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# Delaware Register of Regulations

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Issue Date: JUNE 1, 2017

Volume 20 - Issue 12, Pages 931 - 1001

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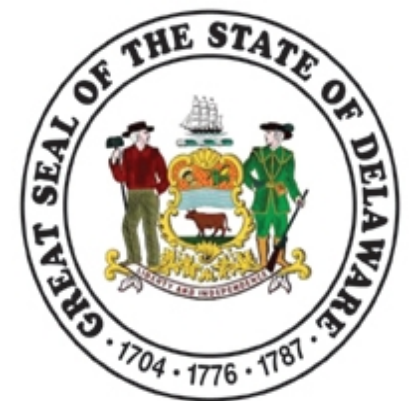


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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before May 15, 2017.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

- Governor's Executive Orders
  - Governor's Appointments
  - Agency Hearing and Meeting Notices
  - Other documents considered to be in the public interest.
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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
July 1	June 15	4:30 p.m.
August 1	July 17	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 16	4:30 p.m.

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	20 DE Reg. 885 (Prop.)
3900 Board of Clinical Social Work Examiners.....	20 DE Reg. 169 (Prop.)
	20 DE Reg. 490 (Final)
4400 Delaware Manufactured Home Installation Board.....	20 DE Reg. 710 (Prop.)
5100 Board of Cosmetology and Barbering.....	20 DE Reg. 624 (Prop.)
	20 DE Reg. 916 (Final)
5300 Board of Massage and Bodywork.....	20 DE Reg. 545 (Prop.)
	20 DE Reg. 825 (Final)
Uniform Controlled Substances Act Regulations.....	20 DE Reg. 31 (Prop.)
	20 DE Reg. 124 (Final)
	20 DE Reg. 513 (Emer.)
	20 DE Reg. 564 (Final)
	20 DE Reg. 624 (Prop.)
	20 DE Reg. 826 (Final)
<b>Office of the State Bank Commissioner</b>	
2101 Operating Regulation.....	20 DE Reg. 304 (Final)
2201 Operating Regulation.....	20 DE Reg. 308 (Final)
2701 Operating Regulation.....	20 DE Reg. 309 (Final)
2901 Operating Regulation.....	20 DE Reg. 310 (Final)
Amendments to Regulations 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, and 1114.....	20 DE Reg. 423 (Prop.)
	20 DE Reg. 654 (Final)
<b>Public Service Commission</b>	
3001 Rules for Certification and Regulation of Electric Suppliers.....	20 DE Reg. 272 (Prop.)
	20 DE Reg. 425 (Prop.)
	20 DE Reg. 827 (Final)
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005).....	20 DE Reg. 713 (Prop.)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Motor Vehicles</b>	
2217 Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents.....	20 DE Reg. 546 (Prop.)
	20 DE Reg. 830 (Final)
2224 Defensive Driving Course, Providers, and Instructors.....	20 DE Reg. 125 (Final)
2289 Transportation Network Companies.....	20 DE Reg. 66 (Final)
<b>Division of Transportation Solutions</b>	
2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	20 DE Reg. 41 (Prop.)
	20 DE Reg. 194 (Final)
	20 DE Reg. 213(Errata)

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**EXECUTIVE DEPARTMENT****Delaware Economic Development Authority**

401 Procedures Regarding Non-State Guaranteed Bonds.....	20 DE Reg. 362 (Prop.)
	20 DE Reg. 655 (Final)
476 Energy Alternatives Program Regulation.....	20 DE Reg. 364 (Prop.)
	20 DE Reg. 657 (Final)
477 Information Technology Training Grant Program Regulation.....	20 DE Reg. 364 (Prop.)
	20 DE Reg. 658 (Final)
478 Neighborhood Assistance Act Tax Credit Program Regulation.....	20 DE Reg. 364 (Prop.)
	20 DE Reg. 659 (Final)

**Office of Management and Budget****Statewide Benefits Office**

2007 Disability Insurance Program Rules and Regulations.....	20 DE Reg. 70 (Final)
	20 DE Reg. 660 (Final)

**OFFICE OF THE STATE TREASURER****Investments and Cash Management**

1201 Objectives and Guidelines for the Investment of State of Delaware Funds	20 DE Reg. 275 (Prop.)
	20 DE Reg. 491 (Final)

**Symbol Key**

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

**Proposed Regulations**

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

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

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 734

**PUBLIC NOTICE****Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****734 District School Board and Charter School Board Member Financial Responsibility Training****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 734 District School Board and Charter School Board Member Financial Responsibility Training. The Department of Education reviewed this and other regulations which were four years or older as part of the 2016 Regulation Review as required by 29 **Del.C.** §10407. This review resulted in the regulation being amended to clarify definitions and align with current practice regarding budget oversight committees in district and charter schools. It also is being amended to include language from Regulation 736 Local School District and Charter School Citizen Budget Oversight Committees. As a result, the title of the regulation is being changed to reflect its content.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not deal with student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended

regulation is intended to continue to ensure all students receive an equitable education by ensuring special schools and programs have appropriate oversight.

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

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

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

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

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

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

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

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

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

<http://regulations.delaware.gov/register/june2017/proposed/20 DE Reg 944RFA 06-01-17.pdf>

## **734 Financial Responsibility Training for District School Board, and Charter School Board and Citizen Budget Oversight Committee Member Members Financial Responsibility Training**

### **1.0 Purpose**

The purpose of this regulation is to outline the criteria and process for the required ~~financial responsibility training~~ Financial Responsibility Training for members of district school boards including vocational technical school boards and the boards of charter schools pursuant to 14 Del.C. §1803 and and for members of the Citizen Budget Oversight Committee (CBOC) pursuant to 14 Del.C. §1508. ~~The purpose of the training is~~ Financial Responsibility Training provides instruction to instruct members of school boards ~~in~~ and CBOCs as to how to properly discharging their responsibility to insure ensure that public funds, ~~including both state and local funds,~~ are appropriately managed and expended, ~~and shall include~~ as well as to provide training on state and local funding of public education.

### **2.0 Definitions**

The following words and terms, for the purposes of this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"**Certificate of Completion**" means the document provided by the Department of Education indicating the individual has attended and completed the ~~School Board~~ Financial Responsibility Training.

"**Charter School**" means 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 of Education for the personal physical attendance of all students.

"**Charter School Board**" shall mean the ~~charter school board of directors pursuant to 14 Del.C. §§503, 504~~ means the board of directors of a charter school that shall be a public body subject to the

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requirements of 29 Del.C. Ch. 100 and shall have the same standing and authority as a Reorganized School District Board of Education, except the power to tax.

**"Citizen Budget Oversight Committee (CBOC)"** means a group of parents, educators and taxpayers that oversee the financial position of a Local School District or Charter School pursuant to 14 Del.C. §1508.

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

**"District School Board"** shall mean reorganized school district boards and vocational technical school district boards duly appointed or elected pursuant to Chapter 10 of Title 14 of the Delaware Code.

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

**"School Board Member"** shall mean ~~means~~ means a District School Board or Charter School Board member whether that person is elected, appointed, or is a volunteer.

**"Trainer"** means an individual or organization approved by the ~~Secretary~~ Department of Education to provide the ~~School Board~~ Financial Responsibility Training.

### 3.0 ~~School Board~~ School Board Financial Responsibility Training Components

3.1 The ~~School Board~~ Financial Responsibility Training ~~or Training~~ means the educational programs, ~~shall be developed and coordinated~~ by the ~~Department of Education, approved by the Office of Management and Budget and Controller General's Office for District School Board and Charter School Board members~~ Department's Finance Office. This ~~Training~~ one-time training may be provided in person or online at the discretion of the Department and shall, ~~at a minimum, consist of two (2) hours~~ and cover the following topics:

- 3.1.1 Overview of education budget process and timelines;
- 3.1.2 Instruction in the basic rules of budgeting, including State of Delaware funds, local funds, and federal funds;
- 3.1.3 ~~State Financial Management System~~ Information regarding the State's financial management system; and
- 3.1.4 Reporting requirements.

### 4.0 ~~District School Board, and Charter School Board~~ District School Board, and Charter School Board Financial Responsibility Training Requirement and CBOC Member Requirements

- 4.1 Each member of a District School Board or Charter School Board shall attend and receive a Certificate of Completion for the ~~School Board~~ Financial Responsibility Training within ~~one (1) year~~ three (3) months of election, appointment, or voluntary service to a District School Board or Charter School Board. Provided further, additional training may be required from time to time as determined by the Department.
- 4.2 An individual that attends ~~Training~~ and receives a Certificate of Completion shall be considered to meet the requirement of 4.1.
- 4.2 Each member of a CBOC shall attend and receive a Certificate of Completion for the Financial Responsibility Training within three (3) months of appointment to a CBOC. Provided further, additional training may be required from time to time as determined by the Department.

### 5.0 ~~Schedule of School Board~~ Schedule of School Board Financial Responsibility Training Schedule

- 5.1 The Department shall ~~annually publish a list of date(s) for Training~~ communicate training opportunities to Local School Districts and Charter Schools as they are scheduled. The Financial Responsibility Training shall be conducted by a Trainer as defined in this regulation, and approved by the Department's Finance Office.



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## 6.0 Notification of Attendance

- 6-4 The Department shall periodically, but not less than annually, provide a list of those School Board Members and CBOC members that have not satisfied the requirement of subsections 4.1 and 4.2 to their respective District School Board or Charter School Board President, the Office of Management and Budget, and Controller General's Office.
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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 736

### PUBLIC NOTICE

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

#### 736 Local School District and Charter School Citizen Budget Oversight Committees

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 736 Local School District and Charter School Citizen Budget Oversight Committees. The Department of Education reviewed this and other regulations which were four years or older as part of the 2016 Regulation Review as required by 29 Del.C. §10407. After an internal review, the regulation is being amended to remove training information that is noted in Regulation 734 and thus not needed in this regulation, and to clarify the definition of "Charter School" to be consistent with Regulation 734.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to help ensure all students receive an equitable education by ensuring schools and programs have appropriate oversight.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state

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

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

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

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

<http://regulations.delaware.gov/register/june2017/proposed/20 DE Reg 947RFA 06-01-17.pdf>

## 736 Local School District and Charter School Citizen Budget Oversight Committees

### 1.0 Purpose

- 4.4 The purpose of this regulation is to outline procedures, criteria and responsibilities related to ~~the local school district and charter school~~ Local School District and Charter School Citizen Budget Oversight Committees (CBOC) required pursuant to 14 Del.C. §1508. ~~The Citizen Budget Oversight Committee is solely CBOCs are established to oversee the financial position of the local school district or charter school it is assigned to oversee~~ each Local School District and Charter School for which it was appointed. ~~The local school board or charter school board~~ Local School District and Charter School Board shall retain all policy and decision-making authorities granted pursuant to Delaware Code.

### 2.0 Definitions

"**Certificate of Completion**" means the document provided by the Department of Education indicating the individual has attended and completed ~~the Citizen Budget Oversight Committee training~~ Financial Responsibility Training.

"**Charter School**" ~~shall mean a school pursuant to 14 Del.C., Ch. 5~~ means 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 or other authorizing body for the personal physical attendance of all students.

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

"**Trainer**" means an individual or organization approved by the ~~Secretary~~ Department of Education to provide ~~the Citizen Budget Oversight Committee training~~ Financial Responsibility Training.

### 3.0 Committee Members for Local School Districts

- 3.1 Each Local School District and Charter School shall be required to establish a ~~Citizen Budget Oversight Committee (Committee)~~ CBOC no later than ~~June 1, 2010~~ CBOC. The ~~Committee~~ CBOC shall have access either electronically or in hard copy format to financial documents and financial information the Local School District has in its possession and that are relevant to the financial position of the district, with redactions permitted only to protect confidential personal information regarding students or employees as permitted by the state's Freedom of Information Act.
- 3.2 The ~~Committee~~ Local School District's CBOC shall have at least five (5) members, ~~with representation from Representation shall consist of~~ parents, educators and taxpayers residing in the district. In addition, where possible, the ~~Committee~~ CBOC shall have at least two members with formal educational or vocational backgrounds amenable to oversight of school district financial statements. Further provided, ~~Committee~~ CBOC members shall not be compensated, except for allowable mileage for training or similar activities, for participation on such ~~Committee~~ CBOC.
- 3.3 The Charter School's CBOC shall have at least five (5) members. Representation shall consist of educators and parents of students in the school, with no more than two being Charter School Board members and one being a representative of the Department. In addition, where possible, the CBOC shall have at least two members with formal educational or vocational backgrounds amenable to

oversight of school district financial statements. Further provided, CBOC members shall not be compensated, except for allowable mileage for training or similar activities, for participation on such CBOC.

~~3-33.4~~ Each Local School ~~district~~ District and Charter School shall establish its own policy for its ~~Citizen Oversight Budget Committee~~ CBOC, and shall submit the policy to the Department for review. The Local School District, if it chooses to establish its own policy, shall submit the policy to the Department within ninety (90) calendar days of the effective day of this regulation. The Associate Secretary for Finance and Services Department's Finance Office shall review the proposed policy and make a decision within fifteen (15) work days to approve or request revisions. The decision to approve or request revisions shall be based on whether the policy meets the provisions in ~~3-4~~ subsection 3.5.

~~3-3.1~~ If the Department does not approve the submitted policy, the Department shall provide comment for areas requiring revisions within fifteen (15) work days of receipt of the proposed policy. The Local School District may submit a revised policy. If the revised policy is not subsequently approved, the Local School District shall follow the Department's Citizen Budget Oversight Committee policy for Local School Districts pursuant to ~~3-4~~. In addition, a Local School District may not resubmit a policy for approval more than one time during a fiscal year.

~~3-43.5~~ The Department's Citizen Budget Oversight Committee CBOC membership provisions shall be as follows:

~~3-4-13.5.1~~ Use the appropriate District or Charter School application form as developed and approved by the Department that delineates standard application language and additional information that includes, but is not limited to, the following:

~~3-4.1.4~~ 3.5.1.1 Membership pursuant to subsections 3.2 and 3.3;

~~3-4.1.2~~ 3.5.1.2 Conflict of interest, and disqualification from membership upon identification thereof, criteria;

~~3-4.1.3~~ 3.5.1.3 Selection, or removal, of the Chairperson to be determined by a majority of the membership of the committee CBOC;

~~3-4.1.4~~ 3.5.1.4 Term length of two (2) years with option to extend to no more than three (3) additional terms based on the majority vote of the existing members of the Committee CBOC; however, a member may terminate his or her position upon written notice to the Chairperson; and

~~3-4.1.5~~ 3.5.1.5 Experience and statement for reason for participation on the Committee CBOC.

~~3-4.2~~ 3.5.2 Post the request for Committee CBOC members for at least fifteen (15) work days on its website and all school building main entrance doors;

~~3-4.3~~ 3.5.3 Identify and post on its website the Selection Committee selection committee that consists of one educator from the district Local School District or Charter School, one local school board Local School Board or Charter School Board member, one member of the local teacher's union, and at least two parents or community members who are not district Local School District or Charter School employees or local school board members; and

~~3-4.4~~ 3.5.4 Use the selection rubric developed and approved by the Department of Education.

~~3-5~~ Notwithstanding the above, a Local School District with an established citizen budget oversight committee or similar type of citizen committee established for financial oversight may submit a request to the Associate Secretary of Finance and Services for this established committee to be considered the Citizen Budget Oversight Committee pursuant to this regulation as long as the membership meets ~~3-2~~ of this regulation. The request shall be made in writing and the Associate Secretary of Finance and Services shall respond within fifteen (15) work days whether to approve such established committee to meet the requirements of this regulation. Upon the effective date of this regulation, any new members or membership solicitation shall be subject to the provisions herein.

## **4-0 Committee Members for Charter Schools**

~~4-1~~ Each Charter School shall be required to establish its Citizen Budget Oversight Committee (Committee) no later than June 1, 2010. The Committee shall have access either electronically or in

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~~hard copy format to financial documents and financial information the Charter School has in its possession and that are relevant to the financial position of the district, with redactions permitted only to protect confidential personal information regarding students or employees.~~

- ~~4.2 The Committee shall have at least five (5) members with representation from educators and parents of students in the school and representation from the Department of Education. In addition, where possible, the Committee shall have at least two members with formal educational or vocational backgrounds amenable to oversight of school district financial statements. Further provided, Committee members shall not be compensated, except for allowable mileage for training or similar activities, for participation on such Committee.~~
- ~~4.3 Each Charter School may establish its own policy for its Citizen Oversight Budget Committee. The Charter School, if it chooses to establish its own policy, shall submit the policy to the Department within ninety (90) calendar days of the effective day of this regulation. The Associate Secretary for Finance and Services shall review the proposed policy and make a decision within fifteen (15) work days to approve or request revisions. The decision to approve or request revisions shall be based on whether the policy meets the provisions in 4.4.~~
- ~~4.3.1 If the Department does not approve the submitted policy, the Department shall provide comment on areas requiring revisions within fifteen (15) work days of receipt of the proposed policy. The Charter School may submit a revised policy. If the revised policy is not subsequently approved, the Charter School shall follow the Department's Citizen Budget Oversight Committee policy for Charter Schools pursuant to 4.4. In addition, a Charter School may not resubmit a policy for approval more than one time during a fiscal year.~~
- ~~4.4 The Department's Citizen Budget Oversight Committee membership provisions shall be as follows:~~
- ~~4.4.1 Use the application form as developed and approved by the Department that delineates standard application language and additional information that includes, but is not limited to, the following:~~
- ~~4.4.1.1 Membership pursuant to 4.2;~~
- ~~4.4.1.2 Conflict of interest, and disqualification from membership upon identification thereof, criteria;~~
- ~~4.4.1.3 Selection, or removal, of the Chairperson to be determined by a majority of the membership of the committee;~~
- ~~4.4.1.4 Term length of two (2) years with option to extend to no more than three (3) additional terms based on the majority vote of the existing members of the Committee; however, a member may terminate his or her position upon written notice to the Chairperson; and~~
- ~~4.4.1.5 Experience and statement for reason for participation on the Committee.~~
- ~~4.4.2 Post the request for Committee members for at least fifteen (15) work days on its website and all school building main entrance doors;~~
- ~~4.4.3 Identify and post on its website a Selection Committee that consists of one educator from the school, one Charter School board member, one teacher, and at least two parents or community members who are not Charter School employees or Charter School Board members; and~~
- ~~4.4.4 Use the selection rubric developed and approved by the Department of Education.~~
- ~~4.5 Notwithstanding the above, a Charter School with an established citizen budget oversight committee or similar type of citizen committee established for financial oversight may submit a request to the Associate Secretary of Finance and Services for this established committee to be considered the Citizen Budget Oversight Committee pursuant to this regulation as long as the membership meets 4.2 of this regulation. The request shall be made in writing and the Associate Secretary of Finance and Services shall respond within fifteen (15) work days whether to approve such established committee to meet the requirements of this regulation. Upon the effective date, any new members or membership shall be subject to the provisions herein.~~

## **5.0 Citizen Budget Oversight Committee Training**

- ~~5.1 The Citizen Budget Oversight Committee Training (Training) means the educational programs developed by the Department of Education for the local school district and charter school Citizen~~

~~Budget Oversight Committee members. This Training shall, at a minimum, consist of two (2) hours and cover the following topics:~~

- ~~5.1.1 Overview of education budget process and timeliness~~
- ~~5.1.2 Instruction in the basic rules of budgeting, including State of Delaware funds, local funds, and federal funds;~~
- ~~5.1.3 State Financial Management System; and~~
- ~~5.1.4 Reporting requirements.~~

## **6-04.0 District School Board and Charter School Board Financial Responsibility Training Requirement**

- ~~6.1 Each member of a Citizen Budget Oversight Committee shall attend and receive a Certificate of Completion for the Citizen Budget Oversight Committee training within three ((3)) months of subsequent appointment to a Citizen Budget Oversight Committee. Provided further, additional training may be required from time to time as determined by the Department. District School Board, Charter School Board and Citizen Budget Oversight Committee Financial Responsibility Training, including frequency and required trainings, is outlined in 14 DE Admin. Code 734.~~

## **7-0 Schedule of School Board Financial Training**

- ~~7.1 The Department shall annually publish a list of date(s) for Training. The Training shall be conducted by a Trainer as defined in this regulation.~~

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, §7405 (16 Del.C. § 7405)  
16 DE Admin. Code 4465

#### **PUBLIC NOTICE**

#### **4465 Delaware Radiation Control Regulations**

On June 1, 2017, the Department of Health and Social Services, Division of Public Health, Office of Radiation Control, plans to publish revised Regulations Governing Radiation Control - Part F and Part H and hold them out for public comment per Delaware law.

#### **NOTICE OF PUBLIC HEARING**

A public hearing will be held on Friday, June 23, 2017, at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

The Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing to repeal and replace two chapters of Delaware Radiation Control Regulations. The purpose of the amendments is to update the requirements so that they are in concert with current healthcare and industry standards, and to align them more closely with current state administrative code and federal requirements. The regulations will apply to any facility or person that receives, possesses, uses, transfers, sells, owns or acquires ionizing radiation sources, or provides radiation services to such radiation source facilities, or who administers machine-generated radiation to human patients in the healing arts.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Friday, July 14, 2017 to:

Jamie Mack, Executive Assistant  
Office of the Director  
Delaware Division of Public Health

Jesse Cooper Building  
417 Federal St.  
Dover, DE 19901  
Email: [jamie.mack@state.de.us](mailto:jamie.mack@state.de.us)  
Fax: 302-739-3984

**\*Please Note:**

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

[http://regulations.delaware.gov/register/june2017/proposed/20 DE Reg 951RFA 06-01-17.pdf](http://regulations.delaware.gov/register/june2017/proposed/20%20DE%20Reg%20951RFA%2006-01-17.pdf)

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

[4465 Delaware Radiation Control Regulations](#)

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL**

**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901(c) and (d) and 903(e)(2)a (7 Del.C.  
§§901(c) and (d) and 903(e)(2)a)  
7 DE Admin. Code 3511

**REGISTER NOTICE  
SAN #2017-05**

**3511 Summer Flounder Size Limits; Possession Limits; Season**

**1. TITLE OF THE REGULATIONS:**

Amend 7 DE Admin. Code 3511 Summer Flounder Size Limits; Possession Limits; Seasons

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

The Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Management Board approved Addendum XXVIII to the Summer Flounder, Scup, [and] Black Sea Bass Fishery Management Plan (FMP) on February 2, 2017, maintaining regional management for the 2017 recreational Summer Flounder fishery. Addendum XXVIII required that each region increase their Summer Flounder minimum size limit by one inch and adopt a no more than four fish possession limit to stay within the 2017 recreational harvest limit (RHL). The Department consulted with the other states within our ASMFC-defined region (Maryland and Virginia) and committed to adopting the regional measures by April 1, 2017. The Department increased its minimum recreational size limit from 16 inches to 17 inches through emergency action (Secretary's Order No. 2017-F-0012) to meet the agreed timeline, remain compliant with the FMP, prevent overfishing of the Summer Flounder resource and provide sufficient time for Delaware's fishing-dependent businesses and their clients/customers to plan for this important fishery. The present action is necessary to adopt the required minimum Summer Flounder recreational size limit through the normal regulatory process. Failure to adopt these measures may result in a federal closure of the fishery in accordance with the Atlantic Coastal Fisheries Cooperative Management Act. No change to Delaware's existing four fish possession limit or 365 day season is required.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del.C. §901(c & d) and §903(e)(2)a

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

None

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to 7 **DE Admin. Code** 3511 Summer Flounder Size Limits; Possession Limits; Seasons will open June 1, 2017. 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 29, 2017 beginning at 6:00 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

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

<http://regulations.delaware.gov/register/june2017/proposed/20 DE Reg 952RFA 06-01-17.pdf>

**3511 Summer Flounder Size Limits; Possession Limits; Season**  
*(Break in Continuity of Sections)*

2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~sixteen (16)~~ seventeen (17) inches between the tip of the snout and the furthest tip of the tail.

3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than ~~sixteen (16)~~ seventeen (17) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

*(Break in Continuity of Sections)*

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

**3511 Summer Flounder Size Limits; Possession Limits; Season**

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE**

Statutory Authority: 24 Delaware Code, Sections 1713(a)(12) and 1769D (24 **Del.C.**  
§§1713(a)(12) & 1769D)  
24 **DE Admin. Code** 1700

**PUBLIC NOTICE****1700 Board of Medical Licensure and Discipline**

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 **Del.C.** §§1713(a)(12) & 1769D, proposes to revise its regulations adding a new regulation clarifying the language in the Medical Practice Act pertaining to telemedicine and telehealth. Written comments should be sent to Devashree Brittingham, Executive



Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 3, 2017 pursuant to 29 **Del.C.** §10118(a).

### **Summary of the evidence and information submitted**

The Delaware Board of Medical Licensure and Discipline pursuant to 24 **Del.C.** §§1713(a)(12) & 1769D, proposed to revise its regulations adding a new regulation clarifying the language in the Medical Practice Act pertaining to telemedicine and telehealth.

Following publication in the Delaware *Register of Regulations* on November 1, 2016 a public hearing was held on January 3, 2017. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibit 1 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. During the written public comment period, comments were received from both local and national interest groups.

A comment was received from Ted Thompson, J.D., Senior Vice President of Public Policy at the Michael J. Fox Foundation for Parkinson's Research. Mr. Thompson requests the removal of language in 19.1 and 19.2 of Regulation 356 that prohibits audio- only telemedicine visits for both examination and establishment of the patient-physician relationship. His concern is that this represents a barrier to accessing healthcare via telemedicine for Parkinson's patients. The Foundation believes physicians should be able to use their training and professional judgment to make the determination about whether or not an audio-visual connection lends itself well to treatment of their Parkinson's that Nemours strongly supports 19.1 and 19.2. citing information from major medical specialty societies whose clinical practical guidelines on telemedicine indicate that both audio and visual contact are necessary to ensure quality treatment, Nemours believes that an audio-only interaction runs the risk of not providing all the necessary information to meet clinical standards of care. Nemours has conducted research studies comparing the use of real-time audio and video to audio only. One particular study led by critical care intensivist, Dr. Nicholas Slamon, reviewed more than 250 charts of transported children who had a real-time audio and video consult and found that the ED disposition fell to 26% ( $p < 0.001$ ). When providers were able to see and hear their patients rather than relying on the description of their condition over the phone, the level of care was significantly raised. Treatment recommendations could begin hours before the transport team arrived, direct admission to the intensive care unit happened more efficiently, and in some cases children seen by real-time audio and video were able to stay in their local community and avoid unnecessary transport altogether. Nemours also supports a ban on opioid prescribing via telehealth technology, with the exception of buprenorphine and naloxone prescribed for the purposes of treating drug addiction. Nemours feels both the prohibition against prescribing opioid generally and an exception for addiction treatment purposes are strategies to combat the current Delaware addiction crisis.

A comment was received from Carolyn Morris, Director of Telehealth Planning and Development for the State of Delaware. Ms. Morris indicates that a critical need exists to address the opiate epidemic impacting Delaware's population. According to a 2016 DEA report Delaware's heroin related deaths rose more than 90 percent from 2013- 2014, with a 93.5 percent increase in New Castle County and an 87.5 percent increase in need across a wide area. The program allows the prescribing physician to utilize life, interactive videoconferencing to provide medication management as part of the comprehensive model of care. Since 2011, WVU has expanded this program into rural areas of the state using telemedicine to help consumers with experts at WVU online and receive comprehensive treatment. The outpatient treatment model includes screening, assessment, group therapy and medication management. Most of the program takes place in person. The medication management for some of the clinics takes place 30 minutes per week via telemedicine in a group setting. According to telehealth coordinator Jordan Cunningham one critical element of the program is having a good relationship with local pharmacies so that processing prescriptions is smooth. Another critical element is a strong dedicated staff at the remote clinics.

Use Case 2: California-based company Bright Heart Health has established a comprehensive and integrated telemedicine modality identified as the first Telemedicine Rapid Access Opioid Use Disorder Program. The model is designed to administer counseling, manage the patient's medication and oversee therapy. Though all medical encounters and treatment sessions are provided through telemedicine, the patient must have an initial in-person assessment by a physician to establish the patient/provider relationship.

During admission and induction the physician evaluates the patient and develops a treatment plan. The



patient is then walked through an in home induction process. Following this all follow-up physician encounters occur virtually via telemedicine including prescription refills, medication management and drug-screening. Quality controls include regular checks of the Prescription Drug Monitoring Program (PDMP) records] does not meet the standard of establishing a patient physician relationship...

Teledoc also requested that 19.4 be revised to read as follows:

...real time communication [unless after review of the patient's medical records] the treating physician determines that audio communication supported by store and forward transfer technology would support a diagnosis consistent with the standard of care.

### **Summary of the finding of fact**

Pursuant to discussions held at open public Board meetings, the Board proposed to adopt telemedicine and telehealth regulations to clarify Section 1769D of Title 24 after the Board became aware that, despite the clear language of the statute, certain interest groups were opining that the requirement that a physician using telemedicine technologies to provide medical care to patients located in Delaware must first provide one of four options, including "an appropriate examination in-person," as that term is used in 24 **Del.C.** §1769D(h)(1) did not actually require an in-person examination as an option. The Board finds compelling the comments of Nemours, indicating that better health care performance flows from audio and visual examination. The Board is also mindful of the large amount of comments it received regarding the ban on opioid prescribing, and the limitations this will place on substance abuse treatment. Therefore, the Board is republishing the regulations, now with the added exception for treatment of substance abuse as suggested by the Delaware Department of Substance Abuse and Mental Health. As suggested by the Medical Society of Delaware, the Board is open to revisiting the regulations periodically as telemedicine become more pervasive in medical practice.

### **Decision of the Board**

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be republished with the addition of an exception for prescribing opioids for the treatment of substance abuse. The exact text of the regulations, as amended, are attached to this order as Exhibit A.

IT IS SO ORDERED this 4<sup>th</sup> day of April, 2017 by the Delaware Board of Medical Licensure and Discipline.

Karyl Rattay, M.D., President	Leslie C. Ramsey, Public Member (absent)
Joseph M. Parise, D.O. (absent)	Stephen G. Cooper, M.D.
Gregory D. Adams, M.D.	Garrett H. Colmorgen, M.D.
Sharon Williams-Mayo, Public Member	Georges A. Dahr, M.D.
Malvine Richard, Public Member	Barry L. Baskt, D.O.
Stephen Lawless, M.D. (absent)	Mary K. Ryan, Public Member
Bryan Villar, M.D.	N.C. Vasuki, Public Member
Mary Lomax, Public Member	Vonda Calhoun, Public Member (absent)

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

<http://regulations.delaware.gov/register/june2017/proposed/20 DE Reg 953RFA 06-01-17.pdf>

**1700 Board of Medical Licensure and Discipline**  
*(Break in Continuity of Sections)*

#### **10.0 Board Reporting of Disciplinary Action**

- 10.1 Upon the Board taking any disciplinary action against a physician written notification of the disciplinary action taken by the Board shall be forwarded to the following agencies or individuals:

# PROPOSED REGULATIONS

- 10.1.1 Federation of State Medical Boards.
- 10.1.2 Medical Boards in other states in which the physician is licensed to practice medicine.
- 10.1.43 The Medical Society of Delaware.
- 10.1.54 Delaware Osteopathic Medical Society.
- 10.1.65 Director of the Division of Revenue.
- 10.1.76 Director of the Division of Public Health.
- 10.1.87 National Practitioner Data Bank.
- 10.1.98 All Hospitals and Managed Care Entities in Delaware.

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

## **19.0 Telemedicine**

- 19.1 A remote, audio-only examination is not an "appropriate in-person examination" as that term is used in 24 Del.C. §1769D(h)(1).
- 19.2 A remote, audio-only interaction does not meet the standards of establishing a patient-physician relationship pursuant to 24 Del.C. §1769D(h)(4).
- 19.3 No opioid prescribing is permitted via telemedicine with the exception of addiction treatment programs offering medication assisted treatment that have received a Division of Substance Abuse and Mental Health (DSAMH) waiver to use telemedicine through DSAMH's licensure or renewal process as outlined in 16 DE Admin. Code 6001 Substance Abuse Facility Licensing Standards Sec. 4.15. All other controlled substance prescribing utilizing telemedicine is held to the same standards of care and requisite practice as prescribing for in-person visits.
- 19.4 For diagnosis using audio and visual communications, the audio and visual communications must be live, real-time communications.

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

**1700 Board of Medical Licensure and Discipline**

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**DIVISION OF PROFESSIONAL REGULATION  
2100 BOARD OF EXAMINERS IN OPTOMETRY**

Statutory Authority: 24 Delaware Code, Section 2104(a)(1) (24 Del.C. §2104(a)(1))  
24 DE Admin. Code 2100

**PUBLIC NOTICE**

**2100 Board of Examiners in Optometry**

The Delaware Board of Examiners in Optometry, pursuant to 24 Del.C. §2104(a)(1), proposes to revise its regulations. The proposed regulations seek to amend regulations 3, 4, and 5 in order to comply with a 2016 statutory change, and amend regulation 8 in order to reduce the list of crimes substantially related to the practice of optometry.

The Board originally scheduled a hearing on the proposed rule changes for April 27, 2017 at 4:30 p.m., but was unable to hold the hearing as the meeting was cancelled. The Board will now hold a public hearing on July 27, 2017 at 4:30 p.m. in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Lisa Smith, Administrator of the Delaware Board of Examiners in Optometry, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until August 11, 2017.

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

<http://regulations.delaware.gov/register/june2017/proposed/20 DE Reg 956RFA 06-01-17.pdf>

## 2100 Board of Examiners in Optometry (Break in Continuity of Sections)

### 3.0 Reciprocity

- 3.1 Applicants from jurisdictions that have the same basic qualifications for licensure as this State, but do not have essentially comparable or higher standards to qualify for 'therapeutic' licensing, shall be required to meet the conditions of ~~24 Del.C. §2108(a) and (b)~~ subsections 5.1 through 5.5.
- 3.2 The applicant shall include, as part of the application, copies of state licensing and/or practice statutes and regulations pertaining to the practice of Optometry for each jurisdiction through which he/she is seeking reciprocity or claiming qualifying practice experience.
- 3.3 "Standards of licensure," as used in 24 Del.C. §2109, shall refer to the qualifications of applicants set forth at §2107 and scope of practice set forth at §2101.
- 3.4 The "standards to qualify for 'therapeutic' licensing," as used in 24 Del.C. §2109 with regard to therapeutic reciprocity, shall refer to the standards of diagnostic and therapeutic practice as set forth in 24 Del.C. §2101(b).
- 3.5 An applicant shall not be licensed by reciprocity as a Delaware ~~therapeutically-certified~~ optometrist unless:
  - 3.5.1 ~~He/she demonstrates that the state in which he/she is therapeutically certified~~ The applicant's license allows for the use and prescription of diagnostic and therapeutic drugs, which is are at least equivalent to that permitted under a Delaware therapeutic optometrist license as set forth in §2101(b), OR.
  - 3.5.2 ~~He/she has met the requirements of §2108(a) and (b) and Rule 5.0.~~

### 4.0 Continuing Education Requirements

#### (Break in Continuity Within Section)

- 4.3 Failure to Comply with Continuing Education Requirements. Licensees who fail to comply with the required continuing education requirements by the end of the biennial licensing period may be referred for possible disciplinary action pursuant to ~~Section 2413~~ 24 Del.C. §2113.
- 4.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Section 4.0.
  - 4.4.1 ~~Attestation may shall~~ be completed electronically if the renewal is accomplished online. ~~In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~
  - 4.4.2 ~~Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to subsection 4.5.~~

#### (Break in Continuity Within Section)

### 5.0 Therapeutic Certification

- 5.1 Individuals seeking to upgrade to therapeutic certification must meet all of the following:
  - 5.1.1 Passage of the examination identified in ~~24 Del.C. §2108(b)~~ 24 Del.C. §2107(a)(2) is the national examination administered by the National Board of Examiners in Optometry (NBEO) for treatment and management of ocular disease. A copy of the certificate representing passage of the examination must be submitted with the application for therapeutic licensure.
  - 5.1.2 ~~All applicants for therapeutic licensure must be CPR-certified~~ CPR certification for both children and adults. All optometrists must keep their CPR certification for both children and adults current.
  - 5.1.3 ~~For applicants currently licensed in Delaware and applicants for reciprocal licensure pursuant to the requirements of §2108,~~ 40 Forty hours of treatment and management of ocular disease

training ~~may be accumulated~~ with a therapeutically certified optometrist, a medical doctor, or an osteopathic doctor. Proof of 40 hours of treatment and management of ocular disease training must be submitted in writing by the supervising doctor. If an applicant's supervisor is a therapeutically certified optometrist practicing in a state other than Delaware, proof of similar therapeutic practice standards in the other state must be submitted.

~~5.4~~ 5.1.3.1 Applicants must have completed their forty (40) hours of clinical experience within twenty-four (24) months of their initial application for therapeutic licensure. No clinical experience older than 24 months (prior to application) will be accepted for therapeutic certification.

5.52 All newly licensed optometrists shall be required to be therapeutically certified. Their six month internship should be done with a therapeutically certified optometrist, M.D. or D.O. However, if a therapeutically certified optometrist, M.D. or D.O. is not available, the intern may do an internship with a non-therapeutically certified optometrist, provided the intern complete an additional 100 hours of clinical experience in the treatment and management of ocular disease supervised by a therapeutically certified optometrist, M.D. or D.O. during their internship.

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

**8.0 Crimes substantially related to the practice of optometry:**

8.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of optometry in the State of Delaware without regard to the place of conviction:

8.1.1 Aggravated menacing. 11 **Del.C.** §602 (b).

~~8.1.2 Reckless endangering in the first degree. 11 **Del.C.** §604.~~

8.1.32 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605.

8.1.43 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.

8.1.54 Assault in the third degree. 11 **Del.C.** §611.

8.1.65 Assault in the second degree. 11 **Del.C.** §612.

8.1.76 Assault in the first degree. 11 **Del.C.** §613.

8.1.87 Abuse of a sports official; felony. 11 **Del.C.** §614.

8.1.98 Assault by abuse or neglect. 11 **Del.C.** §615.

8.1.409 Terroristic threatening; felony. 11 **Del.C.** §621.

8.1.4410 Unlawfully administering drugs. 11 **Del.C.** §625.

8.1.4211 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626.

8.1.4312 Vehicular assault in the first degree. 11 **Del.C.** §629.

8.1.4413 Vehicular homicide in the second degree. 11 **Del.C.** §630.

8.1.4514 Vehicular homicide in the first degree. 11 **Del.C.** §630A.

8.1.4615 Criminally negligent homicide. 11 **Del.C.** §631.

8.1.4716 Manslaughter. 11 **Del.C.** §632.

8.1.4817 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.

8.1.4918 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.

8.1.2019 Murder in the second degree; class A felony. 11 **Del.C.** §635.

8.1.2420 Murder in the first degree. 11 **Del.C.** §636.

~~8.1.22 Promoting suicide. 11 **Del.C.** §645.~~

~~8.1.23 Abortion. 11 **Del.C.** §651.~~

8.1.2421 Incest. 11 **Del.C.** §766.

8.1.2522 Unlawful sexual contact in the second degree. 11 **Del.C.** §768.

8.1.2623 Unlawful sexual contact in the first degree. 11 **Del.C.** §769.

8.1.2624 Rape in the fourth degree. 11 **Del.C.** §770.

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- 8.1.~~27~~25Rape in the third degree. 11 **Del.C.** §771.
- 8.1.~~28~~26Rape in the second degree. 11 **Del.C.** §772.
- 8.1.~~29~~27Rape in the first degree. 11 **Del.C.** §773.
- 8.1.~~30~~28Sexual extortion. 11 **Del.C.** ~~§776~~774.
- 8.1.31 Bestiality. 11 **Del.C.** §777.
- 8.1.~~32~~29Continuous sexual abuse of a child. 11 **Del.C.** ~~§778~~776.
- 8.1.~~33~~30Dangerous crime against a child. 11 **Del.C.** §779.
- 8.1.~~34~~31Female genital mutilation. 11 **Del.C.** §780.
- 8.1.~~35~~32Unlawful imprisonment in the first degree. 11 **Del.C.** §782.
- 8.1.~~36~~33Kidnapping in the second degree. 11 **Del.C.** §783.
- 8.1.~~37~~34Kidnapping in the first degree. 11 **Del.C.** §783A.
- 8.1.~~38~~35Arson in the third degree. 11 **Del.C.** §801.
- 8.1.~~39~~36Arson in the second degree. 11 **Del.C.** §802.
- 8.1.~~40~~37Arson in the first degree. 11 **Del.C.** §803.
- 8.1.41 ~~Criminal mischief.~~ 11 **Del.C.** ~~§811.~~
- 8.1.~~42~~38Burglary in the third degree. 11 **Del.C.** §824.
- 8.1.~~43~~39Burglary in the second degree. 11 **Del.C.** §825.
- 8.1.~~44~~40Burglary in the first degree. 11 **Del.C.** §826.
- 8.1.~~45~~41Possession of burglar's tools or instruments facilitating theft. 11 **Del.C.** §828.
- 8.1.~~46~~42Robbery in the second degree. 11 **Del.C.** §831.
- 8.1.~~47~~43Robbery in the first degree. 11 **Del.C.** §832.
- 8.1.~~48~~44Carjacking in the second degree. 11 **Del.C.** §835.
- 8.1.~~49~~45Carjacking in the first degree. 11 **Del.C.** §836.
- 8.1.~~50~~46Shoplifting; felony. 11 **Del.C.** §840.
- 8.1.51 ~~Use of illegitimate retail sales receipt or Universal Product Code Label; felony.~~ 11 **Del.C.** ~~§840A.~~
- 8.1.~~52~~47Extortion. 11 **Del.C.** §846.
- 8.1.53 ~~Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices; felony.~~ 11 **Del.C.** ~~§850.~~
- 8.1.~~54~~48Receiving stolen property; felony. 11 **Del.C.** §851.
- 8.1.~~55~~49Identity theft. 11 **Del.C.** §854.
- 8.1.56 ~~Possession of shoplifters tools or instruments facilitating theft.~~ 11 **Del.C.** ~~§860.~~
- 8.1.~~57~~50Forgery; felony; ~~misdemeanor.~~ 11 **Del.C.** §861.
- 8.1.~~58~~51Possession of forgery devices. 11 **Del.C.** §862.
- 8.1.~~59~~52Falsifying business records. 11 **Del.C.** §871.
- 8.1.~~60~~53Tampering with public records in the second degree. 11 **Del.C.** §873.
- 8.1.~~61~~54Tampering with public records in the first degree. 11 **Del.C.** §876.
- 8.1.~~62~~55Offering a false instrument for filing. 11 **Del.C.** §877.
- 8.1.~~63~~56Issuing a false certificate. 11 **Del.C.** §878.
- 8.1.~~64~~57Issuing a bad check; felony. 11 **Del.C.** §900.
- 8.1.~~65~~58Unlawful use of credit card; felony. 11 **Del.C.** §903.
- 8.1.~~66~~59Reencoder and scanning devices. 11 **Del.C.** §903A.
- 8.1.~~67~~60Deceptive business practices. 11 **Del.C.** §906.
- 8.1.~~68~~61Criminal impersonation. 11 **Del.C.** §907.
- 8.1.~~69~~62Criminal impersonation, accident related. 11 **Del.C.** §907A.
- 8.1.~~70~~63Criminal impersonation of a police officer. 11 **Del.C.** §907B.
- 8.1.71 ~~Securing execution of documents by deception.~~ 11 **Del.C.** ~~§909.~~

- ~~8.1.72~~ Fraudulent conveyance of public lands. 11 ~~Del.C.~~ §911.
- ~~8.1.73~~ Fraudulent receipt of public lands. 11 ~~Del.C.~~ §912.
- 8.1.74~~64~~ Insurance fraud. 11 **Del.C.** §913.
- 8.1.75~~65~~ Health care fraud. 11 **Del.C.** §913A.
- ~~8.1.76~~ Use of consumer identification information. 11 ~~Del.C.~~ §914.
- 8.1.77 Home improvement fraud. 11 ~~Del.C.~~ §916.
- ~~8.1.78~~ New home construction fraud. 11 ~~Del.C.~~ §917.
- ~~8.1.79~~ Unauthorized access. 11 ~~Del.C.~~ §932.
- 8.1.80 Theft of computer services. 11 ~~Del.C.~~ §933.
- ~~8.1.81~~ Interruption of computer services. 11 ~~Del.C.~~ §934.
- ~~8.1.82~~ Misuse of computer system information. 11 ~~Del.C.~~ §935.
- 8.1.83 Destruction of computer equipment. 11 ~~Del.C.~~ §936.
- 8.1.84~~66~~ Dealing in children. 11 **Del.C.** §1100A.
- 8.1.85~~67~~ Abandonment of child. 11 **Del.C.** §1101.
- 8.1.86~~68~~ Endangering the welfare of a child. 11 **Del.C.** §1102.
- 8.1.87~~69~~ Endangering the welfare of an incompetent person Crime against a vulnerable adult. 11 **Del.C.** §1105.
- 8.1.88~~70~~ Sexual exploitation of a child. 11 **Del.C.** §1108.
- 8.1.89~~71~~ Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 8.1.90~~72~~ Possession of child pornography. 11 **Del.C.** §1111.
- 8.1.94~~73~~ Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
- 8.1.92~~74~~ Sexual solicitation of a child. 11 **Del.C.** §1112A.
- 8.1.93~~75~~ Bribery. 11 **Del.C.** §1201.
- 8.1.94~~76~~ Receiving a bribe; class E felony. 11 **Del.C.** §1203.
- 8.1.95~~77~~ Improper influence. 11 **Del.C.** §1207.
- 8.1.96~~78~~ Official misconduct. 11 **Del.C.** §1211.
- 8.1.97~~79~~ Perjury in the second degree. 11 **Del.C.** §1222.
- 8.1.98~~80~~ Perjury in the first degree. 11 **Del.C.** §1223.
- 8.1.99~~81~~ Making a false written statement. 11 **Del.C.** §1233.
- 8.1.400~~82~~ Wearing a disguise during the commission of a felony. 11 **Del.C.** §1239.
- 8.1.404~~83~~ Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240.
- 8.1.402~~84~~ Hindering prosecution. 11 **Del.C.** §1244.
- 8.1.403~~85~~ Abetting the violation of driver's license restrictions. 11 **Del.C.** §1249.
- ~~8.1.104~~ Abetting the violation of driver's license restrictions. 11 ~~Del.C.~~ §1249.
- 8.1.405~~86~~ Offenses against law-enforcement animals. Felony. 11 **Del.C.** §1250.
- 8.1.406~~87~~ Escape in the second degree. 11 **Del.C.** §1252.
- 8.1.407~~88~~ Escape after conviction. 11 **Del.C.** §1253.
- 8.1.408~~89~~ Assault in a detention facility. 11 **Del.C.** §1254.
- 8.1.409~~90~~ Promoting prison contraband; felony; misdemeanor. 11 **Del.C.** §1256.
- ~~8.1.110~~ Use of an animal to avoid capture; felony. 11 ~~Del.C.~~ §1257A.
- ~~8.1.111~~ Misuse of prisoner mail; felony. 11 ~~Del.C.~~ §1260.
- 8.1.442~~91~~ Bribing a witness. 11 **Del.C.** §1261.
- 8.1.443~~92~~ Bribe receiving by a witness. 11 **Del.C.** §1262.
- 8.1.444~~93~~ Tampering with a witness. 11 **Del.C.** §1263.
- 8.1.445~~94~~ Interfering with child witness. 11 **Del.C.** §1263A.
- 8.1.446~~95~~ Bribing a juror. 11 **Del.C.** §1264.

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- 8.1.41796Bribe receiving by a juror. 11 **Del.C.** §1265.
- 8.1.41897Tampering with a juror. 11 **Del.C.** §1266.
- 8.1.41998Misconduct by a juror. 11 **Del.C.** §1267.
- 8.1.42099Tampering with physical evidence. 11 **Del.C.** §1269.
- 8.1.421100Riot. 11 **Del.C.** §1302.
- 8.1.422101Hate crimes; misdemeanor; felony. 11 **Del.C.** §1304.
- 8.1.423102~~Aggravated harassment~~ Stalking. 11 **Del.C.** §1312.
- 8.1.424103Stalking. 11 **Del.C.** §1312A.
- 8.1.425104Cruelty to animals; felony. 11 **Del.C.** §1325.
- 8.1.426105Animals; fighting and baiting prohibited; felony. 11 **Del.C.** §1326.
- 8.1.427106Maintaining a dangerous animal; felony. 11 **Del.C.** §1327.
- 8.1.128~~Abusing a corpse.~~ 11 ~~**Del.C.** §1332.~~
- 8.1.129~~Trading in human remains and associated funerary objects.~~ 11 ~~**Del.C.** §1333.~~
- 8.1.430107Violation of privacy; misdemeanor; felony. 11 **Del.C.** §1335.
- 8.1.431108Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- 8.1.432109Adulteration. 11 **Del.C.** §1339.
- 8.1.433110Prostitution. 11 **Del.C.** §1342.
- 8.1.434111Patronizing a prostitute prohibited. 11 **Del.C.** §1343.
- 8.1.435112Promoting prostitution in the third degree. 11 **Del.C.** §1351.
- 8.1.436113Promoting prostitution in the second degree. 11 **Del.C.** §1352.
- 8.1.437114Promoting prostitution in the first degree. 11 **Del.C.** §1353.
- 8.1.438115Permitting prostitution. 11 **Del.C.** §1355.
- 8.1.439116Carrying a concealed deadly weapon. 11 **Del.C.** §1442.
- 8.1.440117Carrying a concealed dangerous instrument. 11 **Del.C.** §1443.
- 8.1.441118Possessing a destructive weapon. 11 **Del.C.** §1444.
- 8.1.442119Unlawfully dealing with a dangerous weapon. 11 **Del.C.** §1445.
- 8.1.443120Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.
- 8.1.444121Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.
- 8.1.445122Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.
- 8.1.446123Criminal history record checks for sales of firearms; felony. 11 **Del.C.** §1448A.
- 8.1.447124Wearing body armor during commission of felony. 11 **Del.C.** §1449.
- 8.1.448125Receiving a stolen firearm. 11 **Del.C.** §1450.
- 8.1.449126Theft of a firearm. 11 **Del.C.** §1451.
- 8.1.450127Giving a firearm to person prohibited. 11 **Del.C.** §1454.
- 8.1.451128Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.
- 8.1.452129Unlawfully permitting a minor access to a firearm. 11 **Del.C.** §1456.
- 8.1.453130Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457.
- 8.1.454131Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458.
- 8.1.455132Possession of a weapon with a removed, obliterated or altered serial number. 11 **Del.C.** §1459.
- 8.1.156~~Prohibited acts. cheating devices (a) - (e), second or subsequent offense.~~ 11 ~~**Del.C.** §1471.~~
- 8.1.457133Organized Crime and Racketeering. 11 **Del.C.** §15041503.
- 8.1.458134Victim or Witness Intimidation 11 **Del.C.** §3532 & 3533.
- 8.1.459135Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136(a), (b) and (c).
- 8.1.460136Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).

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- 8.1.461~~137~~ Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C. Former** §4752(a) and (b).
- 8.1.462~~138~~ Unlawful delivery of noncontrolled substance. 16 **Del.C.** §4752A.
- 8.1.463~~139~~ Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).
- 8.1.464~~140~~ Possession and delivery of noncontrolled prescription drug. 16 **Del.C.** §4754A.
- 8.1.465~~141~~ Prohibited acts E under the Uniform Controlled Substances Act. 16 **Del.C. Former** §4755(a)(1) and (2).
- 8.1.466~~142~~ Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C. Former** §4756(a)(1)-(5) and (b).
- 8.1.467~~143~~ Hypodermic syringe or needle; delivering or possessing; disposal; 16 **Del.C.** ~~§4757~~4762.
- 8.1.468~~144~~ Keeping drugs in original containers. 16 **Del.C. Former** §4758.
- 8.1.469~~145~~ Distribution to persons under 21 years of age. 16 **Del.C. Former** §4761.
- 8.1.470~~146~~ Purchase of drugs from minors. 16 **Del.C.** §4761A.
- 8.1.471~~147~~ Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 **Del.C. Former** §4767.
- 8.1.472~~148~~ Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C. Former** §4768.
- 8.1.473~~149~~ Drug paraphernalia. 16 **Del.C.** §4771 (a) and (b).
- 8.1.474~~150~~ Possession, manufacture and sale, delivery to a minor and advertising of drug paraphernalia. 16 **Del.C.** §4774(a), (b), (c) (d).
- 8.1.151 Drug Dealing - Aggravated Possession; class B felony. 16 Del.C. §4752.
- 8.1.152 Drug Dealing - Aggravated Possession; class C felony. 16 Del.C. §4753.
- 8.1.153 Drug Dealing – Aggravated Possession; class D felony. 16 Del.C. §4754.
- 8.1.154 Drug Dealing – Aggravated Possession; class E felony. 16 Del.C. §4755.
- 8.1.155 Drug Dealing – Aggravated Possession; class F felony. 16 Del.C. §4756.
- 8.1.475~~156~~ Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; third and fourth offenses. 23 **Del.C.** §2302(a) and §2305 (3) and (4).
- 8.1.476~~157~~ Attempt to evade or defeat tax. 30 **Del.C.** §571.
- 8.1.477~~158~~ Failure to collect or pay over tax. 30 **Del.C.** §572.
- 8.1.478~~159~~ Failure to file return, supply information or pay tax. 30 **Del.C.** §573.
- ~~8.1.179 Fraud and false statements. 30 Del.C. §574.~~
- 8.1.480~~160~~ Obtaining benefit under false representation. 31 **Del.C.** §1003.
- 8.1.481~~161~~ Reports, statements and documents. 31 **Del.C.** §1004(1), (2), (3), (4), (5).
- 8.1.482~~162~~ Kickback schemes and solicitations. 31 **Del.C.** §1005.
- 8.1.483~~163~~ Conversion of payment. 31 §1006.
- 8.1.484~~164~~ Unlawful possession or manufacture of proof of insurance. 21 **Del.C.** §2118A.
- ~~8.1.185 Temporary registration violations related to providing false information. 21 Del.C. §2133(a) (1)-(3).~~
- ~~8.1.186 False statements. 21 Del.C. §2315.~~
- ~~8.1.187 Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate. 21 Del.C. §2316.~~
- ~~8.1.188 False statements; incorrect or incomplete information. 21 Del.C. §2620.~~
- ~~8.1.189 License to operate a motorcycle, motorbike, etc. 21 Del.C. §2703.~~
- ~~8.1.190 Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age. 21 Del.C. §2710.~~
- ~~8.1.191 Unlawful application for or use of license or identification card. 21 Del.C. §2751.~~
- ~~8.1.192 False statements. 21 Del.C. §2752.~~



- ~~8.1.193 Driving vehicle while license is suspended or revoked. 21 Del.C. §2756.~~
- ~~8.1.194 Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards. 21 Del.C. §2760(a) and (b).~~
- ~~8.1.195 Driving after judgment prohibited. 21 Del.C. §2810.~~
- ~~8.1.196 False statements. 21 Del.C. §3107.~~
- ~~8.1.197<sup>165</sup> Driving a vehicle while under the influence or with a prohibited alcohol content. 21 Del.C. §4177 (3) and (4).~~
- ~~8.1.198 Duty of driver involved in accident resulting in injury or death to any person. 21 Del.C. §4202.~~
- ~~8.1.199 Duty to report accidents; evidence. 21 Del.C. §4203.~~
- ~~8.1.200 Possession of motor vehicle master keys, manipulative keys, key cutting devices, lock picks or lock picking devices and hot wires. 21 Del.C. §4604(a).~~
- ~~8.1.201 Tampering with vehicle. 21 Del.C. §6703.~~
- ~~8.1.202 Receiving or transferring stolen vehicle. 21 Del.C. §6704.~~
- ~~8.1.203 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity. 21 Del.C. §6705(a) (c).~~
- ~~8.1.204 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card. 21 Del.C. §6708(a) and (b).~~
- ~~8.1.205 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers. 21 Del.C. §6709(a).~~
- ~~8.1.206 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers. 21 Del.C. §6710(a).~~
- ~~8.1.207 Offenses [involving meat and poultry inspection including bribery or attempted bribery or assaulting or impeding any person in the performance of his duties] (felony). 3 Del.C. §871.~~
- ~~8.1.208 Fraudulent Written Statements. 3 Del.C. §10049.~~
- ~~8.1.209 Fraudulent Certificate of Registration or Eligibility Documents. 3 Del.C. §10050.~~
- ~~8.1.210 Prohibited trade practices against infirm or elderly. 6 Del.C. §2581.~~
- ~~8.1.211 Auto Repair Fraud victimizing the infirm or elderly. 6 Del.C. §4909A.~~
- ~~8.1.212 Possession or use of false weights. 6 Del.C. §5134.~~
- ~~8.1.213 Violations of the Securities Act. 6 Del.C. §7322.~~
- ~~8.1.214 Unauthorized Acts against a Service Guide or Seeing Eye Dog. 7 Del.C. §1717.~~
- ~~8.1.215 Interception of Communications Generally; Divulging Contents of Communications. 11 Del.C. §2402.~~
- ~~8.1.216 Manufacture, Possession or Sale of Intercepting Device. 11 Del.C. §2403.~~
- ~~8.1.217 Breaking and Entering, Etc. to Place or Remove Equipment. 11 Del.C. §2410.~~
- ~~8.1.218 Obstruction, Impediment or Prevention of Interception. 11 Del.C. §2412.~~
- ~~8.1.219 Obtaining, Altering or Preventing Authorized Access. 11 Del.C. §2421.~~
- ~~8.1.220 Divulging Contents of Communications. 11 Del.C. §2422.~~
- ~~8.1.221 Installation and Use Generally [of pen trace and trap and trace devices]. 11 Del.C. §2431.~~
- ~~8.1.222<sup>166</sup> Aggravated Act of Intimidation. 11 Del.C. §3533.~~
- ~~8.1.223<sup>167</sup> Attempt to Intimidate. 11 Del.C. §3534.~~
- ~~8.1.224 Disclosure of Expunged Records. 11 Del.C. §4374.~~
- ~~8.1.225 Violation of reporting provisions re: SBI. 11 Del.C. §8523.~~
- ~~8.1.226 Failure of child care provider to obtain information required under §8561 or for those providing false information. 11 Del.C. §8562.~~
- ~~8.1.227 Providing false information when seeking employment in a public school. 11 Del.C. §8572.~~
- ~~8.1.228 Filing False Claim [under Victims' Compensation Fund]. 11 Del.C. §9016.~~
- ~~8.1.229<sup>168</sup> Alteration, Theft or Destruction of Will. 12 Del.C. §210.~~
- ~~8.1.230<sup>169</sup> Violation of reporting requirements involving abuse under §903. 16 Del.C. §914.~~

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- 8.1.231~~170~~Coercion or intimidation involving health-care decisions and falsification, destruction of a document to create a false impression that measures to prolong life have been authorized. 16 **Del.C.** §2513(a) and (b).
- 8.1.232~~Violations related to the sale, purchase, receipt, possession, transportation, use, safety and control of explosive materials other than 16 Del.C. §7103. 16 Del.C. §7112.~~
- 8.1.233~~171~~Operation of a Vessel or Boat while under the Influence of Intoxicating Liquor and/or Drugs. 23 **Del.C.** §2302 (3) and (4).
- 8.1.234~~License Requirements. 24 Del.C. §901.~~
- 8.1.235~~Sale to Persons under 21 or Intoxicated Persons. 24 Del.C. §903.~~
- 8.1.236~~Failure to make Reports of Persons who are Subject to Loss of Consciousness. 24 Del.C. §1763.~~
- 8.1.237~~172~~[Interference] Relating to the Blind and "Seeing Eye Dogs". 31 **Del.C.** §2117.
- 8.1.238~~173~~Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C.** §3913(a), (b) and (c).
- 8.2 Crimes substantially related to the practice of optometry shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

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

**2100 Board of Examiners in Optometry**

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## OFFICE OF MANAGEMENT AND BUDGET DIVISION OF FACILITIES MANAGEMENT

Statutory Authority: 29 Delaware Code, Section 6908(a)(6) (29 **Del.C.** §6908(a)(6))  
19 **DE Admin. Code** 4104

### PUBLIC NOTICE

#### **4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects**

In accordance and compliance with the procedures set forth at 29 **Del.C.** §§1131, *et seq.* and 29 **Del.C.** §§10101, *et seq.*, the Director of the Office of Management and Budget is proposing to amend the following Regulation:

#### **I. Title of Regulation:**

19 **DE Admin. Code** 4104 (Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects)  
(<http://regulations.delaware.gov/AdminCode/title19/4000/4100/4104.pdf>)

Members of the public may receive a copy of the existing regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the following address:

122 Martin Luther King Jr. Blvd South  
Dover, DE 19901.

Or by email at: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)

#### **II. Brief Synopsis of the Subject, Substance, and Issues:**

The current regulation is intended to safeguard the public by establishing the mechanism, standards and requirements of a Mandatory Drug Testing Program for Contractors and Subcontractors that are incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 **Del.C.** §6962.

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Proposed amendments to this regulation accomplish the following:

- A) Clarifies that a Contractor or Subcontractor's Program does not need to be Jobsite specific.
- B) Allows for a Contractor or Subcontractor to participate in a Consortium.
- C) Corrects and clarifies substances tested and thresholds.
- D) Increases pre-employment testing requirement from 60 – 180 days.
- E) Decreases the percentage of employees to be randomly tested per month from 10% to 5%.
- F) Removes the requirement that a Contractor or Subcontractor must submit testing forms to the project Owner.

### III. Possible Terms of the Agency Action:

There is no sunset date for this Regulation.

### IV. Statutory Basis or Legal Authority to Act:

29 Del.C. §6908(a)(6), *et seq.*

### V. Other Regulations that May Be Affected by the Proposal:

None Known.

### VI. Notice of Public Comment:

Any person who wishes to make written suggestions, provide compilations of data, testimony, briefs or other written materials concerning to the proposed new regulations must submit them to:

Robert Scoglietti  
Delaware Office of Management and Budget  
122 Martin Luther King Jr. Blvd. South  
Dover, DE 19901

Or Email: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)  
no later than the close of business on July 18, 2017.

### VII. Notice of Public Hearing:

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed amendments to the regulation on June 23, 2017 in Room 219 of the Haslet Armory, 122 Martin Luther King Jr. Blvd South, Dover DE at 2:00 PM. It is requested that those interested in presenting statements at the public hearing register in advance by contacting:

Robert Scoglietti  
Delaware Office of Management and Budget  
122 Martin Luther King Jr. Blvd. South  
Dover, DE 19901

### VIII. Prepared By:

Robert Scoglietti  
Director of Policy and External Affairs  
Delaware Office of Management and Budget

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

<http://regulations.delaware.gov/register/june2017/proposed/20 DE Reg 964RFA 06-01-17.pdf>

## 4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

*(Break in Continuity of Sections)*

### 2.0 Definitions

“Consortium”/“Third Party Administrator” or “(C/TPA)” means a service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers’ drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the drug and alcohol testing programs of its members.

*(Break in Continuity Within Section)*

“Employee” means an individual employed by a Contractor or Subcontractor who works on the Jobsite of a Large Public Works Contract but does not fulfill a clerical or administrative function. For the purpose of this definition, clerical or administrative functions shall refer to job responsibilities that do not generally require an employee to work outside of the Contractor’s Jobsite office, home office or other employer-provided office. For the purposes of this regulation, the term “Employee” shall also include supervisors and foremen working on the Jobsite. The term “Employee” shall also include ~~delivery personnel employed by employees of~~ a Contractor or Subcontractor working on or delivering materials and equipment to and from a Jobsite.

*(Break in Continuity Within Section)*

“Mandatory Drug Testing Program” and “Program” means a defined set of basic procedures, requirements and rules that must be used by a Contractor or Subcontractor to test ~~Employees~~ employees for drugs in compliance with these requirements.

*(Break in Continuity within Section)*

“Positive Test Result” and “Fail a Drug Test” means the result reported by a Health and Human Services certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentration. For purposes of these regulations, an Employee shall not be considered to have a Positive Test Result nor shall an Employee be considered to “Fail a Drug Test”, unless the employee was impaired by marijuana at the Jobsite if:

- The Employee is a Registered Qualifying Patient and;
- The drug detected was marijuana, a component of marijuana, or marijuana metabolites.

“Random Drug Testing” means that an Employee is chosen at random for testing without advance notice, from a pool of Employees ~~working on the Jobsite or as a member of a Consortium.~~ Specific requirements for random drug testing conducted under these regulations are described in Section 5.0.

*(Break in Continuity Within Section)*

“Subcontractor” means an entity such as, but not limited to, an individual, firm, partnership or corporation that has a contractual obligation to perform work for, or supply services to a Contractor as defined in ~~section~~ subsection 2.1.

~~“Testing Result Forms” means a form summarizing drug testing completed monthly by the Contractor and Subcontractor and submitted to the Owner in accordance with requirements contained in the bid solicitation.~~

### 3.0 Employee drug testing documentation requirements.

3.1 The following documentation requirements apply:

- 3.1.1 At bid submission - A solicitation for a Large Public Works Contract must require each Contractor that submits a bid for the work to submit with the bid a signed individual affidavit(s) for the Contractor and each listed Subcontractor certifying that the Contractor and Subcontractor(s) has

in place or will implement during the entire term of the contract a Mandatory Drug Testing Program ~~for their Employees~~ that complies with this regulation.

3.1.2 ~~Two~~ At least two business days prior to contract execution – The awarded Contractor shall provide to the Owner copies of the Employee Drug Testing Program for the Contractor and for all listed Subcontractors.

3.1.3 During contract execution – Contractors that employ additional Subcontractors on the jobsite may do so only after submitting a copy of the Subcontractor's Employee Drug Testing Program. A Contractor or Subcontractor shall not commence work until the Owner has concluded the Employee Drug Testing Program complies with this Regulation as per ~~Section~~ subsection 3.2.

3.1.4 In the event of an emergency a Contractor may employ additional Subcontractors on the jobsite prior to submitting the Subcontractor's Employee Drug Testing Program provided that said Program is submitted to the Owner as soon as practicable.

3.2 A Contractor or Subcontractor shall be treated as having a Mandatory Drug Testing Program that complies with this regulation if the Program includes the following:

3.2.1 The Program meets the minimum standards in ~~section~~ Section 4.0 of this regulation.

3.2.2 The Program provides for the frequency of testing of Employees as per ~~section~~ Section 5.0 of this regulation:

3.2.3 The Program imposes disciplinary measures on an Employee who fails a drug test as per ~~section~~ Section 6.0 of this regulation.

3.3 Prequalified Contractors and Subcontractors – A Contractor or Subcontractor may meet the provisions of ~~Section~~ subsection 3.1 if they are Prequalified through the DFM Prequalification and if the DFM Prequalification includes provisions requiring an Employee Mandatory Drug Testing Program that meet the requirements of Sections 4.0, 5.0 and 6.0 of this Regulation

3.4 The State shall not be obligated to pay, and the Contractor or Subcontractor shall expressly agree that, any portion of work performed by a Contractor or Subcontractor commenced before that Contractor or Subcontractor has complied with ~~Sections~~ subsections 3.1 and 3.2, provided however that emergency work as referenced in subsection 3.1.4 may not be subject to this provision.

**4.0 Minimum Standards for a Mandatory Drug Testing Program**

4.1 Testing for the presence of drugs in an Employee's system and the handling of test specimens shall be conducted in accordance with guidelines for the collection, chain-of-custody procedures, laboratory testing, and Medical Officer Review procedures contained within the Mandatory Guidelines for Federal Workplace Drug Testing Programs published by the Substance Abuse and Mental Health Services Administration (SAMHSA). [http://workplace.samhsa.gov/DrugTesting/Level\\_1\\_Pages/mandatory\\_guidelines5\\_1\\_10.html](http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/mandatory_guidelines5_1_10.html) (49 CFR Part 40).

All tests must be processed by a federal Health and Human Services certified laboratory. Contractors must provide documentation detailing the procedures used in the collection, testing and reporting of drug tests sufficient to show conformance with SAMHSA guidelines.

4.2 Contractors and Subcontractors subject to these regulations may procure the services of an appropriate Drug Testing Firm to administer their program. A Contractor or Subcontractor may also participate in a Consortium. ~~A Contractor or Subcontractor may also implement a Mandatory Drug Testing Program using in-house personnel and resources. However a Contractor or Subcontractor doing so shall have to demonstrate that the program meets or exceeds the requirements specified herein to the satisfaction of the Owner.~~

4.3 Employees subject to drug testing shall be tested using at a minimum a seven-panel protocol testing plus alcohol screening for the following:

<b>Substance</b>	<b>Common Name</b>	<b>Cutoff</b>
Marijuana metabolite		50 ng/ml
Cocaine metabolite		150 ng/ml
Opiate metabolite		2000 ng/ml

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Acetylmorphine	Heroin metabolite	10 ng/ml
Phencyclidine	PCP	25 ng/ml
Amphetamines (including Methamphetamines)	Meth	500 ng/ml
MDMA	Eestasy	250 ng/ml
Alcohol		0.04% BAC

<u>Initial test analyte</u>	<u>Initial test cutoff concentration</u>	<u>Confirmatory test analyte</u>	<u>Confirmatory test cutoff concentration</u>
Marijuana metabolites	50 ng/mL	THCA	15 ng/mL
Cocaine metabolites	150 ng/mL	Benzoylcegonine	100 ng/mL
<u>Opiate metabolites:</u>			
Codeine/Morphine	2000 ng/mL	Codeine	2000 ng/mL
—		Morphine	2000 ng/mL
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
<u>Amphetamines:</u>			
AMP/MAMP	500 ng/mL	Amphetamine	250 ng/mL
—		Methamphetamine	250 ng/mL
MDMA <sup>6</sup>	500 ng/mL	MDMA	250 ng/mL
—		MDA	250 ng/mL
—		MDEA	250 ng/mL

- 4.4 The frequency of Random Drug Testing and the methodology for selecting Employees to be screened are defined in ~~section~~ Section 5.0 and shall be incorporated into Contractor and Subcontractor mandatory testing procedures. A Contractor or Subcontractor may incorporate rules or requirements that exceed the requirements defined herein.

## 5.0 Drug Testing Requirements – Frequency for the Testing of Employees

- 5.1 Initial Drug Testing - Employees commencing work on a Jobsite must be tested with the exception that an Employee who has passed a random or scheduled drug test within the past ~~60~~ 180 days from the date of commencing work or an Employee who passed a pre-employment drug test administered pursuant to a Contractor's or Subcontractor's Program and is subject to testing as part of a Contractor's or Subcontractor's ongoing Program or as part of a Consortium shall be permitted to work at the Jobsite without further testing; however, the Employee is still subject to random testing.
- 5.2 Random Drug Testing - During the course of a project, each Contractor and Subcontractor with Employees on the Jobsite shall ~~implement Random Drug Testing according to the~~ maintain a Program that meets or exceeds the following requirements.
- 5.2.1 All Employees will be subject to random, unannounced testing.
- 5.2.2 The selection of Employees shall be made by a scientifically valid method of randomly generating an Employee ~~employee~~ identifier from a Contractor or Sub-contractor's entire pool of ~~Employees~~ employees, through those Employees working on a Public Works Jobsite or through the Contractor or Subcontractor's participation in a Consortium.

- 5.2.3 ~~No A Contractor or Subcontractor's Program shall provide that no less than 40% 5% of a Contractor's or Subcontractor's anticipated workforce based on construction schedules validated by certified payrolls employees shall be randomly selected each month for testing. Contractors or Subcontractors may participate in a Consortium provided that no less than 5% of the Consortium's pool shall be subject to testing each month.~~ Contractors or Subcontractors with less than 10 ~~Employees employees that do not participate in a Consortium~~ shall test at least one of their ~~Employees employees~~, selected randomly per month. Each ~~Employee employee~~ shall have an equal chance of selection each time the selection is made. Because the selection process is random, some Employees may not be tested within a year, while others may be tested more than once.
- 5.2.4 Employees notified that they have been selected must report within four hours for testing to a site specified. Employees so notified must have been given such notification at least four hours before the scheduled closing time of the testing facility. Any failure to report for random testing, or to cooperate with the testing procedure shall be considered a positive result.
- 5.2.5 Purposely impeding or delaying an Employee's fulfillment of the testing requirements herein by a Contractor or Subcontractor may subject the Contractor or Subcontractor to sanctions listed in Section 8.0.

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

- 5.5 Accident Triggered Testing – An Employee will be required to take a drug test and may be subject to an onsite alcohol breathalyzer test at any time there is a Jobsite accident involving loss or significant property damage, injury or death to an Employee of the Contractor, Subcontractor, or Owner or member of the public.

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

- 5.5.4 If an Employee fails or refuses to be tested, he/she must be removed from the Jobsite and shall be subject to consequences in Section 6.0.

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

## 6.0 Consequences of a Positive Test Result

- 6.1 The disciplinary measures contained within a Contractor's or Subcontractor's ~~drug testing program Program~~ for an employee who tests positive to a mandatory drug test must include at a minimum, all of the following:

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

- 6.1.3 The Employee is subject to unscheduled monthly random testing ~~for at least one (1) year after reinstatement, or during the term of the Large Public Works Contract, whichever is less as per subsection 5.2.~~

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

## 7.0 Contractor and Subcontractor Certification of Compliance with Regulations

- 7.1 During the term of the contract:
- 7.1.1 During the term of the contract, Contractors and Subcontractors on the Jobsite for more than 30 days shall submit Testing Report Forms to the Owner as set forth herein maintain testing data that includes but is not limited to the data elements contained in subsection 7.1.2:
- 7.1.1.1 ~~The Testing Report Forms shall be submitted to the Owner no less than quarterly.~~
- 7.1.1.2 ~~An Owner may require monthly submissions of the Testing Report Forms.~~
- 7.1.1.3 ~~7.1.1.1~~ A Contractor or Subcontractor that is employed on the Jobsite for less than 30 days shall not be subject to the reporting requirements contained in ~~Sections 7.1.1 and subsection~~ 7.1.2 of this regulation, unless the Owner specifies that such reporting is required in the Invitation to Bid or Specifications relating to the work to be performed.
- 7.1.2 The ~~forms data~~ shall at a minimum contain the following ~~information elements~~:
- 7.1.2.1 The number of Employees who worked on the Jobsite during the previous month or quarter.

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## PROPOSED REGULATIONS

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- 7.1.2.2 The number of Employees subjected to random testing during the previous month or quarter.
- 7.1.2.3 The number of negative results and the number of positive results.
- 7.1.2.4 Action taken by the Contractor or Subcontractor on an Employee who failed or tested positive to a random test.
- 7.1.3 ~~Testing Result Forms may be submitted electronically to an Owner.~~ Test results must be kept by a Contractor or Subcontractor for a minimum of 1 year subsequent to the date of close out of the Public Works project.
- 7.1.4 Any Positive Test Result of an Employee working on a Public Works Jobsite including the Employee name and action taken in response by a Contractor or Subcontractor must be reported by the Contractor or Subcontractor to the Owner in writing within 24 hours of the Contractor or Subcontractor receiving the test results. ~~A Positive Test Result must be submitted to the Owner in writing.~~
- 7.1.5 The Owner shall have the right to periodically audit all Contractor and Subcontractor test results at the Contractor or Subcontractor's offices.
- 7.1.6 The failure to comply with these reporting requirements ~~shall~~ may be considered a material breach of any agreement relating to the performance of work by the Contractor or Subcontractor.

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

**4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects**

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## Symbol Key

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

## Final Regulations

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

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

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 503

### REGULATORY IMPLEMENTING ORDER

### 503 Instructional Program Requirements

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 503 Instructional Program Requirements. This regulation is being amended to clarify instructional program requirements and to demonstrate alignment to adopted standards in each content area as adopted by the Department of Education.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 1, 2017, 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 noting the proposed regulation aligns with existing law and practice and thus no concerns were identified. However, the Department of Education, in response to concerns voiced by the State Board of Education, clarified terminology used in the regulation related to classes and performance expectations.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 503 Instructional Program Requirements in order to clarify instructional program requirements and to demonstrate alignment to adopted standards in each content area as adopted by the Department of Education.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 503

Instructional Program Requirements. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 503 Instructional Program Requirements attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 503 Instructional Program Requirements 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** 503 Instructional Program Requirements amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 503 Instructional Program Requirements 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 18, 2017. 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 18<sup>th</sup> day of May 2017.

#### Department of Education

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

Approved this 18<sup>th</sup> day of May 2017

#### State Board of Education

Teri Quinn Gray, Ph.D., President

Nina L. Bunting, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

### 503 Instructional Program Requirements

#### 1.0 English Language Arts

- 1.1 Local school districts and charter schools shall provide instructional programs in English language arts for each grade K to 12.
- 1.2 All public school students in each grade K to 8 shall be enrolled in an English language arts program that demonstrates alignment to the Department of Education's adopted English Language Arts standards and grade level [performance] expectations.
- 1.3 All public school students in grades 9 to 12 shall complete the credits in English language arts necessary to graduate from high school through [classes courses] that demonstrate alignment to the adopted English Language Arts standards and grade level [performance] expectations.

#### 2.0 Mathematics

- 2.1 Local school districts and charter schools shall provide instructional programs in mathematics for each grade K to 12.
- 2.2 All public school students in each grade K to 8 shall be enrolled in a mathematics program that demonstrates alignment to the Department of Education's adopted mathematics standards and grade level [performance] expectations.
- 2.3 All public school students in grades 9 to 12 shall complete the credits in mathematics necessary to graduate from high school through [classes courses] that demonstrate alignment to the adopted mathematics standards and grade level [performance] expectations.

#### 3.0 Science

- 3.1 Local school districts and charter schools shall provide instructional programs in science for each grade K to 12.

- 3.2 All public school students in each grade K to 8 shall be enrolled in a science program that demonstrates alignment to the Department of Education's adopted science standards and grade level [performance] expectations.
- 3.3 All public school students in grades 9 to 12 shall complete the credits in science necessary to graduate from high school through [classes courses] that demonstrate alignment to the adopted science standards and course [performance] expectations.

## 4.0 Social Studies

- 4.1 Local school districts and charter schools shall provide instructional programs in social studies for each grade K to 12.
- 4.2 All public school students in each grade K to 8 shall be enrolled in a social studies program that demonstrates alignment to the Department of Education's adopted social studies standards and grade level [performance] expectations.
- 4.3 All public school students in grades 9 to 12 shall complete the credits in social studies necessary to graduate from high school through [classes courses] that demonstrate alignment to the adopted Social Studies standards and grade level [performance] expectations.

## 5.0 Physical Education

- 5.1 Local school districts and charter schools shall provide instructional programs in physical education for each grade K to 12 with the exception of the James H. Groves High School program.
- 5.2 All public school students in each grade 1 to 8 shall be enrolled in a physical education program that demonstrates alignment to the Department of Education's adopted physical education standards and grade level [performance] expectations.
- 5.3 All public school students in grades 9 to 12 shall complete the credit in physical education necessary to graduate from high school through [classes courses] that demonstrate alignment to the adopted physical education standards and grade level [performance] expectations.
- 5.3.1 In addition to the one credit required for high school graduation, only one additional elective credit in physical education may be used to fulfill the graduation requirements.
- 5.4 The physical education requirements may be waived only for students who either have an excuse from a qualified licensed healthcare provider, which is defined as anyone lawfully authorized to diagnose and prescribe medical treatment or restriction, or objections based on religious beliefs. The local school district or charter school shall have the authority to grant such waivers. The local school district or charter school shall maintain records of the waivers granted and upon request, make them available for review consistent with Federal and state confidentiality laws.
- 5.5 Local school districts and charter schools shall annually assess the physical fitness of each student in grades 4 and 7, and in grade 9 or 10. The physical fitness assessment tool used by the districts and charter schools shall be one designated by the Delaware Department of Education.
- 5.5.1 The local school districts and charter schools shall provide the results of the physical fitness assessment to the parent(s), guardian(s), or Relative Caregiver of each student. The districts and charter schools shall also report this information to the Delaware Department of Education in a format determined by the Department.
- 5.5.1.1 The Delaware Department of Education shall annually report the statewide grade level results of the physical fitness assessment to the public.

## 6.0 Visual and Performing Arts

- 6.1 Local school districts and charter schools shall provide instructional programs in the visual and performing arts for each grade K to 12 with the exception of the James H. Groves High School program.

- 6.2 All public school students in each grade 1 to 6 shall be enrolled in a visual and performing arts program [through classes] that demonstrates alignment to the Department of Education's adopted visual and performing arts [standards] and grade level [proficiency level] expectations.

## 7.0 Career and Technical Education

- 7.1 Local school districts and charter schools, when consistent with the charter school's approved program, shall provide instructional program(s) in grades 7 and 8 that demonstrate alignment to career and technical education programs of study within the high school feeder pattern(s).
- 7.1.1 No later than the 2017-2018 school year, career and technical instructional program(s) in grades 7 and 8 shall be aligned to career and technical education programs of study at the high school level.
- 7.2 All public school students in grades 9 through 12 in local school districts, and charter schools when consistent with the charter school's approved program, shall be provided with the opportunity to enroll in and complete a career and technical education program of study.

## 8.0 World Language

- 8.1 Local school districts and charter schools with any of grades 9 through 12 shall provide instructional programs in world languages for grades 9 through 12 that demonstrate alignment to the Department of Education's adopted world language standards and [proficiency level course] expectations.
- 8.2 All public school students in grades 9 through 12 shall complete the credits in world languages required to graduate from high school through [classes courses] that demonstrates alignment to the Department of Education's adopted world language standards and [proficiency level course] expectations.

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 710

### REGULATORY IMPLEMENTING ORDER

### 710 Public School Employees Workday

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

The Secretary of Education intends to repeal 14 DE Admin. Code 710 Public School Employees Workday. The Department of Education reviewed this and other regulations as part of the 2016 Regulation Review as required by 29 Del.C. §10407. Public comment was received for this regulation. The comment encouraged the Department of Education to maintain the current number of hours in the public school employee's workday and not to increase the number. The Department does not have the statutory authority to increase a school employee's workday. After further review, the Department is repealing this regulation because the public school employee's workday is specified in Delaware Code and therefore the regulation is superfluous.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 1, 2017, in the form hereto attached as Exhibit "A". No comments were received for this regulation.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to repeal 14 DE Admin. Code 710 Public School Employees Workday as the public school employee's workday is specified in Delaware Code and therefore the regulation is superfluous.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 DE Admin. Code 710 Public School Employees Workday. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 710 Public School Employees Workday attached hereto as Exhibit "B" is hereby repealed.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 710 Public School Employees Workday repealed hereby shall be in the form attached hereto as Exhibit "B" is hereby repealed.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 18, 2017. 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 18<sup>th</sup> day of May 2017.

### Department of Education

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

Approved this 18<sup>th</sup> day of May 2017

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 755 (20 DE Reg. 755). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**710 Public School Employees Workday**

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 885

## REGULATORY IMPLEMENTING ORDER

### **885 Safe Management and Disposal of Chemicals in the Delaware Public School System**

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** 885 Safe Management and Disposal of Chemicals in the Delaware Public School System. The Department reviewed this and other regulations which were four years or older as part of the 2016 Regulation Review as required by 29 **Del.C.** §10407. Public comment was received for this regulation, suggesting the regulation be updated to align with the Globally Harmonized System of Classification and Labelling of Chemicals guidance document. The Department agrees and the regulation is being updated accordingly.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 1, 2017, in the form hereto attached as Exhibit "A". No comments were received for this regulation.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 885 Safe Management and Disposal of Chemicals in the Delaware Public School System in order to align it with the Globally Harmonized System of Classification and Labeling of Chemicals guidance document.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 885 Safe Management and Disposal of Chemicals in the Delaware Public School System. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 885 Safe Management and Disposal of Chemicals in the Delaware Public School System attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 885 Safe Management and Disposal of Chemicals in the Delaware Public School System 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** 885 Safe Management and Disposal of Chemicals in the Delaware Public School System amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 885 Safe Management and Disposal of Chemicals in the Delaware Public School System 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 18, 2017. 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 18<sup>th</sup> day of May 2017.

**Department of Education**

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

Approved this 18<sup>th</sup> day of May 2017

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 757 (20 DE Reg. 757). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**885 Safe Management and Disposal of Chemicals in the Delaware Public School System**

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

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

**ORDER****Lactation Counseling Services****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding services provided to pregnant and postpartum individuals, specifically, *to provide lactation counseling services as separately reimbursed pregnancy-related services*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the April Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 1, 2017 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 purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding services provided to pregnant and postpartum individuals, specifically, *to provide lactation counseling services as separately reimbursed pregnancies*.

**Statutory Authority**

- 42 CFR §440.60, *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.170, *Any other medical care or remedial care recognized under State law and specified by the Secretary*

- 42 CFR §440.210, *Required services for the categorically needy*
- 42 CFR §440.225, *Optional services for the categorically needy*
- 42 CFR §447, *Payments for services*
- §1902(a) of the Social Security Act, *State plans for medical assistance, service requirements*

## Background

Improving the health of the population and reducing preventable causes of poor health, such as obesity, is a priority of the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS). Current research shows that the practice of breastfeeding for the first 6 to 12 months of life is highly beneficial for both the mother and infant. On January 20, 2011, the United States Surgeon General released "The Surgeon General's Call to Action to Support Breastfeeding." This report indicates that there is a 32% higher risk of childhood obesity and a 64% higher risk of type 2 diabetes for children who are not breastfed. An extensive body of research supports these assertions and provides evidence of the positive effects of breastfeeding on both short and long term infant and maternal health. Breastfeeding also serves additional advantages for low birth weight infants. Human milk consumption is associated with a reduction in sepsis infections and gastrointestinal illnesses among very low birth weight newborns in the neonatal intensive care unit (NICU).

The U.S. Preventive Services Task Force (USPSTF) specifically recommends coordinated interventions throughout pregnancy, birth, and infancy to increase breastfeeding initiation, duration, and exclusivity. Such recommended interventions include formal breastfeeding education for mothers and families, direct support of the mother during breastfeeding observations, and the training of health professional staff about breastfeeding and techniques for breastfeeding support. The opportunity to promote and provide support for breastfeeding occurs many times throughout the interactions that women have with various types of health care providers during and after pregnancy.

Due to the multiple health benefits associated with breastfeeding, CMS encourages States to go beyond the requirement of solely coordinating and referring enrollees to the Special Supplemental Food Program for Women, Infants, and Children (WIC) (established in 42 C.F.R. § 431.635) and include lactation services as separately reimbursed pregnancy-related services. Because lactation services are not specifically mentioned in the Medicaid statute or Federal Medicaid regulations, not all States separately reimburse lactation services as pregnancy-related services. Delaware Medicaid and Medical Assistance (DMMA) currently supports lactation counseling when provided as part of a pregnant or postpartum individuals inpatient stay. DMMA would like to expand this coverage and to separately reimburse lactation counseling services provided in outpatient settings for pregnant and postpartum individuals when such services are ordered by a licensed practitioner, operating within the scope of their license, and provided by a certified lactation consultant.

## Summary of Proposal

If implemented as proposed, this state plan amendment will accomplish the following, effective April 1, 2017:

- Amend the following state plan pages by adding a provision that allows providers to bill separately for lactation counseling services provided in outpatient settings for pregnant and postpartum individuals when such services are ordered by a licensed practitioner, operating within the scope of their license, and provided by a certified lactation consultant.
  - Attachment 3.1-A Page 3 Addendum - Other Practitioners' Services;
  - Attachment 3.1-A Page 8 and Page 8 Addendum - Extended Services for Pregnant Individuals;
  - Attachment 3.1-A Page 11 and Page 11 Addendum - Licensed or Otherwise State-Recognized covered professionals in the Freestanding Birthing Center Services;
  - Supplement 1 to Attachment 3.1-A - Case Management Services for High-Risk Pregnant Individuals; and
  - Attachment 4.19-B Page 18 - Methods and Standards for Establishing Payment Rates, Lactation Counseling Services.
  - Attachment 4.19-B Page 8 and 8a – Delaware Rates for Obstetrical Care;
  - Attachment 4.19-B Page 9, 9a and 9b – Delaware Rates for Pediatric Care.
- Sunset Attachment 4.19-B Pages 8, 8a, 9, 9a, and 9b as these state plan pages contain out-of-date rates and codes for obstetrical and pediatric care. This was identified while reviewing the state plan to



identify the appropriate areas to update with lactation counseling services. Rates are no longer listed in the state plan; the fee schedule and any annual periodic adjustments to these, and all DMMA rates, are published on the Delaware Medical Assistance Program (DMAP) website at: <https://medicaid.dhss.delaware.gov/provider>.

#### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on proposed regulations. Comments were to have been received by 4:30 p.m. on May 1, 2017.

#### *Centers for Medicare and Medicaid Services Review and Approval*

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

#### *Provider Manuals Update*

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

#### **Fiscal Impact Statement**

The following fiscal impact was developed using data from the Center for Disease Control and Prevention (CDC) regarding the percentage of women who breastfeed and would seek lactation counseling services in a physician's office by a certified lactation consultant. This percentage was then applied to the projected childbirths for Federal Fiscal Year (FFY) 2018 and FFY 2019 to identify the potential fiscal impact of this regulation.

	Federal Fiscal Year 2017 (1)	Federal Fiscal Year 2018
General (State) funds	\$ 26,254	\$ 34,110
Federal funds	\$ 31,069	\$ 40,367

(1) Represents April – September 2017 only

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

No comments were received during the public comment period.

#### **FINDINGS OF FACT:**

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding services provided to pregnant and postpartum individuals, specifically, *to provide lactation counseling services as separately reimbursed pregnancy-related services*, is adopted and shall be final effective June 11, 2017.

Kara Odom Walker, MD, MPH, MSHS, Secretary, DHSS  
5/17/17



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*(Break in Continuity of Sections)*

**DMMA FINAL REGULATION 17-019  
REVISION**

ATTACHMENT 3.1-A  
Page 8 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: DELAWARE  
AMOUNT, DURATION, AND SCOPE OF MEDICAL AND REMEDIAL CARE  
AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

**20. a & b Limitations on Extended Services for Pregnant Women**

Those services normally covered by Medicaid for all eligible Medicaid beneficiaries are available to pregnant women.

In addition, the following services are available with prior authorization:

*(Break in Continuity Within Section)*

- Lactation counseling services for pregnant and postpartum individuals when such services are ordered by a licensed practitioner, [opportuning operating] within the scope of their license, and provided by a certified lactation consultant; and

*(Break in Continuity of Sections)*

**DMMA FINAL ORDER REGULATION 17-019  
REVISION**

ATTACHMENT 3.1-A  
Page 3 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: DELAWARE  
AMOUNT, DURATION, AND SCOPE OF MEDICAL AND REMEDIAL CARE  
AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

*(Break in Continuity of Sections)*

6.d.3. Lactation Consultant Services

Breastfeeding health education and lactation counseling services are permitted for pregnant and postpartum individuals when such services are ordered by a licensed practitioner, [opportuning operating] within the scope of their license, and provided by a certified lactation consultant.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 767 (20 DE Reg. 767). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**Lactation Counseling Services**

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 18 Delaware Code, Section 3365 (18 Del.C. §3365)  
16 DE Admin. Code 4102

## ORDER

## 4102 School-Based Health Centers

## NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing School-Based Health Centers. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 18 Del.C. §3365.

On January 1, 2017 (Volume 20, Issue 7), 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 February 10, 2017, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

## SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing School-Based Health Centers 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 (January 1, 2017 through February 10, 2017).

## Delaware Health Care Association

## Section 2.0 Definitions

- The definition of Parent has been changed to match the definition of Parent in 13 Del. C. Section 8-201. We believe the definition of Parent should not be changed because the current definition points specifically to the parent or legal guardian as the representative who authorizes School Based Health Center (SBHC) enrollment. Please clarify why the definition of Parent has changed, and how the new definition will impact SBHC enrollment procedures.

## DPH Response:

**The Agency appreciates and acknowledges these comments.**

Clarification was necessary to ensure that it did not conflict with consent of minors for services, and impede access to these services, per Delaware law.

## Section 4.0 Service Provision

- 4.1 appears to eliminate parental consent for SBHC services for children under 18 years of age. Parental consent for SBHC services has been a long standing and integral policy for obtaining parent and school district support for the SBHCs. Aside from two areas specifically protected by law (mental health and reproductive health), medical providers cannot legally see minors without parental consent.

The rationale for removing 4.1 from the regulations needs to be explained and clarified. We suggest specifying in the regulations when parental consent is required and when it is not. Otherwise, we fear the apparent elimination of parental consent from the regulations will damage relationships between the parent, schools, and SBHC staff and, as a result, negatively impact student health outcomes.

## DPH Response:

**The Agency appreciates and acknowledges these comments.**

As written, 4.1 is inconsistent with Delaware law.

Health care providers in Delaware are permitted to accept the consent of minors for reproductive health under 13 Del. Code, Section 710 and they may choose to provide such services without notifying the parent or they may choose to notify the parent. However, pursuant to 16 Del. C. 710, a provider may not notify the parents of the consultation, examination or treatment of a minor in connection with a sexually transmitted infection without the minor's consent. There is no requirement that a health care provider provide such treatment to a minor without parental involvement.

Per 16 Del. Code, Section 5003 (f) (3), the proposed regulations track the law in that the requirement for parental consent to receive voluntary outpatient mental health services has been removed and any minor age 14 and over may consent and that consent is binding on the provider.

- 4.3.3 and 4.3.4 eliminate health education and nutritional consultation. The change is confusing given that historically, health education and nutrition were seen as critical student health services. The recent RFP for SBHC seems to affirm this historical perspective by including nutrition as an essential SHBC service component (i.e., BMI is a benchmark in the proposed evaluation tool). We suggest including health education and nutritional consultation in the menu of services outlined in Section 4.3.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

DPH will add "nutrition consultation/education", as outlined in former Section 4.3.4 to the menu of services listed in Section 4.3.

- 4.4 requires SBHCs to promote, "vaccination among enrolled students." This conflicts with proposed changes to Section 4.1, which appears to eliminate student enrollment. Eliminating enrollment requirements in one section but referring to "enrolled students" in other sections of the proposed regulation is confusing. We support maintaining student enrollment requirements as we stated previously in Sections 2.0 and 4.1.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

For consistency, DPH will remove "enrolled" from the section header 4.4 and 4.4.1 and 6.3

**Section 6.0 Billing and Reimbursement**

- 6.1 eliminates the requirement that SBHCs implement and maintain a third party insurance billing process for services provided. The original intent of this requirement was to allow medical vendors to bill for services. If this language is removed from regulations, then what will be inserted in its place to allow medical vendors to bill for services so that insurance companies are compelled to accept and reimburse claims from SBHCs? Providers must have certainty that they may bill third parties for services provided in order that SBHC contracts remain financially viable. We suggest maintaining the current language in Section 6.1.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

Under Delaware law, SBHCs are not required to bill third party insurance. Therefore, language is removed to be consistent with Delaware law.

**State Council for Persons with Disabilities (SCPD)**

First, in §1.0, DPH should consider deletion of the reference to §3365. That statute was in effect only until January 1, 2017.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

§3365 is a current and active Delaware Code reference.

Second, the Legislature enacted H.B. 234 in 2016 with the understanding that “(u)nder DPH regulations students under 18 must enroll for services by having a parent or guardian sign a consent form”. See synopsis. There was no evidence of a legislative intent to eliminate a consent requirement. In contrast, DPH is striking the operative §4.1 which addresses who can consent to services. This makes little sense. Moreover, DPH is retaining a revised definition of “parent” in §2.0. There is no reason to have a definition of “parent” if §4.1 is stricken. The only residual reference to “parent” in the entire regulation is a passing reference to satisfaction surveys within §8.1.2.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

The language referenced in your submitted comment was not included in the final Delaware law. Other Delaware laws govern the requirement for consent to medical services.

Third, the amended definition of “parent” in §2.0 merits reconsideration. For example, it would not cover a court-appointed guardian of a student ages 18 and up. It would also not cover a relative caregiver who is not “charged with caring” but is voluntarily caring for a child. The reference to 13 Del.C. §8-201 is odd. That Code section is from the chapter on establishing paternity and maternity. DPH could consider a cross reference to the Code section specifically addressing consent to health care (Title 13 Del.C. §707) which includes relative caregivers, parents, and guardians.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

DPH will eliminate the definition of “parent”. As it is only referenced one time in the regulation as it relates to satisfaction surveys within §8.1.2.

Fourth, the definition of “student” in §2.0 is odd. It does not cover students ages 18 and above. School-based health centers have historically served students age 18 and above. See, e.g., current §4.1, second sentence.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

The definition of “student” is not age restricted.

Fifth, revised §4.2 contemplates SBHCs only serving “children”. This is “underinclusive” since it omits students age 18 and above.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

The language is consistent with Delaware law.

Sixth, revised §4.2 limits persons serving students to “licensed professionals”. See also revised §5.1. This would exclude a host of professionals and paraprofessionals, including certified school psychologists [14 DE Admin Code §1583]; unlicensed autism services providers [18 Del.C. §3570A(e)(2) and (f)]; physical therapist assistants [24 Del.C. §2602(9)]; occupational therapy assistants [24 Del.C. §2002(5)]; psychological assistants [24 Del.C. §3507]; and speech pathology aides [24 Del.C. §3702(12)]. DPH should consider retaining the current language, “health professionals” (§5.1). Section 5.2 already limits provision of services to that within a staff member’s “education and experience and legally within their scope of practice”.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

The language is consistent with Delaware law.

Seventh, the enabling legislation for SBHCs explicitly requires insurers to cover some costs of care. See 18 Del.C. §3571G(c). DPH proposes to eliminate the only regulation contemplating insurer billing: “~~6.1 SBHCs are required to implement and maintain a third party insurance billing process for services provided.~~” There is some

“tension” between the statutory requirement and elimination of this regulation.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

Under Delaware law, SBHCs are not required to bill third party insurance.

Eighth, §4.3 disallows diagnosis and treatment of certain conditions and diseases without school board approval. This should be reconsidered. If there is valid consent, what is the interest of the school board in excluding diagnosis and treatment? In particular, the rationale for requiring school board approval of HIV testing in revised §4.3 is not self-evident and singling out this form of screening may be imprudent.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

Per Delaware law, From **Title 13 § 1043 Authority**, “school board which shall have the authority to administer and to supervise the free public schools of the reorganized school district and which shall have the authority to determine policy and adopt rules and regulations for the general administration and supervision of the free public schools”.

Ninth, §4.3 refers to “approval of the school board governing the SBHC locale.” This is an odd reference and ignores the overlapping “locales” covered by local districts and Vo-tech school districts. Vo-tech districts are required to maintain SBHCs. See 14 Del.C. §4126. The “locales” of local districts and Vo-tech districts overlap.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

DPH will remove the word “locale” to clarify the regulation.

## **Christiana Health Care System**

### **Section 4.0: Service Provision: Section 4.1:**

Christiana Care supports the removal of language from the previous draft requiring a student to be "enrolled in the SBHC by his or her parent" in order for the student to obtain services at a SBHC. Christiana Care intends to continue to require student or parent consent, as applicable, for particular services in accordance with applicable state and federal laws and regulations, and in accordance with the contractual guidance issued by DPH to Medical Sponsors of SBHCsPI Christiana Care recommends that the regulations include language to that effect, specifically, that "nothing in the regulations limits the ability of a SBHC to require student or parent consent, as applicable, for particular services in accordance with applicable state and federal laws and regulations, and in accordance with the contractual guidance issued by **DPH** to Medical Sponsors of SBHCs."

To the extent that the initial version of the proposed Regulations contemplated that SBHC providers, including Christiana Care, would utilize enrollment statistics as a method of measuring performance of the SBHCs, Christiana Care intends to rely on alternative metrics to demonstrate the success of the CCHS Centers, including de-identified data on services provided to patients and numbers of patient visits.

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

DPH will include the suggested and recommended language in the regulation as written, “nothing in the regulations limits the ability of a SBHC to require student or parent consent, as applicable, for particular services in accordance with applicable state and federal laws and regulations, and in accordance with the contractual guidance issued by **DPH** to Medical Sponsors of SBHCs."

### **Section 4.4: Promotion of vaccination among enrolled students:**

Christiana Care supports the promotion of vaccination of students served by SBHCs, and recommends removing the word "enrolled" from the Section header and in 4.4.1 to make Section 4.4 consistent with Section 4.1

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

DPH will remove "enrolled" from the section header 4.4 and 4.4.1 and 6.3

**Section 6.0 Billing and Reimbursement:**

While Christiana Care does not oppose the removal of the language requiring SBHCs to "implement and maintain a third-party insurance billing process for services provided," we recommend adding language to the regulation that that "nothing in these Regulations is intended to prohibit or otherwise restrict a provider from billing for services for which it is authorized to bill under applicable state and federal laws and regulations, and that nothing in these Regulations is intended to create an independent basis for the denial of payment of any claim."

**DPH Response:**

**The Agency appreciates and acknowledges these comments.**

DPH will include the suggested and recommended language in the regulation in Section 6.0 Billing and Reimbursement as written, "nothing in these Regulations is intended to prohibit or otherwise restrict a provider from billing for services for which it is authorized to bill under applicable state and federal laws and regulations, and that nothing in these Regulations is intended to create an independent basis for the denial of payment of any claim."

**FINDINGS OF FACT:**

Changes made to the regulations based on the comments received are detailed in the summary of evidence. 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 School-Based Health Centers is adopted and shall become effective June 11, 2017, after publication of the final regulation in the Delaware *Register of Regulations*.

Kara Odom Walker, MD, MPH, MSHS  
DHSS SECRETARY  
5/24/17

**4102 School-Based Health Centers  
(Break in Continuity of Sections)**

**2.0 Definitions**

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

**(Break in Continuity Within Section)**

~~["Parent" means the parent or legal guardian authorized to enroll a student in the school based health center a parent as defined by 13 Del.C. §8 201 or a nonparent or agency charged with caring for a child during the child's minority].~~

**(Break in Continuity of Sections)**

**4.0 Service Provision**

- 4.1 ~~In order to obtain services at the SBHC, a minor student must be enrolled in the SBHC by his or her parent/guardian or relative caregiver acting pursuant to an Affidavit of Establishment of Power to Consent to Medical Treatment of Minors in accordance with Title 13 Del.C. §708. A student of the age of 18 years or more may consent for himself or herself.~~

**[Nothing in the regulations limits the ability of a SBHC to require student or parental consent, as applicable, for particular services in accordance with applicable state and federal laws and regulations, and in accordance with the contractual guidance issued by DPH to Medical Sponsors of SBHCs.]**

- 4.2[4.2] A SBHC shall be open during hours accessible to students. Information on hours of operation must be posted in areas frequented by students.

~~[4.3.24.3]~~ A SBHC is required to make services available under the categories of physical health, mental health, health education, and nutrition consultation/education, as outlined in this section All SBHCs shall provide through licensed professionals, primary health services to children, including comprehensive health assessments, diagnosis, and treatment of minor, acute, and chronic medical conditions, [nutrition consultation/education,] referrals to and follow-up for specialty care and oral and vision health services, mental health and substance use disorder assessments, crisis intervention, counseling, treatment, and referral to a continuum of mental health and substance abuse services including emergency psychiatric care, community support programs, inpatient care, and outpatient programs.

*(Break in Continuity Within Section)*

~~[4.3.5.4 4.3.1]~~ Diagnosis and treatment of sexually transmitted diseases, reproductive health, provision of contraceptives, and HIV testing and counseling. Provision of these services by SBHCs is may be provided by a SBHC subject to the approval of the school board governing the SBHC [locale].

~~4.3.64~~ Promotion of vaccination among ~~[enrolled]~~ students

~~4.3.64.1~~ SBHCs must promote provision of all vaccinations required or recommended by the Division of Public Health to ~~[enrolled]~~ students either on site or through referral to a primary care provider.

*(Break in Continuity of Sections)*

## 6.0 Billing and Reimbursement

*(Break in Continuity Within Section)*

6.43 Insurance information on each student ~~[enrolled]~~ in the SBHC must be updated annually at minimum.

**[6.4 Nothing in these Regulations is intended to prohibit or otherwise restrict a provider from billing for services for which it is authorized to bill under applicable state and federal laws and regulations, and that nothing in these Regulations is intended to create an independent basis for the denial of payment of any claim.]**

\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2017 issue of the *Register* at page 528 (20 DE Reg. 528). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**4102 School-Based Health Centers**

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### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 **Delaware Code**, Section 122(3)f (16 **Del.C.** §122(3)f)  
16 **DE Admin. Code** 4461

### ORDER

**4461 State of Delaware Milk Code**

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Milk Code (4461). The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, § 122(f).

On March 1, 2017 (Volume 20, Issue 9), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 7, 2017, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period.

**FINDINGS OF FACT:**

No changes made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Milk Code (4461) is adopted and shall become effective June 11, 2017, after publication of the final regulation in the Delaware *Register of Regulations*.

Kara Odom Walker, MD, MPH, MSHS  
Secretary  
5/25/17

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2017 issue of the *Register* at page 697 (20 DE Reg. 697). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**4461 State of Delaware Milk Code**

**DIVISION FOR THE VISUALLY IMPAIRED  
COMMISSION FOR STATEWIDE CONTRACTS TO SUPPORT EMPLOYMENT FOR INDIVIDUALS WITH  
DISABILITIES**

Statutory Authority: 16 Delaware Code, Section 9604(e) (16 **Del.C.** §9604(e))

**ORDER**

**9101 Rules and Regulations of the Statewide Contracts to Support Employment for Individuals with  
Disabilities**

**AND NOW**, this 21<sup>st</sup> day of March, 2017, the Commission for Statewide Contracts to Support Employment for Individuals with Disabilities (the "Commission") determines and orders the following:

**WHEREAS**, pursuant to 16 **Del.C.** §9604(e) and 29 **Del.C.** §10111, the Commission has the statutory power and authority to promulgate regulations which, inter alia, will govern its operations; and

**WHEREAS**, pursuant to 29 **Del.C.** §§10113(b)(1) and (2), the Commission wishes to adopt and promulgate such regulations and to publish them in the *Register of Regulations* as required by 29 **Del.C.** §10113(b); and

**WHEREAS**, these regulations are strictly a description of the Commission's organization, operations, and procedures for obtaining information as well as the Commission's rules of practice and procedure. Hence, these regulations are exempt from formal notice requirements pursuant to 29 **Del.C.** §10113(b)(2), and no formal notice period or public comment period is required pursuant to 29 **Del.C.** §§10115 to 10118;

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE  
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 16 **Del.C.** §9604(e) and 29 **Del.C.** §10113(b)(2), the Commission hereby adopts the Rules and Regulations of the Statewide Contracts to Support Employment for Individuals with Disabilities (the "Rules") as its official regulations as defined by 29 **Del.C.** §1132(3). A true and correct copy of the Rules is attached as **Exhibit "A"**.

2. The Director of the Division for the Visually Impaired shall transmit a copy of this order (with the attached Rules) to the Registrar of Regulations for publication in the Delaware *Register*. An exact copy of the Rules shall be published as the current official regulations in the Delaware *Register*.

3. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper, including promulgating any amendments to the Rules and promulgating any additional regulations in the future.



**BY ORDER OF THE COMMISSION:**

Debbie Harrington, Chair

Dean Stotler, Commissioner

Doyle R. Dobbins, Vice-Chair

Cynthia Fairwell, Commissioner

**\*Please Note:** This regulation is effective ten days after publication in the Delaware *Register of Regulations*.

## **9101 Rules and Regulations of the Statewide Contracts to Support Employment for Individuals with Disabilities**

### **1.0 General Provisions**

- 1.1 The name of this entity is the Commission for Statewide Contracts to Support Employment for Individuals with Disabilities ("Commission").
- 1.2 The mailing address of the Commission is the Biggs Building, 1901 North DuPont Highway, New Castle, Delaware 19720, and the telephone number is 302-255-9800.
- 1.3 The Commission shall assure an expanded and constant market for products and services of individuals with disabilities. To that end, the Commission will approve proposed contracts and set the price of all products manufactured and services provided by Delaware Industry for the Blind ("DIB") or any community rehabilitation program (CRP) that are being offered to a State agency as defined in 16 Del.C. Ch. 96.
- 1.4 The Officers of the Commission shall be a Chair (appointed by the Governor) and a Vice-Chair (elected by the members of the Commission).
- 1.5 The Chair shall preside at all meetings of the Commission. The Chair shall be the only person authorized to make public announcements for the Commission. The Chair may request from the head or administrator of any state agency, as defined in 16 Del.C. Ch. 96, to provide information necessary to enable the Commission to carry out its duties pursuant to the same chapter. The Chair shall also appoint members to all subcommittees of the Commission. The Chair shall designate members of the Commission to represent the Commission upon all affiliated associations, committees, and organizations; at meetings; and the like. The Chair may also appoint non-Commission members to any subcommittee where he/she deems the person's experience will assist that subcommittee with its responsibilities.
- 1.6 The Vice-Chair shall be vested with all powers and shall perform all the duties of the Chair in his/her absence or disability, to the extent which may be permitted by law, and the Vice-Chair shall perform such other duties as may be prescribed from time to time by the Commission.
- 1.7 The Director of the Division for the Visually Impaired (Director) shall provide administrative services to the Commission. The Director will designate someone to provide administrative assistance at all Commission and all subcommittee meetings and shall record the proceedings of the meetings and shall be responsible for creating the minutes of each meeting. The Director shall give proper notice of all meetings of the Commission and of all of the subcommittees.
- 1.8 The Director shall supervise and direct the execution of all policies, orders, and resolutions of the Commission as may be required of him/her by the Commission.
- 1.9 The Commission shall be composed of the following serving, at the pleasure of the Governor, as voting members with majority members present to rule when voting:
  - 1.9.1 Director of Government Support Services or a designee;
  - 1.9.2 Director of the Division of Vocational Rehabilitation or a designee;
  - 1.9.3 Secretary of Finance or a designee;
  - 1.9.4 Three public members, which shall include at least one person with a disability or a family member of an individual who is 14 years of age or older and has a disability, who are appointed by the Governor;
  - 1.9.5 The Chair, who shall be appointed by the Governor;
  - 1.9.6 Non-voting members who shall consist of the following:

- 1.9.6.1 A representative of an industry that employs persons with disabilities, appointed by the Governor;
- 1.9.6.2 The Director of the Delaware Association of Rehabilitation Facilities, Inc. (d/b/a A.N.D.) or its successor; and
- 1.9.6.3 The Director of the Division for the Visually Impaired.
- 1.10 Members of the Commission shall serve without compensation other than reimbursement for expenses actually incurred in connection with the work of the Commission, and for travel expenses when away from their homes or regular places of business.
- 1.11 There are no set terms for the members of the Commission.

## **2.0 Meetings**

- 2.1 The Commission shall meet once each month; provided, however, that a majority of a quorum present at any such meeting may postpone or change the date of the next monthly meeting.
- 2.2 A special meeting of the Commission may be called at any time by the Chair.
- 2.3 A written notice of each regular meeting of the Commission shall be electronically transmitted by the Director of the Division for the Visually Impaired or his/her designee to each member of the Commission at least seven (7) days prior to the date of such regular meeting. Notice shall be electronically transmitted by the Director of the Division for the Visually Impaired or his/her designee to each member of the Commission at least two (2) days prior to the date of any special meeting which may be duly called, as aforesaid.
- 2.4 A majority of the voting members of the Commission shall constitute a quorum for the transaction of business. Pursuant to 16 **Del.C.** §9603(j), members of the Commission may participate in a meeting of the Commission by means of conference telephone or other communications equipment by which all persons participating in the meeting can hear each other. Participating in the meeting in this manner shall constitute presence in person at the meeting.
- 2.5 No meeting of the Commission shall be only telephonic. There will be at least one voting member present in the physical location where the public may attend in person.
- 2.6 All Commission meetings shall offer the public the ability to attend the meeting telephonically by including a toll free number in its public notices.
- 2.7 It shall be the duty of the members of the Commission to attend the meetings of the Commission so as to take part in its deliberations. If any appointed member fails to attend three successive meetings of the Commission without good and valid cause or excuse or without leave of absence from the Chair, or if the Chair for any cause cannot act, from the Vice Chair of the Commission, that member's office shall be declared vacant by the Commission, and the Chair shall notify the Governor of a vacancy on the Commission, and request that the Governor shall fill the same.
- 2.8 New Commission members shall complete an orientation session designated by the Chair.
- 2.9 All Commission members shall participate in training session as designated by the Chair.
- 2.10 At all meetings of the Commission or any subcommittee thereof, all proceedings shall be conducted in accordance with the Delaware Freedom of Information Act, 29 **Del.C.** Ch. 100 and the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101, as applicable.

## **3.0 Conflicts of Interest**

- 3.1 Any member of the Commission or subcommittee member having an interest in a matter presented to or being considered by the Commission or a subcommittee for recommendation, authorization, approval or ratification, shall give prompt, full and frank disclosure of his or her interest to the Commission or subcommittee prior to its acting on such matter. The body to which such disclosure is made shall thereupon determine by majority vote, whether the disclosure shows that a conflict of interest exists or can reasonably be construed to exist.
- 3.2 If the body to which the disclosure is made determines that a conflict exists, the person regarded as having the conflict shall not vote on, nor use his or her personal influence on, nor participate (other

than to present factual information or to respond to questions) in the discussions or deliberations with respect to such matter. Such person may not be counted in determining the existence of a quorum for the portion of the meeting where the matter that includes the conflict is under discussion or is being voted upon. The minutes of the meeting shall reflect the disclosure made, the vote thereon, and where applicable, the abstention from voting and participation, and whether a quorum was present.

## **4.0 Order of Business**

4.1 The order of business at all regular meetings of the Commission shall be as follows:

4.1.1 Call to Order;

4.1.2 Approval of Minutes of Previous Meeting(s);

4.1.3 Old Business;

4.1.4 New Business;

4.1.5 Report of the Chair;

4.1.6 Report(s) of the Subcommittee(s);

4.1.7 Other Report(s);

4.1.8 Public Comment(s) or Presentation(s); and

4.1.9 Adjournment;

4.2 The Chair shall have the authority to deviate from the order of business as the circumstances warrant.

4.3 Members of the public may speak only during the time that has been designated as "public comment/presentation" under the agenda and only after they have been recognized by the Chair. Members of the public may also speak outside this designated time period but only with the permission of the Chair. Presentations by members of the public shall be limited to five (5) minutes, unless otherwise approved by the Chair. Speakers are requested to give their presentations in the order of sign in. The Chair may limit the number of public speakers heard, as circumstances warrant.

## **5.0 Subcommittees**

5.1 The subcommittees of the Commission shall be as follows:

5.1.1 The Regulations Subcommittee; and

5.1.2 Central Non-Profit Agency (CNA) Subcommittee.

5.2 In December of each year, the Chair shall review the composition of each of the subcommittees, shall make appointments and/or reassign members of the Commission to each of the subcommittees, as needed and permitted by law, and shall name a Chair of each of the subcommittees to serve for the following calendar year. Each member of the Commission shall participate actively in the work of one of the subcommittees. Non-members of the Commission may be appointed by the Chair pursuant to subsection 1.5 of these regulations. Those appointed non-members shall count towards the quorum of that subcommittee and shall have a vote in any matter before the subcommittee. Quorum for any subcommittee shall be a majority of that subcommittee's members.

5.3 The Chair may appoint special or ad hoc committees at any time and from time to time.

5.4 The Regulations Subcommittee shall review and revise, when appropriate, the Commission's Regulations to ensure that they are compliant with the Commission's purpose and statutory authority. It will review any recommendations made regarding the regulations.

5.5 The CNA Subcommittee shall develop the competitive solicitation for the selection of any central non-profit agency. In addition, the subcommittee shall review the performance of the CNAs as well as review and respond to any complaint filed against a CNA with the Commission. The subcommittee will present its findings and recommendations on any complaint to the Commission.

## **6.0 Annual Report**

6.1 Not later than 90 days following the close of each fiscal year, the Commission shall transmit to the Governor and to the General Assembly a report in a format as required by law or executive order. The

report shall include the names of the Commission members serving the preceding fiscal year, the dates of the Commission meetings in that year, a description of its activities during that year, and any recommendations for changes in the law which the Commission might suggest.

- 6.2 The Chair may designate the initial drafting of the Annual Report to an ad hoc committee and the Commission shall vote on the final draft prior to its issuance to the Governor and General Assembly.

## **7.0 Amendments**

- 7.1 At any time, anyone, whether a Commissioner or member of the public, who wishes to propose amendments to these regulations shall send such proposal in writing to the Chair of the Regulations Subcommittee who will present the proposal to the subcommittee for their review and consideration.
- 7.2 A copy of any proposed amendment(s) of these regulations as recommended by the subcommittee shall be forwarded by electronic transmittal to each member of the Commission at least ten (10) days prior to the meeting of the Commission at which it is to be presented and acted upon, together with a written notice of the date, hour, and place of such meeting.
- 7.3 Any amendments of these regulations must first be adopted by affirmative vote of two-thirds of the seated voting members of the Commission before the same shall become effective.

## **DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

### **DIVISION OF STATE POLICE**

### **1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES**

Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304)

24 DE Admin. Code 1300

### **ORDER**

### **1300 Board of Examiners of Private Investigators & Private Security Agencies**

Pursuant to the Guidelines in 29 Del.C. §10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on February 1, 2017 (Vol. 20, Issue 8). Following notice and a public hearing on the proposed rescinding of Rule 2.0 - Use of Rifle and Shotgun, the Board makes the following Findings and Conclusions:

#### **Summary of Evidence and Information Submitted**

1. The Board did not receive written evidence or information pertaining to the proposed rescindment.
2. The Board expressed its desire to rescind this rule as it has been determined there is no longer a valid need for it.

#### **Findings of Fact**

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the rescindment. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that this rule needs to be rescinded as it has been determined there is no longer a valid need for it.
5. The Board finds that the rescindment will have no adverse impact on the public.

#### **Conclusion**

6. The proposed rule rescindment was published by the Board in accord with the statutory duties and authority as set forth in 24 Del.C. §1304 et seq. and, in particular, 24 Del.C. §1304(b)(3).

7. The Board deems this rescindment necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §1304 et. seq.
8. The Board concludes that the rescindment of this rule will be in the best interests of the citizens of the State of Delaware.
9. The Board therefore rescinds the rule pursuant to 24 **Del.C.** §1304(b)(3) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
10. This rescinded rule removes Rule 2.0 in its entirety and any former Rule 2.0 or regulation heretofore promulgated by the Board.
11. The effective date of this Order shall be June 11, 2017.
12. Attached hereto and incorporated herein this order is the rescinded rule marked as exhibit A and executed simultaneously on the 24<sup>th</sup> day of April, 2017.

Lt. Colonel Monroe B. Hudson, Jr., Chairman  
Director Robert J. Irwin  
William G. Bush, IV, Esquire (absent)  
Ms. Sandra C. Taylor  
Mr. Mark W. Rainford

Mr. Wayne A. Keller (absent)  
Ms. Kelly R. Jansen (absent)  
Vacant  
Mr. Harvey A. Woods, III

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2017 issue of the Register at page 618 (20 DE Reg. 618). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1300 Board of Examiners of Private Investigators & Private Security Agencies**

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

### DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345 (29 **Del.C.** §9003(7); 31 **Del.C.** §§341-345)  
9 **DE Admin. Code** 103

#### ORDER

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

#### NATURE OF PROCEEDINGS

The Department of Children, Youth and Their Families ("DSCYF") initiated proceedings to amend Section 22.8 of the State of Delaware Regulations for Family and Large Family Child Care Homes. The proceedings were initiated pursuant to 31 **Delaware Code**, Sections 341-345, 29 **Delaware Code**, Section 9003(7), and 9 **DE Admin. Code** 103.

On April 1, 2017, DSCYF published its notice of proposed regulations pursuant to 29 **Delaware Code**, Section 10115 in the Delaware *Register of Regulations*. Written comments were accepted until May 5, 2017. Comments were received and DSCYF and the Office of the State Fire Marshal evaluated these comments to make revisions. The results of the evaluation of the comments received regarding the April 1, 2017 posting are summarized in the accompanying "Summary of Evidence."

#### SUMMARY OF EVIDENCE

In accordance with Delaware law, the Office of Child Care Licensing (OCCL) published DELACARE:

Regulations for Family and Large Family Child Care Homes for comments in the April 2017, Delaware *Register of Regulations*. The comments were reviewed, evaluated, and some changes were made. The following provided comments:

- Jamie Wolfe, Chairperson, State Council for Persons with Disabilities
- Dafne Carnright, Chairperson, Governor's Council for Exceptional Citizens

**Jamie Wolfe, Chairperson, State Council for Persons with Disabilities and Dafne Carnright, Chairperson, Governor's Council for Exceptional Citizens**

First, the revision explicitly disallows placement of the required fire extinguisher in a cabinet or closet. This is a well-intentioned change since a "hidden" extinguisher is of little value in an emergency. However, the literal ban on mounting an extinguisher "in a cabinet" would disallow use of even a recessed fire-rated cabinet on a wall. See attached descriptions of OVAL and Larsen brand systems. The advantage of such a recessed or low-protrusion cabinet is that it is compatible with ADA standards disallowing objects from protruding more than 4" from walls between 27-80" above the floor. See attachments. DFS should consider modifying its standards so mounting in such a cabinet would be permitted, if not encouraged.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 22.8 to read, "Fire extinguishers shall not be mounted in a closet or cabinet except when using a wall mounted fire extinguisher cabinet that was manufactured specifically for that purpose."

Second, the other material change is to add more discrete standards for the height of mounting the extinguisher based on its weight. The current standard (being deleted) requires all fire extinguishers to be mounted no more than 40 inches above the floor. Under the proposed standard, heavier units could not be hung more than 42 inches from the floor while lighter units could be hung up to 60 inches from the floor. We infer the rationale is that the combination of a heavy unit and high mounting could make access difficult for individuals who are short in stature or lacking strength. While such differentiation has some facial validity, DFS may wish to adopt a uniform standard, i.e., either retaining the current 40" standard or adopting a 42" standard for all fire extinguishers. Our rationale is as follows:

A. A uniform standard is easier to follow and enforce.

B. The 42" standard is very close to the current 40" standard so licensees should be comfortable with the minor change.

C. Expecting individuals to heft a 39 lb. fire extinguisher hung 60 inches from the ground in an emergency presents a safety concern. We suspect that many licensees would be hard-pressed to safely remove a 39 lb. fire extinguisher from a 5-foot wall mount. An unsuccessful attempt could lead to the extinguisher falling on the worker or a nearby child.

D. Individuals with disabilities (e.g. wheelchair users) may not be able to reach extinguishers mounted at high levels. The standard thus has an adverse impact on safety (if the licensee uses a wheelchair) and employability (if applicant who uses a wheelchair applies for a job in a child care home). Adopting a 42" height standard would ostensibly be compatible with ADA guidelines while the proposed 60" standard would not be compatible with ADA guidelines. See attachments.

**Agency Response:** The agency appreciates and acknowledges these comments. Child care providers are required to have a fire extinguisher that is rated at least a 2A-10-BC. This size fire extinguisher weighs no more than 10 pounds. Providers can mount an extinguisher as low as they would like as long as it is at least 4 inches off the floor. The regulation will remain as written.

Third, the proposed standard is ambiguous on the mounting height. Compare attached New Hampshire Fire Marshall interpretation of NFPA 10, i.e. mounting distance is to "top of the extinguisher". The DFS proposed standard could be interpreted as "hook" or "fastener" height.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 22.8 to read, "Fire extinguishers weighing no more than 40 pounds shall be mounted so that the top of the extinguisher is not more than 60 inches above the finished floor. Fire extinguishers weighing more than 40 pounds shall be mounted so that the top of the extinguisher is not more than 42 inches above the finished floor."

Fourth, there is a grammatical error in the first line, i.e., "visibly" should be "visible".

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise

22.8.

The SCPD is recommending that DFS consult both the State Fire Marshall and the Architectural Accessibility Board entities prior to adopting a final regulation.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency consulted with the Office of the State Fire Marshal before proposing this revision and while reviewing these comments.

## NOTICE OF RESCISSION AND PROMULGATION

The Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates the following regulations for family and large family child care homes as authorized in the Delaware Code, Title 31, Chapter 3, Subchapter III, Subsections 341-345, also known as "The Delaware Child Care Act." All previous requirements and regulations pertaining to such facilities are void. These regulations shall take effect on July 1, 2017.

Josette Manning, Esq., Cabinet Secretary                      5/16/17  
Department of Services for Children, Youth and Their Families

Carla Benson-Green, Director                                      5/9/17  
Division of Family Services

### 103 Regulations for Family and Large Family Child Care Homes (Break in Continuity of Sections)

#### 22.0 Fire Safety

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

- 22.8 A licensee shall ~~have an easily~~ provide a clearly **[visibly visible]**, readily accessible, charged portable dry chemical fire extinguisher rated 2A-10BC or above ~~greater~~. A licensee shall ~~mount the fire extinguisher no more than 40 inches above the finished floor. Fire extinguishers shall not be mounted in a [cabinet or closet~~ closet or cabinet **except when using a wall mounted fire extinguisher cabinet that was manufactured specifically for that purpose]**. Fire extinguishers shall be mounted at least 4 inches above the finished floor. Fire extinguishers weighing no more than 40 pounds shall be mounted **[no so that the top of the extinguisher is not]** more than 60 inches above the finished floor. Fire extinguishers weighing more than 40 pounds shall be mounted **[no so that the top of the extinguisher is not]** more than 42 inches above the finished floor. ~~An inspector~~ A fire extinguisher ~~contractor~~ licensed by the **[Office of the] State [fire-marshall Fire Marshal]** shall inspect the fire extinguisher annually.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 775 (20 DE Reg. 775). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

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

# FINAL REGULATIONS

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 100 BOARD OF CHARITABLE GAMING

Statutory Authority: 28 Delaware Code, Section 1508(a)(2) (28 **Del.C.** §1508(a)(2))  
10 **DE Admin. Code** 101

### ORDER

#### 101 Regulations Governing Bingo

On February 1, 2017 the Delaware Board of Charitable Gaming published proposed changes to its regulations in the Delaware Register of Regulations, Volume 20, Issue 8. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 22, 2017 at a regularly scheduled meeting of the Board of Charitable Gaming to receive verbal comments regarding the Board's proposed amendments to its regulations.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

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

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 28 **Del.C.** §1507 the Board has the statutory authority to promulgate rules and regulations to implement or clarify specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

#### DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 28 **Del.C.** §1507 and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on February 1, 2017. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 26<sup>th</sup> day of April, 2017.

#### DELAWARE BOARD OF CHARITABLE GAMING

Janet Williams-Coger, Chairperson

James Ascione (absent)

Francis Gant

S. Jay Mervine

Richard MacDonald

\*Please note that no changes were made to the regulation as originally proposed and published in the February 2017 issue of the *Register* at page 619 (20 DE Reg. 619). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**101 Regulations Governing Bingo**



## DIVISION OF PROFESSIONAL REGULATION 2500 BOARD OF PHARMACY

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))  
24 **DE Admin. Code** 2500

### ORDER

#### 2500 Board of Pharmacy

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 19, 2017 at a scheduled meeting of the Delaware Board of Pharmacy ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

The Board proposed adding to subsection 1.4.1 the requirement that all licensees must complete two hours of continuing education in 1) the distribution, dispensing or delivery of controlled substances, or 2) the detection and recognition of symptoms, patterns of behavior, or other characteristics of impairment and dependency resulting from the abusive or illegal use of controlled substances. Subsection 1.2.4 has been revised to reflect new NAPLEX requirements for taking of the licensure examination. The list of crimes substantially related to the practice of pharmacy, set forth in Section 17.0, has been updated to include amendments to the Uniform Controlled Substances Act. Finally, subsection 5.1.7, pertaining to compounded medications for office use, has been revised to delineate standards for both human use and animal use. The proposed changes allow veterinarians to administer and dispense compounded preparations for animal patients subject to certain specified requirements.

The proposed changes to the rules and regulation were published in the Delaware *Register of Regulations*, Volume 20, Issue 9, on March 1, 2017. Notice of the April 19, 2017 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was May 4, 2017, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on May 17, 2017.

#### Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of Publication.

Board Exhibit 2: *Delaware State News* Affidavit of Publication.

Board Exhibit 3: May 4, 2017 letter from Rachel G. Pontikes, Esquire on behalf of Wedgewood Pharmacy.

#### Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §2506(a)(1), the Board has the statutory authority to promulgate rules and regulations. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations. The only comment presented by the public was the May 4, 2017 correspondence from Ms. Pontikes on behalf of Wedgewood Pharmacy pertaining to the proposed amendments to subsection 5.1.7 of the rules and regulations. Ms. Pontikes advised that Wedgewood did not believe that the 10% limitation on non-patient specific medications dispensed to veterinarians in Delaware is needed to protect animal health and could potentially restrict health care and the quality of treatment options available to animals in Delaware. However, Ms. Pontikes concluded that, as a whole, Wedgewood supported adoption of proposed subsection 5.1.7 on the basis that it gives veterinarians increased access to compounded medication for office use.

The Board finds that requiring pharmacists to complete two hours of continuing education in controlled substances will assist in addressing the opioid epidemic in Delaware. The update to the list of crimes substantially related to the practice of pharmacy is necessary due to amendments to the Uniform Controlled Substances Act. With respect to subsection 5.1.7, pertaining to compounded medications for office use, the Board find that the proposed changes will allow veterinarians to administer and dispense compounded preparations for animal patients subject to certain specified requirements designed to maintain safety and quality for the protection of the public. The Board noted Ms. Pontikes written comment, but finds that the 10% limitation on non-patient specific medications dispensed to veterinarians in Delaware will prevent the proliferation of small-scale compounding facilities that do not meet important FDA requirements and that may provide a risk to public safety.

**Decision and Effective Date**

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

**Text and Citation**

The exact text of the rules and regulations, as amended, is attached to this Final Order as Exhibit A.

**IT IS SO ORDERED** this 17<sup>th</sup> day of May, 2017 by the Delaware Board of Pharmacy.

Susan Esposito, R.Ph.,

Tejal Patel, R.Ph., PharmD, Professional Member

Professional Member, President

Hooshang Shanehsaz, R.Ph., Professional Member, Jay Galloway, Public Member

Vice President

Kimberly Robbins, R.Ph., Professional Member

Gayle MacAfee, Public Member

Bonnie Wallner, R.Ph., Professional Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2017 issue of the *Register* at page 705 (20 DE Reg. 705). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2500 Board of Pharmacy**

## DEPARTMENT OF INSURANCE OFFICE OF LEGAL AND SPECIAL PROJECTS

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)  
18 DE Admin. Code 1204

### NOTICE

#### 1204 Replacement of Life Insurance

**\*Please note that the following regulation was adopted prior to the effective date of the current Administrative Procedures Act. The following is presented for informational purposes only.**

Background: Title 18 of the Delaware Administrative Code governs Insurance matters. Regulation 1204 Replacement of Life Insurance was originally promulgated as Regulation No. 30 effective July 1, 1981, and later amended effective April 15, 1984, as described in Bulletin No. 84-5 (June 1, 1984). At that time, the Notice To Applicant Regarding Replacement of Life Insurance was an addendum to the regulation (referenced internally in the regulation as Exhibit A). This regulation has not been amended since 1984. For unknown reasons, Exhibit A was never incorporated into the Administrative Code during the period of transition in the latter part of the 1990s to the current APA system. Therefore, this notice serves to announce that Exhibit A to the regulations governing the Replacement of Life Insurance will be added to Title 18 of the Administrative Code as an addendum to Section 1204. Exhibit A is currently "hot linked" in the online version of this regulation.

#### Exhibit A. Delaware Insurance Regulation 1204 (Formerly Regulation 30)

##### NOTICE TO APPLICANT REGARDING REPLACEMENT OF LIFE INSURANCE

It is in your best interest to get all the facts before making a decision. Make sure you fully understand the proposed new policy and your existing insurance. New policies may contain provisions which limit benefits during the initial period of the contract, in particular, the suicide and incontestable clauses.

To assist you in evaluating the proposed and the existing insurance, Delaware Insurance Regulation 1204 (Formerly Regulation 30) requires that the insurer advising or recommending replacement:

Provide the consumer, not later than the date the policy or contract is delivered, with a concise summary of the policy or contract to be issued.

Allow a twenty-day period following the delivery of the policy during which time the consumer may surrender the new policy for a full refund.

Advise the present insurance company(s) of the pending replacement.

This same regulation requires your present insurer to provide, on your request, a similar summary describing your present insurance. This information will be provided if you request it using the form below.

Amendments dated June 1, 1984 by Bulletin No. 84-5 to the third and fourth paragraphs of Exhibit A: Prior to the amendment as described in Bulletin No. 84-5, the third paragraph read: "Provide the consumer with a concise summary of the policy it proposes to issue".

Prior to the amendment as described in Bulletin No. 84-5 the fourth paragraph read:

# GENERAL NOTICES

"Allow a twenty-day period for the issue of the proposed policy during which time the consumer may surrender the new policy for a full refund."

(Form appears on the next following page)

### INFORMATION ON PRESENT POLICIES

Company Name	Policy Number	Name of Insured	Summary Requested (mark yes or no)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(continue on reverse as required)

IT IS SELDOM WISE TO TERMINATE YOUR EXISTING POLICY UNTIL YOUR NEW POLICY HAS BEEN ISSUED AND YOU HAVE EXAMINED IT AND FOUND IT TO BE ACCEPTABLE.

I have read this notice and received a copy of it.

_____ Applicant's signature	_____ Date
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_____ Agent's signature*	_____ Date*
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_____ Agent's name and address (printed)*	_____ Company Name*
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Delaware Form R (REG 30) 3/15/84

\*Direct Response Insurers may Omit Items marked by Asterisk

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

The State Board of Education will hold its monthly meeting on Thursday, June 15, 2017 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE****4465 Delaware Radiation Control Regulations**

On June 1, 2017, the Department of Health and Social Services, Division of Public Health, Office of Radiation Control, plans to publish revised Regulations Governing Radiation Control - Part F and Part H and hold them out for public comment per Delaware law.

**NOTICE OF PUBLIC HEARING**

A public hearing will be held on Friday, June 23, 2017, at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

The Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing to repeal and replace two chapters of Delaware Radiation Control Regulations. The purpose of the amendments is to update the requirements so that they are in concert with current healthcare and industry standards, and to align them more closely with current state administrative code and federal requirements. The regulations will apply to any facility or person that receives, possesses, uses, transfers, sells, owns or acquires ionizing radiation sources, or provides radiation services to such radiation source facilities, or who administers machine-generated radiation to human patients in the healing arts.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Friday, July 14, 2017 to:

Jamie Mack, Executive Assistant  
Office of the Director  
Delaware Division of Public Health  
Jesse Cooper Building  
417 Federal St.  
Dover, DE 19901  
Email: [jamie.mack@state.de.us](mailto:jamie.mack@state.de.us)  
Fax: 302-739-3984

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**  
**PUBLIC NOTICE****3511 Summer Flounder Size Limits; Possession Limits; Season**

The Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Management Board approved Addendum XXVIII to the Summer Flounder, Scup, [and] Black Sea Bass Fishery Management Plan (FMP) on February 2, 2017, maintaining regional management for the 2017 recreational Summer Flounder fishery. Addendum XXVIII required that each region increase their Summer Flounder minimum size limit by one inch and adopt a no more than four fish possession limit to stay within the 2017 recreational

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harvest limit (RHL). The Department consulted with the other states within our ASMFC-defined region (Maryland and Virginia) and committed to adopting the regional measures by April 1, 2017. The Department increased its minimum recreational size limit from 16 inches to 17 inches through emergency action (Secretary's Order No. 2017-F-0012) to meet the agreed timeline, remain compliant with the FMP, prevent overfishing of the Summer Flounder resource and provide sufficient time for Delaware's fishing-dependent businesses and their clients/customers to plan for this important fishery. The present action is necessary to adopt the required minimum Summer Flounder recreational size limit through the normal regulatory process. Failure to adopt these measures may result in a federal closure of the fishery in accordance with the Atlantic Coastal Fisheries Cooperative Management Act. No change to Delaware's existing four fish possession limit or 365 day season is required.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3511 Summer Flounder Size Limits; Possession Limits; Seasons will open June 1, 2017. 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 29, 2017 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE**  
**PUBLIC NOTICE**

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 **Del.C.** §§1713(a)(12) & 1769D, proposes to revise its regulations adding a new regulation clarifying the language in the Medical Practice Act pertaining to telemedicine and telehealth. Written comments should be sent to Devashree Brittingham, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 3, 2017 pursuant to 29 **Del.C.** §10118(a).

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**DIVISION OF PROFESSIONAL REGULATION**  
**2100 BOARD OF EXAMINERS IN OPTOMETRY**  
**PUBLIC NOTICE**

The Delaware Board of Examiners in Optometry, pursuant to 24 **Del.C.** §2104(a)(1), proposes to revise its regulations. The proposed regulations seek to amend regulations 3, 4, and 5 in order to comply with a 2016 statutory change, and amend regulation 8 in order to reduce the list of crimes substantially related to the practice of optometry.

The Board originally scheduled a hearing on the proposed rule changes for April 27, 2017 at 4:30 p.m., but was unable to hold the hearing as the meeting was cancelled. The Board will now hold a public hearing on July 27, 2017 at 4:30 p.m. in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Lisa Smith, Administrator of the Delaware Board of Examiners in Optometry, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until August 11, 2017.

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**OFFICE OF MANAGEMENT AND BUDGET**  
**DIVISION OF FACILITIES MANAGEMENT**  
**PUBLIC NOTICE**

**4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects**

In accordance and compliance with the procedures set forth at 29 *Del.C.* §§1131, *et seq.* and 29 *Del.C.*

§§10101, *et seq.*, the Director of the Office of Management and Budget is proposing to amend the following Regulation:

**Title of Regulation:**

19 **DE Admin. Code** 4104 (Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects)

(<http://regulations.delaware.gov/AdminCode/title19/4000/4100/4104.pdf>)

Members of the public may receive a copy of the existing regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the following address:

122 Martin Luther King Jr. Blvd South  
Dover, DE 19901.

Or by email at: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)

Any person who wishes to make written suggestions, provide compilations of data, testimony, briefs or other written materials concerning to the proposed new regulations must submit them to:

Robert Scoglietti  
Delaware Office of Management and Budget  
122 Martin Luther King Jr. Blvd. South  
Dover, DE 19901

Or

Email: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)

no later than the close of business on July 18, 2017.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed amendments to the regulation on June 23, 2017 in Room 219 of the Haslet Armory, 122 Martin Luther King Jr. Blvd South, Dover DE at 2:00 PM. It is requested that those interested in presenting statements at the public hearing register in advance by contacting:

Robert Scoglietti  
Delaware Office of Management and Budget  
122 Martin Luther King Jr. Blvd. South  
Dover, DE 19901

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