or articles to be raffled;
- 4.3.2 all permits, licenses, and any other documents prescribed or required by law as necessary for the lawful conduct of a raffle;
- 4.3.3 a list or access to a list of all persons authorized to sell raffle tickets or participating in any way in the promotion or operation of the raffle. If raffle tickets are given to one person to sell and this person recruits other persons to help sell raffle tickets, the record keeper need only keep a list of those persons to whom the record keeper has directly distributed raffle tickets.
- 4.3.4 a ledger book or other suitable record keeping device listing the number of tickets distributed, and the number of tickets returned as sold.
- 4.3.5 the ticket stubs used to conduct the drawing for a period of not less than six months.
- 4.4 Financial records shall be maintained by the record keeper sufficient to show:
- 4.4.1 the current amount of proceeds received on account of the raffle;
- 4.4.2 all expenses related to the conduct of the raffle including printing costs, advertising costs, lawyers fees, appraisal costs, insurance premiums, and any other costs reasonably attributable to the raffle.

5.0 Violations of Regulations

Failure to comply with any of the Regulations shall subject the violator to suspension or revocation of any valid license issued under ~~28 Del.C. §1130~~ Title 28 of the Delaware Code and criminal prosecution.

6.0 Application

- 6.1 All applications for a license to conduct a raffle shall be submitted on a form approved by the Board. The information supplied must include the name, address, and phone number of the sponsoring organization, the prize to be awarded, the value of the prize, the maximum number of tickets to be sold, the cost of each raffle ticket, the date the prize will be awarded, the exact nature of the charitable purpose for which the proceeds will be used, and the name, address and phone number of the person in charge of the organization, and the person designated to be the record keeper for the raffle.
- 6.1.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding to approve or deny the application.
- 6.2 There shall be a license fee of \$15 for each raffle application submitted to the Board for approval.

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- 6.3 The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new raffle license application on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.
- 6.4 The Board may issue a license only after it determines that:
- 6.4.1 The applicant is duly qualified to conduct raffles under the State Constitution, statutes, and rules and regulations governing raffles; and
 - 6.4.2 The member or members of the applicant who intend to conduct the games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of crimes involving moral turpitude; and
 - 6.4.3 The proceeds are to be disposed of as provided in the State Constitution and statutes; and
 - 6.4.4 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted.
- 6.5 No raffle license application shall be effective for a period of more than one year from the date it was issued.
- 6.6 No raffle license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or §17B of the State Constitution.

7.0 Reports After the Drawing

Within thirty (30) days of the date for awarding the prize as specified in the license application, the record keeper shall furnish in writing to the Board, the name and address of each person to whom a prize was awarded, the gross receipts derived from the selling of raffle tickets, and the total expenses incurred for the raffle.

13 DE Reg. 107 (07/01/09)

8.0 Suspension & Revocation of Licenses

- 8.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a raffle pending a hearing, in which case the hearing must be held within five (5) days after such action.
- 8.2 The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the raffle or to be sent by registered or certified mail to the licensee at the address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 **Del.C.** §10131.
- 8.3 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.
- 8.4 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.
- 8.5 Upon finding of the violation of these rules and regulations or the Delaware statutes, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties imposed, declare the violator ineligible to conduct a raffle and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

9.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

103 Regulations Governing Charitable Gambling Other Than Raffles**1.0 Definitions**

“Board” The Delaware Gaming Control Board.

“Charitable Gambling Gaming” Any game or scheme operated by an organization which has been in existence for two (2) years or longer in which chance is the dominant factor in determining the allocation of a prize, excluding slot machines, roulette, craps, baccarat games, or raffles as defined in the Board’s Regulations for Raffles.

“Charitable gaming vendor” is a term which the Board may use to describe a “third party vendor” as that term appears in Title 28 of the **Delaware Code**. It is an entity licensed to do business in Delaware which is in the business of assisting charitable organizations in conducting gaming events through leasing of premises for the events, providing personnel or equipment to help conduct events or providing other assistance which helps the organization to provide the event.

“Function” is a licensed event of Charitable Gambling maintained and conducted by a Sponsoring Organization for the disposal of awards of merchandise, cash, or its equivalent by means of **“Game”** as defined in this section. This includes without limitation thereto, so-called Las Vegas, Casino, or Monte Carlo Nights.

“Game” shall include without limitation card games such as draw poker, stud poker, or blackjack, devices such as big six wheels or similar devices, dice games other than craps, horse racing games, Nevada cards or pull tabs or any other activity similar to these mentioned games approved by the Board.

“Gross Receipts” means the total amount of money or other consideration received as admission fees, income from gambling and except for a bazaar, carnival, festival, or similar affair, from the sale of food and beverages from any one event.

“Instant Bingo” shall mean any game of chance played with sealed or covered cards which must be opened in some fashion by the holder, such that the cards reveal instantly whether the holder has won a prize. This game includes, but is not limited to games commonly known as “rip-offs” and “Nevada pull-tabs.”

“Net Proceeds” is Gross Receipts less license fee, prizes and reasonable and necessary expenses ordinarily incidental to the conduct of a function.

“Officer” as used in these regulations includes owners, directors, partners, members, investors, managers, shareholders or any other person involved in the operation of the business of a charitable gaming vendor. All such persons must undergo the criminal background checks and all other requirements.

“Sponsoring Organization” Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

2.0 Licensing List Required To Be Kept: Membership List

Each licensed organization must maintain a list of its current membership by name, address, and a description of the type of membership in the organization which shall be kept available for inspection at all reasonable times.

3.0 Conduct of Games**3.1 Workers.**

- 3.1.1 Member in Charge. Every Licensed Organization shall designate a bona fide, active member of the licensee to be in charge of and primarily responsible for each Function. The member-in-charge shall have been a member in good standing of the Sponsoring Organization for at least two (2) years. The member-in-charge shall supervise all activities and be responsible for the conduct of all games during the Function of which he or she is in charge, including the preparation of any financial reports required by law or these regulations. The member-in-charge or his qualified designee shall be present on the premises continually during the Function and shall be familiar with the provisions of these Regulations, and the terms of the license. Neither the member-in-charge nor his or her designee may be employed by or in any way assist a third party vendor in performing its duties during the Function.
- 3.1.2 List of Workers. A Sponsoring Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensee's records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.
- 3.1.3 Bona Fide Member. For the purposes of eligibility to participate in managing or otherwise assisting in the operation of a Function, a person is a bona fide member of the Sponsoring Organization only when he or she:
- 3.1.3.1 Has become a member prior to the commencement of the Function and such membership was not dependent upon, or in any way related to the payment of consideration to participate in, any gambling activity; and,
 - 3.1.3.2 Has held full and regular membership status in the Sponsoring Organization for a period of not less than three (3) consecutive months prior to the subject Function; and,
 - 3.1.3.3 Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the Sponsoring Organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and,
 - 3.1.3.4 Has met all other conditions required by the Sponsoring Organization for membership and in all respects is a member in good standing at the time of the subject Function; and,
 - 3.1.3.5 Has met all of the standards set out above respecting his or her own organization, and he or she is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her Sponsoring Organization, or to which his or her own Sponsoring Organization is auxiliary; and,
 - 3.1.3.6 Has met all of the standards set out above respecting his or her own organization, and this organization has prior to July 6, 1984, assisted the Sponsoring Organization to conduct charitable gambling; and,
 - 3.1.3.7 Has met all of the standards set out above respecting his or her own Sponsoring Organization, and this organization is assisting another similar Sponsoring Organization (i.e. fire company assisting another fire company; fraternal society assisting another fraternal society; charitable, religious or veterans organization assisting another charitable, religious, or veterans organization) to conduct charitable gambling.
- 3.1.4 Identification Required. The member-in-charge and those assisting him in any capacity shall possess and display identification.
- 3.1.5 Member Responsible for Gross Receipts. The member responsible for gross receipts shall not be employed by or perform any duties for a third party vendor during the function.
- 3.1.6 No unreasonable commission, salary, compensation, reward, recompense, reimbursement of expenses or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any Function. Organizations may contract with third party vendors to conduct or assist in conducting the Function, and may agree to pay reasonable compensation to the vendor. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of a Function either directly or indirectly, and one or more signs prohibiting tipping shall be or more signs prohibiting tipping shall be prominently displayed in each playing area. No tip cups may be placed upon tables, nor may cups intended for donations to the charitable organization be placed upon the table. Donations

may be made to the charitable organization but a container to receive such donations must be placed near the entrance to the event and must be accessible to the member in charge. Nothing in this subsection prohibits any person from sharing food and beverages made available at the functions, or the collection of bar tips for the benefit of the Sponsoring Organization.

4.0 Limitation of Participation of Certain Persons

No person directly or indirectly connected with the manufacture, sale, lease or distribution of gaming equipment or supplies, or the premises where the function is held if the premises are not owned by a Sponsoring Organization, or the agents, servants or employees of such person, shall conduct, participate, advise or assist in the conduct of a Function or render any service to anyone conducting, participating or assisting in the conduct of a Function including preparation of any form relating thereto.

5.0 Equipment and Premises

- 5.1 Ownership of Equipment. The licensed organization shall conduct games only with equipment owned by it, borrowed from another qualified Sponsoring Organization or which a lessor undertakes to provide by the terms of a written lease. The rental fee contained in such a lease shall be a sum certain and shall be commercially reasonable.
- 5.2 Equipment. Equipment used in the conduct of a ~~bazaar~~ charitable gaming event must be maintained in good repair and sound working condition. Equipment shall be used and operated so that each player is given an equal opportunity to win.
- 5.3 The function shall be held on premises owned or regularly leased by the applicant. If the applicant desires to hold the function at other premises, a separate written request therefor (together with supporting reasons), shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of a Function on specially leased or donated premises.

6.0 Operation of Games

- 6.1 House Rules. Prior to conducting a Function, each Licensed Organization shall develop a set of house rules which will govern the type, scope and manner of all games to be conducted. Among other information, these rules shall establish the maximum amount of wagers consistent with these regulations which may be placed by persons participating in games. In addition, the rules shall prohibit the giving of anything of value to any person involved in the management or operation of the Function and prohibit anyone involved in the management or operation of the Function from accepting anything of value. A copy of the rules shall be posted conspicuously on the premises where the Function is being conducted at all times during the occasion, and a copy thereof shall be made available upon request, to any law enforcement officer or agent of the Board. The maximum wager and a no tipping sign shall be displayed at the location of each game, so as to be conspicuous to those persons participating in said games. The rules for the individual games should be available on the premises for review upon request.
- 6.2 Monitoring of Poker Tables. An association which has obtained the proper license or permit to conduct poker shall assign one monitor during the playing of poker.
- 6.3 In charitable ~~gambling~~ gaming other than bingo and Texas Hold 'Em, there shall be no limit on the amount a person may bet or win, except that no person may lose more than \$150 in a single day or event. This limit applies to the entire event approved to begin on a certain day. If an event continues past midnight, no new limit shall apply. Any person who has lost \$150 during the event shall not be permitted to gamble again after midnight.

7.0 Prohibited Acts

- 7.1 Wagering Among Participants Not Permitted. No Sponsoring organization shall permit, as part of a Function, a gambling activity which involves a wagering or other items of value by one participant directly against another participant, if the activity does not provide for some portion of the proceeds to go to the Sponsoring Organization. This rule shall not be construed to prohibit games wholly

administered by the Sponsoring organization wherein the licensee collects wagers from among the participants and determines the winners and amount of prizes on a parimutuel basis.

- 7.2 Credit and Checks. No Sponsoring Organization may extend credit to any patron at a Function. No checks may be cashed for more than \$20 or received by the Sponsoring organization except for the receipt of checks in the exact amount for any admission charge.
- 7.3 Persons Under Age Eighteen. No person under eighteen years of age shall be permitted on that portion of the premises used for a Function.
- 7.4 Transaction of Certain Business Prohibited. No person who is directly or indirectly connected with the manufacture, sale or distribution of gaming equipment or supplies or his agents, servants or employees may be present during a Function for the transaction of business.
- 7.5 Workers Prohibited From Participating. Workers are prohibited from participating in games at any Function during which they participate as workers except that they may participate during their breaks if they continue to display their identification, except that if a Function is scheduled for more than one day, a worker may participate in games on any day on which he does not participate as a worker.

8.0 Limitation of Functions

- 8.1 No Sponsoring Organization shall conduct more than one Function in any single calendar month. Charitable games shall not commence prior to 1:30 p.m. The operation of a Function shall be limited to six (6) consecutive hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the time.
- 8.2 When a Function is conducted in conjunction with a bazaar, carnival, festival or similar affair scheduled for more than one day but less than ten consecutive days, the Function shall be considered one licensed event. The games may be operated during the hours when other activities of the bazaar, carnival, festival or similar affair are available to the public.

9.0 Record Keeping

- 9.1 Record Keeping. Accurate records and books shall be kept by each Sponsoring Organization including but not limited to detailed financial reports of the amount and source of proceeds, the members participating in the promotion and/or operation of the Function, all expenses and disbursements.
- 9.2 Access to Records. Board personnel shall at all times have access to all books and records of any Sponsoring organization required by subsection (a).
- 9.3 Period for Retention of Records. All records, books of account, bank statements and all other papers incidental to the operation of events by the Sponsoring Organization shall be retained and available for inspection by Board personnel for a period of two years from the close of the calendar year to which the records apply.
- 9.4 Expenses. Each Sponsoring Organization should incur only those expenses which are reasonable and necessary for the promotion and/or operation of a Function.

10.0 Violations of Regulations

Failure to comply with any of the Regulations shall be deemed a violation of 28 **Del.C.** Ch. 11.

11.0 Application

- 11.1 All applications for a license to conduct a Function shall be submitted on a form approved by the Board. The information supplied must include the name, address, and phone number of the Sponsoring organization, a list of the games to be conducted, the wagering limit on each game, the date and time that the function will be held, the premises where the Function will be held, the owner of the premises, the name, address, and phone number of the designated member in charge and the person responsible for the proper accounting and the exact nature of the charitable purpose for which the proceeds will be used.

- 11.1.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.
- 11.2 There shall be a license fee of \$15 for each occasion upon which the organization wishes to conduct charitable gambling under a license.
- 11.3 The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new charitable gambling license on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.
- 11.4 The Board may issue a license only after it determines that:
- 11.4.1 The applicant is duly qualified to conduct the charitable games under the State Constitution, statutes, and rules and regulations governing charitable gaming; and
- 11.4.2 The person or persons who intend to conduct the games are persons of good moral character and have never been convicted of crimes involving moral turpitude; and
- 11.4.3 The proceeds are to be disposed of as provided in the State Constitution and statutes; and
- 11.4.4 No unreasonable salary, compensation or reward whatever will be paid or given to any person under whom the game is conducted.
- 11.5 No charitable gambling license shall be effective for a period of more than one year from the date it was issued.
- 11.6 No charitable gambling license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or §17B of the State Constitution.

12.0 Reports After the Function

- 12.1 Within 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by ~~28 Del.C. §1140(a)~~ Title 28 of the Delaware Code.
- 12.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.
- 12.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing licensee shall be suspended until such time as the deficiency has been corrected.

13.0 Suspension and Revocation of Licenses

- 13.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a charitable gaming function pending a hearing, in which case the hearing must be held within five (5) days after such action.
- 13.2 The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the function or to be sent by registered or certified mail to the licensee at the address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 **Del.C.** §10131.
- 13.3 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.
- 13.4 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.
- 13.5 Upon a finding of a violation of these rules or of the appropriate statute, a license or permit may be suspended or revoked by the Board. In addition to any other penalty imposed, the Board may declare

the violator to be ineligible to apply for a license or permit for a period not to exceed thirty (30) months. Such decision may be extended to include the violator's parent organization, subsidiary organization or any organization having a common parent or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

14.0 Ownership

If ownership of a charitable gaming vendor changes, the new owner or owners must submit a valid Delaware business license to the Board immediately. In addition, if a charitable organization was to conduct an event using that third party vendor, the organization must inform the Board that it is aware of the change in ownership and whether it will continue with the event with the new owners.

145.0 Licensure

- 145.1 A charitable gaming vendor must hold a valid business license issued by the State of Delaware, which must remain current. The vendor must inform the Board within ten days if the license lapses. The Board may suspend or revoke a vendor's license for failure to maintain a current Delaware business license or for failing to inform the Board of the loss of a business license.
- 145.2 The vendor also must be licensed by the Board as a charitable gaming vendor. To become licensed, the vendor shall file an application prepared by the Board or by the Division of Professional Regulation ("Division"). The application must be signed by all officers of the vendor.
- 145.3 Investigators assigned to the Division will conduct an investigation to determine the suitability of the applicant for licensure. The investigator will provide his or her recommendation of suitability of each applicant to the Delaware Board of Charitable Gaming. The Division's investigators may access the state and federal criminal history databases for the purpose of reviewing the criminal history of any individual applicant or officer of an applicant.
- 145.4 All officers of such vendors shall be required to undergo criminal background checks as a requirement for licensure. The applicant's officers must contact the State Bureau of Identification ("Bureau") to make arrangements for fingerprint processing. The officers must complete a fingerprint card and form with the necessary personal information and sign an Authorization for Release of Information form to release criminal history records to the Division of Professional Regulation ("Division") and the Delaware Board of Charitable Gaming. At the time of processing the officers must show proof of official identification to complete the criminal history request. A fee is required to be paid for state and federal processing of fingerprint cards and criminal history records. The fee is set by the Bureau, and the officers shall make that payment directly to that agency. Certified copies of the criminal history record shall be forwarded to the Division. The Bureau shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Investigation. The Bureau shall forward the results of these federal record checks to the attention of the Division, along with the results of a report of the individual's entire criminal history record from the Bureau or a statement from the Bureau that its Central Repository contains no such information relating to that person, in a confidential manner. The Division may provide the individual officer with a copy of the criminal history records upon written request. The officer shall have the opportunity to respond to the Division regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within ten (10) days of the person's receipt of the criminal background information from the Division.
- 145.5 In making the determination of suitability for licensure, the Board of Charitable Gaming shall consider the background of each individual applicant or officer of the applicant. The licensure requirement shall include the satisfaction of such security, fitness and background standards as the Board may deem necessary relating to competence, honesty and integrity, such that a person's reputation, habits and associations do not pose a threat to the public interest of the State or to the reputation of or effective regulation and control of charitable gaming. It is specifically provided that any person convicted of any felony, a crime involving gambling, or a crime of moral turpitude within ten (10) years prior to applying for a license or any time thereafter shall be deemed unfit, and if such person is an officer of an

applicant, the applicant shall be deemed unfit. The Board shall also consider the applicant's or the officer's truthfulness in disclosing requested information, particularly in regard to the criminal history.

- 145.6 The Board shall communicate the results of the determination of suitability in writing to the applicant within sixty (60) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If the Board determines that an applicant has satisfied the licensing requirements, the applicant will be issued a license. If an applicant is denied a license, the applicant may appeal for reconsideration as set forth below.
- 145.6.1 Appeal may be initiated by an applicant notified that the license was denied by submitting a request for a hearing to the Board of Charitable Gaming within ten (10) days of receipt of the notice of denial.
- 145.6.2 The appeal shall be reviewed by the Board and the person shall be given the opportunity to be heard by the Board within sixty (60) days of receipt of the letter of appeal, unless extenuating circumstances require a longer period. The hearing will be held in accordance with the Administrative Procedures Act, 29 **Del.C.**, Ch. 101.
- 145.6.3 A written decision shall be rendered by the Board within sixty (60) days of the hearing, unless extenuating circumstances require a longer period. All decisions are final and may then be appealed to Superior Court under 29 **Del.C.** §10142.
- 145.7 An applicant determined to be unsuitable for licensure pursuant to this procedure shall be prohibited from reapplying for licensure for a period of twelve (12) months.
- 145.8 All records pertaining to criminal background checks and suitability determinations shall be maintained in a confidential manner including, but not limited to, the following:
- 145.8.1 Access to criminal background check records, letters of reference accompanying out-of-state criminal background checks and determination of suitability of applicants shall be limited to the Board and designated personnel within the Division;
- 145.8.2 All such records shall be kept in locked cabinets or as digital files; and
- 145.8.3 No information from such records shall be released without the signed release of the individual applicant or officer.
- 145.9 All records pertaining to criminal background checks and suitability determinations of applicants for licensure and Board of Charitable Gaming meetings to make suitability determinations shall not be subject to the Delaware Freedom of Information Act, Title 29, Ch. 100.
- 145.10 The license shall expire and be renewable every three (3) years. Ninety (90) days prior to expiration, each licensee shall contact the Division of Professional Regulation and submit a new and updated license application form and undergo an investigation as in the original licensing.
- 145.11 Officers of licensees shall notify the Division of Professional Regulation no later than three (3) days after an arrest for any crime, excluding minor traffic violations. The Division will forward this information to the Board and the Board may proceed to determine the person's continuing suitability as a licensee, and may suspend the license until the criminal charges have been resolved.

156.0 Maximum Number of Permissible Events

- 156.1 Under the terms of 28 **Del.C.** §1139(c), §1827 and 10 **DE Admin. Code** 103 Rule 8.1, organizations are limited in the number of bingo, Texas Hold 'Em and charitable gaming events which they may conduct. The Board has held that a Delaware charitable organization that establishes a subsidiary group or groups, such as an auxiliary which does not have its own separate Employee Identification Number or Federal Identification Number from the Internal Revenue Service, will be required to share its limited number of permissible events with the subsidiary group. For example, since five (5) Texas Hold 'Em tournaments are permitted in one year under 28 **Del.C.** §1827, the main group and the subsidiary group or groups may have a total of five (5) tournaments between or among them, rather than each entity being permitted to have up to five tournaments.
- 156.2 If the subsidiary group obtains its own separate Employer Identification Number or federal identification number from the Internal Revenue Service, then the subsidiary group may itself have the maximum number of events.

156.3 However, the Board views national charitable organizations with Delaware affiliates differently. If there are several affiliates of a national charitable organization in Delaware, and each is independent of the others, each affiliate may seek up to the maximum number of permissible events through use of the notice of charitable standing granted to the national organization, provided the national organization confirms that the affiliate has its permission to do so. Each Delaware affiliate of a national charitable organization may request permission to conduct up to the maximum number of permissible events.

167.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

104 Regulations Governing Texas Hold'em Poker

1.0 Reports After the Function

- 1.1 Within 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by ~~28 Del.C. §1140(a)~~ **Title 28 of the Delaware Code**.
- 1.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.
- 1.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

2.0 Limitation of Texas Hold 'Em Tournaments

- 2.1 The Board interprets the phrase "with each tournament by the sponsoring organization to be held at least 70 days apart" in ~~28 Del.C. §1827~~ **Title 28 of the Delaware Code** to mean that no sponsoring organization may conduct a subsequent tournament less than 70 days from the date of their immediately prior tournament.
- 2.2 A sponsoring organization and any auxiliary seeking to hold a tournament with the sponsoring organization's approval may hold up to a total of five tournaments per year. It is not permissible for a sponsoring organization to hold up to five tournaments and for an auxiliary to also hold up to five tournaments per year.
- 2.3 Only a member of the sponsoring organization may receive the funds during the tournament.

3.0 Re-buys

~~The statutory provisions of 28 Del.C. §1825 and 28 Del.C. §1826(2) do not harmonize. Consequently,~~
The Board has determined that re-buys are optional.

4.0 Application

An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.

5.0 Prize Amount

No prize greater in amount or value than \$5,000 shall be offered or given in any single tournament and the aggregate amount or value of all prizes offered or given in any single tournament shall not exceed \$13,000.

6.0 Licensure

- 6.1 All employees, principals, owners and contractors of third party vendors or charitable gaming vendors involved in conducting a Texas Hold 'Em tournament shall be licensed. Only members of the sponsoring organization who are serving as dealers, bookkeepers or treasurers, or as the tournament director for the tournament shall be licensed.
- 6.2 Investigators assigned to the Division will conduct an investigation to determine the suitability of the applicant for licensure. The investigator will provide his or her recommendation of suitability of each applicant to the Delaware Board of Charitable Gaming. The Division's investigators may access the state and federal criminal history databases for the purpose of reviewing the criminal history of any individual applicant.
- 6.3 The applicant must contact the State Bureau of Identification ("Bureau") to make arrangements for fingerprint processing. The applicant must complete a fingerprint card and form with the necessary personal information and sign an Authorization for Release of Information form to release criminal history records to the Division of Professional Regulation ("Division") and the Delaware Board of Charitable Gaming. At the time of processing the applicant must show proof of official identification to complete the criminal history request. A fee is required to be paid for state and federal processing of fingerprint cards and criminal history records. The fee is set by the Bureau, and the applicant shall make that payment directly to that agency. Certified copies of the criminal history record shall be forwarded to the Division. The Bureau shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Investigation. The Bureau shall forward the results of these federal record checks to the attention of the Division, along with the results of a report of the individual's entire criminal history record from the Bureau or a statement from the Bureau that its Central Repository contains no such information relating to that person, in a confidential manner. The Division will provide the applicant with a copy of the criminal history records. The applicant shall have the opportunity to respond to the Division regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within ten (10) days of the person's receipt of the criminal background information from the Division.
- 6.4 In making the determination of suitability for licensure, the Board of Charitable Gaming shall consider the background of each individual applicant. The licensure requirement shall include the satisfaction of such security, fitness and background standards as the Board may deem necessary relating to competence, honesty and integrity, such that a person's reputation, habits and associations do not pose a threat to the public interest of the State or to the reputation of or effective regulation and control of charitable gaming. It is specifically provided that any person convicted of any felony, a crime involving gambling, or a crime of moral turpitude within ten (10) years prior to applying for a license or any time thereafter shall be deemed unfit. The Board shall also consider the applicant's truthfulness in disclosing requested information, particularly in regard to the criminal history.
- 6.5 The Board shall communicate the results of the determination of suitability in writing to the applicant within sixty (60) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If the Board determines that an applicant has satisfied the licensing requirements, the applicant will be issued a license. If an applicant is denied a license, the applicant may appeal for reconsideration as set forth below.
 - 6.5.1 Appeal may be initiated by an applicant notified that the license was denied by submitting a request for a hearing to the Board of Charitable Gaming within ten (10) days of receipt of the notice of denial.
 - 6.5.2 The appeal shall be reviewed by the Board and the person shall be given the opportunity to be heard by the Board within sixty (60) days of receipt of the letter of appeal, unless extenuating circumstances require a longer period. The hearing will be held in accordance with the Administrative Procedures Act, 29 **Del.C.**, Ch. 101.
 - 6.5.3 A written decision shall be rendered by the Board within sixty (60) days of the hearing, unless extenuating circumstances require a longer period. All decisions are final and may then be appealed to Superior Court under 29 **Del.C.** §10142.

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- 6.6 An applicant determined to be unsuitable for licensure pursuant to this procedure shall be prohibited from reapplying for licensure for a period of twelve (12) months.
 - 6.7 All records pertaining to criminal background checks and suitability determinations shall be maintained in a confidential manner including, but not limited to, the following:
 - 6.7.1 Access to criminal background check records, letters of reference accompanying out-of-state criminal background checks and determination of suitability of applicants shall be limited to the Board and designated personnel within the Division;
 - 6.7.2 All such records shall be kept in locked cabinets or as digital files; and
 - 6.7.3 No information from such records shall be released without the signed release of the individual applicant or officer.
 - 6.7.3.1 All records pertaining to criminal background checks and suitability determinations of applicants for licensure and Board of Charitable Gaming meetings to make suitability determinations shall not be subject to the Delaware Freedom of Information Act, Title 29, Ch. 100.
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**DIVISION OF PROFESSIONAL REGULATION
Board of Dentistry and Dental Hygiene**

Statutory Authority: 24 Delaware Code, Section 1106 (24 **Del.C.** §1106)
24 DE Admin. Code 1100

PUBLIC NOTICE

1100 Board of Dentistry and Dental Hygiene

The Board of Dentistry and Dental Hygiene (“the Board”) in accordance with 24 **Del.C.** §1106(a)(1) has proposed amendments to Regulation 4.0 *Qualifications of Applicant; Residency Requirements* to define active practice for applicants applying for licensure as dentists and dental hygienists by reciprocity. The proposal also amends Regulation 6.0 *Continuing Professional Education* to clarify that the Board will accept courses approved by PACE (Program Approval for Continuing Education) and CERP (Continuing Education Recognition Program) for continuing education. Regulation 6.0 also clarifies that CPR courses provided or approved by organizations approved for continuing education identified in Regulations 6.5.1.1 through 6.5.1.4 are also acceptable to meet the CPR requirement. Finally, the proposal corrects the date for determining the proration of continuing education in Regulations 6.7.2.1 and 6.11.2.1 from March 1st to May 31st.

A public hearing will be held on July 19, 2012 at 3:15 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 Dentistry and Dental Hygiene, 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.

1100 Board of Dentistry and Dental Hygiene

(Break in Continuity of Sections)

4.0 Qualifications of Applicant; Residency Requirements [24 Del.C. §1122(a)(3)]

- 4.1 An applicant for licensure as a dentist must have completed 1 year as a dental intern within a general practice residency accredited by the Commission on Dental Accreditation (CODA).

- 4.2 An applicant who has completed a CODA approved specialty residency of 4 years or more will be deemed to have satisfied the general practice residency requirement.
- 4.3 An applicant who has completed a CODA approved specialty residency of less than 4 years must demonstrate that the specialty residency program meets the following criteria:
- 4.3.1 The program must meet the goals, objectives, proficiencies and competencies set forth in Standard 2.4 of the CODA Accreditation Standards for Advanced Education Programs in General Practice Residency, ©2007.
- 4.3.2 The program must include a rotation of at least 70 hours in anesthesia and a rotation of at least 70 hours in medicine.
- 4.4 An applicant for licensure as a dentist by reciprocity who has had at least 3 years of active dental practice in another state or territory of the United States is not required to provide evidence of a general practice or specialty residency.
- 4.4.1 Active practice shall be defined as an average of at least 1000 hours of direct patient care per year. Satisfactory evidence of active practice may include, but is not limited to, W-2 forms, 1099 forms, tax returns, and/or written verification of hours from the dental practice administrator. The Board reserves the right to request supplemental verification and to reject incomplete documentation.
- 4.5 An applicant for licensure as a dental hygienist by reciprocity must demonstrate active practice during 3 of the 5 years immediately preceding the application in the state in which the applicant currently is or has been licensed.
- 4.5.1 Active practice shall be defined as an average of at least 350 hours of direct patient care per year. Satisfactory evidence of active practice may include, but is not limited to, W-2 forms, 1099 forms, tax returns, and/or written verification of hours from the dental practice administrator. The Board reserves the right to request supplemental verification and to reject incomplete documentation.

14 DE Reg. 1239 (05/01/11)

(Break in Continuity of Sections)

6.0 Continuing Professional Education (CPE) - Dentists [24 Del. C. §1106(a)(1) and (7)]

All persons licensed to practice dentistry in the State of Delaware shall be required to acquire fifty (50) hours of continuing professional education (CPE) credit every two (2) years. Two (2) of the 50 credit hours shall be obtained in courses covering infection control. In addition to the CPE, licensees must provide evidence that they have successfully completed a current course in cardiopulmonary resuscitation (CPR) every two (2) years. The CPR course must encompass hands on clinical participation. On-line courses will not be accepted to satisfy the CPR requirement. Examples of acceptable courses include, but are not limited to, courses offered by the American Red Cross and the American Heart Association and courses offered or approved by any of the organizations listed in 6.5.1.1 through 6.5.1.4 of these regulations. All dentists, upon initial licensure in Delaware and prior to registration renewal, shall be given a written notice of these CPE requirements.

- 6.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of Rule 6.0.
- 6.2 Attestation must be completed electronically at the time of renewal.
- 6.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.8.
- 6.4 Not more than ten (10) hours of the fifty (50) hour biennial CPE requirement may be satisfied by self-study without testing from sources approved by the Board which shall include but not be limited to:
- 6.4.1 Reading dental textbooks
- 6.4.2 Reading dental tape journals
- 6.4.3 Viewing and listening to dental audio-visual materials.
- 6.5 CPE credits may be granted upon proof of successful completion of:

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- 6.5.1 Scientific CPE programs or courses and/or the scientific sessions of meetings sponsored or approved by:
- 6.5.1.1 American Dental Association (ADA), its constituents and components including PACE (Program Approval for Continuing Education)
 - 6.5.1.2 American Dental Hygienists' Association (ADHA), its constituents and components
 - 6.5.1.3 American Dental Assisting Association (ADAA), its constituents and components
 - 6.5.1.4 Academy of General Dentistry (AGD) its constituents and components including CERP (Continuing Education Recognition Program)
 - 6.5.1.45 Recognized national, regional, state and local dental and dental hygiene specialty organizations
 - 6.5.1.56 Recognized dental and dental hygiene study clubs
 - 6.5.1.67 Accredited dental and dental hygiene CPE programs offered by dental and dental hygiene schools.
 - 6.5.1.78 Approved hospital programs.
 - 6.5.1.89 Such other organizations and associations as may be approved by the Board.
- 6.5.2 In addition to the maximum of ten (10) hours of the CPE requirement which may be satisfied by self-study without testing and certification, a maximum of twenty (20) hours of the total CPE requirements may be fulfilled by self-study with test and certificate of completion from bona fide dental educational sources including but not limited to:
- 6.5.2.1 Dental journals
 - 6.5.2.2 Dental textbooks
 - 6.5.2.3 Dental video and audio tape presentations
 - 6.5.2.4 Dental mail-in courses
 - 6.5.2.5 Dental courses presented on the Internet
 - 6.5.2.6 Dental lectures and courses presented via electronic media including computer disks where CPE credits are not specified, one (1) hour of credit will be given for each hour of scientific session attended.
- 6.6 Special Provisions
- 6.6.1 A dentist, employed as a faculty member in a recognized school of dentistry, dental hygiene, dental assisting or any dentally-related field will be allowed not more than ten (10) hours credit for teaching per year.
 - 6.6.2 A dentist presenting a CPE course shall be allowed the hours involved in preparation and presentation on a one-time-per-course basis for a maximum of ten (10) hours for the two-year period.
 - 6.6.3 Table Clinics will be allowed, one (1) hour of credit per hour of presentation for a maximum of two (2) hours.
 - 6.6.4 Twelve (12) hours of credit shall be allowed for a scientific article published in a component or state society journal. 25 hours of credit shall be allowed for a scientific article published in a national journal or for a published scientific textbook or a chapter therein.
 - 6.6.5 Any public health dentally-related presentation will be allowed one (1) hour of credit per hour of participation for a maximum of two (2) hours for the two year period.
 - 6.6.6 Practice management or personal self-improvement courses shall be limited to a total of ten (10) hours for the two (2) year period.
 - 6.6.7 The Board reserves the right to approve any and all activities deemed appropriate for CPE credit. The Board also reserves the right and is the final word to disapprove any activities submitted for credit which it deems inappropriate.
 - 6.6.8 All dentists licensed to practice in Delaware shall be given written notice of these CPE requirements when receiving their initial license.

- 6.6.9 For existing holders of an Unrestricted Permit for anesthesia, at least twelve (12) hours of the required CPE credits must be taken on an Anesthesia topic by the end of the six (6) year re-evaluation period (i.e. by the end of the third biennial licensure renewal period).
- 6.6.10 For existing holders of a Restricted I Permit, at least six (6) hours of the required CPE credits must be taken on an Anesthesia topic by the end of the six (6) year re-evaluation period (i.e. by the end of the third biennial license renewal period).
- 6.7 Exceptions
- 6.7.1 An exception will be granted to any dentist who can demonstrate to the Board an acceptable cause as to why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness, extended absence from the country, or the like.
- 6.7.2 An individual initially licensed by the Board within the last 2 years shall meet the following schedule of reporting CPE credits for license renewal:
- 6.7.2.1 If, as of ~~March 1st~~ May 31st of the year for license renewal, the licensee has been licensed for less than 1 year, zero hours of CPE is required for license renewal; for licensees who are 1 or more but less than 2 years from their initial licensure, one-half of the required CPE must be presented; for individuals 2 years or more from their initial licensure, the full CPE requirement must be presented for renewal.
- 6.8 Audit of Continuing Education Contact Hours
- 6.8.1 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage of licensees, determined by the Board, to be audited. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 6.8.2 Documentation. When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various CPE's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board shall attempt to verify the CPEs shown on the documentation provided by the licensee. Upon completion of the review, the Board will decide whether the licensee's CPEs meet the requirements of these regulations.
- 6.8.2.1 Any continuing education not meeting all provisions of these regulations shall be rejected in part or in whole by the Board
- 6.8.2.2 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Board.
- 6.8.2.3 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Board. This continuing education will not be counted towards the next renewal period.
- 6.8.3 Board Review and Hearing Process. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these regulations. Unjustified noncompliance with these regulations shall be considered unprofessional conduct and grounds for discipline pursuant to 24 **Del.C.** §1128(6).
- 6.8.4 Sanctions for Unjustified Noncompliance. If the Board finds unjustified non-compliance, the Board will impose discipline in accordance with 29 **Del.C.** §1129 which may include, but is not limited to monetary penalties up to \$1,000, suspension and/or revocation of a practitioner's license.

6.9 Continuing Professional Education (CPE) - Dental Hygienists Hygienists [24 Del.C. §1106(a)(1) and (7)]

All persons licensed to practice dental hygiene in the State of Delaware shall be required to acquire twenty-four (24) hours of CPE credit every two (2) years. Two (2) of the 24 credit hours shall be obtained in courses covering infection control. In addition to the CPE, licensees must provide evidence that they have and successfully completed a current course in cardiopulmonary resuscitation (CPR) every two (2) years. The CPR course must encompass hands on clinical participation. On-line courses will not be accepted to satisfy the CPR requirement. Examples of acceptable courses include, but are not limited to, courses offered by the American Red Cross and the American Heart Association. All Dental hygienists, upon initial licensure and prior to registration renewal, shall be given written notice of these CPE requirements.

- 6.9.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of Rule 6.9.
- 6.9.2 Attestation must be completed electronically at the time of renewal.
- 6.9.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.12.
- 6.9.4 CPE credits may be granted upon proof of successful completion of programs including, but not limited to, the following categories:
 - 6.9.4.1 Scientific CPE programs or courses and/or scientific sessions of meetings sponsored or approved by:
 - 6.9.4.1.1 American Dental Hygienists Association, its constituents and components
 - 6.9.4.1.2 American Dental Association, its constituents and components
 - 6.9.4.1.3 American Dental Assisting Association, its constituents, and components
 - 6.9.4.1.4 Recognized national, regional, state, and local dental and dental hygiene specialty societies
 - 6.9.4.1.5 Recognized dental and dental hygiene study clubs
 - 6.9.4.1.6 Accredited dental and dental hygiene schools
 - 6.9.4.1.7 Approved hospital programs
 - 6.9.4.1.8 Such other organizations and associations as may be approved by the Board
 - 6.9.4.2 A maximum of five (5) hours of the total twenty-four (24) hour requirement may be satisfied by self-study without testing from sources approved by the Board which shall include but not be limited to:
 - 6.9.4.2.1 Reading of dental or dental hygiene journals
 - 6.9.4.2.2 Reading dental or dental hygiene textbooks
 - 6.9.4.2.3 Viewing and listening to dental or dental hygiene audio-visual materials
 - 6.9.4.3 In addition to the maximum of five (5) hours which may be satisfied by self-study without testing, a maximum of ten (10) hours of the total twenty-four (24) hour requirement may be fulfilled by self-study with test and certificate of completion from bona fide dental hygiene educational sources including but not limited to:
 - 6.9.4.3.1 Dental or dental hygiene journals
 - 6.9.4.3.2 Dental or dental hygiene textbooks
 - 6.9.4.3.3 Dental or dental hygiene video and audio tape presentations
 - 6.9.4.3.4 Dental or dental hygiene mail-in courses
 - 6.9.4.3.5 Dental or dental hygiene courses presented on the Internet
 - 6.9.4.3.6 Dental or dental hygiene lectures and courses presented via electronic media including computer disks

Where CPE credits are not specified, one (1) hour of CPE credit will be given for each hour of scientific session attended.

The final approval of acceptable dental hygiene CPE credits shall be made by the Board of Dental Examiners in consultation with the Dental Hygiene Advisory Committee.

6.10 Special Provisions

- 6.10.1 A dental hygienist, employed as a faculty member in a recognized school of dentistry, dental hygiene or dental assisting, will be allowed not more than five (5) hours credit for teaching per year.
- 6.10.2 A dental hygienist presenting a CPE course shall be allowed the hours involved in preparation and presentation on a one-time-per-course basis for a maximum of five (5) credits for the two-year period.
- 6.10.3 Table clinics will be allowed one (1) hour of credit per hour of presentation for a maximum of two (2) hours.
- 6.10.4 Twelve (12) hours of credit shall be granted for a scientific article published in a component or state society journal. Twelve (12) hours of credit shall be allowed for a scientific article published in a national journal or for a published scientific textbook or a chapter therein.
- 6.10.5 A dental hygienist giving public education instruction in a school will receive credit up to one (1) hour per year.
- 6.10.6 Practice management or personal self-improvement courses shall be limited to five (5) hours for the two (2) year period.
 - 6.10.6.1 Practice management, personal self-improvement and computer courses shall be limited to 2.5 hours a year for a total of five(5) hours for the two year period.
- 6.10.7 The Board reserves the right to approve any and all activities deemed appropriate for CPE credit. The Board also reserves the right and is the final word to disapprove any activities submitted for credit which it deems inappropriate.
- 6.10.8 All dental hygienists licensed to practice in Delaware shall be given written notice of these CPE requirements when receiving their initial license.

6.11 Exceptions

- 6.11.1 An exception will be granted to any dental hygienist who can demonstrate to the Board an acceptable cause as to why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness, extended absence from the country, or the like.
- 6.11.2 An individual initially licensed by the Board within the last 2 years shall meet the following schedule of reporting CPE credits for license renewal:
 - 6.11.2.1 If, as of ~~March 1st~~ May 31st of the year for license renewal, the licensee has been licensed for less than 1 year, zero hours of CPE is required for license renewal; for licensees who are 1 or more but less than 2 years from their initial licensure, one-half of the required CPE must be presented; for individuals 2 years or more from their initial licensure, the full CPE requirement must be presented for renewal.

6.12 Audit of Continuing Education Contact Hours

- 6.12.1 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage of licensees, determined by the Board, to be audited. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 6.12.2 Documentation. When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various CPE's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board shall attempt to verify the

CPEs shown on the documentation provided by the licensee. Upon completion of the review, the Board will decide whether the licensee's CPEs meet the requirements of these regulations.

- 6.12.2.1 Any continuing education not meeting all provisions of these regulations shall be rejected in part or in whole by the Board
 - 6.12.2.2 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Board.
 - 6.12.2.3 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Board. This continuing education will not be counted towards the next renewal period.
- 6.12.3 Board Review and Hearing Process. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these regulations. Unjustified noncompliance with these regulations shall be considered unprofessional conduct and grounds for discipline pursuant to 24 **Del.C.** §1128(6).
- 6.12.4 Sanctions for Unjustified Noncompliance. If the Board finds unjustified non-compliance, the Board will impose discipline in accordance with 29 **Del.C.** §1129 which may include, but is not limited to monetary penalties up to \$1,000, suspension and/or revocation of a practitioner's license.

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

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION

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

PUBLIC NOTICE

1700 Board of Medical Licensure and Discipline

The Delaware Board of Medical Licensure and Discipline in accordance with 24 **Del.C.** §1713(a)(12) is proposing changes to its rules and regulations to amend outdated renewal provisions in Regulation 14 and replace them with requirements for renewal and examination for physicians seeking initial licensure who have been out of clinical practice for 3 or more years prior to the application as authorized by 24 **Del.C.** §1723(d).

The Board initially published proposed changes to Regulation 14 on March 1, 2012 at 15 DE Reg. 1293 and held a public hearing April 3, 2012 at which time it received public comment. As a result of the comment the Board is proposing to limit the application of the regulation to physicians. The original proposal made the regulation applicable to all professionals under the Medical Practice Act. The Board was persuaded that each advisory council under the Medical Practice Act should address its own practice specific re-entry to practice requirements.

The Board will hold a public hearing on the proposed amendments to Regulation 14 on July 24, 2012 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 may offer comments on the regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments 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 Licensure and Discipline

(Break in Continuity of Sections)

- 14.0 Issuance and Renewal of Registration License; Requirements for Physicians Re-entering Practice**
- ~~Six months after renewal of registration notices have been sent out to physicians a registered letter is to be sent to those physicians who have not yet paid their renewal fee notifying them that they have thirty (30) days from the date of the letter in which to renew their registration, or their certificate to practice medicine will be considered lapsed, and they will be treated as a new applicant upon future reapplication. Those physicians who have allowed their certificates to practice medicine lapse will not be required to be reexamined. The requirements for licensure which were in effect at the time of original licensure will be applicable to the application for relicensure.~~
- 14.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her registration/license pursuant to the Board's regulations and 24 Del.C. Ch. 17.
- 14.2 Renewal may be effected by:
- 14.2.1 filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. License renewal must be accomplished online at www.dpr.delaware.gov;
- 14.2.2 providing other information as may be required by the Board to ascertain the licensee's good standing;
- 14.2.3 attesting on the renewal application to the completion of continuing education as required by the Board's rules and regulations;
- 14.2.4 payment of fees as determined by the Division of Professional Regulation.
- 14.3 Failure of a licensee to renew his/her license shall cause his/her license to expire. A physician whose license has expired may renew his/her license within one year after the expiration date upon fulfilling items 14.2.1 – 14.2.4 above, certifying that he/she has not practiced medicine in Delaware while his/her license has expired, and paying any renewal fees and a late fees determined by the Division of Professional Regulation.
- 14.4 No physician will be permitted to renew his/her license after the expiration of the one-year period.
- 14.5 The former licensee may re-apply under the same conditions that govern applicants for new licensure under 24 Del.C. Ch. 17 and meeting any requirements for re-entry to practice established under Board Rule 14.7.
- 14.6 No physician shall practice medicine in the State of Delaware during the period of time that his/her Delaware license has expired.
- 14.7 A physician seeking to obtain an initial license who has not been engaged in the clinical practice of medicine within the three (3) years immediately preceding the application shall be required to demonstrate clinical competency as follows:
- 14.7.1 completing an approved practice assessment program that is both clinical and didactic in nature. Approved physician re-entry programs are listed on the Board's website. Programs not on the list must be submitted to the Board for approval. A physician who completes a program not on the list without first obtaining Board approval does so at his or her own risk that the program may not be approved by the Board; and
- 14.7.2 demonstrating that the applicant for licensure or renewal has kept current with continuing medical education meeting the requirements of the Board's rules and regulations.

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

1700 Board of Medical Licensure and Discipline

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2905 (24 Del.C., §2905)
24 DE Admin. Code 2930

PUBLIC NOTICE

The Delaware Council on Real Estate Appraisers, pursuant to 24 Del.C. §4006(a)(1), proposes to revise its rules and regulations. The proposed revision to the rules extend the period of time a licensee or certificate holder may request to have her/his license or certificate placed on inactive status from a 6 year limited period of time to an indefinite period of time.

The Board will hold a public hearing on the proposed rule change on July 17, 2012 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Nicole Williams, Administrator of the Delaware Council on Real Estate Appraisers, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

2930 Council on Real Estate Appraisers

(Break in Continuity of Sections)

2.0 Appraiser Licensing and Certification

2.1 Qualifications for Appraiser Licensure and Certification

2.1.1 The qualifications for licensure or certification shall be the criteria established by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation for:

- 2.1.1.1 certified general real property appraiser;
- 2.1.1.2 certified residential real property appraiser;
- 2.1.1.3 licensed real property appraiser; and
- 2.1.1.4 trainee real property appraiser.

2.1.2 A summary of the criteria set by the AQB is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from The Appraisal Foundation, 1155 15th Street, NW, Suite 1111, Washington, DC 20005.

2.1.3 The 2008 qualification criteria established by the AQB will be phased in using the segmented approach. The three AQB components that must be satisfied to obtaining licensure are: education, experience and examination. An applicant must meet the criteria in effect at the time he or she completes one of these components. Therefore, all applicants for certification or licensure must meet the 2008 qualifications criteria established by the AQB for any component completed on or after January 1, 2008.

2.2 License and Certificate Renewal

2.2.1 In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensees and certificate holders. Certificates and licenses will expire on October 31st of each odd numbered year.

2.2.2 As a condition of renewal, all licensees and certificate holders, either resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.3 of this Section.

2.2.3 A licensee or certificate holder shall not perform appraisals after a license has expired. A licensee or certificate holder may renew a certificate or license within 12 months of its expiration. After 12 months, the individual must reapply as a new applicant.

2.2.4 A licensee or certificate holder may apply for inactive status for ~~a period not to exceed 6 years~~ an indefinite time period if he or she is not performing appraisals in Delaware.

PROPOSED REGULATIONS

- 2.2.4.1 Persons with in an inactive license or certificate must complete the same continuing education requirement as active licensees or certificate holders. Evidence of completion is due at renewal as provided in Rule 2.3.
- 2.2.4.2 An inactive license or certificate can be reactivated by notifying the Council in writing.
- 2.3 Continuing Education
 - 2.3.1 All licensees and certificate holders are required to attest to the completion of continuing education according to the following schedule:
 - 2.3.1.1 No continuing education is required for fewer than 6 months of licensure;
 - 2.3.1.2 Effective with the licensure period beginning November 1, 2007, fourteen (14) hours of continuing education are required after at least 6 months but fewer than 24 months of licensure; and
 - 2.3.1.3 twenty-eight (28) hours of continuing education are required after 24 months of licensure.
- 2.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 2.0.
 - 2.4.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.
 - 2.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 2.5.
- 2.5 Random audits will be performed by the Council to ensure compliance with the CEU requirements. At least 25% of the licensees shall be audited at each renewal. The Council shall have the discretion to increase the percentage of licensees to be audited.
 - 2.5.1 The Council will notify licensees within sixty (60) days after January 31 that they have been selected for audit.
 - 2.5.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.
 - 2.5.3 Verification shall include such information necessary for the Council to assess whether the course or other activity meets the CE requirements in Section 2.0, which may include, but is not limited to, the following information:
 - 2.5.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance;
 - 2.5.3.2 Date of CE course;
 - 2.5.3.3 Instructor of CE course;
 - 2.5.3.4 Sponsor of CE course;
 - 2.5.3.5 Title of CE course; and
 - 2.5.3.6 Number of hours of CE course.
 - 2.5.4 The Council shall review all documentation submitted by licensees pursuant to the continuing education audit. If the Council determines that the licensee has met the continuing education requirements, his or her license shall remain in effect. If the Council determines that the licensee has not met the continuing education requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the continuing education requirements. Unjustified noncompliance with the continuing education requirements set forth in these rules and regulations shall constitute a violation of 24 **Del.C.** §4014(a)(5) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §4016.
 - 2.5.5 All licensees and certificate holders, except as provided in 2.3.1.1, must complete as a condition of each renewal:
 - 2.5.5.1 The seven (7) hour National USPAP Update Course or its equivalent as determined through the AQB Course Approval Program or by an alternate method established by the AQB and

- 2.5.5.2 Beginning November 1, 2009, and thereafter three (3) hours of education on Delaware Law, Rules and Regulations
- 2.5.6 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:
- Influences on real estate value
 - Legal consideration of appraisal
 - Types of value
 - Real estate markets and analysis
 - Valuation process
 - Property description
 - Highest and best use
 - Appraisal math & statistics
 - Sales comparison approach
 - Site value
 - Cost approach
 - Income approach
 - Estimation of income and expenses
 - Operating statement ratios
 - Direct capitalization
 - Cash flow estimates
 - Measures of cash flow
 - Discounted cash flow analysis
 - Gross rent multiplier analysis
 - Valuation of partial interests
 - Appraisal standards and ethics
 - Narrative report writing
 - Appraisal Statistical concepts
 - Ad valorem taxation
 - Arbitration
 - Business courses related to real estate appraisal
 - Development cost estimating
 - Ethics and standards of professional practice
 - Land use planning, zoning and taxation
 - Management, leasing, brokerage, timesharing
 - Property development
 - Real estate appraisal (valuations/evaluations)
 - Real estate financing and investment
 - Real estate law
 - Real estate litigation
 - Real estate appraisal related computer applications
 - Real estate securities and syndication
 - Real property exchange
 - Delaware law and regulations
- 2.5.7 Continuing education credit, up to 14 hours per licensure cycle, may also be granted for participation, other than as a student, in:
- 2.5.7.1 Teaching, including preparation time up to the number of hours spent teaching, for example, a 3 hour class can be submitted for 6 hours if the preparation time was at least 3 hours.
- 2.5.7.2 Program development
- 2.5.7.3 Authorship of textbooks
- 2.5.8 Continuing education credit may be awarded for participation in field trips, conferences, and trade association meetings, excluding travel time, if those activities specifically relate to real estate appraisal education, but for no more than eight (8) hours per licensure period.

- 2.5.9 A creditable hour is defined as fifty minutes out of each sixty minute segment. The educational offering must be at least two hours.
- 2.5.10 The Delaware Council on Real Estate Appraisers may approve the content of a distance education course after approval of the delivery mechanism is approved from one of the following sources:
- 2.5.10.1 AQB approved organizations providing approval of course design and delivery, such as the International Distance Education Certification Center (IDECC);
 - 2.5.10.2 A college that qualifies for content approval and awards academic credit for the distance education course; or
 - 2.5.10.3 A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity;
- 2.5.11 Beginning November 1, 2009, and thereafter, at least 14 hours per licensure period must be taken in a traditional classroom setting, with an instructor.
- 2.5.12 Courses must be approved by the Council to qualify as continuing education. Either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.
- 2.5.13 Hardship. An applicant for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. Hardship may include, but is not limited to, disability, illness, extended absence from the country and exceptional family responsibilities. The Council may grant an extension, not to exceed two years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Council reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Council prior to the expiration of the license.
- 2.6 Duplicate License or Certificate Fee
- 2.6.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. A certified copy of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.
- 2.7 Federal Appraiser Registry
- Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid biennially by the license or certificate holder to the State of Delaware.

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

2930 Council on Real Estate Appraisers

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 750

REGULATORY IMPLEMENTING ORDER

750 Support Personnel Salary Supplements for Additional Training

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 750 Support Personnel Salary Supplements for Additional Training to reflect the current administrative professional organizations and examinations. This regulation was reviewed as part of the five year review cycle. The Department worked with district staff as well as the Delaware State Education Association (DSEA) on the proposed changes. The salary supplements are identified in Delaware law.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 5, 2012, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on the amendments to the regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 750 Support Personnel Salary Supplements for Additional Training in order to reflect the current administrative professional organizations and examinations. This regulation was reviewed as part of the five year review cycle. The Department worked with

district staff as well as the Delaware State Education Association (DSEA) on the proposed changes. The salary supplements are identified in Delaware law.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code 750 Support Personnel Salary Supplements for Additional Training**. Therefore, pursuant to 14 **Del.C. §122**, 14 **DE Admin. Code 750 Support Personnel Salary Supplements for Additional Training** attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C. §122(e)**, 14 **DE Admin. Code 750 Support Personnel Salary Supplements for Additional Training** hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code 750 Support Personnel Salary Supplements for Additional Training** amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code 750 Support Personnel Salary Supplements for Additional Training** in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C. §122** on May 17, 2012. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17 day of May 2012.

Department of Education

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 17 day of May 2012

750 Support Personnel Salary Supplements for Additional Training

1.0 Definitions:

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

"Department" means the Delaware Department of Education.

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

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

2.0 Supplements for Additional Training

An administrative secretary, financial secretary, senior secretary, secretary or clerk shall receive as salary the amount that the employee qualifies for under 14 **Del.C. §1308** plus an annual amount for additional training as defined in 14 **Del.C. §1309(b)**. The following shall be the requirements for the salary supplements defined in 14 **Del.C. §1309(b)**:

2.1 Professional Secretary Certificate, Level I Salary Supplement Qualifications

2.1.1 Hold a high school diploma or certificate of equivalency; and

- 2.1.1.1 Complete sixty (60) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related areas; or
- 2.1.1.2 ~~Pass all six parts of the Examination for Certified Professional Secretaries administered by the Professional Secretaries International (PSI) Certified Administrative Professional (CAP) examination administered by the International Association of Administrative Professionals (IAAP); or~~
- 2.1.1.3 Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option 4~~1~~ or Option II, BASIC or above.

2.2 Certified Secretary Certificate, Level II Salary Supplement Qualifications

2.2.1 Hold a high school diploma or certificate of equivalency; and

2.2.1.1 Complete an associate degree in business, professional office training or, accounting from a regionally accredited post secondary institution; and have a minimum of five years successful experience as an office professional; or

2.2.1.2 ~~Pass all six parts of the Examination for Certified Professional Secretaries administered by the Professional Secretaries International (PSI); the Certified Administrative Professional (CAP) examination administered by the International Association of Administrative Professionals (IAAP); complete twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional; or~~

2.2.1.3 ~~Pass the Associate Professional Certificate from the Professional Standards Program (PSP), Options I or II, as administered by the National Association of Educational Office Professionals, complete twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area and have a minimum of five years successful experience as an office professional. Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option I; complete twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional; or~~

2.2.1.4 Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option II which includes the completion of at least twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional;

2.3 Bachelor's Degree Certificate, Level III Salary Supplement Qualifications

2.3.1 An individual shall hold a Bachelor's degree from a regionally accredited College.

3.0 Requirements for a Certificate

The Department shall issue Certificates to Support Personnel in local school districts, charter schools and in the Department of Education who have met the requirements for additional training in 2.1, 2.2 or 2.3.

4.0 Application Procedures

4.1 Applicants for a Certificate for additional training shall submit to the Department the appropriate evidence required to meet the requirements for the type of Certificate requested in 2.1, 2.2 and 2.3 as described in 4.1.1 through 4.1.3.

4.1.1 Official transcripts forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

4.1.2 Evidence of passing scores on the ~~Examination for Certified Professional Secretaries administered by the Professional Secretaries International (PSI) Certified Administrative~~

Professional (CAP) examination as administered by the International Association of Administrative Professionals (IAAP) or passing scores on the Associate Professional Certificate from the Professional Standards Program (PSP), Options ~~1 or 2~~ I or II, as administered by the National Association of Educational Office Professionals.

4.1.3 Documentation of years of experience if appropriate.

4.1.4 Reapplication is not required unless an applicant intends to apply for a different level of certification under 2.0.

5.0 Denial of Certificate

5.1 An applicant may be denied a Certificate for an additional training supplement upon a finding that the applicant has failed to meet the requirements set forth herein or is found to have made a materially false or misleading statement on his or her application or supporting materials.

5.4~~2~~ The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his or her designee within 10 days of the receipt of the notice of denial. The Secretary's decision shall be final.

10 DE Reg. 1143 (01/01/07)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1001

REGULATORY IMPLEMENTING ORDER

1001 Participation in Extra Curricular Activities

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to reauthorize 14 DE Admin. Code 1001 Participation in Extra Curricular Activities. The regulation was reviewed as part of the five year review cycle. It was determined that no amendments were needed.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 5, 2012, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The comments provided were related to DIAA participation rules and the comment section of the regulation. The DOE and Delaware Interscholastic Athletic Association (DIAA) appreciated and reviewed the comment to see if subsequent changes need to be made in this or other regulations. At this time, the DOE does not feel the need to make changes to this regulation.

The flexibility in the determination of eligibility for students with disabilities and participation in interscholastic sports does exist based on current regulations and practices; however, the DOE and DIAA will pursue clarification to the DIAA regulations.

II. Findings of Facts

The Secretary finds that it is appropriate to reauthorize 14 DE Admin. Code 1001 Participation in Extra Curricular Activities upon reviewing this regulation as part of the five year review cycle and determining that amendments were not needed at this time.

III. Decision to Reauthorize the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities hereby reauthorized shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 17, 2012. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17 day of May 2012.

Department of Education

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 17 day of May 2012

1001 Participation in Extra Curricular Activities**1.0 Academic Eligibility Criteria**

Local school districts and charter schools shall establish their own academic eligibility criteria for participation in all extra curricular activities except for interscholastic athletics. The academic eligibility criteria for interscholastic athletics is established in 14 **DE Admin. Code** 1009.2.6 DIAA Senior High School Interscholastic Athletics, and in 14 **DE Admin. Code** 1008.2.6 DIAA Junior High and Middle School Interscholastic Athletics.

Comment: In establishing and implementing academic eligibility criteria applicable to students with disabilities, districts are reminded that some flexibility may be contemplated by Federal guidelines. See 34 CFR Sec. 104.4.

1 DE Reg. 173 (8/1/97)

6 DE Reg. 279 (9/1/02)

10 DE Reg. 1433 (03/01/07)

FINAL REGULATIONS

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

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

ORDER

Diamond State Health Plan Plus Various Related Policies in the Division of Social Services Manual

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Division of Social Services Manual (DSSM) regarding various policies related to the implementation of Diamond State Health Plan Plus. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the April 1, 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) related to the implementation of Diamond State Health Plan Plus.

Statutory Authority

- 42 U.S.C. §1315, *Demonstration projects*
- Social Security Act §1115, *Demonstration projects*

Background

Section 1115 of the Social Security Act provides the Secretary of Health and Human Services broad authority to authorize experimental, pilot, or demonstration projects likely to assist in promoting the objectives of the Medicaid statute. Flexibility under Section 1115 is sufficiently broad to allow states to test substantially new ideas of policy merit. These projects are intended to demonstrate and evaluate a policy or approach has not been demonstrated on a widespread basis. Some states expand eligibility to individuals not otherwise eligible under the Medicaid program, provide services that are not typically covered, or use innovative service delivery systems.

Under a waiver authority of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Using savings achieved under managed care, Delaware expanded Medicaid health coverage to additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Effective April 1, 2012, the Division of Medicaid and Medical Assistance (DMMA) implements its 1115 Demonstration Waiver to integrate primary, acute and long-term care (LTC) services for the elderly and persons with physical disabilities into the Diamond State Health Plan (DSHP) statewide program under the name “Diamond State Health Plan Plus.”

Summary of Proposal

DMMA is leveraging the existing DSHP 1115 demonstration waiver by expanding it to include full-benefit dual eligibles, individuals receiving institutional LTC (excluding the developmentally disabled population), and individuals enrolled in DMMA's Elderly and Disabled and AIDS section 1915(c) waivers.

The purpose of this regulatory action is to inform the public of policy revisions and additions to the Division of Social Services Manual (DSSM) to reflect the expansion of the Managed Care program to include full-benefit dual eligibles and Long Term Care Medicaid.

The proposed changes affect the following policy sections:

DSSM 14920, *Enrollment in Managed Care*

DSSM 14920.1, *Retroactive Coverage Limitations*

DSSM 17913, *Premium Requirements*

DSSM 20100, *Long Term Care Introduction*

ADDED: DSSM 20110, *Managed Care Enrollment Requirements*

ADDED: DSSM 25110, *Managed Care Enrollment Requirements*.

Fiscal Impact Statement

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following similar observations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered the comment and responds as follows.

The GACEC and the SCPD have reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to adopt some discrete regulatory changes to conform to the implementation of the Diamond State Health Plan Plus initiative. The proposed regulation was published as 15 DE Reg. 1408 in the April 1, 2012 issue of the *Register of Regulations*.

The amendments appear to be "housekeeping" measures. GACEC and SCPD endorse the proposed regulation.

Agency Response: DMMA thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding various policies related to the implementation of Diamond State Health Plan Plus is adopted and shall be final effective June 10, 2012.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the April 2012 issue of the *Register* at page 1408 (15 DE Reg. 1408). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Various Related Policies in the Division of Social Services Manual

FINAL REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 20700

ORDER

Home and Community-Based Services Waivers

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Division of Social Services Manual (DSSM) regarding various policies related to Home and Community-Based Services Waivers. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the April 1, 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

As a reminder, the proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Home and Community-Based Services Waivers.

Statutory Authority

- 42 U.S.C. §1315, *Demonstration projects*
- Social Security Act §1115, *Demonstration projects*
- 42 CFR §435.217, *Individuals receiving home and community-based services*

Background

Section 1115 of the Social Security Act provides the Secretary of Health and Human Services broad authority to authorize experimental, pilot, or demonstration projects likely to assist in promoting the objectives of the Medicaid statute. Flexibility under Section 1115 is sufficiently broad to allow states to test substantially new ideas of policy merit. These projects are intended to demonstrate and evaluate a policy or approach has not been demonstrated on a widespread basis. Some states expand eligibility to individuals not otherwise eligible under the Medicaid program, provide services that are not typically covered, or use innovative service delivery systems.

Under a waiver authority of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Using savings achieved under managed care, Delaware expanded Medicaid health coverage to additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Effective April 1, 2012, the Division of Medicaid and Medical Assistance (DMMA) implements its 1115 Demonstration Waiver to integrate primary, acute and long-term care (LTC) services for the elderly and persons with physical disabilities into the Diamond State Health Plan (DSHP) statewide program under the name “Diamond State Health Plan Plus.”

Summary of Proposal

The proposed policy revisions in the Division of Social Services Manual (DSSM) identify the elimination of some of the 1915(c) home and community-based services waivers and the incorporation of them into Long Term

Care Managed Care. In December 2010, three 1915(c) waivers: Elderly/Disabled Waiver, ABI Waiver, Assisted Living Waiver; were consolidated into one Elderly and Disabled Waiver. These changes were never reflected in policy.

As of April 1, 2012, the consolidated Elderly and Disabled Waiver, as well as the AIDS/HIV waiver will be moved to an 1115 Waiver and incorporated into a Managed Care Program.

This regulatory action also proposes to increase the daily living needs allowance of those individuals residing in the community. In supporting community based care, the daily living needs allowance for these individuals increases to be equal to their total income, including income that is deposited into a Miller Trust.

The proposed changes affect the following policy sections:

DSSM 20700, Home and Community-Based Services

DSSM 20700.1, *Division of ~~Mental Retardation~~ Developmental Disabilities Services Waiver*

DSSM 20700.2, *Home and Community-Based Waiver for the Elderly and Disabled*

DSSM 20700.3, *Home and Community-Based Waiver for Individuals with AIDS/HIV*

DSSM 20700.4 through DSSM 20700.4.8, *Assisted Living Waiver*

DSSM 20700.5 through DSSM 20700.5.J, *Acquired Brain Injury Medicaid Waiver Program*

ADDED: DSSM 20710, Long Term Care Community Services

DSSM 20720, *Patient Pay Calculation*

DSSM 20720.1, *Daily Living Needs*

DSSM 20720.4, *Patient Pay Amount*

DSSM 20740, *Hospitalization*

DSSM 20760, *Redetermination.*

Fiscal Impact Statement

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following similar observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

The GACEC and the SCPD have reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to update its regulations to reflect the conversion of multiple HCBS waivers into the new Diamond State Health Plan Plus (DSHPP) Waiver effective April 1, 2012. The new Waiver will be known as "Long Term Care Community Services". The "Summary of Proposal" notes that the ABI, Assisted Living, and Elderly and Disabled Waivers were merged into a consolidated Elderly/Disabled Waiver in December 2010. This consolidated E&D waiver and the AIDS/HIV waivers are now being discontinued in favor of the DSHPP Waiver. The DDDS HCBS Waiver remains a separate program. The proposed regulation was published as 15 DE Reg. 1414 in the April 1, 2012 issue of the Register of Regulations. GACEC and SCPD endorse the proposed regulation subject to the following minor technical revisions.

First, §20700.1, Par. 2, refers to "(o)nce an individual is placed in a residential facility". This is a somewhat outdated concept which demeans individual autonomy and choice. Moreover, a shared living residence (a/k/a foster home) is not commonly viewed as a "facility". Consider the following substitute: "(o)nce an individual accepts a residential setting".

Second, in §20720, Par. 2, add an "s" to "circumstance" to make it plural.

Third, in §20720, Par. 3, change the reference to "...Assisted Living Facility will ~~make~~ submit their patient pay amount..."

Agency Response: DMMA accepts the suggested revisions and thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding policy provisions related to Home and Community-Based Services Waivers is adopted and shall be final effective June 10, 2012.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #12-21**REVISIONS:****20700 Home and Community Based Services
Federal Regulation - 42 CFR 435.217****1115 Social Security Act (42 U.S.C. 1315)**

~~Individuals who are eligible to receive home and community based services, under a special waiver granted to the State's Medicaid program by the Centers for Medicare and Medicaid Services (CMS) are also eligible for the increased financial standard that is used for individuals in nursing facilities-~~

~~These are individuals who would need to be in an institution if the special Medicaid community services were not available. They are also individuals who may not be eligible for SSI or SSP while living in the community because of excess income.~~

~~Delaware currently has a waiver for the mentally retarded (effective 7/1/83), the elderly and disabled (effective 7/1/86) and (effective 1/1/91) persons with Acquired Immune Deficiency Syndrome (AIDS) or other HIV Related Disease (HRD). The Assisted Living Waiver which is a program of community based residential services became effective October 1, 1998.~~

~~Medicaid eligibility under any HCBS waiver is not established until services under the HCBS waiver begin.~~

Effective April 1, 2012, all Home and Community Based Waiver programs, except for the Division of Developmental Disabilities Services Waiver, are incorporated into Diamond State Health Plan Plus, a managed care program. See section DSSM 14900 for additional information regarding this program.

20700.1 Division of ~~Mental Retardation Waiver~~ Developmental Disabilities Services Waiver

1. Only clients of the Division of Developmental Disabilities Services (DDDS) are eligible for this Waiver.
2. Individuals must be medically eligible.

Initial medical eligibility is determined by DDDS staff. The DDDS Intake Coordinator makes a preliminary determination for each applicant for initial eligibility. Once an individual ~~[is placed in accepts]~~ a residential ~~[facility setting]~~, the ~~social~~ DDDS Social Service Benefits Administrator sends all waiver requests to the ~~Medicaid~~ Division of Medicaid & Medical Assistance Medical Review Team (MRT) for review. Based on the information provided on the comprehensive Medical Report (MAP-25), Social Evaluation Form, Cost Projection Data Sheet and the ~~level~~ Level of Care (LOC) form, the MRT will either concur with the initial decision to approve or deny the applicant for an ICF/MR level of care.

- ~~3.~~ The MRT signs off on all forms sent by the DDDS Social Service Benefits Administrator.
3. Individuals must be financially eligible.

If the client is not already Medicaid eligible as an SSI recipient, DDDS submits an application to the appropriate Long Term Care Unit for financial eligibility determination. Eligibility determination is made by using financial criteria applied to those institutionalized and receiving Medicaid.

(Break in Continuity of Sections)

20720 Patient Pay Calculation

~~There are allowable deductions from the monthly income. These are deducted to determine the recipient's share of his/her cost of care.~~

This policy applies to all individuals receiving Medicaid through the Division of Developmental Disabilities Services (DDDS) Waiver and the Long Term Care Community Services Program.

1. The Medicaid recipient's total income will be used in the post eligibility treatment of income. This includes income that is counted for eligibility and income that is excluded for eligibility.
2. Allowable deductions are given based on an individual's circumstance[s]. Not all deductions will apply to all individuals.
3. Any amount of income remaining after allowable deductions is the patient pay amount. This amount must be paid on a monthly basis as indicated below:

For DDDS Waiver recipients, the patient pay amount is paid to the Division of Developmental Disabilities.

Individuals residing in an Assisted Living Facility will **[make submit]** their patient pay amount directly to the Assisted Living Facility.

The following deductions from the Medicaid recipient's total gross income should be taken in the following order:

***Please Note: As the rest of the sections were not amended since the proposal in the April 2012 Register, they are not being published here. A complete copy of the final regulation is available at:**

Home and Community-Based Services Waivers

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XIX Medicaid State Plan, Estate Recovery and Managed Care

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Delaware Title XIX Medicaid State Plan regarding *Estate Recovery and Managed Care*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the April 1, 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan regarding *Estate Recovery and Managed Care*. This regulatory action identifies capitation payments to managed care organizations as an additional Delaware Medicaid expenditure to be included in estate recovery.

Statutory Authority

- Section 1917 of the Social Security Act, *Liens, Adjustments and Recoveries, and Transfers of Assets*;
- 42 CFR §433.36, *Liens and Recoveries*;
- State Medicaid Manual, Section 3810, *Medicaid Estate Recoveries*; and,
- Title 25, Delaware Code, Chapter 50, *Liens and Estate Recoveries*.

Background

Under the estate recoveries provisions in the Omnibus Budget Reconciliation Act (OBRA) of 1993 and §1917(b) of the Social Security Act, states must recover certain Medicaid benefits correctly on behalf of an individual. Beneficiaries are notified of the Medicaid estate recovery program during their initial application for Medicaid eligibility and annual redetermination process. Federal law provides protections to ensure adequate notice to clients, prevention of undue hardship, and cost effectiveness under a state's recovery program.

For individuals age 55 or older, States are required to seek recovery of payments from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services. States have the option of recovering payments for all other Medicaid services provided to these individuals. States are also required to establish procedures, under standards specified by the HHS Secretary for waiving estate recovery when recovery would cause an undue hardship.

State Medicaid Manual

Section 3810(A)(6) of the State Medicaid Manual states that when a Medicaid beneficiary, permanently institutionalized, or age 55 or older, is enrolled (either voluntarily or mandatorily) in a managed care organization and services are provided by the managed care organization that are included under the State's plan for estate recovery, the Medicaid agency must seek adjustment or recovery from the individual's estate for the premium payments in its claim against the estate. When the beneficiary enrolls in the managed care organization, the Medicaid agency must provide a separate notice to the beneficiary that explains that the premium payments made to the managed care organization are included either in whole or in part in the claim against the estate.

Summary of Proposal

Delaware Medicaid is moving its Long Term Care program under a Managed Care Organization. Estate Recovery will be required to recover monthly Long Term Care capitated payments made to the Managed Care Organizations as opposed to monthly Nursing Home rates set per facility.

As such, the proposed amendment updates current regulations regarding Medicaid estate recovery carried out by the Division of Medicaid and Medical Assistance (DMMA). The Medicaid State plan will be amended at Attachment 4.17-A, Page 4, *Liens and Adjustments or Recoveries* to require that the amount subject to recovery shall include a capitation payment made by the Delaware Medical Assistance Program to a managed care organization on behalf of the deceased recipient. This regulatory action is based upon language provided by the federal Medicaid agency, the Centers for Medicare and Medicaid Services (CMS), in its guidance document publication titled "State Medicaid Manual."

When a Medicaid beneficiary is enrolled in a managed care organization and services are provided by the managed care organization that are included under the Medicaid State Plan, the State shall seek adjustment or recovery from the individual's estate for the capitation payments in the State's claim against the estate. When the individual enrolls in the managed care organization, the State shall provide a separate notice to the individual that explains that the capitation payments made to the managed care organization are included in whole in the claim against the estate. The State shall recover from the individual's estate the total capitation rate for the period the individual was enrolled in the managed care organization.

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

Fiscal Impact Statement

The proposed plan amendment imposes no increase in cost on the General Fund.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following similar observations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered the comments and responds as follows.

The GACEC and the SCPD is aware that federal law requires DMMA to pursue estate recovery for at least some Medicaid expenditures for individuals age 55 or older receiving nursing home services, home and community-based services, and related hospital and prescription drug services. Based on the attached Section 3810(A)(6) of the State Medicaid Manual, when states use a managed care system with a capitation rate, they must pursue recovery of the premium paid to the MCO on behalf of the covered beneficiary. Therefore, DMMA is incorporating the authorization to seek estate recovery of MCO capitation payments in the State Plan.

GACEC and SCPD endorse the proposed regulation since the amendment is ostensibly required to conform to CMS standards.

Agency Response: DMMA thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan regarding *Estate Recovery and Managed Care* is adopted and shall be final effective June 10, 2012.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #12-22

REVISION:

Revision: HCFA-PM-95-3
MAY 1995

(MB)

ATTACHMENT 4.17-A
PAGE 4

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

Liens and Adjustments or Recoveries Continued

7. The State uses the following collection procedures (include specific elements contained in the advance action notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

The Delaware Health and Social Services (DHSS) notifies the client in advance by distributing a pamphlet to the client, guardian, and/or responsible party, outlining estate recovery procedures, at the time of application to all applicants for long-term care services.

All persons receiving or applying for Long Term Care Medicaid Services are advised in writing about the estate recovery policy of DHSS at the time of application and redetermination, via the ERL1.DOC form titled, "Recovery and Lien Policy". This form outlines the following:

- Explanation of estate recovery, including citations of the federal and state authority;
- Defines long-term care;
- Describes the circumstances under which DHSS will file a claim;
- Describes the circumstances under which DHSS will file a lien;

- Defines what a lien is explains that the lien will not lead to loss of ownership;
- Describes what constitutes undue hardship. Exclusion and hardship waiver conditions are listed on page 2 of this form titled, "Request for Exclusion or Hardship Waiver";
- Specifies which Medicaid payments DHSS will seek to recover; and,
- Notifies the applicant, guardian, and/or responsible party of appeal procedures, specifically stating, "If you are dissatisfied with any decision made by the Division of Medicaid and Medical Assistance (DMMA), you have the right to request an appeal of the decision by requesting a fair hearing. You must submit a written request to the local DHSS office within 90 days of the action".

DHSS exempts from estate recovery all Medicare Savings Program cost sharing benefits with dates of service on or after January 1, 2010 for qualified dual eligibles age 55 and over, but otherwise DHSS shall seek estate recovery after the client's death of the maximum recoverable amount to be defined as the total of funds disbursed or incurred by DHSS (including Federal matching dollars) during the time an individual, age 55 and over, receives long-term care services paid for by DHSS including the total capitation rate for the period the beneficiary was enrolled in the managed care organization (MCO).

Collections efforts will include written notification to the executor, guardian, and/or responsible party of the client's long-term care balance owed via a claim summary report. If a lien was placed on the client's property upon entry to the long-term care institution, DHSS will place a recovery claim against the proceeds from the sale of the property. DHSS will also pursue obtaining any residual funds remaining in a trust to offset any balance owed DHSS. Upon request, DHSS will work with heirs of the estate who voluntarily wish to satisfy the recovery claim on a case-by-case basis offering mutually agreed upon payment schedules if necessary. Additionally, when the maximum recoverable amount cannot be collected DHSS may agree to accept partial recoveries.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 7903 (16 **Del.C.**, §7903)
16 **DE Admin. Code** 4455

ORDER

4455 Delaware Regulations Governing a Detailed Plumbing Code

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing A Detailed Plumbing Code. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** 101 and authority as prescribed by 16 **Del.C.** §7903.

On April 1, 2012 (Volume 15, Issue 10), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 30, 2012, or be presented at a public hearing on April 25, 2012, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

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

Written and verbal comments were received on the proposed regulations during the public comment period (April 1, 2012 through April 30, 2012). Entities offering comments included:

- Mr. John Feltwater, Owner, The RainMaker Lawn Irrigation and Landscape Lighting
- Mr. Dale Carey, CLLI, Area Account Manager, Atlantic Irrigation
- Mr. David Baird, Delaware Rural Water Association
- Mr. Richard Williams, Owner, R&L Irrigation Services, Inc.

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

- The wording for testing Backflow preventer affects me as a small lawn irrigation contractor. So you know back in May of 2011 I went through the ASSE certification training held by Delaware Water Association in Milford, Delaware. I passed the test and hold a certificate to test PVB, RPZ along with two other assemblies. The problem with the new law if passed would only allow Master Plumbers to test the devices. This would cause me to lose business because the backflow preventer would need to be tested before an irrigation system could be put in operation. I cannot afford to have a Master Plumber on my staff because I do not generate that kind of income. I went through the ASSE so I could test these assemblies myself!!! I am trying to make a living while others are trying to push me out of business. I am going to join with other irrigation contractors to voice our concerns!!

Agency Response: The Agency appreciates and acknowledges your comment but respectfully will not adopt your recommendation. The requirement in the Delaware Plumbing Code for testing backflow assemblies requires the person testing the assembly to have an ASSE or CSA accredited course in backflow testing (16 DE Admin Code 312.10.2 and 16 DE Admin Code 2.14.2). The Board of Plumbing and HVAC Examiners (BOPE) has had ongoing discussions in their meetings about the testing of backflow devices and whether this is a plumbing service as defined in their regulations under 24 Del. C. § 1807. The Board of Plumbing and HVAC Examiners has the authority to determine if a licensed plumber is required to test backflow assemblies (24 Del. C. § 1806). As such, regulations adopted by the Department of Health and Social Services, Delaware Division of Public Health, cannot conflict with the authority of BOPE.

Unlike other comments you may be receiving, I am a distributor of irrigation products in Delaware. Having been involved on the distribution side of things for 18 years, I deal with about 80 active irrigation contractors in the State of Delaware.

I believe that when you speak with the best of them, we are all concerned about backflow prevention. Most of these same contractors have been installing backflows long before the actual codes required them.

Atlantic has branches covering the entire east coast from Maine to Georgia, that said, many states have had requirements of backflows long before Delaware, but in many of these states the irrigation contractors meet or exceed the requirements to install and certify these devices without involving another person (plumber) on the site.

Simply put, I believe that if any legislation is passed for backflow, that anyone can pass and be certified to both install and test. This allows for everyone to be allowed, if they pass and certify. Take New Jersey for an example, they actually use the irrigation association to govern the industry. Many of the irrigation contractors are very concerned about their livelihood, the competitiveness of the industry does not allow for additional charges that would be incurred if this is passed as the plumbers would like to see.

As a distributor, we try to educate and instruct contractors working in different regions as to the codes, etc.. But we see them receive material and install, not to code. This we cannot regulate but as you see in many industries, there will always be contractors and associates of contractors installing on the weekends, after hours not to code. Even the Master Plumbers have their employees moonlighting plumbing entire homes.

I just wanted to send in my comments that affect my industry greatly. I would like to see Delaware work as James City County, Virginia (Williamsburg, VA area), they are very fair to the industry allowing anyone to take their testing and if pass and meet requirements, they can install and test backflows. This is all we are asking for, fairness.

As someone that covers the entire State of Delaware on a regular basis, and a Delaware resident, I am a pro-backflow or proponent of safe drinking water. But I am also a simple person and realize the reality of things in the real world. Delaware has a long way to go to catch up with other states, counties and townships. But we cannot get there overnight and jump into decisions quickly that affect a lot of people and their businesses. I do not see the infrastructure in place to even touch the inspections that obviously would be required to ensure that what is law is getting done.

I hope this helpful information to move forward on this. Reality is, last year, many contractors stated adhering to the new codes. These same contractors were losing contracts to other contractors that choose not to adhere to codes, ignore or all of the above. No matter the codes, etc., this will always happen. I witnessed this in Maryland. Worcester County, MD was a leader in the area of one of the first counties to require backflow, permitting and post inspection. My real life observations, they only inspected the systems that permits were pulled on, which were probably about 30%.

I witnessed this one day, when the inspector pulled up to, following up on an issued permit, two doors down, another contractor was installing an irrigation system, a known code violator, he was pointed out by the contractor to the inspector. The inspector left his job and drove right out of the development. This is what I see everyday.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully will not adopt your recommendation. The requirement in the Delaware Plumbing Code for testing backflow assemblies requires the person testing the assembly to have an ASSE or CSA accredited course in backflow testing (16 DE Admin. Code 312.10.2 and 16 DE Admin. Code 2.14.2). The installation of a backflow assembly to a potable water system requires a permit from the Delaware Division of Public Health in accordance with the Delaware Plumbing Code. The Board of Plumbing and HVAC Examiners (BOPE) has had ongoing discussions in their meetings about the testing of backflow devices and whether this is a plumbing service as defined in their regulations under 24 Del.C. §1807. The Board of Plumbing and HVAC Examiners has the authority to determine if a licensed plumber is required to test backflow assemblies (24 Del.C. §1806). As such, regulations adopted by the Department of Health and Social Services, Delaware Division of Public Health, cannot conflict with the authority of BOPE.

I just have one comment for consideration. I guess maybe before I go on to the specific comment, we do applaud the work that's been done, and for the most part, and when I say "the most part," about 98 percent support the proposal as it's written.

There's just one question that we want clarification on, and that is Section 2.14.2 of the proposed amendment. It refers to subsection 312.10.2 of the 2012 plumbing code. That language adds -- it's related to testers of backflow assemblies, and I'll just read it. "By adding a new sentence after the last sentence to read 'Testers of back flow assembly devices shall be certified under an ASSE or CSA backflow tester's course. Backflow assemblies shall be tested and test forms submitted prior to use of any backflow assembly.'"

I do want to say we fully support that language as it is written. However, I just would like some additional clarification that there's not an assumption or there's not a requirement for licensed plumbers to perform that work. It's our opinion that anyone who is certified under ASSE or CSA back-flow testers course should be able to perform that work because they have received certification through ASSE. So it's really a point of clarification that the certifications that stand, it shouldn't also be a requirement that they be a licensed plumber to do that.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully will not adopt your recommendation. The requirement in the Delaware Plumbing Code for testing backflow assemblies requires the person testing the assembly to have an ASSE or CSA accredited course in backflow testing (16 DE Admin. Code 312.10.2 and 16 DE Admin. Code 2.14.2). The Board of Plumbing and HVAC Examiners (BOPE) has had ongoing discussions in their meetings about the testing of backflow devices and whether this is a plumbing service as defined in their regulations under 24 Del.C. §1807. The Board of Plumbing and HVAC Examiners has the authority to determine if a licensed plumber is required to test backflow assemblies (24 Del.C. §1806). As such, regulations adopted by the Department of Health and Social Services, Delaware Division of Public Health, cannot conflict with the authority of BOPE.

My comments are in regard to Section 2.14.2 of the Proposed Regulation which amends Subsection 312.10.2 of the 2012 International Plumbing Code by adding a new sentence after the last sentence to read "Testers of backflow assembly devices shall be certified under an ASSE or CSA backflow tester's course. Backflow assemblies shall be tested and test forms submitted prior to use of any backflow assembly". It is my position additional language should be added that would allow those who are certified under an ASSE or CSA backflow tester and repair course be authorized to test and repair backflow assemblies. In addition, the plumbing code should clarify that the testing and/or repair of backflow assemblies shall be performed by individuals with ASSE or CSA certifications to test or repair backflow assemblies without being recognized as a licensed plumber.

It is important that the above language is included in the 2012 Plumbing Code for a number of reasons. First, the language currently proposed would have an adverse impact on services currently provided by professionals in

the municipal and private water utilities, irrigation companies and utility contractors throughout the State. These professionals are currently providing these services and many have previously or are in the process of receiving ASSE certifications in backflow testing, and repair along with ASSE certifications for cross connection surveying and administration of cross connection control programs.

Second, allowing individuals with the appropriate ASSE certifications to perform backflow work is good for the consumer as it has the potential to reduce the overall cost by having a single party perform the work. For instance, irrigation professionals with ASSE certifications would be able to test and/or repair assemblies at the same time they are on site performing system start up, maintenance or shut down. Additionally, ASSE certified personnel from the over 250 public water systems around the State would be able to perform work on backflow assemblies located within their respective water systems. This point is critical when it comes to ensuring that annual inspections and tests of assemblies (especially containment devices) are completed in an additional effort to protect the public drinking water supply. Not only is this approach good for the consumer from a cost perspective, it improves public health and the public drinking water supply because the utility is able to work closely with those individuals with ASSE certification in backflow testing and repair that are working in the public water system.

Finally, allowing ASSE backflow certified professionals perform this work creates business opportunities and jobs throughout the State. Individuals, along with new and existing businesses and current licensed plumbing contractors can expand their services into backflow testing and repair with the appropriate ASSE certifications.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully will not adopt your recommendation. The requirement in the Delaware Plumbing Code for testing backflow assemblies requires the person testing the assembly to have an ASSE or CSA accredited course in backflow testing (16 DE Admin. Code 312.10.2 and 16 DE Admin. Code 2.14.2). The same would be required for backflow assembly repair. The Board of Plumbing and HVAC Examiners (BOPE) has had ongoing discussions in their meetings about the testing of backflow devices and whether this is a plumbing service as defined in their regulations under 24 Del.C. §1807. The Board of Plumbing and HVAC Examiners has the authority to determine if a licensed plumber is required to test backflow assemblies (24 Del.C. § 1806). As such, regulations adopted by the Department of Health and Social Services, Delaware Division of Public Health, cannot conflict with the authority of BOPE.

I would love to amend or talk about what Dave from Delaware Water said. The code, we're all in support of the amendment, subsection 312.10.2, adding the new sentence about an ASSE certified to test a back-flow preventer does not have to have a master plumber's license to do so. And that is what we're in favor of.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully will not adopt your recommendation. The requirement in the Delaware Plumbing Code for testing backflow assemblies requires the person testing the assembly to have an ASSE or CSA accredited course in backflow testing (16 DE Admin. Code 312.10.2 and 16 DE Admin. Code 2.14.2). The Board of Plumbing and HVAC Examiners (BOPE) has had ongoing discussions in their meetings about the testing of backflow devices and whether this is a plumbing service as defined in their regulations under 24 Del.C. §1807. The Board of Plumbing and HVAC Examiners has the authority to determine if a licensed plumber is required to test backflow assemblies (24 Del.C. §1806). As such, regulations adopted by the Department of Health and Social Services, Delaware Division of Public Health, cannot conflict with the authority of BOPE.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing A Detailed Plumbing Code are adopted and shall become effective June 11, 2012, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

4455 Delaware Regulations Governing a Detailed Plumbing Code

*Please note that no changes were made to the regulation as originally proposed and published in the April 2012 issue of the *Register* at page 1422 (15 DE Reg. 1422). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

4455 Delaware Regulations Governing a Detailed Plumbing Code

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 49A
(16 **Del.C.** Ch. 49A)

ORDER

4470 State of Delaware Medical Marijuana Code

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Medical Marijuana Code. The DHSS proceedings to adopt the regulations were initiated pursuant to 29 **Del.C.** Ch. 101 and authority as prescribed by 16 **Del.C.** Ch. 49A.

On April 1, 2012 (Volume 15, Issue 10), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 30, 2012, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

FINDINGS OF FACT

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

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) regulations governing the State of Delaware Medical Marijuana Act were published in the Delaware State News, the News Journal and the Delaware Register of Regulations. Written comments were received on the proposed regulations during the public comment period (April 1, 2012 through April 30, 2012). Entities offering written comments included:

- Marijuana Policy Project
- Governor's Advisory Council for Exceptional Citizens (GACEC)
- State Council for Persons with Disabilities (SCPD)
- Dr. Richard Chong
- Stephen Haner
- Diane L. Jump
- Todd Kitchen
- Patricia Lake
- Elizabeth Wiberg

- John Wiberg

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

Marijuana Policy Project:

The Marijuana Policy Project (MPP), which has been working in partnership with patients and patient advocates in Delaware for several years, submits the following comments on the regulations developed by the Department of Health and Social Services relating to the Delaware Medical Marijuana Code entitled "Rules and Regulations Governing the Delaware Medical Use of Marijuana."

We are grateful to the Division of Public Health for its diligent work to craft medical marijuana rules. While we feel that most of the rules are reasonable, there are some provisions that we believe to be unnecessary, onerous, or contrary to the language of Delaware's medical marijuana law. In addition, we urge the division to add rules to regulate compassion centers, as is being done in other states, including neighboring New Jersey and the District of Columbia.

When appropriate, the department's proposed regulations are initially quoted exactly as they appear in the April 1, 2012 edition of the Delaware Register of Regulations. MPP's suggestions are found in the comment box with underscored and struck-through language being additions or redactions to the language found in the proposed regulations.

Thank you very much for your consideration and attention to the changes MPP deems necessary to these regulations. Your thorough examination of this matter is greatly appreciated.

4.0 Designated Caregiver Registry Identification Card Application Requirements

4.1.3: Section 4.1 of the proposed regulations, among other requirements, mandates certain information and documentation be given to the medical marijuana program in order for an individual to obtain a caregiver registry identification card. Regulation 4.1.3 requires a potential caregiver to submit "written approval by the qualified patient(s) and the qualified patient(s)' Physician(s) authorizing responsibility for managing the wellbeing of a qualified patient(s) with respect to the use of marijuana."

MPP comment: § 4908A of Title 16 of the Delaware Code contains no requirement that potential caregivers seek and show evidence of approval from their patient(s)' physician(s) in order to obtain an identification card as a registered caregiver. In fact, an application to obtain a caregiver ID card may only be denied if certain conditions are met; none of these requirements is physician approval of the caregiver. Del. Code Title 16 §4910A(b).

Besides being contrary to the letter of the law, MPP believes that requiring physicians to approve of all caregivers is bad policy. This requirement moves dangerously close to involving the physician in the medical marijuana supply chain that could lead to adverse actions against them by the federal government. The Ninth Circuit Court of Appeals has held that physicians have a First Amendment right to discuss the use of medical marijuana with their patients. *Conant v. Walters* 309 F.3d 629 (2003), cert denied. However, physicians cannot do so with the specific intent that the patient use the recommendation to obtain medical marijuana. If the physician were required to designate a person to obtain marijuana for the patient, it is possible that intent could be implied.

Finally, this regulation will make it much more difficult for patients to obtain their needed medicine. The severity of patients' medical conditions can change. A patient who is mobile at one point - and whose doctor may not think needs a caregiver at that time - may be hospitalized or bedridden at another time. A patient using prescription drugs can send their significant other or spouse to the pharmacy to pick up their medications without a doctor's approval. The requirement that a patient designate a single person to the department already is stricter than the standard for prescription medications.

We recommend amending 4.1.3 to read:

"written approval by the qualifying patient(s) and the qualified patient(s)' Physician(s) authorizing responsibility for managing the well-being of a the qualified patient(s) with respect to the use of marijuana."

Agency Response: The Agency appreciates this suggested revision to the proposed regulations. The requirement to have the physician provide written approval of the patient's caregiver was intended to allow for protection of at-risk population patients from abuse by someone who has more than a medicinal interest in marijuana. However, after further scrutiny of the Medical Marijuana Law, and additional discussion on ways to balance the needs of patients with the protection of the community, the Department has modified the regulations to remove the requirement of the physician's approval of a patient's care giver.

5.0 Registry Identification Cards

5.3.6: Section 5.3 of the proposed regulations lists several life events (including but not limited to a change of name, address, or status of a debilitating illness) that would require a registered identification cardholder to contact the department to notify them of the change. Section 5.3.6 gives teeth to the notification requirement stating that "A cardholder who fails to make a notification to the Department that is required by Section 3.5 is subject to a civil infraction, punishable by a penalty of no more than \$150.00 shall result in the immediate revocation of the registry identification card and all lawful privileges provided under the act."

MPP comment: The immediate revocation of an identification card and privileges associated with being a cardholder is extreme and contrary to the intent and language of Delaware's medical marijuana law. § 4912A of Title 16 of the Delaware Code is the statutory companion to regulations section 3.5. § 4912A(d) states that a cardholder who fails to make a notification to the department required in § 4912A is subject to a civil violation of not more than \$150. There is no statutory requirement that a failure to make a notification result in a revocation of the card and its associated privileges.

If the Delaware Legislature intended to penalize a patient or caregiver with revocation of an identification card and its privileges for failure to make a clerical notification, they would have enacted such a penalty in the law, like they did when enacting § 4919A(r) (a cardholder who sells marijuana to a non-cardholder shall have his or her card revoked). In fact, the medical marijuana law specifically states that revocation of a card will only be made for "multiple or serious" violations of the chapter. Del. Code Title 16 § 4919A(t). Immediate revocation for a first time failure to notify the department of a life change does not fit this description. For example, a patient's condition could worsen and force a move into an assisted living facility. At a time of great emotional and physical distress, denying a person the right to use his or her medicine for a single oversight would be unwarranted and cruel. If the department feels that repeated failures to adhere to the notification requirement should result in a revocation, it could do so under the letter of the law, but we urge it to do so based on the totality of the circumstances and after the cardholder has an opportunity to be heard.

We recommend amending 5.3.3 to read:

"A cardholder who fails to make a notification to the Department that is required by Section 3.5 is subject to a civil infraction, punishable by a penalty of no more than \$150.00 shall result in the immediate revocation of the registry identification card and all lawful privileges provided under the act."

Agency Response: The Agency respectfully disagrees. One of the tasks of the Medical Marijuana Program is to provide balance between patient protection and that of the community. This regulation gives authority to allow maximum punitive action if required; however, it does not provide for absolute action by the Department. In fact, section 5.3.1 allows for extension of the required time for notification with the showing of good cause. This regulation is not intended to punish patients, but instead to protect them. If a card is lost, for example, the need to have the ID number removed from the registry would be an important timely action. For clarification, we will modify the text in Section 5.3.6 to read as follows. "A cardholder who fails to make a notification to the Department that is required by Section 5.3 is subject to a civil infraction, punishable by a penalty of no more than \$150, and is also subject to the immediate revocation of the registry identification card and all lawful privileges provided under the act."

6.0 Registration and Operation of Compassion Centers

The department has reserved sections for future rules and regulations governing the compassion center program. Presumably, this decision was made after Gov. Markell stated that he would not allow the compassion centers to open to avoid adverse actions taken toward the centers by the federal government.

MPP comment: We feel it is unnecessary to wait to make rules for compassion centers and urge the department to move forward with the rule-making process. Patients need a safe source of medical marijuana.

State regulated and registered medical marijuana providers are openly and actively serving patients in New Mexico, Colorado, and Maine. Additionally, the Rhode Island General Assembly has been working with Gov. Lincoln Chafee on legislation that will result in the opening of three compassion centers across their state. Arizona, Vermont, New Jersey, and Washington, D.C. are all moving forward with regulations to implement dispensary programs as well. No state worker has ever been prosecuted for implementing a dispensary program, and no court has ever found that registering and regulating compassion centers would be a federal crime. We maintain that it is not a crime, and we believe it is inconceivable that the federal government would prosecute a state employee for implementing a regulatory program, particularly without a prior explicit warning or civil action.

While MPP appreciates that the sections were reserved for compassion center rules, we respectfully request

that the department move forward with compassion center regulations. The department would be best served by reviewing regulations passed by the New Mexico Department of Health, the Rhode Island Department of Health, the Maine Department of Health and Human Services, and the Colorado Department of Public Health and Environment.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking public comments regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

7.0 Registration and Operation of Testing Facility Centers

The department has reserved sections for future rules and regulations governing the medical marijuana safety compliance facilities. Presumably, this decision was made after Gov. Markell stated that he would not allow the compassion centers to open to avoid adverse actions taken toward the centers by the federal government.

MPP comment: We feel it is unnecessary to wait and urge the department to move forward with the rule-making process.

State regulated and registered medical marijuana testing facilities are openly and actively serving the medical marijuana program in Colorado. These facilities ensure that medical marijuana does not contain molds or contaminants and clearly determine the percentage of various cannabinoids present so patients can more easily find a strain to address their particular debilitating disease or condition.

While we appreciate the department reserving the sections for future rules and regulations for the testing facilities, MPP respectfully requests that the department move forward with testing facility center regulations.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking public comments regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

8.0 Monitoring and Corrective Actions

8.1.1: Section 8.0 of the regulations lays out the duties and powers entrusted to the department to monitor for and subsequently correct violations of the medical marijuana law and regulations. Section 8.1.1 states, "The Department or its designee may perform on-site assessments of a qualified patient or primary caregiver to determine compliance with these rules. The Department may enter the premises of a qualified patient or primary caregiver during the business hours for the purposes of monitoring and compliance. Twenty-four (24) hours notice will be provided to the qualified patient or primary caregiver prior to an on-site assessment except when the Department has a reasonable suspicion to believe that providing notice will result in the destruction of evidence or that providing such notice will impede the Department's ability to enforce these Regulations."

MPP comment: MPP believes that this provision is unlawful and should be removed in its entirety. Title 16, §4903A(m) of the Delaware code states that "mere possession of, or application for, a [medical marijuana] registry identification card or registration certificate shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person, property, or home of the person possessing or applying for the registry identification card" (emphasis added). Allowing the department to conduct a search of a patient, caregiver, and/or their premises simply because they hold an identification card is in direct contrast to the above law.

We recommend amending 8.0 to remove "8.1 Monitoring" in its entirety. Delaware residents' homes are not invaded for searches to see that they are complying with the law for other medications they are prescribed. Patients and caregivers should not - and under Delaware law cannot - be treated like criminal suspects for being state-legal medical marijuana patients.

Agency Response: The Agency appreciates the comments and acknowledges the commenter's concern for Delaware's citizens. While the intent of this section was to allow for community protective action if and when the

Department is made aware of an instance of abuse of these regulations, the Department has changed section 8.1 to refer instead to an interview process for a patient or caregiver who cannot leave their home. Please see the final posted regulations for the final text of this section.

8.0 Monitoring and Corrective Actions

8.3.1.3.6: Section 8.0 of the regulations lays out the duties and powers entrusted to the department to monitor for and subsequently correct violations of the medical marijuana law and regulations. 8.3.1.3.6 retains the right of the state to prosecute a medical marijuana patient or caregiver for possessing or transferring marijuana "outside Delaware or attempt[ing] to obtain or transport marijuana from outside Delaware."

MPP comment: This is an unnecessary regulation and will only result in harming patients. The law clearly protects patients and caregivers who possess up to a certain amount of marijuana. If they are over their possession limits, they may be subject to prosecution. In addition, Delaware patients could be traveling out of state to seek medical attention and would then be subject to prosecution for taking their physician-recommended medicine with them. Similarly, Delaware patients could be returning from a state where there is legal access to medical marijuana. Some states allow patients to give marijuana away to other patients. Patients should not have to destroy their marijuana when entering their home state, only to have to obtain more marijuana from the criminal market.

We recommend removing, in its entirety, 8.3.1.3.6.

Agency Response: The agency respectfully disagrees. It is the intent of the regulations to provide protection for the community against possible diversion of marijuana from a registered program patient or care giver to a non-registered person. The Division of Public Health is charged with administering Chapter 49A of Title 16 of the Delaware Code, The Delaware Medical Marijuana Act. The scope of the law does not allow for any program administration outside of the state of Delaware; therefore, we do not have the ability to relieve registered card holders from any punitive penalties with regard to marijuana-related activities outside of the state of Delaware. This section of the regulation simply emphasizes the limited scope of the regulations.

8.0 Monitoring and Corrective Actions

8.3.2: Section 8.0 of the regulations lays out the duties and powers entrusted to the department to monitor for and subsequently correct violations of the medical marijuana law and regulations. Section 8.3.2 states that a "Violation of any provision of this rule may result in either the summary suspension of the qualified patient's or primary caregiver's registry identification card, or a notice of contemplated action to suspend or revoke the qualified patient's or primary caregiver's registry identification card, and all lawful privileges under the act."

MPP comment: We oppose this rule for many of the same reasons we oppose 5.3.6 above. The medical marijuana law already contemplates when an identification card can be revoked, and it is in the event of "multiple or serious" violations of the chapter. Del. Code Title 16 § 4919A(t). Any regulation must take this language into account.

We recommend amending 8.0 to state: "Multiple or serious violations of any provision of this rule may result in either the summary suspension of the qualified patient's or primary caregiver's registry identification card, or a notice of contemplated action to suspend or revoke the qualified patient's or primary caregiver's registry identification card, and all lawful privileges under the act."

Agency Response: The Agency respectfully disagrees. One of the tasks of the Medical Marijuana Program is to provide balance between patient protection and that of the community. This regulation gives authority to allow suspension or revocation of a registry card if required to protect the community; however, it does not provide for absolute action by the Department. It is not intended to punish patients, but instead to protect both them and the community from potential threats.

8.0 Monitoring and Corrective Actions

8.3.3: Section 8.0 of the regulations lays out the duties and powers entrusted to the department to monitor for and subsequently correct violations of the medical marijuana law and regulations. Section 8.3.3 states that a "A registry identification card may be revoked or suspended, and a renewal application may be denied for: 8.3.3.1 failure to comply with any provisions of these requirements; 8.3.3.2 failure to allow a monitoring visit by authorized representatives of the Department; 8.3.3.3 the discovery of repeated violations of these requirements during monitoring visits."

MPP comment: We oppose this rule for many of the same reasons we oppose 8.3.2 and 8.1.1 above. First and foremost, the medical marijuana law already contemplates when an identification card can be revoked, and it is in the event of "multiple or serious" violations of the chapter. Del. Code Title 16 § 4919A(t). Any regulation must take this language into account. Secondly, as discussed above, monitoring visits on the basis of being a cardholder are unlawful, so revocation based on said visits must be removed.

We recommend amending 8.3.3 to state: "A registry identification card may be revoked or suspended, and a renewal application may be denied for: 8.3.3.1 failure to comply with any provisions of these requirements; 8.3.3.2 failure to allow a monitoring visit by authorized representatives of the Department; 8.3.3.3 the discovery of repeated or serious violations of any provision of these requirements during monitoring visits."

Agency Response: The Agency respectfully disagrees. One of the tasks of the Medical Marijuana Program is to provide balance between patient protection and that of the community. This regulation gives authority to allow suspension or revocation of a registry card if required to protect the community; however, it does not provide for absolute action by the Department. It is not intended to punish patients, but instead to protect both them and the community from potential threats.

Governor's Advisory Council for Exceptional Citizens (GACEC):

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Public Health proposal to adopt regulations implementing Delaware's law on medical use of marijuana enacted in May, 2011. The GACEC would like to share the following observations.

First, the regulations, including definitions, generally track the statute.

Second, §5.3.1 is somewhat vague and should be more clear in specifying the scope of information to be reported to the Division of Long Term Care.

Agency Response: The Agency appreciates this comment. There is no reporting to the Division of Long Term Care, but instead to the Division of Public Health. In order to provide clarity in the regulations, we will propose that section 5.3.1 be listed as individual situations that would require reporting to the Department, rather than a comma delimited list. So that the new section would read as follows. "5.3.1 A registered qualifying patient or registered designated caregiver who possesses a registry identification card shall notify the Department of any of the following within 10 calendar days of the change. An extension shall be granted by the Medical Marijuana Program up on the showing of good cause. 5.3.1.1 a change in card holder's name or address, 5.3.1.2 knowledge of a change that would render the patient no longer qualified to participate in the program, such as a cure of the debilitating condition causing the need for Medical Marijuana, 5.3.1.3 knowledge of a change that renders the patient's physician no longer a "physician" as defined in 2.0 of these regulations, 5.3.1.4 a change that renders the patient's caregiver no longer eligible as defined in these regulations.

Third, §5.3.6 authorizes a \$150 civil penalty if a patient or caregiver cardholder fails to report a change in name, address, physician, disability condition, medical status, etc. This is consistent with Title 16 Del.C. §4912A. However, the regulation should include due process to contest the penalty. Compare §§8.2.5 (record review available to challenge suspension of registry identification card); and 8.4 (hearing available to challenge suspension or revocation of registry identification card).

Agency Response: The Agency respectfully disagrees. One of the tasks of the Medical Marijuana Program is to provide balance between patient protection and that of the community. This regulation gives authority to allow maximum punitive action if required; however, it does not provide for absolute action by the Department. In fact, section 5.3.1 allows for extension of the required time for notification with the showing of good cause. This regulation is not intended to punish patients, but instead to protect them. If a card is lost, for example, the need to have the ID number removed from the registry would be an important timely action. For clarification, we will modify the text in Section 5.3.6 to read as follows. "A cardholder who fails to make a notification to the Department that is required by Section 5.3 is subject to a civil infraction, punishable by a penalty of no more than \$150, and is also subject to the immediate revocation of the registry identification card and all lawful privileges provided under the act."

Fourth, §8.5.3 recites that "(a)ll hearings held pursuant to this section shall be open to the public." Such

hearings would typically involve confidential medical records and otherwise sensitive evidence. The statute explicitly contemplates that such information is confidential and protected, not "open to the public". See Title 16 Del.C. §4920A. For similar reasons, §8.14.4 is problematic since it makes a final hearing decision "public information" without redaction. . Cf. 16 DE Admin Code 5000, §5502 [DHSS hearing decisions can be published but in redacted form].

Agency Response: The Agency acknowledges this comment and appreciates the concern for the protection of confidential medical records and the individuals to whom they pertain. While the meeting may be public, the Board can go into "executive session," which is off the record and in private, if one of the nine conditions is met under the FOIA statute - Title 29, section 1004(b). In addition, anything confidential under HIPPA says protected health information is confidential from disclosure to the public without consent. The hearing officer will guide this process, requesting people not to disclose information as part of the public hearing, and also reviewing information before it is made public.

Fifth, in §8.8, substitute "bear" for "endure".

Agency Response: The Agency appreciates this suggestion and will adopt the suggested substitution.

Sixth, §8.11 imposes the burden of proof on the patient or caregiver in all hearings. The traditional approach in administrative hearings is to impose the burden of proof on the "consumer" for denials of initial applications while imposing the burden of proof on the agency for terminations. The rationale is that there must be some change in circumstances to justify a termination. The agency should have the burden of showing the change in circumstances.

Agency Response: The Agency appreciates the comments regarding the burden of proof. We have removed sub section 8.11 entirely and will refer to the Administrative Procedures Act if and when questions arise regarding this issue.

Seventh, the word "Secretary" should be capitalized in §§8.14.1, 8.14.2, and 8.14.3.

Agency Response: The Agency appreciates this suggestion and will adopt the suggested capitalization.

Eighth, §8.14.3 contemplates the hearing officer's issuance of a "recommended decision" which is subject to the Secretary's revision. Since the Secretary was not involved in the hearing, it is unclear as to why this approach is being taken. The general DHSS approach is to authorize its hearing officers to issue a final decision. Compare 16 DE Admin Code 5000, §5304.5.

Agency Response: The Agency appreciates but respectfully disagrees with this comment. It is, in fact, the Secretary who releases/approves the final order. The hearing officer can only make a recommendation to the Secretary based on the hearing proceedings.

State Council for Persons with Disabilities (SCPD):

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's proposal to adopt regulations governing the State of Delaware Medical Marijuana Act. SCPD has the following observations.

First, the regulations, including definitions, generally track the statute.

Second, §5.3.6 authorizes a \$150 civil penalty if a patient or caregiver cardholder fails to report a change in address, physician, medical status, etc. This is consistent with Title 16 Del.C. §4912A. However, the regulation should include due process to contest the penalty. Compare §§8.2.5 (record review available to challenge suspension of registry identification card); and 8.4 (hearing available to challenge suspension or revocation of registry identification card).

Agency Response: The Agency respectfully disagrees. One of the tasks of the Medical Marijuana Program

is to provide balance between patient protection and that of the community. This regulation gives authority to allow maximum punitive action if required; however, it does not provide for absolute action by the Department. In fact, section 5.3.1 allows for extension of the required time for notification with the showing of good cause. This regulation is not intended to punish patients, but instead to protect them. If a card is lost, for example, the need to have the ID number removed from the registry would be an important timely action. For clarification, we will modify the text in Section 5.3.6 to read as follows. "A cardholder who fails to make a notification to the Department that is required by Section 5.3 is subject to a civil infraction, punishable by a penalty of no more than \$150, and is also subject to the immediate revocation of the registry identification card and all lawful privileges provided under the act."

Also, SCPD recommends clarifying the term "qualified patient's Physician status" in Section 5.3.1. While the regulation may contain be a definition for "Physician", the meaning of "qualified patient's Physician status" could be misconstrued in the reporting context. In addition, the requirement to report a "change in the status of the qualified patient's debilitating medical condition" is overburdening on the patient. For example, a person's medical condition may change from day to day. Fining someone \$150 (Section 5.3.6) for not accurately reporting all changes in their medical condition is not fair. The Division may wish to limit such reporting to a change in condition which disqualifies them from the medical marijuana program.

Agency Response: The Agency appreciates this comment. In order to provide clarity in the regulations, we will propose that section 5.3.1 be listed as individual situations that would require reporting to the Department, rather than a comma delimited list. So that the new section would read as follows. "5.3.1 A registered qualifying patient or registered designated caregiver who possesses a registry identification card shall notify the Department of any of the following within 10 calendar days of the change. An extension shall be granted by the Medical Marijuana Program up on the showing of good cause. 5.3.1.1 a change in card holder's name or address, 5.3.1.2 knowledge of a change that would render the patient no longer qualified to participate in the program, such as a cure of the debilitating condition causing the need for Medical Marijuana, 5.3.1.3 knowledge of a change that renders the patient's physician no longer a "physician" as defined in 2.0 of these regulations, 5.3.1.4 a change that renders the patient's caregiver no longer eligible as defined in these regulations.

Third, §8.5.3 recites that "(a)ll hearings held pursuant to this section shall be open to the public." Such hearings would typically involve confidential medical records and otherwise sensitive evidence. The statute explicitly contemplates that such information is confidential and protected, not "open to the public". See Title 16 Del.C. §4920A. For similar reasons, §8.14.4 is problematic since it makes a final hearing decision "public information" without redaction. . Cf. 16 DE Admin Code 5000, §5502 [DHSS hearing decisions can be published but in redacted form].

Agency Response: The Agency acknowledges this comment and appreciates the concern for the protection of confidential medical records and the individuals to whom they pertain. While the meeting may be public, the Board can go into "executive session," which is off the record and in private, if one of the nine conditions is met under the FOIA statute - Title 29, section 1004(b). In addition, anything confidential under HIPPA says protected health information is confidential from disclosure to the public without consent. The hearing officer will guide this process, requesting people not to disclose information as part of the public hearing, and also reviewing information before it is made public.

Fourth, in §8.8, substitute "bear" for "endure".

Agency Response: The Agency appreciates this suggestion and will adopt the suggested substitution.

Fifth, §8.11 imposes the burden of proof on the patient or caregiver in all hearings. The traditional approach in administrative hearings is to impose the burden of proof on the "consumer" for denials of initial applications while imposing the burden of proof on the agency for terminations. The rationale is that there must be some change in circumstances to justify a termination. The agency should have the burden of showing the change in circumstances.

Agency Response: The Agency appreciates the comments regarding the burden of proof. We have removed regulation 8.11 entirely and will refer to the Administrative Procedures Act if and when questions arise regarding this issue.

Sixth, the word "Secretary" should be capitalized in §§8.14.1, 8.14.2, and 8.14.3.

Agency Response: The Agency appreciates this suggestion and will adopt the suggested capitalization.

Seventh, §8.14.3 contemplates the hearing officer's issuance of a "recommended decision" which is subject to the Secretary's revision. Since the Secretary was not involved in the hearing, this approach makes little sense. The general DHSS approach is to authorize its hearing officers to issue a final decision. Compare 16 DE Admin Code 5000, §5304.5.

Agency Response: The Agency appreciates but respectfully disagrees with this comment. It is, in fact, the Secretary who releases/approves the final order. The hearing officer can only make a recommendation to the Secretary based on the hearing proceedings.

Dr. Richard Chong:

The publicized driver for suspending SB 17 appears to be primarily based on the potential legal liability of state employees from federal prosecution and the state's large distribution model. The federal government has red flagged the "large centralized distribution model". While Delaware's bill does not actively suggest a large central distribution model, it does not eliminate it from consideration either. A use of the federal mandatory minimum sentence guideline for marijuana possession of plants should be considered. New Mexico and the District of Columbia limit cultivation of 95 plants per center (over a 100 plants is a mandatory minimum federal jail sentence). New Mexico recently increased the number of plants per center. New Mexico has released data about their medical cannabis program that suggest this limited plant model can support up to 800 patients with restrictions on the amount of cannabis a patient can receive at a time. New Mexico and Maine have medical cannabis programs that has not cause any federal intervention.

A resource the state of Delaware may want to collaborate with is Eric E. Sterling, Esquire, the president of the Criminal Justice Policy Foundation. He authored an article about Delaware's medical marijuana program and legal analysis of Charles Oberly's letter to the governor in the Baltimore Sun. Eric lectures to bar associations about medical marijuana and was counsel to the US House Judiciary committee from 1979-1989, where he worked on medical marijuana legislation.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking public comments regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

Stephen Haner:

I attended the hearings in Dover to help get SB 17 passed. I suffer from Multiple Sclerosis and have found that smoking 2-3 tokes of marijuana immediately lessens my pain level and completely subsides my fatigue level. I continue to purchase marijuana illegally and am at risk of arrest and jail. By making it legal to either grow it myself or purchase it in a compassion center avoids the risk of unhealthy additives that may be included in the marijuana I buy. Delaware should continue the passage of SB17. In this day and age, I should be purchasing from a compassion center with tax dollars going to the State of Delaware, not into the hands of the Drug Cartels, which is where the money trail ends. If Delaware is afraid of State employees being involved in any way in the sale of Med. Mar., they should allow those patients who suffer from a qualifying disease, to grow a small number of plants themselves.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking public comments regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012

edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

Diane L. Jump:

My name is Diane Jump, and I am so excited by the potential progress that Delaware is making for Medical Marijuana Patients to have peace of mind. I am fighting for the day that we have Safe Access. I understand that medical cards are going to be distributed with a qualifying letter from the patients Primary Care Physician. Do you have a sample letter for our PCP to use as a template? (My PCP and my Oncologist are both willing to write the letter, they would just like to see a sample of what you are looking for.)

Agency Response: The Agency appreciates your comments. Required documentation and how to access and submit that required documentation will be addressed through the development of Operating Procedures within the Division of Public Health and the Medical Marijuana Program. Those procedures are not part of the regulations and, as such, cannot be finalized until after the adoption of the Final Medical Marijuana Code. The Operating Procedures will include a fee assessment schedule, application instructions, and a timeline of operations. Those procedures will be communicated with the public after they are finalized.

Is there required DHSS documentation that the patient and caregivers will need to complete? Can that be done online / fax / mail if some patients cannot travel and the do not yet have a caregiver?

Agency Response: The Agency appreciates your questions regarding required documentation and how to access and submit that required documentation. Those questions will be addressed through the development of Operating Procedures within the Division of Public Health and the Medical Marijuana Program. Those procedures are not part of the regulations and, as such, cannot be finalized until after the adoption of the Final Medical Marijuana Code. The Operating Procedures will include a fee assessment schedule, application instructions, and a timeline of operations. Those procedures will be communicated with the public after they are finalized.

When and how do patients submit the required documentation,

Agency Response: The Agency appreciates your questions regarding required documentation and how to access and submit that required documentation. Those questions will be addressed through the development of Operating Procedures within the Division of Public Health and the Medical Marijuana Program. Those procedures are not part of the regulations and, as such, cannot be finalized until after the adoption of the Final Medical Marijuana Code. The Operating Procedures will include a fee assessment schedule, application instructions, and a timeline of operations. Those procedures will be communicated with the public after they are finalized.

Once all documentation has been submitted, how long will it take to be given the 10 digit number and receive a medical marijuana card.

Agency Response: The Agency appreciates your questions regarding required documentation and how to access and submit that required documentation. Those questions will be addressed through the development of Operating Procedures within the Division of Public Health and the Medical Marijuana Program. Those procedures are not part of the regulations and, as such, cannot be finalized until after the adoption of the Final Medical Marijuana Code. The Operating Procedures will include a fee assessment schedule, application instructions, and a timeline of operations. Those procedures will be communicated with the public after they are finalized.

I know that there is not much being said about the three compassion care centers. But Delaware needs to make this happen soon. Right now we are moving in the right direction, but even after we get a medical marijuana card, we are still criminals buying marijuana illegally off the street, and that is a serious problem.

I am a patient and I choose marijuana as my medication to relieve the most horrible symptoms of cancer and a chemotherapy regime that is difficult, painful, nauseating and has horrible side effects on my body.

I can absolutely say that by adding marijuana to my therapy along with, doctor prescribed medications, eating

properly, exercise, my art, love and support from family and friends I have the chance to beat my cancer and become a survivor.

My CT scan readings are tomorrow with my doctor, we will decide if I continue on with this chemotherapy routine, or if we need to change medications. Friday, I will begin chemo again after a month break because my cell counts have been low.

There are so many patients just like myself, I am at Helen Graham on average three times a week, for test, bloodwork, Neulasta shots, port flushings, I talk to so many patients who are afraid of the legal implications of marijuana, So many people who want the relief that marijuana offers, but don't know how or where to buy it. People want to feel safe, and not worry that they are a criminal. I have showed and explained the affirmation defense to many, It doesn't really resonate with patients. No one wants to be hauled off to jail, fined and then try using that defense.

I am in school again beginning may, I will be finishing my degree after all these years in Paralegal Studies and will focus on Medical Marijuana law. I have completed all the book work and am earning certifications in cannabis education,

I appreciate everything Delaware is doing to move forward. and I want to be part of that movement.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act.

My caregiver is my longtime friend, He has been so since 2008. My doctor doesn't need to involve himself, when Huck picks up my medication from the pharmacy. So there is no need add unnecessary restrictions.

Patient Care Giver

As noted below, i recommend amending 4.1.3 to read:

written approval by the qualifying patient(s) and the qualified patient(s)' Physician(s) authorizing responsibility for managing the well-being of a the qualified patient(s) with respect to the use of marijuana."

Agency Response: The Agency appreciates this suggested revision to the proposed regulations. The requirement to have the physician provide written approval of the patient's caregiver was intended to allow for protection of at-risk population patients from abuse by someone who has more than a medicinal interest in marijuana. However, after further scrutiny of the Medical Marijuana Law, and additional discussion on ways to balance the needs of patients with the protection of the community, we have resigned to modify the regulations to remove the requirement of physician's approval of a patient's care giver.

We must move forward today: patients need safe access to medical marijuana NOW! You are forcing patients to buy illegally and also subject themselves to risk as well as place themselves in harms way. Compassion care centers must be our focus point and need to be dressed immediately. It does no good to have a medical marijuana card in the street! My pot contact could care less if I have a card or not. The card only applies to the compassion care center.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. Those regulations do not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

The below section is ridiculous and against all we are trying to accomplish. Imagine obtaining quality medical marijuana from a different state that allows (I may have to go to New Jersey) outside patients to obtain medical marijuana, only to be a criminal again when I come back to my own state.

I am a grown law abiding citizen that doesn't need monitoring by some state appointed person who think they should have control over my medications.

8.0 Monitoring and Corrective Actions

8.3.1.3.6: Section 8.0 of the regulations lays out the duties and powers entrusted to the department to monitor for and subsequently correct violations of the medical marijuana law and regulations. 8.3.1.3.6 retains the right of the state to prosecute a medical marijuana patient or caregiver for possessing or transferring marijuana "outside Delaware or attempt[ing] to obtain or transport marijuana from outside Delaware

Agency Response: The agency respectfully disagrees. It is the intent of the regulations to provide protection for the community against possible diversion of marijuana from a registered program patient or care giver to a non-registered person. The Division of Public Health is charged with administering Chapter 49A of Title 16 of the Delaware Code, The Delaware Medical Marijuana Act. The scope of the law does not allow for any program administration outside of the state of Delaware; therefore, we do not have the ability to relieve registered card holders from any punitive penalties with regard to marijuana-related activities outside of the state of Delaware. This section of the regulation simply emphasizes the limited scope of the regulations.

Pre chemo yesterday. Doctor appointment today to discuss the CT scan I had on Monday, tomorrow I start chemo again, the days are running into each other and I am so sick as I try to manage my disease, my job, my life.

What helps me get through each day is marijuana. It takes the edge off.. It lessens the pain, eases the stress, it allows movement when everything else restricts me. When I smoke marijuana as part of my medication routine, it takes away the nausea... I smoke in the early morning, so i can take the pile of prescribed pills without throwing them up. I smoke and it allows me to eat a healthy breakfast, otherwise, I'm not hungry and I go without eating. Marijuana has so many therapeutic benefits, without the debilitating side effects of cancer, chemo and prescribed medications.

The prescribed medications help, and they hurt. their side effects (diarrhea, nausea, constipation, migraines and so many others) and the pain at times is unbearable. Then include the side effects of the chemotherapy and its just a another nightmare.

Marijuana is medication for so many of us and we know the therapeutic and healing value of it. We are asking for Safe Access to it. Many of us are at risk and are put in harms way when we purchase marijuana. And, we are never sure of the quality of our medication.

The only way to provide quality medical marijuana is through a compassion care center. Delaware has the ability to provide our sick who choose medical marijuana safe access to a quality product. We need to move forward with compassion care centers in each county.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act.

It's also reasonable for doctors to be concerned about whether they would be in compliance with Federal law, but like those States that worry about the absurd proposition that State employees might be prosecuted for the mundane day to day administration of medicinal cannabis patient protection laws this concern has been put to bed by the Federal Appellate Courts. This particular concern was put to rest in *Conant v. Walters*. (9th Cir 2002) 309 F.3d 629, (cert denied Oct. 14, 2003). Physicians have a First Amendment right to discuss medical marijuana with their patients, but not to help them obtain cannabis for medical use. <http://www.chrisconrad.com/expert.witness/conant.htm>

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act.

Delaware medical marijuana !

In 2009, 137 Delawareans died of drug overdoses, according to the Delaware Health Statistics Center -- 80 percent of them caused by prescription drugs.

Between 2009 and 2010, prescription narcotics and anti-anxiety medications killed significantly more

Delawareans than traffic accidents, heroin, cocaine and alcohol combined.

The problem, some say, is that many people think because a doctor prescribed it, the drug must be safe.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act.

Check out this video on YouTube:

http://www.youtube.com/watch?v=59VNBnGo8B8&feature=youtube_gdata_player

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act.

Bold and innovative. That's what Ethan Nadelmann, Executive Director of the Drug Policy Alliance, said he's looking for in proposed reform. The rest of drug policy shares this sentiment and has long been calling for something that could shape the future of reform. My friends, a group in Ohio is trying to do just that. The Ohio Medical Cannabis Amendment proposes a brand new model for medical marijuana that may very well be the game changer we've all been waiting for.

What does it do? First off, part of the OMCA's beauty is its simplicity. Go look and attempt to read other states' medical marijuana laws. Most are extremely long and riddled with specific regulation. In fact, if you're not bored to tears after the first page, you might notice that most of the laws look similar to each other. Not the OMCA. It's a 2 page amendment that very simply establishes rights for medical marijuana patients and delegates the rulemaking powers to a Commission of Cannabis Control.

Both of these functions are extremely important-I'll explain why in turn.

The Rights. The OMCA states plainly and specifically that an eligible patient has the right to use, grow, and purchase medical marijuana to alleviate their suffering. No other medical marijuana law contains this language. Rather, other states with medical marijuana simply decriminalize the use and possession for patients, thus making it a privilege, not a right. This distinction has tremendous legal significance in the fight against the federal government because a privilege is prone to governmental interference without justification, whereas a right is subject to a higher level of scrutiny.

The OMCA also gives eligible patients the rights of confidentiality and privacy with respect to their medical marijuana use. These rights are not present in current medical marijuana laws. In fact, the opposite is true. Many states are free to hand over their patients' information to any federal agency that asks, while other states have 24 hour live-feed cameras to the police. None of these practices would exist in Ohio under the OMCA. "HIPAA applies to our patients for every other aspect of their medical care, so why shouldn't it apply to our patient's use of medical marijuana as well?" said Theresa Daniello, spokesperson for the OMCA. I agree.

Taking things one step further, the OMCA grants eligible patients the right to be free from state discrimination and interference with respect to their medical marijuana use. It also charges the State of Ohio with upholding and defending the rights listed in the OMCA. These two provisions combined are amazing for medical marijuana patients. What this essentially amounts to is a direct prohibition on any state employee of Ohio from discriminating or interfering with medical marijuana patients. Police would not be free to choose the federal law and join a DEA raid. Further, Ohio's Attorney General would not be able to just idly stand by while medical marijuana patients are raided either, he'd be charged with challenging federal intervention. Once more, medical marijuana laws elsewhere lack these provisions.

Last, but not least, the OMCA extends broad rights for the existence of a medical marijuana industry in Ohio. "We wanted to avoid problems present in states like Michigan, where there is some debate as to the legality of the sale of medical marijuana." said OMCA's general counsel Mark Ramach. "By providing for the rights of the industry to exist, our patients are protected in every facet of their medical marijuana use. Our goal in crafting the OMCA was to keep patients' rights first at all times. The rights granted are a result of that goal." The rights granted by the OMCA address most of the pitfalls in previous medical marijuana legislation. Any remaining issues are handled thanks to OMCA's commission.

The Commission. The OMCA seeks to avoid the headaches of other states by delegating rulemaking authority to a Commission of Cannabis Control. In doing so, the OMCA won't be victim to problems present in other medical

marijuana states that resulted from a lack of foresight in the law's implementation. Allow me to explain. In the past, medical marijuana laws have been written with regulation in the language. Such regulation has set possession limits, governed the purchase and sale, and delegated conflicting powers to both state and local governments. What those laws haven't come with, however, is an efficient and effective way to create or change regulation to address problems as they arise.

Enter the OMCA and its commission. This commission will be able to provide regulation for the medical marijuana industry in Ohio and will operate much like other regulatory bodies do in this country. Hearings will be public, and the people will have a say in proposed rules. The commission's ability to create and modify regulation is vital in medical marijuana policy. It'll provide an adaptable industry structure that can change over time in response to new scientific and medical studies. In short, Ohio won't be victim to unforeseen circumstances-were there ever to be a problem, the Commission could fix it.

To further ensure proper rulemaking, all members of the Commission are charged, via the OMCA's language, with creating regulation that upholds and defends the rights given by the amendment. This guarantees that patients' rights are always kept first and that regulation is made in a way that best protects the patients. The Commission will also be key in handling the federal government, were it to intervene. This brings me to my last point.

What about the Feds? The OMCA brings a new approach to the federal problem. In order to fully understand its significance, one must know how *Gonzalez v. Raich* changed the game. Most by now know about Angel Raich and how the DEA raided her place and took her plants. Ms. Raich eventually challenged this action and found her way to the U.S. Supreme Court. Despite testimony from Angel Raich's doctor that Ms. Raich would die without use of her medical marijuana and regardless of the fact that Ms. Raich grew her own marijuana in her own house, never to sell to others or cross state lines, the Supreme Court held that Congress could use the Commerce Clause to regulate marijuana and thus the DEA raid was proper. Prior to Raich, the Court had not yet ruled on this question. This ruling opened the door for the continuous raids that we see to this day.

The logic behind the Court's reasoning is heavily debated and often difficult to explain, but it basically goes like this. So long as Congress is properly exercising an enumerated power, it can limit what states do. One of Congress's enumerated powers is the Commerce Clause. This clause gives Congress the power to regulate commerce among the States. Basically, anything that moves from state to state (or interstate), Congress can regulate. They can also regulate things like the roads, rivers, and airways. In 1942, the Supreme Court further interpreted the power to mean that Congress could regulate anything that, in the aggregate, has a substantial effect on interstate commerce.

Fast-forward to Raich. Raich did not purchase her marijuana outside of California. She was not going to sell it in or outside state lines. She grew it in California and was only going to use it personally. The Government argued that these actions, if everyone did it, would affect the black market on marijuana in the aggregate and therefore affect interstate commerce. There was no proof that Raich's actions actually had this effect, or that medical marijuana patient's in general growing their own would have that big of an impact on the black market, but the Court said it didn't matter. This decision basically closed the door on challenging the federal government on Commerce Clause principles.

What does all of this have to do with the OMCA? Well, the OMCA is a constitutional amendment that creates rights for medical marijuana patients in Ohio. Raich had to pursue her case using theories that came from California's law, which is a state statute that did not specifically address whether she in fact had a right to use marijuana. In short, California's language limited potential constitutional claims Raich could have brought. By specifically granting rights to its patients, the OMCA opens the door for new challenges against federal intervention.

Up until now, the federal government has hidden behind marijuana's federal status as a schedule 1 drug without having to justify its position against the overwhelming medical evidence to the contrary. Every court case related to medical marijuana has been decided on legal technicalities and not on the actual merits of whether marijuana in fact is medicine. The OMCA could force that discussion once and for all. Imagine the federal government having to justify its stance towards marijuana in light of Ohio's constitutional command that its sick citizens have the right to use, possess, and grow it. From what I've been told, this would bring up areas of constitutional law that have not seen a court room in some time.

Progress is slow, legal progress even slower. With that in mind however, simply having the ability to bring a new argument against the federal government puts our cause in a better position than ever before. The OMCA is the real deal. For more information on it and the group behind the language, check out www.omca2012.org if

you're like me, and are already sold and want to do your part to help, please check out www.omca2012.org

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act.

Glenn Greenwald writing in Salon.com:

The same person who directed the DOJ to shield torturers and illegal government eavesdroppers from criminal investigation, and who voted to retroactively immunize the nation's largest telecom giants when they got caught enabling criminal spying on Americans, and whose DOJ has failed to indict a single Wall Street executive in connection with the 2008 financial crisis or mortgage fraud scandal, suddenly discovers the imperatives of The Rule of Law when it comes to those, in accordance with state law, providing medical marijuana to sick people with a prescription."

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act.

Does Delaware have a patient registry in place?

Agency Response: Thank you for your question regarding the Medical Marijuana Program. At this time, we are responding to the comments that were submitted in response to the proposed regulations. When the regulations are finalized, the agency will develop operating procedures for the program. Once they are finalized, the Medical Marijuana Program will begin to accept applications from the public for registry cards.

Have Delaware physicians registered to participate in the program?

Agency Response: Thank you for your questions regarding the Medical Marijuana Program. The Delaware Medical Marijuana Code does not require physicians to register; however, they will have to complete an agency developed form for their patient to be submitted with the patient's application for the registry card.

Does the DHSS have a plan to address education of law INCLUDING enforcement officers?

Agency Response: The Agency appreciates your concern for the education of law enforcement officers with regard to the Medical Marijuana Program. The regulations allow for 24 hour access for law enforcement officers to be able to confirm a patient's or caregiver's participation in the Medical Marijuana Program.

Does Delaware have a Director for our Medical Marijuana Program?

Agency Response: Delaware does have a Program Director for the Medical Marijuana Program, as part of the Health Systems Protection Section of the Division of Public Health.

Will Delaware require a fee to register? For patients and caretaker?

Agency Response: At this time, we are responding to the comments that were submitted in response to the proposed regulations. When the regulations are finalized, the agency will develop operating procedures for the program. The fee schedule will be finalized in correlation with the operating procedures after the regulations are finalized.

Is there a list of participating physicians?

Agency Response: Thank you for your questions regarding the Medical Marijuana Program. The Delaware

Medical Marijuana Code does not require physicians to register; however, they will have to complete an agency developed form for their patient, to be submitted with the patient's application for the registry card.

Does Delaware have a website so that physicians can submit their information?

Agency Response: Thank you for your questions regarding the Medical Marijuana Program. The Delaware Medical Marijuana Code does not require physicians to register; however, they will have to complete an agency developed form for their patient, to be submitted with the patient's application for the registry card.

Is there a secure website / patient registry, so patients can submit their medical illness, doctor letter?

Agency Response: Thank you for your questions regarding the Medical Marijuana Program. At this time, we are responding to the comments that were submitted in response to the proposed regulations. When the regulations are finalized, the agency will develop operating procedures for the program. Those operating procedures will include procedures for submitting application information to the program.

I've noticed there isn't a public meeting scheduled for Delaware medical marijuana in the next couple weeks. Will there be a public meeting? Will we discuss all comments and concerns submitted? Will we move forward? I have submitted at least 20 emails and I get the same response each time.!

I know we are submitting our concerns through April 30th. But information about our path forward would be reassuring.

I still purchase my medical marijuana illegally, like so many others. I will continue to do so because I have no other options.

Agency Response: Thank you for your questions and comments. At this time, we are responding to the comments that were submitted in response to the proposed regulations. There is no public meeting scheduled for the Delaware Medical Marijuana Program. When the regulations are finalized, the agency will develop operating procedures for the program. Those operating procedures will include procedures for submitting application information to the program.

I'm always sorta shocked by the mentality of "The Powers That Be"

When I think Medical Marijuana, or I say Medical Marijuana, it's with such passion, conviction and belief that I will beat MY cancer because Marijuana part of therapy, therefore, part of the Cure.

My Doctor / Patient relationship believes in a balance of science and nature... I am in chemotherapy treatment w/ two drugs that have horrific disgusting side effects, and that requires MY recovery to be as important as MY treatment.

I know what MY body needs, I am a qualified expert at bringing MY mind and body back from the toxic hell where chemotherapy and prescribed narcotics dump me. I hydrate, medicate, rest and meditate.

For me to live through this disease, & treatment, I had to find my faith, change my life, find a team of Doctors who believes in me.

Just because the doctor prescribes a pill, doesn't mean it's going to cure the ill. It's checks and balance and I have to be a smart patient. I need to take care of my body and find medication that work for ME. I am in control of MY cancer.

I added Marijuana to my medication routine in 2009, almost one year after I was diagnosed. The same year I shared my personal story in Dover and became an advocate for Medical Marijuana.

When Gov. Markell halted progress in February after the Oberly Memo, I told my story to Chad Livengood. I was just consumed with fear of being a criminal, I was so sick from chemo and headline news.

Tomorrow is the deadline to submit our thoughts, testaments, concerns to DHSS. I've checked public meetings on the State website and I don't see any public meetings scheduled in the upcoming weeks. We are supposed to have registry and medical marijuana cards in 60 days.

Is there a secret panel of compassionate state government employees that are qualified to make decisions regarding my life? Because if so, I've written on 20 is so different occasions and have received the same generic response each time.

I am at my doctors office as I finish this letter, I just signed newly required documents (Nurse Sue said it is Delaware State Required) about the dangers of prescribed opiates. Imagine that, we are running years behind on an epidemic.

If the Delaware Powers That Be cannot get their heads around Medical Marijuana... Get out of office, you don't belong there. ..

NH Medical Marijuana resolve to putting state employees at risk is to do away with compassion care centers ..

Other provisions of the bill, which has been repeatedly revised, guard against the concerns raised by the law enforcement community, Forsythe said. The bill, which would allow patients diagnosed with a debilitating medical condition to cultivate up to six ounces of marijuana, no longer allows for distribution centers, a plan that officials said would place state employees in violation of federal law.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act.

Todd Kitchen:

My name is Todd and I was very involved with getting SB17 passed and attended the Bill signing ceremony with Gov. Markell. I still work closely with the people assigned to DE from MPP(Marijuana Policy Project) to get this bill in motion so that us patients relying on this bill can finally get the medicine we were promised and fought & worked so hard to finally get. My Doctor, who I have seen since I was a little kid has written out the paper work needed for me to get a card and be able to use medical marijuana. The statement certifies, under Del. Code Ann. tit. 16, 4913A, that my Doctors who I have established a bona fide physician-patient relationship under Del. Code Ann. tit. 16, 4913A. My Dr. has discussed the medical benefit & risks and in his professional opinion I would receive therapeutic or palliative benefits from medical marijuana. He will continually monitor my condition while I use the medical marijuana for my debilitating conditions. I am under my Doctors medical care/ and he treats me for my back diseases, stomach disease, wasting man syndrome, anxiety disorder, plus multiple other serious debilitating conditions. He stays in contact with all my other specialists also.

My Question is when can I get my ID card and what do I have to do or where do I have to go, and how much will it cost?

Agency Response: The Agency appreciates your questions regarding required processes in obtaining a Medical Marijuana registry card. Those questions will be addressed through the development of Operating Procedures within the Division of Public Health and the Medical Marijuana Program. Those procedures are not part of the regulations and, as such, cannot be finalized until after the adoption of the Final Medical Marijuana Code. The Operating Procedures will include a fee assessment schedule, application instructions, and a timeline of operations. Those procedures will be communicated with the public after they are finalized.

I have a very serious issue that has just recently Passed and is being heavily discussed and its Delaware's Medical Marijuana Bill - SB17!! It's time to save lives and help people in massive pain who don't want opiates 24/7 for the rest of their life. There are so many harmful things that opiates do to your body that are horrible and Medical Marijuana use no bad side effects and it makes the quality of life way better and you don't have to take as many as your opiates and other harmful RX's. So please think about all the people who will have their lives improved and possibly SAVED and their Pain Levels significantly Decrease!!!

These are some emails I revived after i read something about the ID cards April 1, 2012. I have had my legal Doctor written note with important parts of the bill being cited and the amendments#s and everything required and needed by Senate Bill 17.

I told them everything, about me and my diseases and ailments and chronic pain and chronic problems. I also told them about the work I did and how i was invited to the Senate Bill17 signing ceremony and met with Gov. Markell. I also submitted some amendments & ideas to help save the bill and some people like my amendments and they say they were submitted to maby be used.

I've had the proper paperwork as soon as the bill was passed. And now I am trying to get my ID card and get the medical program back on track !! Back on track so that us patients that fought so hard, Fought so hard and won, and we ill and diseases and cancer having people were promised our medicine when this bill was passes, we

want our medicine we were promised !!! Please let me know anything I can do to help Delaware's medical marijuana situation. It is going to save my life and many others and literally keeps me able to live a better quality of life with the medical use of marijuana.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act.

True medical users have NO Problem following the DE SB17 Medical Marijuana Laws. We just want our medicine we fought for, and won the right to have/use responsibly!

I am writing to ask you to rethink your decision to halt implementation of Delaware's medical marijuana program in light of the letter from U.S. Attorney Oberly, and instead stand up for our state and protect our seriously ill by moving forward. Our state lawmakers vigorously debated the topic and came to the same conclusion that you ultimately did when you signed the bill allowing medical marijuana is the compassionate thing to do.

The letter states that state employees will not be immune for any actions they take under state law that violate the CSA. To date, no state employee in any medical marijuana state has been targeted by the federal government. If this letter concerns you, you can ask U.S. Attorney Oberly what exactly he believes would violate the CSA. No court has held that simply registering dispensaries is a crime.

Patients in Delaware need safe, reliable, and (in many cases) immediate access to the medicine their physicians think best. Delaware law now recognizes the medical value of marijuana, so why would we want our sick and debilitated to have to frequent the dangerous criminal market to get their medicine?

Please take some time to think over this issue. I urge you to stay strong in this presence of vague threats from the U.S. attorney. Please follow state law and implement the medical marijuana program despite the saber rattling from our U.S. attorney.

1. Instead of "State employees" it could be people who have been screened and approved by the state so that way the people approved would be people the State would employ. This would be for anybody involved in the medical marijuana program. From growers, dispensary owners, dispensary employees, transportation, basically everything having to do with the whole process.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

2. Instead of 3 dispensaries (1 each county) maby 2-3 smaller ones in each county, not state owned or operates just Watched/Monitored by the State , again all approved and certified by the State. That way the state is not the "employer" but they still have control and can monitor it constantly.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

3. Have a camera system set up in every part of the medical Marijuana process. From the grows and drying/curing to dispensary sales. That way the state and the Law, revenue board, whoever can look at a screen and see what's going on at every part. (Something similar to what some are doing in Colorado, they have the cameras linked right to the police, so monitoring is not a problem)

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only

taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

4. Maby consider a Small home cultivation program, where again the state has to approve and randomly monitor it. - True Medical users will follow the law and wouldnt mind if a Sheriff had to inspect their grow every now ale then. Keep it SMALL. 6 flowering 6 vegetative maby 2-4 clones/seedlings to be able to start their medicine. True medical users who really need it will not mind to have to pay small registration fees and maby a visit every now and then to check and see if their home grow is up to code. We just want a less painful life and a better quality of life without all the Horrible side effects of all the opiates over all the years.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

5. If possible use Vacant State buildings for the grow rooms and dispensaries so that way the state could make Money off unused buildings just sitting there. Let the State certified citizens who want to open/run/grow and work at lease the buildings from the state. It will bring the state money to help fox many things. Colorado made over \$8Million in 1Day off registration fees just to show you some numbers from around the country.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking comments from the public regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

Patricia Lake:

After witnessing and caring for several family members and friends who have suffered horribly from the effects of cancer and its accompanying treatments (chemotherapy and radiation), I would like to suggest that the Medical Marijuana Code be put into law.

While taking care of my mother in 1997 as she went through nauseating chemotherapy and lost weight dramatically, I tried to find marijuana to help relieve her nausea and increase her appetite; after asking around among my friends and colleagues I located a source. In fact, several were available to me. The problem with doing business with them was that they also dealt in the distribution of illegal and potentially fatal drugs such as heroin and cocaine, the use of which I will never support. I can't begin to express how difficult it was for me to allow my mother to continue with her suffering rather than to deal with potentially dangerous felons.

I completely support the code which would allow patients with debilitating and/or fatal diseases access to regulated marijuana.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking public comments regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

Elizabeth Wiberg:

To all this should concern, It is apparent that the state of Delaware along with the other states in our union have

lost all logic concerning right from wrong. Why is it right to give patients with chronic pain a pill that can KILL, yet a natural grown plant that the Lord has blessed us with that hurts nobody is wrong? Why are you afraid of the feds? D.C. is about to open the Walmart of Weed isn't that in the Feds back yard? Delaware doesn't want patients to grow there own, why? As a caregiver of a patient with Ehlers-Danlos Syndrom (a rare connective tissue disorder), you want to come into my home and see if I'm respectable enough to be a caregiver as well as if the person or persons I care for are worthy. Have we lost all common deceincy? Where is the humanity, the common sence. Please look into your own past, you're still here. I would be more than happy to speak with anyone who needs affirmation about the benifits of Medical Marajuana.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking public comments regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

John Wiberg:

am an almost 80 year old retired clergyman .I am deeply concerned about the State of Delaware approach to medical marijuana. I spoke in Senate and House committees, in favor of legalization. Now I find total inertia. I do not understand why Delaware drags its feet while other states such as California, Colorado and others openly regulate the sale of marijuana. I now understand that in Washington DC they are about to, or have, openned a store know as "The Walmart" of marijuana. This in the seat of our Federal Government. Where are the law inforcers who are charged to close it down? It seems to me Delaware is afraid of a non- existent bogeyman. I am also concerned that Delaware is now moving to provide those who need medical marijuana with letters from doctors or ID cards so local and state law officers will not arrest people so approved for possession However they will be able to arrest them for buying marijuana from illegal vendors. Medical user are being forced to buy from illegal, unregulated street corner providers. What a mess! Delaware should bite the bullet and do it right! Since the State is worried about State employees being arrested by the Feds, I volunteer to be an inspector to assure regulated, quality products for approved users! I am sure there are people who would be willing to be approved growers! A better way would be to allow those who need it, to grow a certain amout, that would be sufficient for their need. Tell the Governor to be brave show some leadership. am tired of polititions standing in the way of progress. No one has ever died from an over dose of this producted. It could be simply reguated in terms of the number of plants and the amount in possession in public and treating it as alcohol in terms of driving regulations. This would leave it up to individuals to deal with the Feds.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, we are only taking public comments regarding the adoption of the Medical Marijuana Code as published in the April 1, 2012 edition of the Register of Regulations, Volume 15, Issue 10, the proposed Regulations Governing the State of Delaware Medical Marijuana Act. The scope of those regulations does not provide guidance on how a patient can obtain medical marijuana. Once the regulations are finalized, we will develop operating procedures to address the process of obtaining a registry card for both patients and caregivers, for which the regulations do provide guidance.

The public comment period was open from April 1- April 30, 2012.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Medical Marijuana Code is adopted and shall become effective June 11, 2012, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

Rules and Regulations Governing the Delaware Medical Use of Marijuana

Preamble

The Secretary of Delaware Health and Social Services adopts these Regulations in response to the authority vested in the Secretary by 16 Delaware Code Chapter 49A, The Delaware Health and Social Services Medical Marijuana Act. These Regulations establish the standards for the procedures for issuing a certificate of registration to qualified patients and primary caregivers. These Regulations provide a system of permitting and inspection, as well as governing confidentiality, payments of fees, and enforcement of these rules.

Purpose

These Regulations shall be liberally construed and applied to promote their underlying purpose of protecting the public's health.

1.0 State of Delaware Medical Marijuana Code

These Regulations shall hereby be known as the "State of Delaware Medical Marijuana Code."

2.0 Definitions

The following words and terms, when used in these Regulations, should have the following meaning, unless the context clearly indicates otherwise:

"Adulterated" means made impure or inferior by adding extraneous ingredients. Goods that are prepared in food establishments that are licensed facilities in response to 16 Del.C. §122(3)(u) and 16 Del.C. §134, and that contain marijuana for medical use by a registered patient, are not considered to be adulterated.

"Advisory board" means a nine member committee established, chaired, and appointed by the General Assembly of Delaware to evaluate and make recommendations to the state legislature and the Department.

"Applicant" means any person applying to participate in the Delaware Office of Medical Marijuana Program, hereinafter OMMP.

"Cardholder" means a registered patient or a registered designated caregiver who has been issued and possesses a valid registry identification card.

"Debilitating medical condition" means a chronic or debilitating disease, medical condition or symptom listed in these rules and as defined in 16 Del.C. §4902A(3) that qualifies for the medical use of marijuana by a registered patient.

"Department" means the Delaware Department of Health and Social Services.

"Designated caregiver" means a person who:

- (a) is at least 21 years of age
- (b) has agreed to assist with a patient's medical use of marijuana
- (c) has not been convicted of an excluded felony offense; and
- (d) assists no more than five qualifying patients with their medical use of marijuana

"Excluded felony offense" means:

- (a) a violent crime defined in 11 Del.C. §4201(c), that was classified as a felony in the jurisdiction where the person was convicted; or
- (b) a violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted, not including:
 - (1) an offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed 10 or more years earlier; or
 - (2) an offense that consisted of conduct for which this chapter would likely have prevented a conviction, but the conduct either occurred prior to the enactment of this chapter or was prosecuted by an authority other than the state of Delaware.

“Incidental amount of marijuana” means marijuana seeds, stalks and roots of the plant that are not included when calculating the allowable amounts of marijuana specified in these rules. This includes the weight of any non-marijuana ingredients combined with marijuana, such as ingredients added to prepare a topical ointment, food or drink.

“Marijuana” means the same as defined in 16 **Del.C.** §4701 (23).

“Marijuana paraphernalia” is limited to equipment, products and materials that are ordinarily used in planting, propagating, cultivating, growing, harvesting, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body. It includes:

- (a) Scales and balances used or intended for use in weighing or measuring marijuana;
- (b) Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (c) Envelopes and other containers used or intended for use in packaging small quantities of marijuana for medical use;
- (d) Containers and other objects used or intended for use in storing medical marijuana; and
- (e) Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana into the human body, including but not limited to:
 - (1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
 - (2) Water pipes;
 - (3) Carburetion tubes and devices;
 - (4) Smoking and carburetion masks;
 - (5) Roach clips, meaning objects used to hold burning marijuana cigarettes that have become too small or too short to be held in the hand;
 - (6) Chamber pipes;
 - (7) Carburetor pipes;
 - (8) Electric pipes;
 - (9) Air-driven pipes;
 - (10) Chillums;
 - (11) Bongs designed for marijuana and not for cocaine; or
 - (12) Ice pipes or chillers.

“Medical use” means the acquisition, possession, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient’s debilitating medical condition or symptoms associated with the registered patient’s debilitating medical condition.

“Onsite assessment” means a visit by an employee of the Department for the purpose of ensuring compliance with the requirements of these rules.

“Physician” means a properly licensed physician subject to 24 **Del.C.** Chs. 17 and 19, except as otherwise provided in this subsection. If the qualifying patient’s debilitating medical condition is post-traumatic stress disorder, the physician must also be a licensed psychiatrist. In relation to a visiting qualifying patient, “physician” means a person who is licensed with authority to prescribe drugs to humans and who may issue a written certification or its equivalent in the state of the patient’s residence.

“Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition.

“Registry identification card” means a document issued by the Department that identifies a person as a registered patient or registered designated caregiver.

“Tincture” means a mixture created from a concentrated extract of marijuana.

“Topical treatment” means a mixture or extract of marijuana made into a balm, lotion, ointment or rubbing alcohol solution, that is applied transcutaneously.

“Usable amount of medical marijuana for medical use” means six ounces or less of usable marijuana as defined below.

“Usable marijuana” means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the weight of any non-marijuana ingredients combined with marijuana, such as ingredients added to prepare a topical administration, food, or drink.

“Verification system” means a phone or web-based system established and maintained by the Department that is available to law enforcement personnel and compassion center agents on a twenty-four-hour basis for verification of registry identification cards.

“Visiting qualifying patient” means a patient who:

- (a) has been diagnosed with a debilitating medical condition;
- (b) possesses a valid registry identification card, or its equivalent, that was issued pursuant to the laws of another state, district, territory, commonwealth, insular possession of the United States or country recognized by the United States that allows the person to use marijuana for medical purposes in the jurisdiction of issuance; and
- (c) is not a resident of Delaware or who has been a resident of Delaware for less than 30 days.

“Written certification” means a document dated and signed by a physician, stating that in the physician’s opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient’s debilitating medical condition or symptoms associated with the debilitating medical condition. A written certification shall be made only in the course of a bona fide physician-patient relationship where the qualifying patient is under the physician’s care for her or his primary care or for her or his debilitating condition after the physician has completed an assessment of the qualifying patient’s medical history and current medical condition. The bona fide physician-patient relationship may not be limited to authorization for the patient to use medical marijuana or consultation for that purpose. The written certification shall specify the qualifying patient’s debilitating medical condition.

3.0 Qualifying Patient Identification Card Application Requirements

- 3.1 The Department shall issue a registry identification card to an applicant for the purpose of participating in the medical marijuana program upon the written certification of the applicant’s Physician, supporting application documents and a non-refundable application fee with a personal check or a cashier’s check made out to “State of Delaware, Medical Marijuana Program.” The following information shall be provided in the participant enrollment form submitted to the Department in order for a registry identification card to be obtained and processed.
- 3.2 An attached original written certification for patient eligibility form shall contain:
 - 3.2.1 the name, address and telephone number of the applicant’s Physician;
 - 3.2.2 the Physician’s clinical licensure;
 - 3.2.3 the patient applicant’s name and date of birth;
 - 3.2.4 the medical justification for the Physician’s certification of the patient’s debilitating medical condition;
 - 3.2.5 the Physician’s signature and date;
 - 3.2.6 the name, address and date of birth of the applicant;
 - 3.2.7 the name, address and date of birth of the applicant’s primary caregiver(s), if any;
 - 3.2.8 a reasonable xerographic copy of the applicant’s Delaware driver’s license or comparable State of Delaware or federal issued photo identification card verifying Delaware residence; State of Delaware issued identification card must be available for inspection/verification;

- 3.2.9 the length of time the applicant has been under the care of the Physician providing the medical provider certification for patient eligibility;
- 3.2.10 the applicant's signature and date; and
- 3.2.11 a signed consent for release of medical information related to the patient's debilitating medical condition, on a form provided by the medical marijuana program.

4.0 Designated Caregiver Registry Identification Card Application Requirements

- 4.1 The Department shall issue a registry identification card to a primary caregiver applicant for the purpose of managing the well-being of one to five qualified patients, including themselves if caregiver is a qualified patient, in response to the requirements of this rule upon the completion and approval of the primary caregiver application form, available from the medical marijuana program, and a non-refundable application fee, in the form of a personal check or a cashier's check made out to "State of Delaware, Medical Marijuana Program". In order for a registry identification card to be obtained and processed, the following information shall be submitted to the medical marijuana program:
 - 4.1.1 birth certificate verifying that the applicant is at least (21) years of age;
 - 4.1.2 a reasonable xerographic copy of the applicant's Delaware license or comparable State of Delaware or federal issued photo identification card verifying Delaware residence; State of Delaware issued identification card must be available for inspection/verification.
 - 4.1.3 written approval by the qualified patient(s) [~~and the qualified patient(s)~~ Physician(s)] authorizing responsibility for managing the well-being of a qualified patient(s) with respect to the use of marijuana;
 - 4.1.4 the name(s), address(es), telephone number(s) and date of birth of the qualified patient(s);
 - 4.1.5 the name, address and telephone number for each of the qualified patient's Physicians;
 - 4.1.6 the name, address, telephone number of the applicant; and
 - 4.1.7 the applicant's signature and date.
- 4.2 Designated caregiver application requirements:
 - 4.2.1 Criminal history screening requirements:
 - 4.2.1.1 All designated caregiver applicants are required to consent to a nationwide and statewide criminal history screening background check. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall be paid by the primary caregiver applicant.
 - 4.2.1.2 Individuals convicted of an excluded felony offense, as described in the definitions Section 2.0, and 16 Del.C. §4902A(7) are prohibited from serving as a designated caregiver. The applicant and qualified patient shall be notified by registered mail of his or her disqualification from being a designated caregiver.

5.0 Registry Identification Cards

- 5.1 Department inquiry:
 - 5.1.1 The Department may verify information on each application and accompanying documentation by the following methods:
 - 5.1.1.1 contacting each applicant by telephone, mail, or if proof of identity is uncertain, the Department shall require a face-to-face meeting and the production of additional identification materials
 - 5.1.1.2 contacting the Delaware Division of Professional Regulation to verify that the Physician is licensed to practice medicine in Delaware and is in good standing; and
 - 5.1.1.3 contacting the Physician to obtain further documentation that the applicant's medical diagnosis and medical condition qualify the applicant for enrollment in the medical use marijuana program.

5.1.2 Upon verification of the information contained in an application submitted in response to this subsection, the Department shall approve or deny an application within 45 calendar days of receipt.

5.2 Department registry identification card: The Department shall issue a registry identification card within 30 calendar days of approving an application. A registry identification card shall contain a 10-digit alphanumeric identification, maintained by the Department, which identifies the qualified patient or primary caregiver. Unless renewed at an earlier date, suspended or revoked, or if the physician stated in the written certification that the qualifying patient would benefit from marijuana until a specified earlier date, a registry identification card shall be valid for a period of 1 year from the date of issuance and shall expire at midnight on the day indicated on the registry identification card as the expiration date.

5.3 Supplemental requirement:

5.3.1 A registered qualifying patient or registered designated caregiver who possesses a registry identification card shall notify the Department of any ~~[change in the person's name, address, qualified patient's Physician status, qualified patient's designated caregiver status, or change in status of the qualified patient's debilitating medical condition~~ of the following] within 10 calendar days of the change. An extension shall be granted by the medical marijuana program upon the showing of good cause.

[5.3.1.1 a change in card holder's name or address,

5.3.1.2 knowledge of a change that would render the patient no longer qualified to participate in the program, such as a cure of the debilitating condition causing the need for Medical Marijuana,

5.3.1.3 knowledge of a change that renders the patient's physician no longer a qualified "physician" as defined in 2.0 of these regulations,

5.3.1.4 knowledge of a change that renders the patient's caregiver no longer eligible as defined in these regulations.]

5.3.2 Before a registered qualifying patient changes his or her designated caregiver, the qualifying patient must notify the Department in writing.

5.3.3 If a cardholder loses his or her registry identification card, he or she shall notify the Department in writing within 10 days of becoming aware the card has been lost. Upon notification, the Department shall issue a new registry identification card. Unless documentation in the initial application has changed, the qualified patient or designated caregiver shall not be required to submit a new application.

5.3.4 When a cardholder notifies the Department of items listed in Section 5.3 but remains eligible, the Department shall issue the cardholder a new registry identification card with a new random 10-digit alphanumeric identification number within 10 days of receiving the updated information and the cardholder shall pay a \$20 fee. If the person notifying the Department is a registered qualifying patient, the Department shall also issue his or her registered designated caregiver, if any, a new registry identification card within 10 days of receiving the updated information.

5.3.5 If a registered qualifying patient ceases to be a registered qualifying patient or changes his or her registered designated caregiver, the Department shall promptly notify the designated caregiver by legal process server. The registered designated caregiver's protections under this chapter as to that qualifying patient shall expire 15 days after notification by the Department.

5.3.6 A cardholder who fails to make a notification to the Department that is required by Section 5.3 is subject to a civil infraction, punishable by a penalty of no more than \$150.00 ~~[shall result in, and is also subject to]~~ the immediate revocation of the registry identification card and all lawful privileges provided under the act.

5.3.7 If the registered qualifying patient's certifying physician notifies the Department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the physician no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the card shall become null and void. However, the registered qualifying patient shall have 15 days to dispose of his or her marijuana.

- 5.4 Registry identification card application denial: The DHSS Secretary or designee shall deny an application if the applicant fails to provide the information required, if the Department determines that the information provided is false, or if the patient does not have a debilitating medical condition eligible for enrollment in the program, as determined by the DHSS Secretary. A person whose application has been denied shall not reapply for 6 months from the date of the denial, unless otherwise authorized by the Department, and is prohibited from all lawful privileges provided by this rule and act.
- 5.4.1 The Department shall deny an application or renewal of a qualifying patient's registry identification card if the applicant:
- 5.4.1.1 did not provide the required information and materials;
 - 5.4.1.2 previously had a registry identification card revoked; or
 - 5.4.1.3 provided false or falsified information.
- 5.4.2 The Department shall deny an application or renewal for a designated caregiver chosen by a qualifying patient whose registry identification card was granted if:
- 5.4.2.1 the designated caregiver does not meet the requirements of Section 4.2;
 - 5.4.2.2 the applicant did not provide the information required;
 - 5.4.2.3 the designated caregiver previously had a registry identification card revoked; or
 - 5.4.2.4 the applicant or the designated caregiver provides false or falsified information.
- 5.4.3 The Department shall notify the qualifying patient who has designated someone to serve as his or her designated caregiver if a registry identification card will not be issued to the designated caregiver.
- 5.4.4 Denial of an application or renewal is considered a final Department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.
- 5.5 Registry identification card renewal application: Each registry identification card issued by the Department is valid in accordance to Section 5.2. A qualified patient or primary caregiver shall apply for a registry identification card renewal no less than 45 calendar days prior to the expiration date of the existing registry identification card in order to prevent interruption of possession of a valid (unexpired) registry identification card.
- 5.6 Non-transferable registration of registry identification card: A registry identification card shall not be transferred, by assignment or otherwise, to other persons or locations. Any attempt shall result in the immediate revocation of the registry identification card and all lawful privileges provided by this rule and act.
- 5.7 Automatic expiration of registry identification card by administrative withdrawal: Upon request the qualified patient or designated caregiver shall discontinue the medical marijuana program by an administrative withdrawal. A qualified patient or designated caregiver that intends to seek an administrative withdrawal shall notify the licensing authority in writing no less than 30 calendar days prior to withdrawal.

6.0 Registration and Operation of Compassion Centers

- 6.1 General Requirements for Operation of a Compassion Center. RESERVED
- 6.2 Security Requirements. RESERVED
- 6.3 Operations Manual. RESERVED
- 6.4 Required Training. RESERVED
- 6.5 Personnel Records. RESERVED
- 6.6 Application for Operation of Compassion Center. RESERVED
- 6.7 Complete Application Required. RESERVED
- 6.8 Compassion Center Application Review Criteria. RESERVED
- 6.9 Issuance of Registration Certificate Authorizing Operation of a Compassion Center. RESERVED
- 6.10 Registry Identification Cards for Principal Officers, Board Members, Agents, Volunteers or Employees of a Compassion Center. RESERVED

- 6.11 Expiration Date. RESERVED
- 6.12 Expiration, Termination or Renewal of a Registration Certificate Authorizing Operation of a Compassion Center. RESERVED
- 6.13 Non-transferable Registration Certificate Authorizing Operation of a Compassion Center. RESERVED
- 6.14 Maximum Amount of Usable Marijuana to be Dispensed. RESERVED
- 6.15 Inspection. RESERVED

7.0 Registration and Operation of Testing Facility Centers

- 7.1 General Requirements for Operation of a Testing Facility Center. RESERVED
- 7.2 Security Requirements. RESERVED
- 7.3 Operations Manual. RESERVED
- 7.4 Required Training. RESERVED
- 7.5 Personnel Records. RESERVED
- 7.6 Application for Operation of Testing Facility Center. RESERVED
- 7.7 Complete Application Required. RESERVED
- 7.8 Testing Facility Center Application Review Criteria. RESERVED
- 7.9 Issuance of Registration Certificate Authorizing Operation of a Testing Facility Center. RESERVED
- 7.10 Registry Identification Cards for Principal Officers, Board Members, Agents, Volunteers or Employees of a Testing Facility Center. RESERVED
- 7.11 Expiration Date. RESERVED
- 7.12 Expiration, Termination or Renewal of a Registration Certificate Authorizing Operation of a Testing Facility Center. RESERVED
- 7.13 Non-transferable Registration Certificate Authorizing Operation of a Testing Facility Center. RESERVED
- 7.14 Inspection. RESERVED

8.0 Monitoring and Corrective Actions

8.1 [Monitoring: On-site Visits/Interviews]

- 8.1.1 The Department or its designee may perform on-site ~~[assessments interviews]~~ of a qualified patient or primary caregiver to determine ~~[compliance with these rules eligibility for the program]~~. The Department may enter the premises of a qualified patient or primary caregiver during business hours for purposes of ~~[monitoring and compliance interviewing a program applicant]~~. Twenty-four (24) hours' notice will be provided to the qualified patient or primary caregiver prior to an on-site ~~[assessment except when the Department has a reasonable suspicion to believe that providing notice will result in the destruction of evidence or that providing such notice will impede the Department's ability to enforce these Regulations interview]~~.
- 8.1.2 All qualified patients or primary caregivers shall provide the Department or the Department's designee immediate access to any material and information necessary for determining ~~[compliance eligibility]~~ with these requirements.
- 8.1.3 Failure by the qualified patient or primary caregiver to provide the Department access to the premises or information may result in action up to and including the revocation of the qualified patient or primary caregiver registry identification card and referral to state law enforcement.
- 8.1.4 Any failure to adhere to these rules, documented by the Department during ~~[monitoring an interview]~~, may result in sanction(s), including suspension, revocation, non-renewal or denial of licensure and referral to state or local law enforcement.
- 8.1.5 The Department shall refer credible criminal complaints against a qualified patient or primary a caregiver to the appropriate Delaware state or appropriate local authorities.

8.2 Corrective action:

- 8.2.1 If violations of these requirements are cited as a result of monitoring, the qualified patient or primary caregiver shall be provided with an official written report of the findings following the monitoring visit.
- 8.2.2 Unless otherwise specified by the Department, the qualified patient or primary caregiver shall correct the violation within 5 calendar days of receipt of the official written report citing the violation(s).
- 8.2.3 The violation shall not be deemed corrected until the Department verifies in writing after receiving notice of the corrective action that the corrective action is satisfactory.
- 8.2.4 If the violation has not been corrected, the Department may issue a notice of contemplated action to revoke the qualified patient's or designated caregiver's registry identification card.
- 8.2.5 Suspension of registry identification card without prior hearing: In accordance with the 16 Delaware Code Chapter 49A, if immediate action is required to protect the health and safety of the general public, the Department may suspend the qualified patient or designated caregiver registry identification card without notice.
- 8.2.5.1 A qualified patient or primary caregiver whose registry identification card has been summarily suspended is entitled to a record review not later than 30 calendar days after the registry identification card was summarily suspended.
- 8.2.5.2 The record review requested subsequent to a summary suspension shall be conducted by the Department.
- 8.2.5.3 The Department shall conduct the record review on the summary suspension by reviewing all documents submitted by both card holder and the Department.
- 8.2.5.4 The sole issue at a record review on a summary suspension is whether the card holder's registry identification card shall remain suspended pending a final adjudicatory hearing and ruling.
- 8.2.5.5 A card holder given notice of summary suspension by the division may submit a written request for a record review. To be effective, the written request shall:
- 8.2.5.5.1 be made within 30 calendar days, as determined by the postmark, from the date of the notice issued by the Department;
- 8.2.5.5.2 be properly addressed to the medical marijuana program;
- 8.2.5.5.3 state the applicant's name, address, and telephone number(s);
- 8.2.5.5.4 provide a brief narrative rebutting the circumstances of the suspension, and
- 8.2.5.5.5 additional documentation must be included with the request for a record review.
- 8.3 **Summary Suspension, Revocation and Appeal Process:**
- 8.3.1 Participation in the medical marijuana program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from:
- 8.3.1.1 criminal prosecution or civil penalties for activities not authorized in this rule and act;
- 8.3.1.2 liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of marijuana; or
- 8.3.1.3 criminal prosecution or civil penalty for possession, distribution or transfers of marijuana or use of marijuana:
- 8.3.1.3.1 in a school bus or public vehicle;
- 8.3.1.3.2 on school grounds or property;
- 8.3.1.3.3 in the workplace of the qualified patient's or primary caregiver's employment;
- 8.3.1.3.4 at a public park, recreation center, youth center or other public place;
- 8.3.1.3.5 to a person not approved by the Department pursuant to this rule;
- 8.3.1.3.6 outside Delaware or attempts to obtain or transport marijuana from outside Delaware; or
- 8.3.1.3.7 that exceeds the allotted amount of usable medical use marijuana.

FINAL REGULATIONS

- 8.3.2 Revocation of registry identification card: Violation of any provision of this rule may result in either the summary suspension of the qualified patient's or primary caregiver's registry identification card, or a notice of contemplated action to suspend or revoke the qualified patient's or primary caregiver's registry identification card, and all lawful privileges under the act.
- 8.3.3 Grounds for revocation or suspension of registry identification card, denial of renewal application for registry identification card. A registry identification card may be revoked or suspended, and a renewal application may be denied for:
- 8.3.3.1 failure to comply with any provisions of these requirements;
- 8.3.3.2 failure to allow a monitoring visit by authorized representatives of the Department;
- 8.3.3.3 the discovery of repeated violations of these requirements during monitoring visits.
- 8.4 Request for hearing: A qualified patient or primary caregiver whose registry identification card has been summarily suspended, or who has received a notice of contemplated action to suspend or revoke, may request a hearing, in addition to a request for a record review, for the purpose of review of such action. The ~~[appellant shall file the]~~ request for hearing **[shall be filed]** within 30 calendar days of the date the action is taken or the notice of contemplated action is received. The request shall include the following:
- 8.4.1 a statement of the facts relevant to the review of the action;
- 8.4.2 a statement of the provision of the act and the rules promulgated under the act that are relevant to the review of the action;
- 8.4.3 a statement of the arguments that the ~~[appellant]~~ **qualified patient/primary caregiver** considers relevant to the review of the action; and
- 8.4.4 any other evidence considered relevant.
- 8.5 Hearing process:
- 8.5.1 All formal adjudicatory hearings held in response to these Regulations shall be conducted by a hearing officer duly appointed by the DHSS Secretary.
- 8.5.2 Except for telephonic hearings, hearings shall be conducted in Dover or, upon written request by an aggrieved person, in the place or area affected.
- 8.5.3 All hearings held pursuant to this section shall be open to the public.
- 8.5.4 The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter. The decision as to the type of recording shall be at the discretion of the Department.
- 8.5.5 Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.
- 8.5.6 The Department shall schedule and hold the hearing as soon as practicable, however; in any event no later than 60 calendar days from the date the Department receives the ~~[appellant's]~~ **request for hearing**. The hearing officer shall extend the 60 day time period upon motion for good cause shown or the parties shall extend the 60 day time period by mutual agreement. The Department shall issue notice of hearing, not less than 20 days prior to the hearing, which shall include:
- 8.5.6.1 a statement of the time, place and nature of the hearing;
- 8.5.6.2 a statement of the legal authority and jurisdiction under which the hearing is to be held;
- 8.5.6.3 a short and plain statement of the matters of fact and law asserted;
- 8.5.6.4 notice to any other parties to give prompt notice of issues controverted in fact or law; and
- 8.5.6.5 all necessary telephone numbers if a telephonic hearing shall be conducted.
- 8.6 All parties shall be given the opportunity to respond and present evidence and argument on all relevant issues.
- 8.7 Record of proceeding: The record of the proceeding shall include the following:
- 8.7.1 all pleadings, motions and intermediate rulings;
- 8.7.2 evidence received or considered;

- 8.7.3 a statement of matters officially noticed;
- 8.7.4 questions and offers of proof, objections and rulings thereon;
- 8.7.5 proposed findings and conclusions; and
- 8.7.6 any action recommended by the hearing officer.
- 8.8 A party may request a transcription of the proceedings. The party requesting the transcript shall **[endure bear]** the cost of transcription.
- 8.9 Procedures and evidence:
 - 8.9.1 Any party shall be represented by a person licensed to practice law in Delaware or an individual **[appellant]** may represent him or herself.
 - 8.9.2 The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence shall be admitted and such evidence shall be sufficient in itself to support a finding if the evidence is reliable, regardless of the existence of any statutory or common law rule that shall make admission of such evidence improper in a civil action. Irrelevant, immaterial or unduly repetitious evidence shall be excluded at a party's request or on the hearing officer's own initiative.
 - 8.9.3 Documentary evidence shall be received in evidence in the form of true copies of the original.
 - 8.9.4 Documentary and other physical evidence shall be authenticated or identified by any reasonable means that shows that the matter in question is what the proponent claims it to be.
 - 8.9.5 The experience, technical competence and specialized knowledge of the hearing officer, the Department or the Department's staff shall be used in the evaluation of evidence.
 - 8.9.6 Evidence on which the hearing officer shall base his or her decision is limited to the following:
 - 8.9.6.1 all evidence, including any records, investigation reports and documents in the Department's possession of which the Department desires to avail itself as evidence in making a decision that is offered and made a part of the record of the proceeding; and
 - 8.9.6.2 testimony and exhibits introduced by the parties.
 - 8.9.7 The record shall include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.
 - 8.9.8 A party to a hearing shall submit to the hearing officer, and to all other parties to the hearing, all documents to be introduced at the hearing no later than five business days from the scheduled hearing date to insure the hearing officer and other parties receive the documents prior to the hearing.
 - 8.9.9 The Department may choose to:
 - 8.9.9.1 issue subpoenas for witnesses and other sources of evidence, either on the agency's initiative or at the request of any party; and
 - 8.9.9.2 administer oaths to witnesses; limit unduly repetitive proof, rebuttal and cross-examination.
- 8.10 Conduct of proceeding: Unless the hearing officer reasonably determines a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule. The following procedures shall apply:
 - 8.10.1 the **[appellant Division]** shall present an opening statement on the merits and the **[appellee Cardholder]** shall make a statement of the defense or reserve the statement until presentation of that party's case;
 - 8.10.2 after the opening statements, if made, the **[appellant Division]** shall present its case in chief in support of the **[appellant's Division's]** petition;
 - 8.10.3 upon the conclusion of the **[appellee Cardholder]** case, the **[appellee Cardholder]** shall present its case in defense;
 - 8.10.4 upon conclusion of the **[appellee's Cardholder's]** case, the **[appellant Division]** shall present rebuttal evidence;
 - 8.10.5 after presentation of the evidence by the parties, the **[appellant Division]** shall present a closing argument; the **[appellee Cardholder]** then shall present its closing argument and the **[appellant Division]** shall present a rebuttal argument; and
 - 8.10.6 thereafter, the matter shall be submitted for recommendation by the hearing officer.

FINAL REGULATIONS

~~8.14~~ ~~**Burden of proof: The appellant bears the burden of showing by a preponderance of the evidence that the decision made by the Department or an agent of the Department shall be reversed or modified.**~~

8.~~12~~~~11~~Continuances: The hearing officer shall not grant a continuance except for good cause shown. A motion to continue a hearing shall be made at least 10 calendar days before the hearing date.

8.~~13~~~~12~~Telephonic hearings:

8.~~13~~~~12~~.1Any party requesting a telephonic hearing shall do so within 10 business days of the date of the notice. Immediately after the parties agree to conduct the hearing by telephone, notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

8.~~13~~~~12~~.2Any party that has agreed to a telephonic hearing, but subsequently requests an in-person hearing shall do so in writing to the hearing officer no later than 10 calendar days before the scheduled date of the hearing. The decision to grant or deny the request for an in-person hearing shall be at the discretion of the hearing officer for good cause shown. The hearing officer's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. Should the hearing officer grant the request, the hearing shall be rescheduled to a time convenient for all parties. Should the hearing officer deny the request, the telephonic hearing shall proceed as scheduled.

8.~~13~~~~12~~.3The location or locations of the parties during the hearing shall have a speaker telephone and facsimile machine available so that all shall hear the proceedings and documents shall be transmitted between witnesses and the hearing officer.

8.~~13~~~~12~~.4The ~~[appellee Cardholder]~~ shall initiate the telephone call. The ~~[appellant Division]~~ is responsible for ensuring the telephone number to the ~~[appellant's Division's]~~ location for the telephonic hearing is accurate and the ~~[appellant Division representative]~~ is available at said telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the petitioner to a default judgment.

8.~~13~~~~12~~.5The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing officer.

8.~~14~~~~13~~Recommended action and final decision:

8.~~14~~~~13~~.1At the request of the hearing officer or upon motion by either party granted by the hearing officer, and before the hearing officer recommends action by the Secretary, the parties shall submit briefs including findings of fact and conclusions of law for consideration by the hearing officer. The hearing officer holds the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing officer. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing officer request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing officer has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than 45 calendar days from the date of continuance.

8.~~14~~~~13~~.2No more than 30 calendar days after completion of the hearing, the hearing officer shall prepare a written decision containing recommendation of action to be taken by the Secretary. The recommendation shall propose to sustain, modify or reverse the initial decision of the Department or the Department's agent.

8.~~14~~~~13~~.3The Secretary shall accept, reject or modify the hearing officer's recommendation no later than 10 calendar days after receipt of the hearing officer's recommendation. The final decision or order shall be issued in writing and shall include:

8.~~14~~~~13~~.3.1a brief summary of the evidence.

8.~~14~~~~13~~.3.2a statement of findings of fact based upon the evidence.

8.~~14~~~~13~~.3.3conclusions and the reasons thereof, on all material issues of fact, law or discretion involved.

8.~~14~~~~13~~.3.4any other conclusions required by law of the Department, and

8.[4413].3.5a concise statement of the Department's specific determination or action taken to sustain, modify or reverse the initial decision of the Department or the Department's agent.

8.[4413].3.6 Service shall be made by registered or certified mail.

8.[4413].4 The final decision or order shall be public information and shall become a part of the record.

9.0 Severability

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

DIVISION OF SOCIAL SERVICES

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

ORDER

DSSM: 11003.7 Child Care Subsidy Program Income Eligible Child Care

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Income Eligible Child Care*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the April 2012 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Summary of Proposed Changes

DSSM 11003.7, ~~Income Eligible Child Care~~ RESERVED: This regulatory action removes this policy as most of the content is no longer relevant. What is relevant is redundant and is covered in the following sections of the Division of Social Services Manual (DSSM):

DSSM 11002.4, *Persons Eligible*

DSSM 11002.6.2, *Federal Law/Regulation*

DSSM 11002.8, *Seamless Services*

DSSM 11003, *Eligibility Requirements* and,

DSSM 11003.6, *Income Limits*.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following similar observations below. The Division of Social Services (DSS) has considered each comment and responds as follows.

The GACEC and the SCPD have reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its Child Care Subsidy Program Income Regulation. The proposed regulation was published as 15 DE Reg. 1435 in the April 1, 2012 issue of the *Register of Regulations*. Specifically, DSS proposes to delete a single regulation since the content is covered by other regulations. We have compared the provisions in the deleted regulation to the balance of the regulations and believe the content of the deleted regulation is covered by the other regulations.

GACEC and SCPD endorse the proposed regulation.

Agency Response: DSS thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Income Eligible Child Care* is adopted and shall be final effective June 10, 2012.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #12-23

REVISION:

11003.7 ~~Income Eligible Child Care~~ **RESERVED**

~~DSS provides child care to families who are financially eligible to receive care because the family's gross income is equal to or under 200 percent of the federal poverty level and they have a need for care as outlined below. These families are considered income eligible. DSS has two funding streams, CCDF and SSBG, that cover income eligible individuals.~~

~~DSS programmed the DCIS II Child Care Sub system to identify the need and include all the child care needs into one category, Category 31. DSS also programmed the DCIS II Child Care Sub system so that it could make the policy distinctions needed to make payments from the appropriate funding source for each child in care. Though Case Managers will not have to make these distinctions, it is helpful to know them.~~

~~They are:~~

~~1. CCDF Child Care will include:~~

- ~~a. parents/caretakers who need child care to accept or keep a job, and/or~~
- ~~b. participate in education or training as outlined in section 11003.7.4 and 11003.7.5, or~~
- ~~c. children who receive or need to receive protective services.~~
- ~~d. parents/caretakers who are homeless and need care to accept or keep a job or participate in education or training as outlined in section 11003.7.4 and 11003.7.5.~~

~~It will also include parents/caretakers who need care because of a special needs child. It will always coincide with the parent/caretaker's need to work or participate in education or training. It will not include parents/caretakers who have a special need or other adult household member who has a special need.~~

~~2. SSBG Child Care will include:~~

- ~~a. parents/caretakers who need child care to accept or keep a job,~~
- ~~b. parents/caretakers who need child care to participate in education or training as outlined in section 11003.7.4 and 11003.7.5,~~

-
- e. ~~parents/caretakers whose only need is a special need child or special needs adult household member,~~
 - d. ~~children who need protective services, or~~
 - e. ~~parents/caretakers who are homeless.~~

9 DE Reg. 572 (10/01/05)

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
Office of Workers' Compensation

Statutory Authority: 19 Delaware Code, Sections 2322B, C, E, and F (19 **Del.C.** §§2322B, C, E, and F)
19 DE Admin Code 1341

1341 Workers' Compensation Regulations

ORDER

A public meeting was held on May 14, 2012, by the Department of Labor to receive public comments relating to revised sections of the Utilization Review regulations. The members of the Health Care Advisory Panel ("HCAP"), signed below, recommend that the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Volume 15, Issue 10 (April 2012).

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.

No 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. No members of the public were in attendance at the public meeting. No public comments were made during the public meeting.

Therefore, the HCAP agreed to submit and recommend for adoption by the Delaware Department of Labor the revisions to the Utilization Review regulations.

**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 14th day of May, 2012.

HEALTH CARE ADVISORY PANEL

George B. Heckler, Esq., Chair

Barry Bakst, D.O.

Douglas Briggs, D.C.

James Downing, M.D.

Matthew Eppley, M.D.

Harry Gravell

A. Richard Heffron

Joseph Rhoades, Esq.

Theresa Smith

Wayne Smith

1341 Workers' Compensation Regulations

*Please note that no changes were made to the regulation as originally proposed and published in the April 2012 issue of the *Register* at page 1437(15 DE Reg. 1437). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1341 Workers' Compensation Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR QUALITY**Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)

Secretary's Order No.: 2012-A-0017

7 DE Admin. Code 1131, Low Enhanced Inspection & Maintenance Program (LEIM) and the associated Plan for Implementation (PFI)

Date of Issuance: May 15, 2012

Effective Date of the Amendment: June 11, 2012

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 **DE Admin. Code** 1131, Low Enhanced Inspection & Maintenance Program (LEIM), and the associated Plan for Implementation (PFI). 7 **DE Admin. Code** 1131 is an air regulation that includes the inspection and maintenance program requirements which apply to vehicles registered in both Kent and New Castle County. The associated PFI includes information such as technical documentation of the test standards and procedures as required by Regulation 1131, as well as a demonstration that the requirements of Regulation 1131 and Delaware's overall vehicle inspection and maintenance program meet the minimum federal requirements of 40 CFR 51 Subpart S, Inspection and Maintenance Program Requirements. Both Regulation 1131 and the PFI are required by the federal Clean Air Act (CAA) to be a part of Delaware's State Implementation Plan (SIP).

The purpose of this proposed promulgation is to update 7 **DE Admin. Code** 1131 and the PFI by (1) removing the non-regulatory provisions of Regulation 1131 and adding these provisions to the PFI; (2) reformatting and reordering the requirements of 1131 and the PFI to simplify and clarify their content; and (3) revising the PFI to ensure it fully comports with federal requirements. It should be noted that the proposed amendments will not likely affect the public. No changes will be proposed to the emissions tests or the standards, exemptions, etc. which

currently apply to Delaware registered vehicle owners. Revisions to the PFI will generally align the plan with current Delaware Division of Motor Vehicles (DMV) and DNREC's Division of Air Quality (DAQ) practices. The simplification and clarification of the regulatory text of Regulation 1131 will positively impact all.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-01. The Department published the proposed regulatory amendments in the March 1, 2012 *Delaware Register of Regulation* and held a public hearing on April 2, 2012. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated May 9, 2012 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. It should be noted that the Department received no public comment from the regulated community at the public hearing, as noted in the Report.

I find that the Department's experts in the DAQ fully developed the record to support adoption of these Amendments. With the adoption of the regulation amendments to 7 **DE Adm in. Code** 1131, Low Enhanced Inspection & Maintenance Program (LEIM), and the associated Plan for Implementation (PFI), Delaware will be enabled to align the PFI with current Delaware Division of Motor Vehicles (DMV) and DNREC's Division of Air Quality (DAQ) practices. As noted previously, no changes are being made at this time to the emissions tests or standards which currently apply to Delaware registered vehicle owners, and the simplification and clarification of the regulatory text of Regulation 1131 will positively impact all.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;
- 3.) The Department held a public hearing on April 2, 2012 on the proposed Amendments in order to consider public comments before making any final decision concerning this matter;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments do not reflect any substantive change from the proposed regulation Amendment as published in the March 1, 2012, *Delaware Register of Regulations*;
- 6.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will then be enabled to (1) remove the non-regulatory provisions of Regulation 1131 and add these provisions to the PFI; (2) reformat and reorder the requirements of 1131 and the PFI to simplify and clarify their content; and (3) revising the PFI to ensure it fully comports with federal requirements; and
- 7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1278 (15 DE Reg. 1278). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1131 Low Enhanced Inspection and Maintenance Program and the associated Plan for Implementation (PFI)

FINAL REGULATIONS

DEPARTMENT OF SAFETY AND HOMELAND SECURITY OFFICE OF THE SECRETARY

Statutory Authority: 11 Delaware Code, Section 1448A(k) (11 Del.C. §1448A(k))

ORDER

101 Regulations Governing the Relief from Disabilities Board

I. NATURE OF THE PROCEEDINGS

Pursuant to its authority under 11 Del.C. §1448A(k), the State of Delaware, Department of Safety and Homeland Security (hereinafter "Department") proposed new regulations as they relate to the creation and operations of the Relief from Disabilities Board and the transmission of health information to NICS pursuant to 11 Del.C. §1448A(k). The Department published the proposed rules and regulations on March 1, 2012 and accepted comments from the public until April 1, 2012.

II. PUBLIC COMMENT

The Department received the following public comments in response to its notice of intention to adopt the proposed regulations and offers the following responses thereto:

- A public comment was received expressing concerns that 11 Del.C. §1448A(k) and the proposed rules and regulations inappropriately discriminates against persons with mental illnesses who are no more prone to violent crime than persons without mental illness. After meeting with the commenters, all parties recognized the need to maintain the public safety as it relates to firearms and that the federal and state law addresses that need. The commenters further recognized that 11 Del.C. §1448A(k) and the proposed regulations balances promoting and protecting the public safety, while also providing persons with mental illness who are persons prohibited under federal and state law, but who are not a threat to themselves or others, a forum to seek and obtain relief from that status through a due process hearing.
- A public comment was received requesting that a member of the Delaware Consumer Recovery Coalition be allowed to serve on the Relief from Disabilities Board. Title 11, §1448A(k) of the **Delaware Code** specifically mandates that the Relief from Disabilities Board be comprised of three (3) members, one from the Department of Safety and Homeland Security and two (2) from the Department of Health and Social Services, one of whom shall be a Delaware licensed psychiatrist. The Department declines to amend the rules and regulations to the extent they are consistent with the mandate set forth in 11 Del.C. §1448A(k).

III. FINDINGS AND CONCLUSIONS

Based on the comments received, the Secretary of the Department of Safety and Homeland Security finds that any comments and/or amendments made in response thereto do not change the intent or meaning of these proposed regulations. Therefore, based on the foregoing, the proposed regulations shall be adopted.

IV. ORDER

AND NOW, this 15th day of May, 2012 it is hereby ordered that:

The proposed regulations are adopted;

The text of the proposed regulations shall be in the form attached as Exhibit A;

The effective date of this Order is ten (10) days from the date of publication in the Delaware *Register of Regulations* in accordance with 29 **Del.C.**, §10118(e) and,

The Department reserves unto itself the authority to issue such other and further orders concerning its practices and procedures as may be just and proper.

IT IS SO ORDERED.

BY: Lewis D. Schiliro, Secretary

Department of Safety and Homeland Security

DATED: 5-15-12

101 Regulations Governing the Relief from Disabilities Board

***Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1286 (15 DE Reg. 1278). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

101 Regulations Governing the Relief from Disabilities Board

OFFICE OF THE SECRETARY

Statutory Authority: 24 Delaware Code, Chapter 12, Subchapter II, Section 1229
(24 **Del.C.** §1229)

ORDER

102 Regulations Governing Security Systems and Protective Services: False Alarms

I. NATURE OF THE PROCEEDINGS

Pursuant to its authority under 24 **Del.C.** §1229, the State of Delaware, Department of Safety and Homeland Security (hereinafter "Department") proposed new regulations as they relate to the enforcement of civil penalties for false alarms and the appeals process pursuant to 24 **Del.C.** §1229. The proposed regulations were published in the Delaware *Register of Regulations* on April 1, 2012. Public comment was received by the Department until April 30, 2012.

II. PUBLIC COMMENT

The Department did not receive any comments from the public.

III. FINDINGS AND CONCLUSIONS

Therefore, based on the foregoing, the proposed regulations shall be adopted.

IV. ORDER

AND NOW, this 15th day of May, 2012, it is hereby ordered that:

The proposed regulations are adopted;

The text of the proposed regulations shall be in the form attached as Exhibit A;

The effective date of this Order is ten (10) days from the date of publication in the Delaware *Register of Regulations* in accordance with 29 **Del.C.** §10118(e); and,

The Department reserves unto itself the authority to issue such other and further orders concerning its practices and procedures a may be just and proper.

IT IS SO ORDERED.

BY: Lewis D. Schiliro, Secretary
Department of Safety and Homeland Security
Dated: 5-15-12

102 Regulations Governing Security Systems and Protective Services: False Alarms

*Please note that no changes were made to the regulation as originally proposed and published in the April 2012 issue of the *Register* at page 1441 (15 DE Reg. 1278). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

102 Regulations Governing Security Systems and Protective Services: False Alarms

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

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

ORDER

1700 Board of Medical Licensure and Discipline

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 3, 2012 at a scheduled meeting of the Delaware Board of Medical Licensure and Discipline (the "Board") to receive comments regarding proposed changes to the Board's rules and regulations.

The Delaware Board of Medical Licensure and Discipline in accordance with 24 **Del.C.** §1713(a)(12) proposed changes to 4 separate regulations. Those regulations are Regulations 14, 16, 21 and 25. The Board proposed to amend Regulation 14 to replace outdated renewal provisions with requirements for renewal and examination for practitioners seeking initial licensure who have been out of clinical practice for 3 or more years prior to the application as authorized by 24 **Del.C.** §1723(d).

The Board also proposed to update and clarify provisions related to physician assistants by deleting Regulation 16 and incorporating the relevant provisions into Regulation 25 including provisions related to supervision. The proposal further clarifies that Regulations 21 *Delegation of Responsibilities to Non-Physicians* does not apply to physician assistants.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Board did not receive any written or oral public comment opposed to the proposed amendments to Regulations 16, 21, or 25. Paula Paul, Delaware Academy of Physician Assistants (DAPA), submitted written and oral comment supporting the amendments to Regulations 16, 21, and 25.

DAPA also offered written and oral comment through Ms. Paul requesting that the Board reconsider requiring physician assistants and other professionals regulated under the Medical Practice Act to comply with the proposed

revisions to Regulation 14. Ms. Paul stated that DAPA would like to see physician assistants excepted from Regulation 14 regarding re-entry into practice noting that DAPA is proposing legislation that would address physician assistant re-entry into practice. That legislation takes into account the team practice inherent in the physician assistant profession.

Ms. Paul noted that she called a couple of the physician re-entry practice assessment programs that would be acceptable under the Board's proposal and it was unclear whether they even have re-entry programs for physician assistants. She did locate one such program but noted that physician assistants are in a unique position to re-enter practice with extra supervision and/or extra course work rather than going through an assessment program. Finally, DAPA recommended that the Board circulate any re-entry language to the other professions regulated under the Medical Practice Act for their input and comment before including them in the regulation.

Nitin Rao, Medical Society of Delaware, offered comments in support of the physician assistant regulations. The Medical Society also supports the re-entry regulations but noted a concern with regard to the availability of practice assessment programs and offered the Medical Society's assistance in identifying additional programs for approval.

FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION SUBMITTED

Board Exhibit 1, the News Journal Affidavit of Publication, **Board Exhibit 2**, the Delaware State News Affidavit of Publication, and **Board Exhibit 3**, written comments from Paula Paul on behalf of DAPA were made a part of the record.

The Board also considered the oral comments provided at the public hearing, which support the proposed amendments to Regulations 16, 21 and 25 regarding physician assistants without any modification.

With regard to Regulation 14 the Board's initial draft re-entry language only addressed the regulation to physicians re-entering practice. The public comment has persuaded the Board that additional consideration should be given before extending the language concerning re-entry to the other professionals licensed under the purview of the Medical Practice Act. The Board has determined that it will republish Regulation 14 and limit its application to physicians only.

THE LAW

The Board's rulemaking authority is provided by 24 **Del.C.** §1713(a)(12).

DECISION AND EFFECTIVE DATE

The Board hereby adopts Regulations 16, 21 and 25 as effective 10 days following publication of this Order in the *Register of Regulations*. The Board has determined not to adopt the amendments to Regulation 14 as proposed and instead will republish Regulation 14.

TEXT AND CITATION

The text of Regulations 16, 21 and 25 remains as published in *Register of Regulations*, Vol. 15, Issue 9, on March 1, 2012.

IT IS SO ORDERED this 1st day of May, 2012.

BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Stephen Cooper, M.D., President

Raymond Moore, Public Member

Gregory Adams, M.D., Vice-President

Joseph Parise, D.O.

Garrett H. Colmorgen, M.D.

Karyl Rattay, M.D.

Thomas Desperito, M.D.
Vincent Lobo, D.O.

Mary Ryan, Public Member

1700 Board of Medical Licensure and Discipline

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

1700 Board of Medical Licensure and Discipline

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1775 (c)) (24 **Del.C.** §1775 (c))
24 **DE Admin. Code** 1770

1770 Respiratory Care Advisory Council

REPORT AND RECOMMENDATION

The Respiratory Care Advisory Council (“Council”) established to assist the Board of Medical Licensure and Discipline (“Board”) in the performance of its duty relating to the regulation of Respiratory Care Practitioners is authorized by 24 **Del.C.** §1775(c) to promulgate rules and regulations governing the practice of respiratory care. Pursuant to 24 **Del.C.** §1775(c), the Council is proposed modifications to Regulations 8.5.1.1 and 8.5.1.2 to clarify that a maximum number of eight (8) contact hours of continuing education may be obtained by taking courses in Basic Life Support (BLS), Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) and the Neonatal Resuscitation Program (NRP). The clarification also specifically states that courses in BLS, ACLS, PALS and NRP may not be counted toward the twelve (12) contact hours required to be in a field related to the science and practice of respiratory care.

Pursuant to 29 **Del.C.** §10115, notice of the proposed amendments to the rules and regulations was published on February 1, 2012, in the Delaware *Register of Regulations*, Volume 15, Issue 8. Public notice of these proposed modifications to the Rules and Regulations was also published in two (2) newspapers of general circulation.

Pursuant to such notice a public hearing was conducted by the Council on March 14, 2012.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No members of the public commented at the hearing. No written comments were received in response to the proposed regulations.

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

There was no public comment received at the public hearing. No written comments were received in response to the proposed regulations.

The Council finds that the amendments to Regulations 8.5.1.1 and 8.5.1.2 are necessary to clarify that a maximum number of eight (8) contact hours of continuing education may be obtained by taking courses in Basic Life Support (BLS), Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) and the Neonatal Resuscitation Program (NRP). The regulation is also necessary to clarify that courses in BLS, ACLS, PALS and NRP may only be counted toward the eight (8) elective contact hours and *may not* be applied toward the twelve (12) contact hours that a licensee must complete a field related to the science and practice of respiratory care.

Council has observed during recent continuing education compliance audits that licensee have been uncertain about how many contact hours in these courses would be permissible toward meeting the twenty (20) hours of required continuing education and to which category of continuing education the courses would apply. Council finds that the proposed amendment will provide direction to licensees and ensure that Council is consistent in the application of the credits during future audits.

In summary, the Council finds that adopting the proposed amendments to Regulation 8.5.1.2 meets the objectives of protecting the public as set forth in 24 **Del.C.** §1701 and are in the best interest of the citizens of the State of Delaware.

THE LAW

The rulemaking authority of the Counsel and Board is provided by 24 **Del.C.** §1775(c).

RECOMMENDATION

Based on the findings, conclusions and the above discussion, it is the recommendation of the undersigned members of the Respiratory Care Practice Advisory Council to the Board of Medical Licensure and Discipline that the Board approve these changes to the Rules and Regulations of the Respiratory Care Practice Advisory Council to be effective ten (10) days after their final publication in the Delaware *Register of Regulations*.

Respectfully submitted this 11th day of April, 2012:

Theresa Q. Thompson, RRT, **Vice-Chairperson, Presiding**

Juanita Bernard, RRT

Christine Cipolla, RRT

ORDER

AND NOW, to-wit, this 1st day of May, 2012;

WHEREAS, the Board has considered the attached Report and Recommendation of the Respiratory Care Practice Advisory Council concerning the hearing on the proposed modifications of the Rules and Regulations of the Respiratory Care Practice Advisory Council; and

WHEREAS, the Board has deliberated and determined to accept such Report and Recommendation and approve the proposed Rule and Regulation modifications for the reasons set forth in the attached Report and Recommendation.

NOW THEREFORE:

The proposed modifications to the Rules and Regulations of the Respiratory Care Practice Advisory Council as set forth on the attached Report and Recommendation are hereby approved without any changes as originally published in the *Register of Regulations* on February 1, 2012, Volume 15, Issue 8.

IT IS SO ORDERED:

BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Stephen Cooper, M.D., President

Raymond Moore, Public Member

Gregory Adams, M.D., Vice-President

Joseph Parise, D.O.

Garrett H. Colmorgen, M.D.

Karyl Rattay, M.D.

Thomas Desperito, M.D.

Mary Ryan, Public Member

Vincent Lobo, D.O.

1770 Respiratory Care Practice Advisory Council

*Please note that no changes were made to the regulation as originally proposed and published in the February 2012 issue of the *Register* at page 1132 (15 DE Reg. 1132). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1770 Respiratory Care Practice Advisory Council

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 5206(1) (24 Del.C. §5206(1))
24 DE Admin. Code 5200

ORDER**5200 Board of Examiners of Nursing Home Administrators**

Pursuant to 29 Del.C. §10118 and 24 Del.C. §5206(1), the Delaware Board of Nursing Home Administrators issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on March 13, 2012, the Board makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the January 1, 2012 Delaware *Register of Regulations* and in the Delaware *News Journal* and Delaware *State News*. The Board proposed to rework its regulations in an attempt to better organize and clearly establish the standards governing licensed nursing home administrators in the State of Delaware.

2. The Board received no written comments during January 2012. The Board held a public hearing on March 13, 2012 and received no public comments.

3. The Board proposed to define a Preceptor, adds pre-approval of a direct supervisor for the Administrator in Training Program, changes the percentages of the type of work done for the Administrator in Training Program, changes the time periods for an expired license, and allows for continuing education credits for the appointees of the Board for their attendance at Board meetings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's Rules. No public comment was received and therefore no further revision of the rules need be considered.

5. There being no public comment to consider, the Board hereby adopts the regulation changes as originally published on January 1, 2012.

EFFECTIVE DATE

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, 2012.

IT IS SO ORDERED this 8th day of May, 2012

BOARD OR NURSING HOME ADMINISTRATORS

Teruko White, N.H.A., President

Victoria Parker, Public Member

Timothy Ballas, N.H.A., Vice President

Michael Salitsky, N.H.A

Timothy Bane, Public Member

Hope Squier, Healthcare Public Member

Sandra Dole, Healthcare Public Member
Elizabeth Hague, Healthcare Public Member

Frances Wimbush, R.N., Secretary

5200 Board of Examiners of Nursing Home Administrators

*Please note that no changes were made to the regulation as originally proposed and published in the January 2012 issue of the *Register* at page 983 (15 DE Reg. 983). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

5200 Board of Examiners of Nursing Home Administrators

EXECUTIVE DEPARTMENT

OFFICE OF MANAGEMENT AND BUDGET

29 Delaware Code, Sections 6303A and 6307A (29 Del.C. §§6303A & 6307A)

ORDER

Promoting, Maintaining and Controlling the Public Use of the Legislative Mall

AND NOW, this 2nd day of May, 2012, Ann Shepard Visalli, as Director of the Delaware Office of Management and Budget, in accordance with 29 Del.C. §§6303A & 6307A, for the reasons stated below enters this ORDER adopting and promulgating the State of Delaware Legislative Mall Usage Regulation. (the "Regulation").

NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION

In accordance with procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C. Ch. 101, the Director of the Delaware Office of Management and Budget is adopting the final Regulation governing the public use of the Legislative Mall.

The purpose of the Regulation is to further provide for the effective and efficient maintenance and operation of the Legislative Mall.

This Regulation is adopted to establish rules and procedures to help promote, maintain and control the public use of the Legislative Mall.

FINDINGS OF FACT AND CONCLUSIONS

1. The Delaware Office of Management and Budget has established rules and procedures to help promote, maintain and control the public use of the Legislative Mall.
2. The Regulation reflects these rules and procedures.
3. The Director of the Delaware Office of Management and Budget has statutory authority to promulgate regulations pursuant to 29 Del.C. §§6303A & 6307A.

DECISION AND ORDER CONCERNING THE REGULATION

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

Ann Shepard Visalli, Director, Delaware Office of Management and Budget

Promoting, Maintaining and Controlling the Public Use of the Legislative Mall

1.0 Purpose

The purpose of this Regulation is to establish rules and procedures to help promote, maintain and control the public use of the Legislative Mall.

2.0 Enabling Legislation

Pursuant to 29 Del.C. §§6301A and 6307A, the Office and Facilities Management were established. The Office has authority to make regulations pursuant to 29 Del.C. §6303A(16).

3.0 Definitions

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

“**Environmental Health Field Services**” means the State of Delaware Department of Health and Social Services, Division of Public Health, Environmental Health Field Services.

“**Facilities Management**” means the State of Delaware Office of Management and Budget, Division of Facilities Management.

“**Miss Utility**” means Miss Utility of Delaware.

“**Office**” means the State of Delaware Office of Management and Budget.

“**State**” means the State of Delaware.

4.0 Request Procedure

4.1 Upon receiving a request to use Legislative Mall, Facilities Management will issue a tentative reservation letter detailing the rules and regulations governing use of the property. Reservations are not considered final until all required paperwork is filed with Facilities Management prior to the event. Permission to utilize the area cannot be assigned or transferred without prior written approval from Facilities Management.

4.2 Facilities Management approval only grants permission to utilize the property; it is the responsibility of the event sponsor to obtain all necessary permits required by the City of Dover and other governmental agencies.

5.0 Approval To Use Legislative Mall Is Subject To The Following Conditions:

5.1 The event sponsor must provide satisfactory evidence of a minimum of \$1,000,000 (one million dollars) liability insurance coverage listing Facilities Management, as the certificate holder on the policy binder for the event (copy of document must be supplied to Facilities Management prior to the event).

5.2 The event sponsor must execute an indemnification and save harmless agreement to ensure that the State and Facilities Management shall accrue no liability for damage or injury to persons or property occurring on State premises.

5.3 The event sponsor must contact the City of Dover Police Department [(302) 736-7111] and the City of Dover Fire Marshal's Office [(302) 736-7010] to obtain the necessary permits and file the same.

5.4 If food will be prepared and/or served at the event, the event sponsor must contact Environmental Health Field Services [(302) 744-1220] to obtain any necessary permits.

5.5 Contact the City of Dover Police Department and the Delaware Capitol Police [(302) 739-3200] to ensure the availability of police for traffic, noise and crowd control.

5.6 Contact the City of Dover Police Department to coordinate any necessary street closings.

- 5.7 No street closure of Legislative Avenue can take place without the written approval of Debby Porter, Legislative Council, at (302) 744-4387.
- 5.8 Tent supports or other ground penetrations are not permitted within 20 feet of the outside perimeter of Legislative Mall. It is the responsibility of the event coordinator to contact Miss Utility [(800) 282-8555] to have utilities that are not the responsibility of Facilities Management located and marked.
- 5.9 Only open-sided "Event" tents will be allowed to be erected for any single event and will be subject to approval of placement by Facilities Management.
- 5.10 No individuals may sleep or camp on Legislative Mall.
- 5.11 Any event related signage must be placed in a location that is approved by Facilities Management.
- 5.12 All signage must be removed by the end of the day of the event, before 11:59 p.m.
- 5.13 The grounds must be left in good repair and free of litter upon departure.
- 5.14 Vehicles and/or trailers of any type will not be permitted on grassy areas or sidewalks without the express permission of Facilities Management.
- 5.15 The use of paint or other permanent substances to mark streets, parking lots, grass, etc. is prohibited.
- 5.16 The use of tape, wire, nails, etc. to adhere signs, balloons or other materials to street lights, trees, benches, signs, buildings, etc. is prohibited.
- 5.17 Open fires are not permitted. All barbecue grills must remain curbside.
- 5.18 The serving and/or consumption of alcoholic beverages is not permitted.
- 5.19 The State of Delaware is not responsible for personal items and possessions on the Legislative Mall property. Unattended personal property is subject to removal by the Facilities Management or law enforcement.

6.0 Effective Date

This Regulation will become effective 10 days after being published as a final regulation.

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	APPOINTMENT DATE
Authority on Radiation Protection	Charles J. Milazzo	3/28/2012
Board of Landscape Architecture and Discipline	Jeffrey A. Clark	3/27/2012
Board of Medical Licensure and Discipline	Leslie C. Ramsey	4/3/2012
Board of Professional Land Surveyors	Kenneth A. Monroe	3/27/2012
Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers	Meredith L. Sullivan	3/27/2012
Child Death, Near Death and Stillbirth Review Commission	Deborah A. Miller	3/27/2012
Child Placement Review Board - New Castle	Richard O. Briden Pamela J. Facciolo Kathy K. Goldsmith Ruth S. Grulich Robert M. Undercuffler	3/28/2012 3/28/2012 3/28/2012 3/28/2012 3/28/2012
Child Placement Review Board Executive Committee	Bonita J. Maull	3/28/2012
Child Placement Review Board - Sussex	Henry F. Lucas	3/28/2015
Commissioner of Family Court	The Honorable David W. Jones The Honorable Louann Vari The Honorable Sonja Truitt Wilson	2/3/2012 2/17/2012 2/15/2012
Committee on Disposition of Unmarked Human Burials	Karen Rosenberg, Ph.D.	3/27/2012
Council on Banking	Joseph E. Chippie David E. Gillan Robert V.A. Harra, Jr. Lynda A. Messick Stephen C. Nelson Edward A. Reznick Clinton W. Walker	4/4/2012 4/4/2012 4/4/2012 4/4/2012 4/4/2012 4/4/2012 4/4/2012
Council on Health Promotion and Disease Prevention	Anthony J. Aglio, II	3/27/2012
Council on Real Estate Appraisers	Georgianna C. Trietley	3/27/2012
Council on Services for Aging and Adults with Physical Disabilities	William A. Bell Katie E. Macklin	11/1/2014 3/15/2012

GOVERNOR'S APPOINTMENTS

1775

BOARD/COMMISSION OFFICE	APPOINTEE	APPOINTMENT DATE
Council on Social Services	Robert L. Doyle, III	9/4/2012
Delaware / Commission	Christopher W. Bason F. Kenny Blessing, Jr.	3/16/2012 4/16/2012
Delaware Commission of Veterans' Affairs	Ruth B. Harden	3/9/2012
Delaware Council of Faith-Based Partnerships	Raina H. Allen Michael S. Beals Pastor Silvester S. Beaman Sister Jeanne F. Cashman Kenneth L. Foster Douglas D. Gerdts, DMin Flora McConkie John G. Moore, Sr. Usman Z. Sandhu Kimberly Mark Tephabock Max J. Wolf	4/5/2012 4/5/2012 4/5/2012 4/5/2012 4/5/2012 4/5/2012 4/5/2012 4/5/2012 4/18/2012 4/5/2012 4/5/2012
Delaware Economic and Financial Advisory Council	Joshua M. Twilley	2/16/2012
Delaware Humanities Council	Donna F. Henderson	3/27/2012
Delaware State Arts Council	Louellen H. Braithwaite Joann E. Browning Richard A. Givens, II Margaret H. Johnson Ralph A. Kuebler Jon W. Newsom Joseph Mack Wathen	3/21/2012 3/21/2012 3/21/2012 3/21/2012 3/21/2012 3/21/2012 3/21/2012
Developmental Disabilities Council	Gregory D. Gouge	3/27/2012
Governor's Public Works and Procurement Opportunity Council	Cleon L. Cauley, Sr.	9/4/2012
Justice of the Peace	The Honorable Jeni L. Coffelt The Honorable Richard D. Comly, Jr. Deborah J. Keenan Vincent G. Kowal The Honorable Rosalie O. Rutkowski Susan E. Ufberg	2/6/2012 2/15/2012 4/16/2012 4/15/2012 2/3/2012 4/17/2012
Professional Standards Board	Jill T. Lewandowski	6/29/2013
Recycling Public Advisory Council	Stanley A. Mills, Jr.	3/29/2012
Sex Offender Management Board	Mr. Robert D. Gingrich	3/27/2012

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	APPOINTMENT DATE
Sex Offender Management Board	Ms. Valerie C. Marek	3/27/2012
	Michelle D. Moran	3/27/2012
	Francesca Stasko	3/27/2012
	Cheryl W. Will	3/27/2012
State Board of Electrical Examiners	Richard B. Millar, Jr.	3/1/2012
	James R. Murrian	2/27/2012
State Board of Home Inspectors	Joyce E. Edwards	4/4/2012
	Daniel C. Eichelberger	4/4/2012
	Donald E. Pyle, Sr.	4/4/2012
	Dennis G. Theoharis	4/4/2012
State Emergency Response Commission	Alfred F. Johnson, Jr.	3/27/2012
	John C. Verdi	3/27/2012
State Fire Prevention Commission	William F. Tobin, Jr.	9/16/2012
Tax Appeals Board	Robert W. Slavin	3/21/2012
Tourism Advisory Board	Megan M. McGlinchey	4/4/2012
	Patricia A. Ratner	4/3/2012
	Danielle Rice	4/4/2012

DEPARTMENT OF AGRICULTURE
FOOD PRODUCTS INSPECTION SECTION
301 Food Products Inspection
PUBLIC NOTICE

The Delaware Department of Agriculture's Food Products Inspection Section ("the Department") proposes to amend Regulation 3.1 of its existing Regulations (see 3 **DE Admin. Code** 301) to ensure that all meat, poultry, and egg product inspections in Delaware as well as its methods of slaughter are in compliance with current federal regulatory requirements as they are found in the Code of Federal Regulations, and as they may be amended from time to time, and so as to satisfy U.S. Department of Agriculture officials that Delaware is enforcing inspection standards that are "at least equal to" those imposed and enforced under the relevant federal acts mandated by 3 **Del.C.** §8707(6).

Public comments concerning the proposed amendment to Regulation 3.1 may be submitted in writing to Andrea Jackson, Administrator, Food Products Inspection, at 2320 S. DuPont Highway, Dover, DE 19901, on or before July 2, 2012.

HARNESS RACING COMMISSION
501 Harness Racing Rules and Regulations
PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 6.2.2.2 to add at the end of the second sentence the words "except when written Delaware Owned or Bred Preferred." The Commission will hold a public hearing on the proposed rule change at Harrington Raceway on August 14, 2012 at 10:15 am.

Written comments should be sent to Hugh J. Gallagher, Executive Director of the Delaware Harness Racing Commission, Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations*.

The proposed changes are for the purpose of updating the Rules and to more accurately reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.html

A copy is also available for inspection at the Harness Racing Commission office.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, June 21, 2012 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
Transitional Resources to Relative Caregivers
PUBLIC NOTICE

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

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, 2012.

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
Determining Income Eligibility
PUBLIC NOTICE

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

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, 2012.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

1125 Requirements for Preconstruction Review
PUBLIC NOTICE

The Department proposes to revise Section 1.9 "Definitions" of 7 **DE Admin. Code** 1125 to clarify the definition of "Subject to Regulation". This language was added to 1125 as part of the December 2010 revisions made to implement the EPA's greenhouse gas tailoring rule. This new language can be read to provide that Prevention of Significant Deterioration (PSD) review is required only for pollutants that are emitted in major amounts. This proposed change will clarify that a major source for any pollutant subject to regulation under the CAA is subject to PSD review for all pollutants emitted at greater than the significance level. The December 2010 revisions were submitted to the EPA as a revision to Delaware's State Implementation Plan (SIP). This clarification is necessary to enable the EPA to approve this SIP revision.

The Department will hold a public hearing on these proposed amendments on Monday, June 25, 2012 beginning at 6:00 pm in the Richardson and Robbins Building auditorium, located at 89 King's Highway in Dover. Interested persons may submit comments in writing to Gene Pettingill, Division of Air Quality, 715 Grantham Lane, New Castle DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

DIVISION OF FISH AND WILDLIFE
3531 Tautog; Size Limits, Creel Limits and Seasons
PUBLIC NOTICE

The purpose of this action is to amend the tautog (*Tautoga onitis*) regulations, with possible changes to the season, size and creel limits. Delaware was previously mandated to modify its tautog regulations by the Atlantic States Marine Fisheries Commission for the 2012 fishing season to achieve a 53% reduction in harvest. The mandate was to reduce harvest by 53% as required under Addendum VI to the Interstate Fisheries Management Plan for Tautog (Plan). However, an error was identified and corrected in the 2011 stock assessment. Although the stock continues to be overfished and overfishing is occurring, the updated 2011 assessment indicates that the required reduction in exploitation should be 39%. The ASMFC Tautog Management Board has approved modifications to state proposals to achieve the updated reduction target. As such, Delaware proposes to modify its existing

regulations to allow for less restrictive management measures consistent with a 39% reduction in exploitation. This may include changes to the tautog size limits, creel limits and/or seasons. It is anticipated that these regulations will remain in place for three to five years.

The hearing record on the proposed changes to the tautog regulation will be open June 1, 2012. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on June 22, 2012 beginning at 7 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Gaming Control Board

101 Regulations Governing Bingo; 102 Regulations Governing Raffles; 103 Regulations Governing Charitable Gambling Other Than Raffles; 104 Regulations Governing Texas Hold'em Poker

PUBLIC NOTICE

The Delaware Gaming Board will seek public comments on the issue of whether its current rules should be amended. Amendments to 10 **DE Admin. Code** 101 will correct various typographical errors and to eliminate references to specific statutory sections which may soon be changed. A new section will also be added to show that bingo events may not be conducted at a charitable gaming vendor's facility.

The definition of "raffle" in 10 **DE Admin. Code** 102 will be amended to make it clear that a raffle with a series of drawings over six months will be charged a single fee for the entire six months, and also make it clear that chances in such a raffle may be purchased throughout the six month period. It will also be amended to make it clear that one must be 18 years old to participate in a raffle. A new section 2.2 will make it clear that the sponsoring organization must handle the money in all raffles and there can be no third party payor, such as PayPal. Another new section 3.8 will indicate that houses or other buildings may not be the prize offered in a raffle. A new Rule 3.9 will make it clear that no raffle tickets may be sold until the charitable organization has been licensed to conduct the raffle. Various statutory references will also be deleted.

Amendments will also be made to 10 **DE Admin. Code** 103 to change certain words and to delete statutory references. A new section 6.4 will also be added to this section to require that when new ownership takes over a charitable gaming vendor, the new owner must submit a valid Delaware business license. The charitable organization with a license to conduct an event using that vendor must inform the Board that it is aware of the ownership change and will continue with the event with the new owners. In addition, an amendment to Rule 3.1.6 in this section will make it clear that no tip cups may be placed on a table because tips are not permitted at charitable gaming events. While tips are not allowed, donations to the charitable organization are permitted, to be placed in bowls or cups near the entrance to the game where it will be accessible to the member in charge.

Statutory references will also be deleted from 10 **DE Admin. Code** 104.

Persons wishing to present their views regarding this matter may do so at a public hearing to be held on Thursday, July 5, 2012 at a meeting of the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit responses in writing by the close of business on or before June 30, 2012 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

DIVISION OF PROFESSIONAL REGULATION
1100 Board of Dentistry and Dental Hygiene
PUBLIC NOTICE

The Board of Dentistry and Dental Hygiene ("the Board") in accordance with 24 **Del.C.** §1106(a)(1) has proposed amendments to Regulation 4.0 *Qualifications of Applicant; Residency Requirements* to define active practice for applicants applying for licensure as dentists and dental hygienists by reciprocity. The proposal also amends Regulation 6.0 *Continuing Professional Education* to clarify that the Board will accept courses approved by PACE (Program Approval for Continuing Education) and CERP (Continuing Education Recognition Program) for continu-

ing education. Regulation 6.0 also clarifies that CPR courses provided or approved by organizations approved for continuing education identified in Regulations 6.5.1.1 through 6.5.1.4 are also acceptable to meet the CPR requirement. Finally, the proposal corrects the date for determining the proration of continuing education in Regulations 6.7.2.1 and 6.11.2.1 from March 1st to May 31st.

A public hearing will be held on July 19, 2012 at 3:15 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 Dentistry and Dental Hygiene, 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.

DIVISION OF PROFESSIONAL REGULATION
1700 Board of Medical Licensure and Discipline
PUBLIC NOTICE

The Delaware Board of Medical Licensure and Discipline in accordance with 24 **Del.C.** §1713(a)(12) is proposing changes to its rules and regulations to amend outdated renewal provisions in Regulation 14 and replace them with requirements for renewal and examination for physicians seeking initial licensure who have been out of clinical practice for 3 or more years prior to the application as authorized by 24 **Del.C.** §1723(d).

The Board initially published proposed changes to Regulation 14 on March 1, 2012 at 15 DE Reg. 1293 and held a public hearing April 3, 2012 at which time it received public comment. As a result of the comment the Board is proposing to limit the application of the regulation to physicians. The original proposal made the regulation applicable to all professionals under the Medical Practice Act. The Board was persuaded that each advisory council under the Medical Practice Act should address its own practice specific re-entry to practice requirements.

The Board will hold a public hearing on the proposed amendments to Regulation 14 on July 24, 2012 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 may offer comments on the regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments 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.

DIVISION OF PROFESSIONAL REGULATION
1790 Acupuncture Advisory Council
PUBLIC NOTICE
RESCHEDULED HEARING

Consistent with a recent statutory amendments providing for the licensure of Acupuncture Detoxification Specialists (ADS), the Acupuncture Advisory Council ("Council") of the Board of Medical Licensure and Discipline ("Board") in accordance with 24 **Del.C.** §1796(c) and 29 **Del.C.** Ch. 101, has developed and is proposing to recommend to the Board the approval of regulations regarding the practice of acupuncture detoxification using the National Acupuncture Detoxification Association (NADA) or equivalent organization's auricular point protocol in the State of Delaware. The proposed regulations clarify the provisions of 24 **Del.C.** §1799F regarding initial licensure, practice settings, renewal and demonstrating continued competency at the time of renewal. The full text of the proposed regulations was published in the *Register of Regulations* on February 1, 2012 at 15 DE Reg. 1137.

The public hearing originally scheduled for April 19, 2012 at 3:15 p.m. in the second floor conference room C of the Cannon Building, 861 Silver Lake Boulevard, Dover was cancelled due to a lack of quorum to conduct the meeting. The public hearing has now been rescheduled to June 21, 2012 at 3:15 p.m. in the second floor confer-

ence room B of the Cannon Building, 861 Silver Lake Boulevard, Dover where members of the public may offer comments.

Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing. The Council may vote on whether to promulgate the proposed regulations subject to the approval of the Board immediately following the public hearing.

DIVISION OF PROFESSIONAL REGULATION
2930 Council on Real Estate Appraisers
PUBLIC NOTICE

The Delaware Council on Real Estate Appraisers, pursuant to 24 **Del.C.** §4006(a)(1), proposes to revise its rules and regulations. The proposed revision to the rules extend the period of time a licensee or certificate holder may request to have her/his license or certificate placed on inactive status from a 6 year limited period of time to an indefinite period of time.

The Board will hold a public hearing on the proposed rule change on July 17, 2012 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Nicole Williams, Administrator of the Delaware Council on Real Estate Appraisers, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.