
Delaware Register of Regulations

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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, 2018.

Cover Photo By
Dolores Michels

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF RESEARCH STAFF

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2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	21 DE Reg. 418 (Prop.)
	21 DE Reg. 585 (Final)
MERIT EMPLOYEES RELATIONS BOARD	
Merit Employees Relations Board	
3001 Merit Employees Relations Board.....	21 DE Reg. 739 (Final)

OFFICE OF MANAGEMENT AND BUDGET

Division of Facilities Management

4104 Regulations for the Drug Testing of Contractor and Subcontractor	
Employees Working on Large Public Works Projects.....	21 DE Reg. 284 (Prop.)
	21 DE Reg. 503 (Final)
	21 DE Reg. 645 (Final)

OFFICE OF THE STATE TREASURER

Division of Debt and Cash Management

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds.....	21 DE Reg. 800 (Prop.)
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Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION**

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

PUBLIC NOTICE**1001 Thoroughbred Racing Rules and Regulations****Summary**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend rule 15 to add new Rule 15.25 relating to the adoption by reference of the ARCI definition of the responsible person for an adverse finding in an out-of-competition test, new Rule 15.26 relating to the adoption by reference of the ARCI requirement for trainers to keep up-to-date records of all medications and treatments administered and to maintain 30-day records documenting all corticosteroid or other intra-articular injections to horses in their care, and new Rule 15.27 relating to the adoption by reference of the ARCI requirement for any veterinarian who treats a race horse on Commission grounds to submit a Veterinarian's Medication Report to the Commission Veterinarian. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the June 1, 2018 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these

proposed regulations should be adopted, rejected or modified. Pursuant to 29 Del.C. §10118(a), public comments must be received on or before July 2, 2018. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after July 2, 2018, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

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

[http://regulations.delaware.gov/register/june2018/proposed/21 DE Reg 939RFA 06-01-18.pdf](http://regulations.delaware.gov/register/june2018/proposed/21%20DE%20Reg%20939RFA%2006-01-18.pdf)

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

15.0 Medication; Testing Procedures

(Break in Continuity Within Section)

15.25 ARCI Out-of-Competition Testing - Responsible Persons Definition.

15.25.1 The Commission hereby adopts by reference the Association of Racing Commissioners Out-of-Competition Testing rule definition of Responsible Persons (ARCI-011-022(10), Model Rules v8.3, April 2018). If there is any inconsistency between the Commission's regulations and the ARCI Out-of-Competition Testing rule, the provisions of the Commission's regulations shall prevail.

15.26 ARCI Trainer Other Responsibilities Rule.

15.26.1 The Commission hereby adopts by reference the Association of Racing Commissioners Trainer Other Responsibilities Rule Recordkeeping, Reporting and Corticosteroid and Intra-Articular Injection Reporting Requirements (ARCI-008-020 C.17-19, Model Rules v8.3, April 2018). If there is any inconsistency between the Commission's regulations and the ARCI Trainer Other Responsibilities Rule Recordkeeping, Reporting and Corticosteroid and Intra-Articular Injection Reporting Requirements, the provisions of the Commission's regulations shall prevail.

15.27 ARCI Veterinary Practice Rule.

15.27.1 The Commission hereby adopts by reference the Association of Racing Commissioners International Veterinary Practice Rule, Veterinarian's Reports (ARCI-011-010 D., Model Rules v8.3, April 2018). If there is any inconsistency between the Commission's regulations and the ARCI Veterinary Practice Rule, Veterinarian's Reports rule, the provisions of the Commission's regulations shall prevail.

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

[1001 Thoroughbred Racing Rules and Regulations](#)

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 Del.C. §122(a))
14 DE Admin. Code 225

PUBLIC NOTICE

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

225 Prohibition of Discrimination

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §122(a), the Secretary of Education intends to amend 14 DE Admin. Code 225 Prohibition of Discrimination. The regulation is being amended pursuant to a directive from Governor Carney to Secretary Bunting in a memo dated July 17, 2017. Through this directive, the Department was required to provide guidance through regulation to school districts and charter schools to prohibit unlawful discrimination in educational programs and activities for students. The memo also required stakeholder input and that the new regulation be published for public comment by November 1, 2017 and required a model policy that each district and charter school could adopt, or tailor and adopt, to suit the needs of the students in the district/charter school. The original proposed regulation (November 2017) received comments that resulted in substantive changes, reflected in this version of the new regulation.

Information related to this regulation can be found at the Department website here: <https://www.doe.k12.de.us/page/3531>.

Through this process, the Department reviewed information from various sources including the Education Commission of the States and policies from other states and prepared a preliminary draft regulation and model policy. A Development Team was then established to review the preliminary draft regulation and model policy and to make recommendations for revisions. The Development Team consisted of seventeen individuals and included superintendents, a charter school head of school, students, local board members, school administrators and an advocate. Four Development Team meetings were held. The revised draft was made available for general public input. Prior to the November 2017 publication, the Department held four Community Conversations with one in each county and one in the City of Wilmington. An online survey was made available for public input.

During the comment period that ended December 4, 2017, the Department received over 11,000 comments. The Department held a final meeting with the Development Team on January 31, 2018 and approximately 300 members of the public attended. Comments from that meeting as well as from the public comment period have been taken into consideration in the preparation of this current proposed amended regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 6, 2018 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments are intended to help ensure that all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation 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 additional expected costs 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/june2018/proposed/21 DE Reg 941RFA 06-01-18.pdf>

225 Prohibition of Discrimination

4.0 ~~Prohibition of Discrimination~~

~~No person in the State of Delaware shall on the basis of race, color, religion, national origin, sex, sexual orientation, genetic information, marital status, disability, age or Vietnam Era veteran's status be unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving approval or financial assistance from or through the Delaware Department of Education.~~

1.0 Purpose

- 1.1 The purpose of this regulation is to provide guidance to School Districts and Charter Schools for the development of a policy prohibiting discriminatory treatment of students on the basis of a Protected Characteristic(s) in all Educational Programs and Activities and Extra-Curricular Activities. The intent of the policy is to foster school environments as welcoming, inclusive places where all students can flourish.
- 1.2 No person in the State of Delaware shall on the basis of race, ethnicity, color, religion, national origin, sex, gender, sexual orientation, genetic information, marital status, disability, age, gender identity or expression or other characteristic protected by state or federal law, known as "Protected Characteristics" under this regulation, be unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving approval or financial assistance from or through the State of Delaware.
- 1.3 This regulation requires each School District and Charter School to establish an anti-discrimination policy and procedures for reviewing the policy for compliance with the stated Purpose of the regulation. The established anti-discrimination policy shall, at a minimum, be consistent with this regulation. All School Districts and Charter Schools may use the document entitled "Guidance to assist School Districts and Charter Schools in creating an anti-discrimination policy" as developed and attached to this regulation as Exhibit 1 - which may be amended by the Department of Education - to assist with creating a policy to meet their community's needs.

2.0 Definitions

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

context clearly indicates otherwise:

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

"Course of Study" or "Unit of Study" means academic based instruction within an Educational Program and Activity.

"Department" means the Delaware Department of Education.

"Educational Program and Activity" means an activity or program for providing education made available, sponsored or supervised by a Charter School or School District.

"Extra-Curricular Activity" means a student activity made available, sponsored or supervised by a School District or Charter School not falling within the scope of required Charter School or School District activities or relating to formally or informally approved and usually organized student activities connected with the Charter School or School District and not carrying academic credit.

"Protected Characteristic(s)" means race, ethnicity, color, religion, national origin, sex, gender, sexual orientation, genetic information, marital status, disability, age, gender identity or expression or other characteristic protected by state or federal law.

"School District" means a reorganized school district or vocational technical school district established pursuant to Title 14 of the Delaware Code.

3.0 Parental Notification

A school shall request permission from the parent or legal guardian before accommodating a request by a minor student that the school take action to recognize a change in any Protected Characteristic. Prior to requesting such permission, to safeguard the health, safety and well-being of the student, the school shall discuss with the student the permission process and, based on its discussions with the student, assess the degree to which the parent or legal guardian is aware of the change to the Protected Characteristic. If the student does not permit the school to request permission from the parent or legal guardian, then the request to take action shall not be accepted.

4.0 Admission to Educational Programs and Activities

- 4.1 All Educational Programs and Activities offered by a public school shall be open and available to students regardless of Protected Characteristic(s), unless the Educational Program and Activity is legally constituted as single gender or is for the purpose of assisting students with a disability.
- 4.2 A School District or Charter School shall not schedule students into a Course of Study or Unit of Study on the basis of Protected Characteristic(s).
- 4.3 No student, on the basis of Protected Characteristic(s), shall be discriminated against in accessing a Course of Study or Unit of Study.
- 4.4 Nothing in this regulation shall be construed to prevent School Districts and Charter Schools from providing separately to each gender those segments of a program of instruction dealing exclusively with human sexuality. A student shall have the opportunity to participate in the program of instruction dealing exclusively with human sexuality that is consistent with the student's gender identity regardless of the student's assigned sex at birth.

5.0 Career and Educational Guidance

- 5.1 School counselors and other school personnel shall present to students a broad spectrum of educational and career opportunities. School counselors and other school personnel shall make reasonable effort to depict individuals with the various Protected Characteristic(s) as representatives in educational and career opportunities.
- 5.2 No materials, tests or procedures shall be employed for guidance purposes that discriminate or limit educational and career choices on the basis of Protected Characteristic(s).

6.0 Instructional Materials

PROPOSED REGULATIONS

- 6.1 No School District or Charter School shall use instructional materials in a manner that encourages unlawful discrimination against individuals based on a Protected Characteristic(s).
- 6.2 Each school with a physical education program shall provide equal opportunity for all students. Goals, objectives and skill development standards, where used, shall neither be designated on the basis of gender nor designed to have an adverse impact on members of any gender.

7.0 Extra-Curricular Activities

- 7.1 Advantages and privileges of Charter Schools and School Districts include all Extra-Curricular Activities made available to, sponsored by or supervised by any Charter School or School District. No Charter School or School District shall make available, sponsor or supervise any Extra-Curricular Activities that restrict student participation on the basis of Protected Characteristic(s). This regulation does not prohibit School Districts or Charter Schools from allowing use of school premises by independent groups with restrictive membership if such premises are generally made available to the public.
- 7.2 No student shall be denied the opportunity in any implied or explicit manner to participate in an Extra-Curricular Activity because of the student's Protected Characteristic(s) except as provided in subsection 7.3. Participation in Extra-Curricular Activities shall be encouraged by each Charter School and School District for all students regardless of their Protected Characteristic(s).
- 7.3 School Districts and Charter Schools shall comply with Delaware Interscholastic Athletic Association regulations and policies regarding equal athletic opportunities for all students.

8.0 Student Records

- 8.1 All students entering a School District or Charter School shall be enrolled in eSchoolPLUS and assigned a DELSIS Student ID. The DELSIS Student ID is the unique identifier used to track a student throughout the student's entire educational career in Delaware.
- 8.2 Any student who seeks to change the student's name and does so pursuant to 10 Del.C. §5901, shall have the name changed in eSchoolPLUS upon the school's receipt of proof that the petition for change of name has been granted by the court. The legal name change shall be reflected only on the student's educational records from the effective date of the petition going forward; historical records shall not reflect the change.
- 8.3 Any student who seeks to change the student's name on the basis of a Protected Characteristic and does not do so pursuant to 10 Del.C. §5901 may select a "preferred name", which the school shall enter into eSchoolPLUS. The student's legal name shall also be maintained in eSchoolPLUS and shall be displayed on all educational records for the student.
- 8.4 A student's preferred name cannot be placed on the student's diploma unless it is the student's legal name.
- 8.4.1 A student may request a notarized letter of certification from the Department for a legally changed name after the issuance of the diploma. The Department does not issue duplicate or revised diplomas after the diploma has been issued.

9.0 Privacy

The school board of each School District and Charter School shall include a provision within its anti-discrimination policy that accommodates all students and addresses student access to locker rooms and bathrooms. School Districts and Charter Schools shall work with students and families on providing access to locker rooms and bathrooms that correspond to students' gender identity or expression.

10.0 Notification and Student Complaint Procedure

- 10.1 The superintendent of each School District and head of school for each Charter School shall be responsible for ensuring that all school handbooks and codes of conduct adhere to this regulation. In order to ensure that such obligations are fulfilled, all school handbooks or codes of conduct shall also contain the following:

- 10.1.1 The anti-discrimination policy required by subsection 11.1;
- 10.1.2 The school's procedures for an informal discussion process and a formal complaint process, which includes accepting, investigating and resolving students' complaints alleging discrimination in violation of the school's policy under subsection 10.1.1, which procedure shall, at a minimum, contain:
 - 10.1.2.1 A description of the basic procedures;
 - 10.1.2.2 An informal process for students such as identifying specific school staff member(s) a student may speak with if the student does not wish to initiate a formal complaint;
 - 10.1.2.3 A formal student complaint provision that allows for the complaint to be brought by the student or parent or both, and which includes the following:
 - 10.1.2.3.1 The identification of the administrative position at the school that will address the formal student complaint at each level of the process and the identification of the final decision-maker at the school or School District levels;
 - 10.1.2.3.2 A provision that the formal student complaint be in writing at each step of the process and that the formal student complaint specifies the basis for the complaint, and that it shall be filed;
 - 10.1.2.3.3 A provision that the submitted formal student complaint shall be addressed by the school, or if requested by the student that a conference with the student and parent be held within five (5) school days of its receipt and, if a conference is held, that a written determination shall be issued within five (5) school days after the conference;
 - 10.1.2.3.4 The disciplinary or intervention measures that the school may impose if it determines that discrimination has occurred.
 - 10.1.2.4 The appeal process for both the student who filed the formal student complaint or for the individual determined to have engaged in discrimination if either wishes to appeal the disciplinary or intervention measure decision.
- 10.2 Notwithstanding the requirement in Section 12.0 for an implementation date of January 1, 2019, the requirement set forth in subsection 10.1 may be satisfied by posting these policies on each School District or Charter School website (in lieu of reprinting handbooks or codes of conduct) by January 1, 2019, with hard copies provided to any requesting party. The policy shall be printed in the handbook and/or codes of conduct for the beginning of the 2019-2020 school year and be included in any electronic or website version of those documents.

(Non-regulatory note - please refer to 14 **DE Admin. Code** 605 for requirements related to student rights and responsibilities.)

11.0 Implementation

- 11.1 The school board of each School District and Charter School shall establish an anti-discrimination policy, which shall be, at a minimum, consistent with this regulation.
- 11.2 The school board of each School District and Charter School shall periodically review its anti-discrimination policy and procedures for compliance with the stated purpose under Section 1.0 of this regulation, and assurance that all obstacles to equivalent access to Educational Programs and Activities and Extra-Curricular Activities for all students regardless of Protected Characteristic(s) are removed.
- 11.3 All School Districts and Charter Schools shall strive to prevent discrimination based upon a student's Protected Characteristic(s), and all School Districts and Charter Schools shall respond promptly to such discrimination when they have knowledge of its occurrence.
- 11.4 The superintendent of each School District and head of school for each Charter School shall promote and direct effective procedures for the full implementation of this regulation and shall make recommendations to the school board of the School District or Charter School for the necessary policies, program changes, and budget resource allocations needed to achieve adherence to this regulation.

PROPOSED REGULATIONS

11.5 Any contributions to a School District or Charter School for activities and monetary awards within or sponsored by the School District or Charter School or for scholarships administered by the School District or Charter School by any person, group or organization shall be free from any unlawful restrictions based upon Protected Characteristic(s). Schools may post or print information regarding private restricted scholarships as long as no preferential treatment is given to any particular scholarship offered and as long as the school does not endorse or recommend any such scholarship or advise or suggest to a particular student that he or she apply for such a scholarship; provided that a school may so endorse or recommend such a restricted scholarship to a student if the school is aware that it is available to that student based on such student's self-identified Protected Characteristic(s).

12.0 Policy Reporting Requirements and Timelines

This regulation shall become effective on January 1, 2019 and each School District and Charter School shall establish its anti-discrimination policy for implementation by that date. An electronic copy of the current anti-discrimination policy of each School District and Charter School shall be on file with the Department of Education.

13.0 Application

Nothing in this regulation shall alter a School District's or Charter School's rights and responsibilities under any applicable federal or state law including, for example, the First Amendment of the U.S. Constitution, Title IX of the Education Amendments of 1972, the Individuals with Disabilities Act, or Title VI of the Civil Rights Act of 1964.

EXHIBIT 1

Guidance to assist School Districts and Charter Schools in creating an anti-discrimination policy.

The following guidance is intended to assist School Districts and Charter Schools in developing their own anti-discrimination policy consistent with regulation 225. School Districts and Charter Schools may, but are not required to, adopt the language provided below.

School Districts and Charter Schools should seek to prohibit the following behavior:

- Discriminating against a student with regard to access to or scheduling into a course or unit of study on the basis of Protected Characteristic(s).
- Utilizing Protected Characteristic(s) as limiting factors in career determination while providing career and educational guidance.
- Utilizing instructional materials in a manner that encourages discrimination of individuals based on Protected Characteristic(s).
- Disallowing a student's access to locker rooms or bathrooms on the basis of the student's gender identity or expression.
 - NOTE: Schools are encouraged to work with transgender students and their families to determine how to best provide access to bathrooms and locker rooms. This may include providing access to the facility that corresponds to a student's gender identity, access to a private and non-stigmatizing alternate facility such as a single stall restroom, nurse's office or gender neutral facility, access to a private area within a locker room, or a different schedule to change so a student can use a locker room separately from their peers. Such opportunities and accommodations should be open to any student to promote a safe and comfortable environment for everyone.
- Expressing slurs, jokes or remarks that are derogatory, demeaning, threatening or suggestive to a class of persons or a particular student or that promote stereotypes of persons with a Protected Characteristic(s).
- Engaging in discrimination between persons of different races or ethnicities, or even between persons of the same race or ethnicity because of their skin color, complexion or tone.
- Prohibiting a student from being excused from lunch or breakfast because of their religion.

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- Treating students unfavorably or favorably because they are from a particular country or part of the world, because of ethnicity or accent or because they appear to be of a certain ethnic background (even if they are not).
 - Treating students differently on the basis of ancestry or physical or cultural characteristics associated with a certain race, such as skin color, hair texture or styles, or certain facial features.
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OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a) and 4112(b) (14 **Del.C.** §§122(a) and 4112(b))
14 **DE Admin. Code** 608

PUBLIC NOTICE

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

608 Unsafe School Choice Option Policy

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 **Del.C.** Chapter 41, §4112(b) the Secretary of Education intends to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy. This regulation is being amended to provide the current federal statutory reference, remove language that is no longer included in the amended federal statute, modify language for school choice when a school is identified as persistently dangerous, and remove the definition of Terroristic Threatening as it is no longer a mandatory report under 14 **Del.C.** §4112(b).

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 6, 2018 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, 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 specifically address student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure all students receive a safe and equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments help ensure all students' health and safety are adequately protected.
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 amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is 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/june2018/proposed/21 DE Reg 947RFA 06-01-18.pdf](http://regulations.delaware.gov/register/june2018/proposed/21%20DE%20Reg%20947RFA%2006-01-18.pdf)

608 Unsafe School Choice Option Policy

1.0 Purpose

The Elementary and Secondary Education Act (ESEA) of 1965, as amended by the ~~No Child Left Behind Act of 2004~~ Every Student Succeeds Act (ESSA) of 2015, requires that a State Education Agency establish a State Unsafe School Choice Option policy in order to receive funding under ESEA.

~~1.02.0~~ Definitions

In this regulation, the following terms shall have the meanings indicated below:

"**Crime**" shall have the same meaning as provided in 14 **Del.C.** §4112.

"**Enrolled Students**" unless the context indicates otherwise, means all students included in the Delaware Student Information System (DELSIS) report for the year of the data collection.

"**Expulsion**" means, for purposes of this regulation, the exclusion from the regular school setting for a period determined by the local district board or charter school board not to exceed one year. The process for readmission shall be determined by the local district board or charter school board.

"**Firearm**" means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

"**Fiscal Year**" means the period of July 1 through June 30.

"**Gun Free Schools Violation**" means the prohibited bringing to school, or possession while in school of a firearm by a student.

"**Persistently Dangerous School**" means a school that has five or more unsafe incidents for every one hundred students enrolled for three consecutive fiscal years.

"**Safe School**" means a school in the same school district that is not currently identified by the Department of Education as a persistently dangerous school.

"**School**" means any public school including charter schools. School property shall have the same meaning as provided in 14 **Del.C.** §4112 (a)(9).

"**Suspension**" means, for the purpose of this regulation, the external (out of school) removal of a student from the general school population.

~~"**Terroristic Threatening**" shall have the same meaning as provided in 11 **Del.C.** §621.~~

"**Unsafe Incidents**" means any of the following:

The school suspended or expelled a student for a gun free schools violation; or

The school suspended or expelled a student for a crime committed on school property which is required to be reported under 14 **Del.C.** §4112; or

The school reported a crime committed by a non student on school property that is required to be reported under 14 **Del.C.** §4112; or

~~The school suspended or expelled a student for terroristic threatening as that term is defined in 14 Del.C. §621.~~

"Violent Felony" shall have the same meaning as provided in 11 Del.C. §4201(c). ~~(A list of these crimes can be found in the Delaware Guidelines for the Development of the Unsafe School Choice Option.)~~

2-03.0 Identification of Persistently Dangerous Schools

- ~~2-13.1~~ The Department of Education shall identify each persistently dangerous school using the data reported to it pursuant to the provisions of 14 Del.C. §4112, 14 DE Admin. Code 601, and any expulsion and suspension data as required by the Department.
- ~~2-23.2~~ Notwithstanding any provision herein to the contrary, any year that a school fails to comply with the reporting mandates, as set forth in ~~2-13.1~~ above, to the Delaware Department of Education or to the appropriate police agency as set forth above, the Department of Education will consider the school as if it otherwise met the criteria to be classified as a persistently dangerous school for that year until such time as it may be determined, in the sole discretion of the Department, that the school has met such reporting requirements.
- ~~2-33.3~~ A school identified as persistently dangerous will retain that designation for the entire fiscal year.

3-04.0 Students Attending Schools Labeled as Persistently Dangerous

- ~~3-14.1~~ A student attending a persistently dangerous school shall be allowed to choice to a safe Safe school in the same school district, including a charter school; provided such an option exists in the district, ~~the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.~~
- ~~3-24.2~~ Each public school district having one or more persistently dangerous schools and any charter school identified as a persistently dangerous school shall develop a plan and time line that describes the process for notifying parents of the school's status and for relocating any student who exercises the right to choice to a safe Safe school. The plan shall also describe the corrective actions that will be implemented. The plan shall be forwarded to the Department of Education no later than September 15th of the year that the school is identified.

4-05.0 Students Who are Victims of a Violent Felony

- ~~4-15.1~~ A student who is the victim of a Violent Felony while in or on the grounds of a school in which the student is enrolled shall be allowed to choice to a safe Safe school in the same school district, including a charter school; ~~the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring. Each school district and charter school shall have an electronic copy of the current policies and procedures on file with the Department of Education.~~
- ~~4-25.2~~ All school districts and charter schools shall establish a plan that describes their policies and procedures for providing school choice options to a student who is the victim of a violent felony, including the process for notifying parents.
- ~~4-35.3~~ Each school district and charter school shall provide an electronic copy of any new or revised policies and procedures within ninety (90) days of any revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies post the policy and procedures on the district's or charter school's website, with hard copy provided to any requesting parties.

PROPOSED REGULATIONS

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4819A and 4805(a)(14), (a)(20), (a)(33), and (b)(14) (29 **Del.C.** §§4819A & 4805(a)(14), (a)(20), (a)(33), & (b)(14))

PUBLIC NOTICE

205 Charitable Video Lottery Rules and Regulations

The Director of the Office of the Delaware State Lottery (Director) hereby gives notice of proposed new Delaware Charitable Video Lottery Regulations.

The Director seeks to adopt main rules of the Office of the Delaware State Lottery (10 **DE Admin. Code** 205) to govern charitable gaming organizations and charitable gaming vendors. These rules are both substantive and procedural in nature and apply to the licensing process, appeals, duties and rights of charitable gaming organizations and charitable gaming vendors, and the required operating procedures of charitable gaming organizations and charitable gaming vendors. The rules also serve in part to clarify the intent of the Director as enacted through these regulations. These new rules should not pose additional burdens on licensees or consumers. The Delaware Code authority for these proposed regulations is 29 **Del.C.** §4819A and well as 29 **Del.C.** §§4805(a)(14), (a)(20), (a)(33) and (b)(14).

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

Any person may submit written comments, suggestions, or other materials regarding the proposed rules to the Office of the Delaware State Lottery at the same address noted above. Any written submission in response to this notice and the relevant proposed rules must be received by the Office of the Delaware State Lottery by no later than 4:30 p.m. (EST) on July 2, 2018.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Office of the State Lottery does hereby ORDER that the regulations be, and that they hereby are, proposed to be enacted as set forth below.

Vernon A. Kirk, Director
Office of the State Lottery

***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/june2018/proposed/21 DE Reg 950RFA 06-01-18.pdf](http://regulations.delaware.gov/register/june2018/proposed/21%20DE%20Reg%20950RFA%2006-01-18.pdf)

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

205 Charitable Video Lottery Rules and Regulations

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

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

PUBLIC NOTICE

Home Health Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Home Health Services, specifically, *to add accreditation as an option to Medicare certification for Medicaid providers.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on July 2, 2018. Please identify in the subject line: **Home Health Services.**

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Home Health Services, specifically, *to add accreditation as an option to Medicare certification for Medicaid providers.*

Statutory Authority

- 1902(a)(10)(D) of the Social Security Act, *Home health services*
- 42 CFR 440.70, *Home health services*

Background

Currently, to receive reimbursement, Delaware Medicaid providers must obtain Medicare certification.

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) has worked closely with the provider community to develop an alternative which provides flexibility and removes limitations.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to add accreditation as an option to Medicare certification for Medicaid providers.

Summary of Proposed Changes

Effective for services provided on and after September 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 4.19-B Page 6 of Title XIX Medicaid State Plan regarding Home Health Services, specifically, *to add accreditation as an option to Medicare certification for Medicaid providers.*

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives

public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 2, 2018.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

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

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

<http://regulations.delaware.gov/register/june2018/proposed/21 DE Reg 951RFA 06-01-18.pdf>

AMENDED

Attachment 4.19-B
Page 6

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - OTHER TYPES OF CARE

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES HOME HEALTH SERVICES 42 CFR 440.70

Home Health Services are reimbursed as follows:

Home Health Services are reimbursed in accordance with 42 CFR 42 CFR 440.70 and when provided as defined in Attachment 3.1-A of this State Plan, subject to the requirements of 42 CFR 441.15 and 42 CFR 441.16.

Home Health agencies must be certified by Medicare or by an accreditation organization and be properly licensed by the State in which they are located.

An "accreditation organization" means a professional organization that evaluates Home Health agencies and certifies that services are being performed in accordance with acceptable practices and established standards. A current list of approved accreditation organizations can be found at <https://www.nahc.org/consumers-information/home-care-hospice-basics/accrediting-agencies/>

Payment for Home Health Services shall be reimbursed as follows:

The rates are prospective and are arrayed to determine the seventy-fifth (75th) percentile for each procedure code. The 75th percentile refers to the array of rates with regard to the Delaware Medicaid enrolled providers at the time of the new rate methodology consideration. The rates are then inflated by the four (4) quarter moving average within the CMS Home Health Market Basket Index. The Inflated average cost is per fifteen (15) minutes for each

procedure code. Supply cost will be reimbursed as part of the skilled nursing and home health aide prospective rates.

An inflation factor will be applied to the prior year's rates to determine the current year's rates. The inflation indices are obtained from the CMS Home Health Market Basket Index.

TN No. SP# <u>18-002</u>	Approval Date
Supersedes	
TN No. SP# <u>15-007</u>	Effective Date <u>September 1, 2018</u>

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §§7401 and 7406 (16 Del.C. §§7401, 7406)
16 DE Admin. Code 4465

PUBLIC NOTICE

4465 Delaware Radiation Control Regulations

On June 1, 2018, the Department of Health and Social Services, Division of Public Health, Office of Radiation Control, plans to publish revised Regulations Governing Radiation Control and hold them out for public comment per Delaware law. The Authority on Radiation Protection is authorized to promulgate these regulations in 16 Del.C. §7406.

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 Parts F and H of the Delaware Radiation Control Regulations. Additional changes to formatting, numbering and definitions have been made throughout the 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.

NOTICE OF PUBLIC HEARING

A public hearing will be held on Tuesday, June 26, 2018 at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Monday July 16, 2018 to:

Elisabeth Scheneman, Executive Assistant
Office of the Director
Delaware Division of Public Health
Jesse Cooper Building
417 Federal St.
Dover, DE 19901
Email: elisabeth.scheneman@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/june2018/proposed/21 DE Reg 953RFA 06-01-18.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

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Section 311, and 24 Delaware Code, Section 716(c)
(18 Del.C. §311 & 24 Del.C. §716(c))

PUBLIC NOTICE**1318 Compensation for Chiropractic Services****A. Type of Regulatory Action Required**

Re-proposal of New Regulation

B. Synopsis of Subject Matter of the Regulation

At 21 DE Reg. 19 (July 1, 2017), the Department of Insurance (the Department) published a notice of its intent to codify proposed new Regulation 1318, Compensation for Chiropractic Services and solicited written comments from the public for thirty (30) days as mandated by 29 Del.C. § 10118(a). The Delaware Code authority for the proposed new regulation is 24 Del.C. §716(c) and 18 Del.C. §§102, 311 and 329.

The Department received several timely submitted comments, copies of which are on file with the Department. In response to the comments received, the Department redrafted the proposed new regulation, and gave notice of its re-proposal at 21 DE Reg. 610 (February 1, 2018). The proposed new regulation as redrafted prohibits insurance carriers and third party administrators who are regulated by the Department from including in any insurance policy terms and conditions that unreasonably discriminate against access to chiropractic care or services. It also prohibits compensation of doctors of chiropractic that is unreasonable or discriminatory, as detailed in the proposed new regulation. Comments on the re-proposal were accepted until March 5, 2018. The Department did not hold a public hearing on the re-proposal.

Summary of Comments Received and the Department's Response

The Department received comments on the re-proposal from two commenters, copies of which are on file with the Department.

In addition to several non-substantive changes to the text for consistency, the Department has determined to make four changes which are substantive in nature and therefore require the Department to solicit public comment pursuant to the Delaware Administrative Procedures Act.

First, the Department has determined to delete subsection 5.1.5.3, which prohibits an insurance carrier from including in any insurance policy, contract or certificate any provision that unreasonably discriminates against access to chiropractic care or services, including but not limited to "a provision that requires a patient who wishes to seek the care or services of a doctor of chiropractic to first obtain a referral or other approval from a health-care provider who is not a doctor of chiropractic." This subparagraph added unnecessary confusion to the regulation. Additionally, the concept of prohibiting unreasonable discrimination concerning access to care is already clearly set forth in subsection 5.1.

Second, the Department has determined to delete subsection 6.3, which prohibited carriers and third party administrators (TPAs) from utilizing "a cost containment or managed care strategy concerning reimbursement for

chiropractic care or services, when any one of chiropractic, medical, osteopathic or pharmaceutical care would be a medically suitable treatment for a patient's particular condition and would otherwise be eligible for reimbursement." This subsection could arguably be considered contrary to the underlying statute at 24 **Del.C.** §716(b), which states "nothing shall prevent the operation of reasonable and nondiscriminatory cost containment or managed care provisions"

Third, the Department has determined that subsections 5.2 and 6.3 address the same issue, which is the statutory provision at 24 **Del.C.** §716(b) that allows carriers and TPAs to implement reasonable and nondiscriminatory cost containment and managed care provisions. Accordingly, the Department is combining these two paragraphs into a new section 7.0 entitled "Reasonable and Nondiscriminatory Provisions."

Fourth, the Department has determined to change the effective date of the regulation. As proposed, Section 5.0 of this regulation would have become effective on or after January 1, 2019, for any policy newly written or renewed, while all other sections of the regulation would have become effective on or after the effective date of this regulation. The Department has determined to make the entire regulation effective on or after January 1, 2019.

The Department does not plan to hold a public hearing on the redrafted version of the proposed new regulation. The proposed new regulation appears below and may also be viewed at the Department's website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2nd day of July, 2018. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
841 Silver Lake Drive
Dover, 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

***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/june2018/proposed/21 DE Reg 954RFA 06-01-18.pdf>

1318 Compensation for Chiropractic Services

1.0 Authority

This regulation is adopted pursuant to 18 **Del.C.** §§102, 311 and 329 and 24 **Del.C.** §716 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

2.0 Purpose

The purpose of this regulation is to implement 24 **Del.C.** §716.

3.0 Scope

3.1 This regulation shall apply to all carriers and to all third party administrators as defined herein.

3.2 This regulation shall not apply to personal injury protection automobile insurance that is required under 21 **Del.C.** Ch. 21.

4.0 Definitions

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

"**Administrator**" or "**third party administrator**" or "**TPA**" means "**Administrator**" or "**third party administrator**" or "**TPA**" as those terms are defined at 18 **DE Admin. Code** 1406-2.1.

PROPOSED REGULATIONS

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

"Chiropractic" means **"Chiropractic"** as defined in 24 **Del.C.** §701 and in 24 **DE Admin. Code** 700.

"Chiropractic care or services" means those practices that a licensed doctor of chiropractic is licensed to provide pursuant to 24 **Del.C.** Ch. 7 and 24 **DE Admin. Code** 700.

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

"Doctor of chiropractic" means a person who is licensed to administer chiropractic care or services pursuant to 24 **Del.C.** Ch. 7 and 24 **DE Admin. Code** 700.

"Medically necessary" means the providing of health care services or products that a prudent physician would provide to a patient for the purpose of diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

- A. In accordance with generally accepted standards of medical practice;
- B. Consistent with the symptoms or treatment of the condition; and
- C. Not solely for anyone's convenience.

"Physician" means, for purposes of this regulation, anyone who is licensed as a physician pursuant to 24 **Del.C.** Ch. 17 or as a doctor of chiropractic pursuant to 24 **Del.C.** Ch. 7.

5.0 Unreasonable and Discriminatory Access to Chiropractic Care or Services Prohibited

- 5.1 No carrier shall include in any insurance policy, contract or certificate any provision that unreasonably discriminates against access to chiropractic care or services, including but not limited to:
 - 5.1.1 A cost containment or managed care provision that denies or restricts access to chiropractic care or services in a manner that is more restrictive than a cost containment or managed care provision placed on a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially similar service, for the treatment of a patient with a condition that is within the scope of chiropractic practice;
 - 5.1.2 A provision that classifies chiropractic care or services as "maintenance care" or "not medically necessary," solely for the purpose of denying access to chiropractic care or services;
 - 5.1.3 A provision that requires a patient to pay a higher copay or deductible when being treated by a doctor of chiropractic than that patient would otherwise be required to pay for the same or substantially similar care or services had that care or services been rendered by a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to render that or a substantially similar care or service;
 - 5.1.4 A provision that requires a patient to pay a copayment or coinsurance that is more than 25 percent of the fee due or to be paid to a doctor of chiropractic for chiropractic care or services;
 - 5.1.5 A provision that contains a utilization or compensation restriction or practice for a doctor of chiropractic that is more restrictive than a utilization or compensation restriction or practice placed on a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially similar care or service for the treatment of patients with conditions within the scope of chiropractic care or services, including but not limited to:
 - 5.1.5.1 Unreasonable or discriminatory restrictions on the number of compensated visits per condition, or per episode, year, or other period; or
 - 5.1.5.2 Unreasonable or discriminatory precertification requirements and allowances for initial or subsequent visits, or for the determination of medical necessity; or
 - 5.1.6 Including a provision that would unreasonably deny coverage for a chiropractic technique, method or diagnostic procedure if that chiropractic technique, method or diagnostic procedure is taught by a Chiropractic College or University accredited by the Council on Chiropractic Education (CCE), or has been approved by the Delaware Board of Chiropractic.

6.0 Unreasonable and Discriminatory Compensation Prohibited

- 6.1 No carrier or TPA shall discriminate against or unreasonably deny a doctor of chiropractic compensation for a chiropractic service rendered by that doctor of chiropractic if the carrier would otherwise compensate a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform that same or substantially similar service.
- 6.2 Every carrier or TPA shall utilize nondiscriminatory cost containment and managed care payment strategies to provide payment for chiropractic care or services, regardless of whether the care or services were delivered by a licensed doctor of chiropractic or by a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially similar service.

7.0 Reasonable and Nondiscriminatory Provisions

Nothing in this regulation shall prohibit a carrier or a TPA from implementing reasonable and nondiscriminatory cost containment or managed care provisions as permitted by 24 Del.C. §716(b).

8.0 Waiver not permitted

The provisions of this regulation may not be waived, voided, or nullified by contract.

9.0 Causes of Action

This regulation shall not create a private cause of action for any person or entity other than the Commissioner against a carrier or its representative based upon a violation of 24 Del.C. §716 or any provision of this regulation.

10.0 Effective Date

This regulation shall become effective on January 1, 2019.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C. Ch. 60)
7 DE Admin. Code 1101

REGISTER NOTICE

SAN #2018-06

1101 Definitions and Administrative Principles

1. TITLE OF THE REGULATION:

7 DE Admin. Code 1101: Definitions and Administrative Principles

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

The purpose of this action is to add three definitions in 7 DE Admin. Code 1101 needed for the new Source Category Permit "Removal of Lead-containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting"

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60 Environmental Control

PROPOSED REGULATIONS

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

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a hearing on this proposed amendment on July 12, 2018 beginning at 6pm at the Kent County Levy Court, 555 S. Bay Road, Room 220, Dover, DE 19901. Interested parties may present oral or written comments regarding the proposed changes at the public hearing or in writing to David Fees, Division of Air Quality, DNREC, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904, or by email to david.fees@state.de.us. The hearing record will remain open until July 27, 2018.

7. PREPARED BY:

David Fees david.fees@state.de.us (302) 739-9402
May 13, 2018

***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/june2018/proposed/21 DE Reg 957RFA 06-01-18.pdf>

1101 Definitions and Administrative Principles
(Break in Continuity of Sections)

~~42/41/2016~~ xx/xx/2018

2.0 Definitions

(Break in Continuity Within Section)

"Dry abrasive blasting" means propelling an abrasive material under dry, pressurized conditions against a surface to remove coatings or contaminants or to prepare for subsequent coating. Dry sandblasting is included within this definition.

(Break in Continuity Within Section)

"Lead-containing coating" means a coating that contains lead or lead compounds.

(Break in Continuity Within Section)

"Water tank" means a storage vessel, elevated or at ground level, that holds potable or non-potable water for use in including, but not limited to, a potable water system, a manufacturing process or other type of process, or for fighting fires.

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

1101 Definitions and Administrative Principles

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C. Ch. 60)
7 DE Admin. Code 1102

REGISTER NOTICE
SAN #2017-18

1102 Permits

1. TITLE OF THE REGULATION:

7 DE Admin. Code 1102: Permits

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

The purpose of this action is to revise 7 DE Admin. Code 1102, Section 15.0 "Outdoor painting and sand blasting equipment" of Appendix A to qualify that removal of lead-containing coatings from water tanks by dry abrasive blasting is no longer exempt from obtaining a permit.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60 Environmental Control

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a hearing on this proposed amendment on July 12, 2018 beginning at 6pm at the Kent County Levy Court, 555 S. Bay Road, Room 220, Dover, DE 19901. Interested parties may present oral or written comments regarding the proposed changes at the public hearing or in writing to David Fees, Division of Air Quality, DNREC, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904, or by email to david.fees@state.de.us. The hearing record will remain open until July 27, 2018.

7. PREPARED BY:

David Fees david.fees@state.de.us (302) 739-9402
May 8, 2018

***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/june2018/proposed/21 DE Reg 958RFA 06-01-18.pdf>

1102 Permits

(Break in Continuity of Sections)

06/11/2006 (xx/xx/xxxx)

Appendix A

(For the applicability of Appendix A, see 2.2 of this regulation)

(Break in Continuity Within Section)

15.0 Outdoor painting and sand blasting equipment except for the removal of lead-containing coatings from outdoor water tanks by dry abrasive blasting.

defined in 7 DE Admin. Code 1144.

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

1102 Permits

PROPOSED REGULATIONS

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

2600 EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

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

PUBLIC NOTICE

2600 Examining Board of Physical Therapists and Athletic Trainers

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

Revisions to Section 7.0 modify the examination process for physical therapist and physical therapist assistant applicants. Specifically, subsection 7.3.1.3 gives the Board the discretion to identify a third-party as its authorized designee to approve applicants to sit for the examination. In addition, subsection 7.3.1.3.1 authorizes a physical therapist student or physical therapist assistant student to take the examination up to 90 days prior to graduation from a CAPTE accredited program.

A public hearing will be held on June 26, 2018 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be July 11, 2018, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

***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/june2018/proposed/21 DE Reg 960RFA 06-01-18.pdf](http://regulations.delaware.gov/register/june2018/proposed/21%20DE%20Reg%20960RFA%2006-01-18.pdf)

2600 Examining Board of Physical Therapists and Athletic Trainers

(Break in Continuity of Sections)

7.0 Duty to Update Address; Licensure Procedures; Renewal of Licenses (24 Del.C. §2606)

(Break in Continuity of Sections)

- 7.3 Applicants for Physical Therapist or Physical Therapist Assistant licensure shall not be admitted to the examination without the submission of the following documents:
- 7.3.1 Professional Qualifications – proof of graduation (official transcript) from an educational program for the Physical Therapist or Physical Therapist Assistant which is accredited by the appropriate accrediting agency as set forth in the Practice Act.
 - 7.3.2 Proof of current CPR certification by the American Red Cross, American Heart Association, National Safety Council or other agency approved by the Board and posted on the Division of Professional Regulation's website. CPR certification must be obtained through a course with a live lab component.
 - 7.3.3 Proof of completion of a criminal background check, pursuant to application instructions.
 - 7.3.4 A fee in check or money order payable to the State of Delaware.
 - 7.3.5 A completed application form.
- 7.4 The Board shall use the Physical Therapist and Physical Therapist Assistant examination endorsed by the Federation of State Boards of Physical Therapy.

- ~~7.5~~ All applicants for licensure as a Physical Therapist or Physical Therapist Assistant must successfully pass the examination described in subsection 7.4 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.
- ~~7.3~~ Applicants for licensure as a Physical Therapist or Physical Therapist Assistant.
- ~~7.3.1~~ Examination.
- ~~7.3.1.1~~ The Board shall use the Physical Therapist and Physical Therapist Assistant examination endorsed by the Federation of State Boards of Physical Therapy.
- ~~7.3.1.2~~ All applicants for licensure as a Physical Therapist or Physical Therapist Assistant must successfully pass the examination described in subsection 7.3.1.1 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.
- ~~7.3.1.3~~ The Board may designate a third-party as its authorized designee to approve applicants to sit for the examination, including approval of requests for testing accommodations under the Americans with Disabilities Act of 1990, as amended.
- ~~7.3.1.3.1~~ A physical therapist student or physical therapist assistant student may take the examination up to 90 days prior to graduation from a CAPTE accredited program.
- ~~7.3.2~~ Applicants for licensure as a Physical Therapist or Physical Therapist Assistant must submit to the Board the following:
- ~~7.3.2.1~~ Professional Qualifications - proof of graduation (official transcript) from an educational program for the Physical Therapist or Physical Therapist Assistant which is accredited by the appropriate accrediting agency as set forth in the Practice Act.
- ~~7.3.2.2~~ Proof of current CPR certification by the American Red Cross, American Heart Association, National Safety Council or other agency approved by the Board and posted on the Division of Professional Regulation's website. CPR certification must be obtained through a course with a live lab component.
- ~~7.3.2.3~~ Proof of completion of a criminal background check, pursuant to application instructions.
- ~~7.3.2.4~~ A check or money order payable to the State of Delaware.
- ~~7.3.2.5~~ A completed application form.
- ~~7.6-7.4~~ Applicants for licensure as an Athletic Trainer must submit to the Board the following:
- ~~7.6-47.4.1~~ Professional Qualifications - proof of graduation (official transcript) from an educational program described in 24 Del.C. §2606(a)(1), whether an accredited program or Board of Certification (BOC) internship.
- ~~7.6-27.4.2~~ Official letter of Athletic Trainer certification from BOC.
- ~~7.6-37.4.3~~ Proof of current CPR certification by the American Red Cross, American Heart Association, National Safety Council or other agency approved by the Board and posted on the Division of Professional Regulation's website. CPR certification must be obtained through a course with a live lab component.
- ~~7.6-47.4.4~~ Proof of completion of a criminal background check, pursuant to application instructions.
- ~~7.6-57.4.5~~ A check or money order made payable to the State of Delaware.
- ~~7.6-67.4.6~~ The completed application form.
- ~~7.7.5~~ Licenses shall expire biennially on every odd numbered year. License renewal shall be accomplished online at www.dpr.delaware.gov and shall include:
- ~~7.7-17.5.1~~ the applicable fee, and
- ~~7.7-27.5.2~~ attestation of completion of continuing education courses required by Section 13.0.
- 8.0 Admission to Practice, Licensure by Reciprocity (24 Del.C. §2610)**
- Definition - The granting of a license to an applicant who meets all the requirements set forth in this Section and 24 Del.C. §2610.

PROPOSED REGULATIONS

- 8.1 The reciprocity applicant shall submit the documentation listed in subsections 7.3 or ~~7.6~~7.4.
(*Break in Continuity Within Section*)

9.0 Applicants Trained Outside of the United States (24 Del.C. §2606(b))

- 9.1 A physical therapist or physical therapist assistant applicant whose application is based on a diploma issued by a school located outside of the United States shall complete all of the following requirements:

(*Break in Continuity Within Section*)

- 9.1.3 Pass the applicable licensing examination as set forth in ~~subsections 7.4 and 7.5~~ subsection 7.3.1.1.

(*Break in Continuity Within Section*)

10.0 Temporary Licensure (24 Del.C. §2611)

- 10.1 The Board may issue a temporary license to all applicants who have submitted to the Board the documents listed in ~~subsection~~ subsections 7.3 and ~~subsection 7.6~~ 7.4, respectively, and who have been determined to be eligible to take the examination. The Board shall accept a letter signed by the Physical Therapist or Physical Therapist Assistant applicant's school official stating that the applicant has completed all requirements for graduation; provided, however, that the applicant shall submit to the Board an official transcript as soon as it becomes available. The Board will determine the Physical Therapist or Physical Therapist Assistant applicant's eligibility to take the examination. In the case of Athletic Trainer applicants for temporary license, a letter from BOC stating the applicant's eligibility to take the BOC examination will be required. Physical Therapist and Physical Therapist Assistant applicants may practice only under the direct supervision of a licensed Physical Therapist. Athletic Trainer applicants may practice only under the direct supervision of a licensed Athletic Trainer or Physical Therapist as that supervision is defined in subsection 1.2.1. A temporary license shall expire upon notice to the applicant of his/her failure to pass the license examination and may not be renewed. In all other cases, a temporary license may be renewed only once.

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

2600 Examining Board of Physical Therapists and Athletic Trainers

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 132(e), 507, 508 and 29 Delaware Code, Section 8404(8) (17 **Del.C.** §§132(e), 507 & 508; 29 **Del.C.** §8404(8))
2 **DE Admin. Code** 2309

PUBLIC NOTICE

2309 Development Coordination Manual

Pursuant to the authority provided by 17 **Del.C.** §§132(e), 507, and 508, as well as 29 **Del.C.** §8404(8), the Delaware Department of Transportation (DelDOT) adopted the Development Coordination Manual.

The Department, through its Division of Planning and Public Policy, seeks to adopt general revisions to its existing regulations, the Development Coordination Manual, to address procedural changes, add or modify technical requirements and clarify and amend design criteria. These collective changes are both technical and administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

Public Comment Period

DelDOT will take written comments on these proposed general revisions to Section 2309 of Title 2, Delaware Administrative Code, from June 1, 2018 through July 2, 2018. The public may submit their comments to:

Wendy Polasko, P.E., Process and Quality Control Engineer, Planning Development Coordination
 via email (Wendy.Polasko@state.de.us) or in writing to her attention,
 Division of Planning
 Delaware Department of Transportation
 P.O. Box 778 Dover, DE 19903

SUMMARY OF PROPOSED CHANGES TO THE DEVELOPMENT COORDINATION MANUAL

Sec/Fig	Para.	DelDOT Comment/Proposed Change	Justification
3.1	-	“In most cases, if the requirements of this chapter are met, the result will be the issuance of a letter of “No Objection to Recordation” from DelDOT to the local land use agency.”	Removed text for clarification
3.1	-	The letter of “No Objection to Recordation” is not a DelDOT endorsement of the project. Rather, it is a recitation of the transportation improvements which the applicant may be required to make as a pre- condition to recordation steps and deed restrictions as required by the respective county/municipality in which the project is located. If transportation improvements are necessary, they are based on an analysis of the proposed project, its location, and its estimated impact on traffic movements and densities.	Moved text from 3.4.1 to 3.1 for clarification
3.1	-	The required improvements conform to DelDOT’s published rules, regulations and standards. Ultimate responsibility for the approval of any project rests with the local government in which the land use decisions are authorized. There may be other reasons (environmental, historic, neighborhood composition, etc.) which compel that jurisdiction to modify or reject this proposed plan even though DelDOT has established that these enumerated transportation improvements are acceptable.	Moved text from 3.4.1 to 3.1 for clarification

PROPOSED REGULATIONS

3.2.4.1		<p>“Right-of-way monuments shall be set and/or placed by a Professional Land Surveyor (PLS) licensed in Delaware.”</p> <p>“Right-of-way monuments shall be set and/or placed by a Professional Land Surveyor (PLS) licensed in Delaware and located on a monumentation plan to be provided with the as built.”</p>	Clarification
Figure 3.2.5-a		Added a Functional Class for Principal Arterial and a corresponding Minimum Dedicated Right of Way	Clarification
3.2.5.2		<p>“Per 17 Del.C.§ 530, DelDOT cannot require a dedication of land along a State-maintained roadway for a minor subdivision plan that meet the requirements set forth in 17 Del.C.§ 530, for farms that are (1) subdivided into smaller farms, and (2) subdivided merely for the purpose of transferring land to family members for their use as a primary residence or residences, unless DelDOT can adequately demonstrate that additional right-of-way is necessary due to safety concerns caused by the proposed subdivision.”</p>	Removed language that was not consistent with 17 Del.C.§ 530
3.2.7.2 C		<p>“A minimum 10-foot permanent easement shall be provided along each side of all streets to allow DelDOT personnel to undertake routine and emergency maintenance work and shall also be available for utility and construction purposes, and permanent placement of signs and traffic control devices.”</p>	Added ‘minimum’ for clarification

<p>3.3.1</p>		<p>“An initial stage fee calculation form which is available online (for more information go to http://devcoord.deldot.gov > Forms) and fee payment is to be submitted with the electronic submission in accordance with the submission process outlined in the preface of this manual through DelDOT’s online submission portal.”</p>	<p>Clarification</p>
<p>3.3.2</p>		<p>“The plan for a minor residential strip development on a State-maintained roadway shall include the items as specified in Section 3.4.2.1 A., B., C. and D., as well as the following note: A.The following note shall be added to the minor subdivision record plan: <i>If the residual lands of the applicant are ever developed into a major subdivision, then the access to the minor subdivision parcels may be required to be from an internal subdivision street.</i> B.The access to subdivided lots along the streets shown on the Functional Classification Network shall be clearly portrayed on subdivision plan. See Chapter 7 for detailed access requirements.”</p>	<p>Clarified which portions of Section 3.4.2.1 are applicable to Minor Subdivisions</p>
<p>3.4</p>		<p>“A residential subdivision of 6 or more lots will require construction of internal streets.”</p>	<p>Added language for clarification</p>
<p>3.4</p>	<p>-</p>	<p>Deleted all language referring to the LONC process.</p>	<p>Removed text to reduce possibly of errors. All applicable LONC language is in P.6</p>
<p>3.4.1</p>	<p>-</p>	<p>Added language to create the Record Plan – RED submittal.</p>	<p>Create an optional process for commercial developments where the local land use agency does not require site plan recordation</p>
<p>3.4.2</p>	<p>-</p>	<p>Added language for the submittal requirements for the Record Plan - RED</p>	<p>Create an optional process for commercial developments where the local land use agency does not require site plan recordation</p>

PROPOSED REGULATIONS

3.4.2.1	-	Added language for Record Plan – RED and site plan content	Create an optional process for commercial developments where the local land use agency does not require site plan recordation
3.5.1	-	Deleted this Section	Removed text for clarification
3.5.4.2 A, 3.5.4.2 B, and 3.5.4.2 C		“Regardless of the location of the project or whether a project is required to actually construct a SUP/SW, a Permanent Easement (PE) is required per Section 3.2.5.1.2 of this manual. The proposed Permanent Easement (PE) shall be shown (on the Record Plan or Site Plan) and recorded via separate deed or recorded plat.”	Removed redundant text
3.5.4.2 D		“Shared-use paths and sidewalks shall be constructed in accordance with Chapter 5 of this manual and shall meet Americans with Disabilities Act the Pedestrian Accessibility Standards requirements.”	Clarified that the Pedestrian Accessibility Standards are the standard for the Department
3.5.4.2 F		“Shared-use paths and sidewalks shall be free of utility poles, bushes, plants, and all other obstructions.”	Deleted due to overlap in PAS
3.5.4.3		“Walkways are recommended between parts of a site where the public is invited or allowed to walk. Walkways should be included as part of office/warehouse and retail/warehouse combinations. Walkways are not recommended between buildings or portions of a site such as truck loading docks and warehouses that are not intended or likely to be used by pedestrians or are considered to be unsafe for use by pedestrians.”	Removed text for clarification
3.5.4.3 C and 3.5.4.3 E		Deleted Part C and Part E	Removed text for clarification

3.7.1		“Maintenance Agreement will be established for the landscaping in the median.”	Added text to clarify and existing standard
3.8		“Private stormwater management facilities, excluding filter strips and bioswales , shall be located a minimum of 20 feet from the State right-of-way, as measured to the top of slope of the facility.”	Removed the exclusion for certain stormwater facilities

***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/june2018/proposed/21 DE Reg 962RFA 06-01-18.pdf](http://regulations.delaware.gov/register/june2018/proposed/21%20DE%20Reg%20962RFA%2006-01-18.pdf)

(2) Due to the size of the proposed regulation, it is not being published here. The following links to the proposed regulation are provided below:

Preface (<http://regulations.delaware.gov/register/june2018/proposed/Preface.pdf>)

Chapter 3: (<http://regulations.delaware.gov/register/june2018/proposed/Chap3.pdf>)

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.

CASH MANAGEMENT POLICY BOARD

Statutory Authority: 29 Delaware Code, Section 2716 (29 **Del.C.** §2716)
1 **DE Admin. Code** 1201

REGULATORY IMPLEMENTING ORDER**1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds**

The Cash Management Policy Board (the "Board") hereby adopts and issues this ORDER repealing the prior guidelines and promulgating new guidelines for the deposit and investments of State funds (the "Guidelines").

I. BACKGROUND

The Board is authorized by statute to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any State Pension Fund or the State Deferred Compensation Program, and (b) to determine the terms, conditions, and other matters relating to those investments including the designation of permissible investments. See 29 **Del.C.** §2716(a). The Board previously promulgated Guidelines that, among other things, require collateralization of State deposits and establish maturity restrictions for securities purchased with State funds. See 1 **DE Admin. Code** 1201.

The Board, upon the recommendations of the Board's Subcommittees, has proposed changes to the Guidelines. The changes (a) modify existing collateralization requirements for the State's depository banks and (b) remove a seven-year cap on the maximum average maturity for reserve accounts managed by the State's investment managers. The Banking Subcommittee unanimously recommended the collateralization-related changes based on a comprehensive review of collateralization practices and issues conducted by the Office of State Treasurer ("OST"). The Investment Subcommittee unanimously recommended the investment-related changes to accommodate the State's new investment architecture, as approved and memorialized in Board Resolution 2018-1. The Board, after a public meeting on February 28, 2018, and by unanimous vote, approved

revised Guidelines for proposal under Delaware's Administrative Procedures Act, 29 **Del.C.** Ch. 101 (the "APA").

In accordance with the APA, OST caused notice and a copy of the revised Guidelines to be published in the Delaware *Register of Regulations*, Vol. 21, Issue 10, from April 1, 2018 through May 1, 2018. Only one comment was received relating to Guideline §5.3. The Delaware Bankers Association ("DBA") suggested certain changes relating to the manner by which cash management banks submit "call reports" to OST. OST and DBA worked together to craft mutually acceptable changes to § 5.3. DBA also inquired about OST's "flexibility" with respect to the manner in which State funds are collateralized. OST has proposed changes to Section 1.2 that clarify the Board's authority to grant exceptions to the Guidelines.

Additionally, OST recommended two minor changes to address potential ambiguity. OST proposed a change to Section 5.1 to clarify that the Guidelines strive to achieve, but do not necessarily require, full collateralization of all end-of-day demand deposit account balances. OST also proposed a change to Section 5.2.1 to clarify that U.S. agency obligations, when posted as collateral by cash management banks, are not subject to the percentage limitations that apply when such obligation are purchased by the State's investment managers.

The Banking Subcommittee, after a meeting on May 9, 2018, unanimously agreed that the foregoing changes are non-substantive and recommended that the changes be incorporated into the revised Guidelines.

II. FINDINGS OF FACT

The Board, for the reasons discussed in detail at, and reflected in the minutes of, the Board meetings convened on February 28, 2018 and May 14, 2018, finds that the revised Guidelines, as further amended to address DBA's comments and OST's suggested changes, are necessary and appropriate to ensure the safe deposit and prudent investment of State funds. The Board also finds that the changes identified above are non-substantive and may be incorporated in the revised Guidelines and finally approved without re-proposal under the APA.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Board concludes that it is appropriate to repeal the Guidelines presently published at 1 **DE Admin. Code** 1201 and replace them with the revised Guidelines attached hereto as Exhibit A.

IV. TEXT AND CITATION

The text of 1 **DE Admin. Code** 1201, as amended hereby, shall be in the form attached hereto as Exhibit A and shall be cited as 1 **DE Admin. Code** 1201, Objectives and Guidelines for the Investment of State of Delaware Funds.

V. EFFECTIVE DATE

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED the 14th day of May, 2018.

John V. Flynn, Chair

Cash Management Policy Board

David Marvin, Chair

Investment Subcommittee

Warren C. Engle, Chair

Banking Subcommittee

Kenneth A. Simpler, Member

State Treasurer

Jeffrey Bullock, Member

Secretary, Department of State

Manubhai C. Karia, Co-Chair

Investment Subcommittee

Lynda A. Messick, Co-Chair

Banking Subcommittee

Richard J. Geisenberger, Member

Secretary, Department of Finance

Michael Morton, Member

Controller General

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

1.0 Statutory Authorization

(Break in Continuity Within Section)

- 1.2 **Role of the Office of the State Treasurer.** The investment of State Funds is to be made by the Office of the State Treasurer ("OST") in accordance with the objectives and guidelines outlined herein ("Guidelines"); ~~29 Del.C. §2716(e)(2)~~ **provided, however, that the Board, by majority vote, may authorize OST to depart from the Guidelines**.

(Break in Continuity of Sections)

5.0 Collection and Disbursement Accounts

- 5.1 **Investment Objectives.** The funds in the Collection and Disbursement Accounts must be immediately available to support the State's daily governmental programs and activities. The primary investment objectives are therefore safety and liquidity of such funds; return is a secondary priority. OST may, consistent with these investment objectives, minimize credit risk associated with demand deposit account balances at Cash Management Banks through same-day money market mutual fund sweep products in accordance with subsection 5.2.2 and/or banking services arrangements offering "daylight overdraft" or similar privileges. End-of-day ledger balances shall be [fully] secured as provided in subsection 5.2.
- 5.2 **Permissible Investments.** Cash Management Banks shall maintain State Funds in either collateralized demand deposit accounts or open-end money market mutual funds, in each case, subject to the provisions of subsections 5.2.1 and 5.2.2, respectively, in order to mitigate the risk of State Funds being exposed to the credit risk of such financial institution.
- 5.2.1 **Demand Deposit Accounts.** State Funds held by Cash Management Banks in demand deposit accounts shall be collateralized ~~by the pledge and transfer by such financial institution of [with] one or more of following approved methods: (a) pledges of government securities that meet the definitions set out in subsections [6-3-4 6.3.1.1] and [6-3-2 6.3.2.1] ("Eligible Collateral") to a custody account held for the benefit of the State at a Federal Reserve Bank [for the benefit of the State], or held by an independent trust company, bank or similar financial institution rated in the highest rating category by at least one Nationally Recognized Statistical Rating Organizations approved by OST ("NRSRO"); ("Fed Custody Account") (b) irrevocable standby letters of credit ("LOCs") issued by a Federal Home Loan Bank or financial institution rated in the highest rating category by at least one NRSRO; and (c) surety bonds issued by insurance companies rated in the highest rating category by at least one NRSRO (collectively, "Eligible Collateral"). The terms of any pledge or custody agreement, LOC, or surety bond shall be reviewed and approved by OST. The market aggregate value of Eligible Collateral in a Fed Custody Account shall be set at a level equivalent to the highest daily intra-day shall equal or exceed the total average monthly closing ledger balances of State Funds held or expected to be held at such financial institution by Cash Management Banks during the prior month, plus such additional amount of Eligible Collateral as OST may request such bank require Cash Management Banks to pledge and transfer as may be required to ensure against volatility in daily balances provide to protect against volatility and ensure that all uninsured ledger balances are fully secured at the close of each business day. Eligible Collateral in the form of government securities shall be marked to market at the close of each business day using an independent pricing service. A Cash Management Bank may adjust collateral levels at a Fed Custody Account as frequently as may be required to comply with the substitute or reduce Eligible Collateral provided that Eligible Collateral levels meet or exceed the foregoing requirements, so long as OST is shall be provided with same-day notice of any additions to or reductions such substitutions or reductions of Eligible Collateral in the Custody Account. In addition, a Cash Management Bank shall provide OST with a detailed report of the Eligible Collateral held in any Fed Custody Account by 5:00 P.M. on the close of each business day a custody account as requested by OST.~~

(Break in Continuity Within Section)

- 5.3 **Call Reports.** Each Cash Management Bank shall provide OST with a Consolidated Report of Condition and Income ~~[(FFIEC 034), generally referred to as a “call report,”]~~ with respect to such financial institution on a quarterly basis ~~[by the last day of the month following the end of such calendar quarter unless such report is available publicly from the Federal Financial Institutions Examination Council’s web site or a successor agency’s website].~~

(Break in Continuity of Sections)

10.0 Restrictions & Violations

(Break in Continuity Within Section)

- 10.5 **Mutual or Commingled Fund Exceptions to Guidelines.** The Board recognizes that (i) mutual funds and other types of commingled investment vehicles can provide, under some circumstances, lower costs and better diversification than can be obtained with a separately managed fund pursuing the same investment objectives and (ii) such funds cannot customize their investment policies to conform to the guidelines set out herein. In such cases, the policies of such funds shall supersede these guidelines and are exempt from the policies and restrictions specified herein.

Originally adopted January 18, 1982

Revised December 12, 2014

Revised August 12, 2015

Revised August 10, 2016

[Revised May 14, 2018]

*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2018 issue of the *Register* at page 800 (21 DE Reg. 800). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

[1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds](#)

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

ORDER

501 Harness Racing Rules and Regulations

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on March 13, 2018, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 8.3.5.9.4 and 8.3.5.9.6 in the April 1, 2018 *Register of Regulations*.
2. The Commission received no written comments. The Commission held the public comment period open until close of business on April 30, 2018. The Delaware Harness Racing Commission will finalize the regulations at its regularly scheduled monthly meeting on May 8, 2018. Monthly meetings are noticed public meetings.

FINDINGS OF FACT AND CONCLUSIONS

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

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

5. The effective date of this Order will be ten (10) days from publication of this Order in the *Register of Regulations* on June 1, 2018.

IT IS SO ORDERED this 8th day of May 2018.

Beverly H. Steele, Chairman

Patt Wagner, Vice-Chairman

George P. Staats, Commissioner

Jack Berberian, Commissioner

Stephanie Liguori, Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the April 2018 issue of the *Register* at page 768 (21 DE Reg. 768). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION

PROFESSIONAL STANDARDS BOARD

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

REGULATORY IMPLEMENTING ORDER

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1504 Certificate of Eligibility

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Department of Education ("Department"), developed 14 **DE Admin. Code** 1504 Certificate of Eligibility. The regulation concerns certification under 14 **Del.C.** §1221(2) for educators of students with disabilities who are participating in a state-approved, appropriate alternative route for teacher licensure and certification program.

Notice of the proposed regulation in the form attached hereto as Exhibit "A" was published in the *Register of Regulations* on April 1, 2018. The Board received written comments from the State Council for Persons with Disabilities ("SCPD") and the Governor's Advisory Council for Exceptional Citizens ("GACEC").

On May 3, 2018, the Board discussed the SCPD's and GACEC's written comments. Regarding the comment from both SCPD and GACEC that the proposed regulation does not require school districts to affirmatively notify parents or guardians that their child's educator does not have a Standard Certificate, the Board noted that if a Delaware educator holds a Certificate of Eligibility and is participating in an ARTC program that meets federal requirements, the educator is considered under the law to possess full state certification. Regarding the comment from both SCPD and GACEC that the proposed regulation does not make reissuance of a Certificate of Eligibility contingent upon the holder demonstrating competence, the Board noted that subsection 5.3.2 requires an educator to make documented progress toward earning a Standard Certificate by continuing to participate in a state-approved, appropriate alternative route for teacher licensure and certification. Regarding the comment from both SCPD and GACEC that it may not be possible for educators who hold a Certificate of Eligibility to participate in the Extended School Year because of the date that Certificates of Eligibility expire, the Board noted that it is an implementation issue. If, as the Department implements the regulation, this becomes an issue that needs addressing through regulation, the Board can work with the Department to make changes. In addition, the Board discussed GACEC's request for clarification on what "other considerations" in subsection 4.1.1 means. The Board noted that "other considerations" means other information relating to the proposed recipient's ability or qualities for consideration. The Board also discussed GACEC's comment that subsection 4.1.3 should be reworded to provide greater clarity. The Board decided to amend subsection 4.1.3 by adding the word "as" and two commas to clarify

the subsection. The Board voted to propose 14 **DE Admin. Code** 1504 Certificate of Eligibility with the clarifying amendments to subsection 4.1.3 for adoption by the Department subject to the State Board of Education's approval.

II. FINDINGS OF FACTS

The Department finds that a Delaware educator is considered under the law to possess full state certification if he or she holds a Certificate of Eligibility and is participating in an ARTC program that meets federal requirements; that subsection 5.3.2 requires an educator to make documented progress toward earning a Standard Certificate by continuing to participate in a state-approved, appropriate alternative route for teacher licensure and certification; and that the possibility that educators who hold a Certificate of Eligibility may not be able to participate in the Extended School Year because of the date that Certificates of Eligibility expire is an implementation issue; and that "other considerations" in subsection 4.1.1 means other information relating to the proposed recipient's ability or qualities for consideration. The amendments to subsection 4.1.3 clarify the subsection and are non-substantive changes that do not require republication.

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1504 Certificate of Eligibility.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1504 Certificate of Eligibility subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1504 Certificate of Eligibility attached hereto as Exhibit "B" is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1504 Certificate of Eligibility adopted hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited as 14 **DE Admin. Code** 1504 Certificate of Eligibility in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Department pursuant to 14 **Del.C.** §§1203 and 1205(b) on May 17, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 17th day of May, 2018.

Department of Education

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

Approved this 17th day of May, 2018.

State Board of Education

Dennis L. Loftus, Ed.D., President

Nina Lou Bunting, Vice President

Dr. Audrey J. Noble (absent)

Wali W. Rushdan, II

Barbara B. Rutt (absent)

Hon. Liane M. Sorenson (absent)

Terry M. Whittaker, Ed.D.

FINAL REGULATIONS

1504 Certificate of Eligibility (Break in Continuity of Sections)

4.0 Application Procedures

4.1 The Employing Authority shall:

(Break in Continuity Within Section)

4.1.3 Establish that the proposed recipient is participating in a state-approved alternative route for teacher licensure and certification program which is appropriate to the Certification [, as] identified in Section 1.0 of this regulation[,] that the proposed recipient is pursuing; and

*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2018 issue of the *Register* at page 770 (21 DE Reg. 770). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1504 Certificate of Eligibility

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

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

ORDER

204 Sports Lottery Rules and Regulations

The Director of the Office of the State Lottery (Director) hereby gives notice of amendments to 10 DE Admin. Code 204 relating to the Delaware Sports Lottery Rules and Regulations.

The Director seeks to adopt revisions to the existing sports lottery rules, i.e., the Sports Lottery Rules and Regulations (10 DE Admin. Code 204), to confirm that the Director has the legal authority to develop and implement a sports lottery mobile application to sell sports lottery tickets and to update the rules to comply with changes that have been made to Delaware laws and internal policies and procedures of the Office of the State Lottery. These revisions are primarily procedural in nature and relate to updates to match with current internal operating procedures. Pursuant to 29 Del.C. §10113(b)(6), regulations describing an agency's codifications of existing agency principles of decision derived from previous decisions are exempted from the notice and public comment requirements of 29 Del.C. Ch. 101. These revisions should not pose additional burdens on licensees or consumers. The Delaware Code authority for these revisions is 29 Del.C. §§4805(a) and (b) and 4825(a), (c), and (d).

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

DECISION AND ORDER CONCERNING THE REGULATIONS

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

Vernon A. Kirk, Director
Office of the State Lottery
May 15, 2018

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

204 Sports Lottery Rules and Regulations

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Reimbursement Methodology for FQHCs

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding the reimbursement methodology for Federally Qualified Health Centers (FQHCs), specifically, to align DMMA reimbursement policy with the costs of operating Delaware FQHCs. 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 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 1, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after April 1, 2018 Delaware Health and Social Services/ Division of Medicaid and Medical Assistance proposes to amend Title XIX Medicaid State Plan regarding the reimbursement methodology for Federally Qualified Health Centers (FQHCs), specifically, to align DMMA reimbursement policy with the costs of operating Delaware FQHCs.

Background

In 2017, one of Delaware's Federally Qualified Health Centers (FQHCs) and the Division of Medicaid and Medical Assistance (DMMA) began a review of the FQHC's Medicaid reimbursement methodologies. At that time, it became apparent that current DMMA reimbursement policy - based on a methodology developed years ago - was in need of an update to be more in line with the present, true costs incurred by FQHCs for serving Medicaid members. The proposed update to the FQHC reimbursement policy will allow for more flexibility around adjusting for future changes in the spectrum of services offered by the providers.

Statutory Authority

Section 1902(bb) of the Social Security Act

Purpose

The purpose of this proposed regulation is to better align DMMA reimbursement policy with the costs of operating Delaware Federally Qualified Health Centers (FQHCs).

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on May 1, 2018.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

Updating the current methodology as intended could result in approximately \$251,830 in additional cost to the State in 2018, and approximately \$987,675 in 2019. Additionally, to completely implement the revised FQHC reimbursement methodology, independent auditing services will be necessary to validate the costs as reported by the FQHCs.

	Federal Fiscal Year 2018	Federal Fiscal Year 2019
General (State) funds	\$ 251,830	\$ 987,675
Federal funds	\$ 573,842	\$ 2,314,757

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: One commenter inquired if DMMA was establishing rates for assisted living.

Agency Response: The revised reimbursement methodology for FQHCs does not apply to rates for assisted living via Delaware Medicaid, nor does DMMA establish such rates.

No changes were made to the regulation as a result of this comment.

Comment: Another commenter had three separate comments.

First, The two methodologies are referred to as "a prospective payment system (PPS) rate" or the "per-visit cost". Please clarify that both methods are in fact a PPS rate, with a different basis for the rate. The first basis is 100% of reasonable costs based upon historical cost reports inflated by the Medicare Economic Index and the second basis is the per visit cost. Both methods are a PPS rate because the payment under either methodology is made regardless of the intensity of the actual service provided.

Agency Response: Per the Centers for Medicare and Medicaid Services:

"In 2000, Section 702 of the Medicare, Medicaid, and Benefits Improvement and Protection Act adapted the payment methodology for FQHCs, moving from a retrospective cost-based system to prospective payment system (PPS) methodology. This created a PPS per-visit rate equal to 100 percent of costs in the previous year. States are permitted to use an alternative payment methodology (APM); however, the new payment methodology must ensure that health centers do not receive less than what they would have received under PPS and the health centers have to agree to it."

As a result of the Prospective Payment System (PPS) having a very specific Federal statutory definition, for reimbursement purposes, the per-visit cost method option must be considered an alternate payment methodology (APM).

Second, Please provide additional details as to how the wraparound payment would be billed to DMMA and what day the 90 day timeframe is from (i.e. Date of service? Date of claim submission?)

Agency Response: Per the proposed reimbursement methodology revision, "The Delaware Medicaid Program will verify that the FQHC has received at least the PPS correct rate for every visit. If there is a discrepancy in payment amounts, DE will make a wraparound payment to the FQHC within 90 days." To clarify, if a discrepancy

in payment amounts is observed and verified, the 90-day resolution timeframe commences from the date that the claim is submitted.

Third, The cost report is historically due on June 30. We support the audit performed by a certified public accountant under the per-visit cost method, however, are concerned about the timing of such audit given the effective date of July 1. We encounter significant problems when we have to retroactively bill the managed care organizations due to rate changes. An estimate should be made for the length of time the audit will take, and the cost report due date adjusted accordingly so that the July 1 effective date can be achieved without rebilling.

Agency Response: DMMA recommends allowing for at least one month of lead time to allow for the auditing component of the "per-visit cost" method. Therefore, it is recommended that the FQHC submit their cost report to DMMA by no later than June 1, given a rate effective date of July 1.

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

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the reimbursement methodology for Federally Qualified Health Centers (FQHCs), specifically, to align DMMA reimbursement policy with the costs of operating Delaware FQHCs, is adopted and shall be final effective June 12, 2018.

Kara Odom Walker, MD, MPH, MSHS, Secretary, DHSS
5/31/18

FINAL

Attachment 4.19-B
Page 13

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

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - OTHER TYPES OF CARE

FEDERALLY QUALIFIED HEALTH CENTERS

The Centers for Medicare and Medicaid Services (CMS) requires that Federally Qualified Health Centers (FQHCs) be reimbursed in compliance with the Benefits Improvement and Protection Act (BIPA) of 2000. Effective ~~January 1, 2001~~ July 1, 2018, ~~Delaware will pay 100% of reasonable cost based on an average of the Fiscal Year 1999 and 2000 audited cost report~~ reimburse each FQHC per-visit through one of the following two (2) methodologies, whichever nets the greater result:

1. A prospective payment system (PPS) rate, where 100 percent of the reasonable costs based upon an average of their fiscal years 1999 and 2000 audited cost reports are inflated annually by the Medicare Economic Index (MEI).
- or
2. The per-visit cost as reported by the FQHC in its most recent cost report, subject to an audit performed by a certified public accountant as to the reasonableness of the reported costs.

The Medicaid Managed Care Organizations are contractually required to include the same service array and the same payment methodology as the State Medicaid FFS contracts with FQHCs. ~~The Medicaid FFS rate is a prospective payment system (PPS) rate paid per FQHC visit.~~ The Delaware Medicaid Program will verify that the FQHC has received at least the PPS correct rate [as calculated by methodology option one (above)] for every visit. If there is a discrepancy in payment amounts, DE will make a wraparound payment to the FQHC within 90 days **[following the date the claim was submitted]**.

~~FQHCs are assigned a prospectively determined rate per clinic visit based in actual costs reported on their audited cost reports, and they do not correspond with the Federal Fiscal Year, they would span more than one fiscal year. Starting July 1, 2001, the Medicare Economic Index will be used to inflate their rates. The computation is also adjusted each year to reflect any increase or decrease in the Center's Scope of Services.~~

The Delaware Medical Assistance Program (DMAP) requires that a new provider submit an estimated cost report so that a rate based on reasonable costs can be established. **[It is recommended that the FQHC submit their annual cost report to the DMAP at least one month (30 days) prior to the July 1 rate effective date in order to allow for sufficient lead time to conduct the above-mentioned independent audit, as well as to reduce the need for retroactive rate adjustments to the facilities.]**

Any new FQHC will be capped at 100% of the highest rate that Medicaid pays to a FQHC for the initial rate year. Primary Care costs are separated from Administrative and General costs for purposes of rate calculation. The Administrative and General component is capped at 40% of the highest cost. Each cost component is inflated by the current HCFA Medicare Economic Index

Medicaid will ensure 100% percent cost payments regardless of the payment mechanism.

The rate year for FQHC services is July 1 through June 30.

The payment methodology for FQHCs will conform to section 702 of the BIPA 2000 legislation.

The payment methodology for FQHCs will conform to the BIPA 2000 requirements Prospective Payment System.

For services provided on or after January 2, 2017 the cost of long-acting reversible contraceptives (LARCs) will be based on actual acquisition cost (AAC). The FQHC must submit a separate claim to be reimbursed for the AAC of a LARC.

TN No. SPA <u>18-002</u>	Approval Date
TN No. SPA <u>17-003</u>	Effective Date <u>April 1, 2017</u>

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER

GROUNDWATER DISCHARGES SECTION

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)
7 **DE Admin. Code** 7102

Secretary's Order No.: 2018-W-0031

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 7102:
*Regulations Governing Underground Injection Control***

Date of Issuance: May 16, 2018

Effective Date of the Amendment: June 11, 2018

7102 Regulations Governing Underground Injection Control

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

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 7102, *Regulations Governing Underground Injection Control* (hereinafter referred to as "UIC Regulations"). Delaware's current UIC Regulations were promulgated by the Department in 1983, with no amendments to those regulations having been promulgated by DNREC since that time. On April 5, 2000, the United States Environmental Protection Agency ("EPA") issued the *Revisions to the Underground Injection Control (UIC) Regulations for Class V Injection Wells*, which explicitly addressed large capacity cesspools and motor vehicle disposal wells (floor drains). Additional regulations were promulgated by the EPA in December of 2011 to address a new "Class VI - Injection Well" Class. Neither of these EPA promulgations has been incorporated into Delaware's existing UIC Regulations, nor do they cover current or emerging technology in the field of Underground Injection Control ("UIC") activities.

The promulgation of the above proposed Amendments would enable the Department to (1) bring Delaware's existing UIC Regulations into compliance with current federal requirements, as determined by the EPA; (2) provide additional clarity and a greater understanding to the public as to the requirements associated with UIC operations in Delaware; and (3) correct existing formatting and clerical errors.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 7102, *Regulations Governing Underground Injection Control*, pursuant to 7 **Del.C.** Ch. 60. The Department's Division of Water, Groundwater Discharges Section, commenced the regulatory development process with Start Action Notice #2012-21 (signed by then-DNREC Secretary Collin O'Mara on December 4, 2012). The Department published its initial proposed regulation Amendments in the May 1, 2017 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this proposed promulgation was held on May 25, 2017. Members of the public attended that public hearing, and comment was received by the Department. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment on June 9, 2017.

As a result of the Department's review of the comments received in this matter, it was determined that several revisions should be made to the proposed Amendments, in order to provide additional clarity and a greater understanding to the regulated community of the requirements associated with UIC operations in Delaware. Since these revisions were substantive in nature, and were made subsequent to the public hearing of May 25, 2017, the revised proposed Amendments were re-noticed and re-published in the Delaware *Register of Regulations* on October 1, 2017. Accordingly, the hearing record was re-opened for an additional thirty (30) days at that time in order to receive comment from the public.

Subsequent to the revised proposed Amendments being published in the October 1, 2017 monthly edition of the *Register*, responsible Department staff identified several formatting and typographical errors contained therein. Thus, the revised proposed Amendments were corrected and then once again re-noticed and re-published in the Delaware *Register of Regulations* on November 1, 2017. The hearing record was re-opened for an additional thirty (30) days to receive comment from the public on the changes made to the revised proposed Amendments. At the final closing of the hearing record on November 30, 2017, no additional comments had been received by the Department from the public, nor had any additional changes been made to the revised proposed Amendments subsequent to the version published in the *Register* on November 1, 2017. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Vest prepared a Hearing Officer's Report dated April 25, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the revised proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the revised proposed regulatory amendments to 7 **DE Admin. Code** 7102, *Regulations Governing Underground Injection Control*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the revised proposed regulatory Amendments be promulgated as final. I further find that the Department's experts in the Division of Water, Groundwater Discharges Section, fully developed the record to support adoption of these revised regulatory Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the revised proposed amendments to 7 **DE Admin. Code** 7102, pursuant to 7 **Del.C.** Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these revised proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on May 25, 2017, and during the 15 days subsequent to the hearing (through June 9, 2017). Moreover, the Department provided the public additional periods of time in which to offer comment in this matter when the revised proposed Amendments were re-noticed and re-published in the *Register of Regulations* (October 1 - 30, 2017, and again November 1 - 30, 2017), consistent with 29 **Del.C.** §10118(a), before making any final decision;
4. Promulgation of the revised proposed Amendments to 7 **DE Admin. Code** 7102: *Regulations Governing Underground Injection Control*, will enable the Department to (1) bring Delaware's existing UIC Regulations into compliance with current federal requirements, as determined by the EPA; (2) provide additional clarity and a greater understanding to the public as to the requirements associated with Underground Injection Control ("UIC") operations in Delaware; and (3) correct existing formatting and clerical errors.
5. The Department has reviewed the revised proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption "B1" regarding same, as this promulgation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;
6. The Department's Hearing Officer's Report, including its established record and the recommended revised proposed Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as initially published in the May 1, 2017 Delaware *Register of Regulations*, then subsequently revised, re-noticed and re-published in the November 1, 2017 *Register*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the revised proposed Amendments to 7 **DE Admin. Code** 7102: *Regulations Governing Underground Injection Control*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

7102 Regulations Governing Underground Injection Control
(Break in Continuity of Sections)

4.0 Acronyms and Definitions:

The following words and phrases, when used in these Regulations, have the meaning ascribed to them as follows, unless the text clearly indicates otherwise:

(Break in Continuity Within Section)

Definitions:

(Break in Continuity Within Section)

"Annulus" ~~[refers to means]~~ the space between the well casing and the wall of the bore hole; the space between concentric strings of casing; the space between casing and tubing.

(Break in Continuity Within Section)

"Appropriate Act and Regulations" means the Clean Water Act (CWA); the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes. In the case of an ~~["Approved State Program," "Appropriate Act and Regulations"]~~ **Approved State Program, Appropriate Act and Regulations** includes program requirements.

"Approved [~~program~~ program]" or [~~approved~~ "Approved] State" means a State or interstate program which has been approved or authorized by EPA.

(Break in Continuity Within Section)

"Aquifer" means a geological [~~formation~~ formation], group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Aquifer Storage and Recovery (well)" [~~refers to means]~~ a well that is utilized for the purpose of storing potable water in an aquifer; potable water is injected into the aquifer and withdrawn at a later date.

"Area of [~~review~~ review" or "[AOR]" [~~refers to means]~~ the region surrounding the geologic sequestration project where USDWs may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and displaced fluids, and is based on available site characterization, monitoring, and operational data.

"Authorization by Rule" [~~refers to means]~~ the operation of a category of injection wells operated in compliance with these Regulations, without the need for a permit or Rule Authorization letter; and this activity does not endanger underground sources of drinking water and the activity complies with other UIC program requirements.

(Break in Continuity Within Section)

"Biosphere" [~~refers to means]~~ the part of the Earth's crust, waters, and atmosphere that supports life.

"Brine" [~~refers to means]~~ a strong saline solution; also refers to the discharge fluid generated by a water treatment process.

(Break in Continuity Within Section)

"Capillary force" [~~refers to means]~~ the adhesive force that holds a fluid in a capillary or a pore space. Capillary force is a function of the properties of the fluid, and surface and dimensions of the space. If the attraction between the fluid and surface is greater than the interaction of fluid molecules, the fluid will be held in place.

"Caprock" See confining zone.

"Carbon dioxide plume" [~~refers to means]~~ the extent underground, in three dimensions, of an injected carbon dioxide stream.

"Carbon dioxide (CO₂) stream" [~~refers to means]~~ the carbon dioxide that has been captured from an emission source (e.g., a power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This subpart does not apply to any carbon dioxide stream that meets the definition of a hazardous waste under 40 CFR Part 261.

(Break in Continuity Within Section)

"Catastrophic collapse" means the sudden or utter failure of overlying [~~strata~~ strata] caused by removal of underlying materials.

"Cement" [~~refers to means]~~ the material used to support and seal the well casing to the rock formations exposed in the borehole. Cement also protects the casing from corrosion and prevents movement of injectate up the borehole. The composition of the cement may vary based on the well type and purpose; cement may contain latex, mineral blends, or epoxy.

(Break in Continuity Within Section)

"Class V Storm Water Drainage Well" [~~refers to means]~~ subsurface infiltration wells or pipes to manage surface water runoff (rainwater or snow melt); Storm water infiltration systems with piping to enhance infiltration capabilities meet the UIC definition of a Class V well.

"Code of Federal Regulations" [~~CFR~~] or "(CFR)" [~~is means]~~ the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the U.S. Federal Government.

"Commercial Facility" [~~refers to means]~~ any structure or building, or any portion thereof, other than a residential dwelling.

FINAL REGULATIONS

(Break in Continuity Within Section)

"Confined Aquifer" ~~[refers to means]~~ an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself and containing Groundwater. An aquifer containing Groundwater which is at a pressure greater than atmospheric pressure is one in which water in a well will rise to a level above the top of the aquifer.

(Break in Continuity Within Section)

"Delaware Environmental Protection Act" ~~[(DEPA)]~~ or "DEPA" means the State of Delaware Environmental Protection Act codified in Chapter 60 of Title 7 of the Delaware Code.

(Break in Continuity Within Section)

"Department of Natural Resources and Environmental Control" ~~[(DNREC)]~~ or "DNREC" means the State of Delaware Department of Natural Resources and Environmental Control.

(Break in Continuity Within Section)

"Down Gradient" ~~[refers to means]~~ an area that has a lower potentiometric surface (hydraulic head) than a comparative reference point.

"Draft permit" means a prepared document indicating the Department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a ~~["permit." permit.]~~ A notice of intent to terminate a permit and a notice of intent to deny a permit are types of ~~["draft permits." draft permits.]~~ A denial of a request for modification, revocation and reissuance, or termination, is not a ~~["draft permit." draft permit.]~~ A ~~["proposed permit" proposed permit]~~ is not a ~~["draft permit." draft permit.]~~

"Drilling mud" means a heavy suspension used in drilling an ~~["injection well." injection well,]~~ introduced down the drill pipe and through the drill bit.

(Break in Continuity Within Section)

"Ductility" ~~[refers to means]~~ the ability of a material to sustain stress until it fractures.

(Break in Continuity Within Section)

"Emergency permit" means a UIC ~~["permit" permit]~~ issued in accordance with Section 35.0 of these ~~[regulations Regulations]~~.

"Enhanced Coal Bed Methane ~~[(ECBM)]~~ recovery" [or "ECBM recovery"] means the process of injecting a gas (e.g., CO₂) into coal, where it is adsorbed to the coal surface and methane is released. The methane can be captured and produced for economic purposes; when CO₂ is injected, it adsorbs to the surface of the coal, where it remains trapped or sequestered.

"Enhanced Oil or Gas Recovery ~~[(EOR/EGR)]~~ or "EOR/EGR" ~~[refers typically, means]~~ the process of injecting a fluid (e.g., water, brine, or CO₂) into an oil or gas bearing formation to recover residual oil or natural gas. The injected fluid thins (decreases the viscosity) and/or displaces extractable oil and gas, which is then available for recovery. This is also used for secondary or tertiary recovery.

(Break in Continuity Within Section)

"Environmental Protection Agency" ~~[(EPA)]~~ or "EPA" means the United States Environmental Protection Agency.

"Exempted aquifer" means an ~~["aquifer" aquifer]~~ or its portion that meets the criteria in the definition of ~~["underground source of drinking water" underground source of drinking water]~~ but which has been exempted according to the procedures in Section 57.0 of these Regulations.

"Existing injection well" means an ~~["injection well" injection well]~~ other than a ~~["new injection well." new injection well.]~~

(Break in Continuity Within Section)

"Fact Sheet" ~~[refers to means]~~ a document that briefly sets forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit.

"Fault" means a surface or zone of rock fracture along which there has been displacement.

"Flapper valve" [refers to means] a valve consisting of a hinged flapper that seals the valve orifice. In Class VI wells, flapper valves can engage to shut off the flow of the CO₂ when acceptable operating parameters are exceeded.

(Break in Continuity Within Section)

"Formation fluid" means [~~"fluid"~~ fluid] present in a [~~"formation"~~ formation] under natural conditions as opposed to introduced fluids, such as [~~"drilling mud,"~~ drilling mud.]

"Generator" means any person, by site location, whose act or process produces waste.

"Geological formation" [refers to means] a layer of rock that is made up of a certain type of rock or a combination of types.

"Geologic sequestration [~~(GS)~~ or "GS"] [refers to means] the long-term containment of a gaseous, liquid or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to CO₂ capture or transport.

"Geologic sequestration project" means [~~for the purpose of this regulation,~~] an injection well or wells used to emplace a carbon dioxide stream beneath the lowermost formation containing a USDW; or, wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to these requirements; or, wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II EOR/EGR aquifer exemption pursuant to these requirements. It includes the subsurface three-dimensional extent of the carbon dioxide plume, associated area of elevated pressure, and displaced fluids, as well as the surface area above that delineated region.

(Break in Continuity Within Section)

"Hazardous Waste Management facility" [~~(HWM facility)~~ or "HWM facility"] means all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

[~~"HWM facility" means "Hazardous Waste Management facility."~~]

(Break in Continuity Within Section)

"Injectate" [refers to means] the fluid that is being discharged or injected; this is also known as the CO₂ stream.

(Break in Continuity Within Section)

"Injection well" means a [~~"well"~~ well] into which [~~"fluids"~~ fluids] are being injected.

"Injection zone" means a geological [~~"formation,"~~ formation,] group of formations, or part of a formation receiving injectate through a [~~"well,"~~ well.]

"Interstate agency" means an agency of two or more States established by or under an agreement or compact approved by the United States Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Department under the [~~"appropriate Act and regulations,"~~ appropriate Act and regulations.]

"Large-capacity cesspool" [refers to means] a cesspool located at a non-residential establishment or a cesspool having the capability of serving at least 20 persons per day.

"Large System" [refers to means] any On-site Wastewater Treatment and Disposal System (OWTDS) with a projected wastewater design flow rate equal to or greater than 2,500 gallons per day.

"Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

"Major Class V injection well" [refers to means] any Class V injection well for which a UIC permit is required that injects any of the following: more than 25,000 gallons of fluid per day directly into a USDW; injects domestic or industrial wastewater directly into a USDW; injects cooling water with additives; is an experimental injection well; is used as a salt water intrusion barrier; or is used to inject fluids into a confined aquifer.

"Major facility" means any RCRA, UIC, NPDES, or 404 [~~"facility or activity"~~ facility or activity] classified as such by the Department.

FINAL REGULATIONS

"Mechanical integrity [~~(MI)~~ or "MI"] means the absence of significant leakage within the injection tubing, casing, or packer (known as internal mechanical integrity), or outside of the casing (known as external mechanical integrity).

"Mechanical Integrity Test" [or "MIT"] [~~refers to means]~~ a test performed on a well to confirm that a well maintains internal and external mechanical integrity. MITs are a means of measuring the adequacy of the construction of an injection well and a way to detect problems within the well system.

(Break in Continuity Within Section)

"On-Site Wastewater Treatment and Disposal System" [~~(OWTDS)~~ or "OWTDS"] means a conventional or alternative wastewater treatment and disposal system installed or proposed to be installed on land of the owner of the OWTDS or on other land on which the owner of the OWTDS has the legal right to install the system.

[Operational Testing] "Operational Testing" [~~refers to means]~~ a period, lasting up to two years under the construction permit, of full-scale injection operation for the purposes of long term testing, to determine potential fluid migration prior to issuing the operational permit.

"Operator" means owner or operator of any [~~"facility or activity"~~ facility or activity] subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

"Owner" [~~refers to means]~~ person(s) who has a vested legal or equitable title to real or personal property, including an injection system.

(Break in Continuity Within Section)

"Permeability" [~~refers means]~~ the property of a soil horizon that enables the soil to transmit gases, liquid, or other substances.

(Break in Continuity Within Section)

"Permittee" [~~refers to means]~~ any individual, partnership, corporation, association, institution, cooperative enterprise, agency, municipality, commission, political subdivision, or duly established entity to which a permit is issued by the Department.

(Break in Continuity Within Section)

"Pore space" [~~refers to means]~~ the open spaces in rock or soil. These are filled with water or other fluids such as brine (i.e., salty fluid). CO₂ injected into the subsurface can displace pre-existing fluids to occupy some of the pore spaces of the rocks in the injection zone.

"Post-injection site care [~~(PISC)~~ or "PISC"] means the appropriate monitoring and other actions (including corrective action) needed following cessation of injection to ensure that USDWs are not endangered.

(Break in Continuity Within Section)

"Publicly owned treatment works" [~~(POTW)~~ or "POTW"] means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a [~~"State"~~ State] or [~~"municipality,"~~ municipality.] This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(Break in Continuity Within Section)

"Rapid Infiltration Basin" [~~(RIB)~~ or "RIB"] means a permeable earthen basin designed and operated to dispense treated domestic wastewater to the surficial aquifer.

(Break in Continuity Within Section)

"Reverse Osmosis" [~~refers to means]~~ the water treatment process by which water passes through a porous membrane in the direction opposite to that for natural osmosis when subjected to a hydrostatic pressure greater than the osmotic pressure.

"Rule Authorization letter" [~~refers to means]~~ a document approving a Class V injection activity that is not required to obtain a UIC permit, since the activity does not endanger underground sources of drinking water, and the injection activity complies with other UIC program requirements.

(Break in Continuity Within Section)

"Schedule of compliance" means a schedule of remedial measures included in a [~~"permit,"~~ permit,] including an enforceable sequence of interim requirements (for example, actions, operations, or

milestone events) leading to compliance with the ~~["appropriate Act and regulations;" appropriate Act and regulations.]~~

(Break in Continuity Within Section)

"Site" means the land or water area where any ~~["facility or activity" facility or activity]~~ is physically located or conducted, including adjacent land used in connection with the facility or activity.

(Break in Continuity Within Section)

"Sorption (absorption, adsorption)" [means] as follows: Absorption refers to gases or liquids being incorporated into a material of a different state; adsorption is the adhering of a molecule or molecules to the surface of a different molecule.

(Break in Continuity Within Section)

"Test Well" ~~[refers to means]~~ a well that is constructed for the purpose of demonstrating that a location is appropriate for the intended injection activity.

"Total dissolved solids" [(TDS) or "TDS"] means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136. The measurement, usually in mg/L, for the amount of all inorganic and organic substances suspended in liquid as molecules, ions, or granules. For injection operations, TDS typically refers to the saline (i.e., salt) content of water-saturated underground formations.

"Total Maximum Daily Load" [is means] a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards. It is the sum of the allowable loads of a single pollutant from all contributing point and non-point sources, and includes a margin of safety and consideration of seasonal variations.

(Break in Continuity Within Section)

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any ~~["hazardous waste" hazardous waste]~~ so as to neutralize such wastes, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(Break in Continuity Within Section)

"Underground Source(s) of Drinking Water" [(USDW) or "USDW"] means an aquifer or its portion: (1)(i) Which supplies any public water system; or (ii) Which contains a sufficient quantity of Groundwater to supply a public water system; and (A) Currently supplies drinking water for human consumption; or (B) Contains fewer than 10,000 mg/l total dissolved solids; and (2) Which is not an exempted aquifer. An aquifer or portion of an aquifer that supplies any public water system or that contains a sufficient quantity of Groundwater to supply a public water system, and currently supplies drinking water for human consumption, or that contains fewer than 10,000 mg/l total dissolved solids and is not an exempted aquifer.

*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 410 (21 DE Reg. 410). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

7102 Regulations Governing Underground Injection Control

OFFICE OF THE SECRETARY

Statutory Authority: 7 Delaware Code, Section 7507A(b) (7 Del.C. §7507A(b))

Secretary's Order No.: 2018-P-0030

**RE: Approving Final New Regulations: 7 DE Admin. Code 109:
Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection**

Date of Issuance: May 15, 2018

Effective Date of the Amendment: June 11, 2018

109 Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §§6006, 6010, 7 Del.C. §7507A(b), 29 Del.C. §8003(7), and any other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed new Regulations, to wit: 7 DE Admin. Code 109: *Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection* (hereinafter referred to as "Open Space Regulations"). Title 7, Chapter 75 of the Delaware Code, known as the *Delaware Land Protection Act* ("LPA"), gives State agencies the ability to permanently protect land through the acquisition of a property in fee simple interest or through the acquisition of a conservation easement on a property. The Open Space Program, established by the LPA, was created to fund these acquisitions. The associated Open Space Council, which consists of seven members appointed by the Governor, was created to advise the Cabinet Secretary of DNREC on all matters relating to the administration, implementation, and financing of the Open Space Program, pursuant to 7 Del.C. §7505.

The entities of the State that are eligible to purchase land through the Open Space Program are as follows: (1) the DNREC Division of Parks and Recreation; (2) the DNREC Division of Fish and Wildlife; (3) the Department of Agriculture; (4) the Delaware Forest Service; and (5) the Department of State Division of Historic and Cultural Affairs. All land transactions are voluntary, and are done to permanently protect land in the State of Delaware. To be eligible for permanent protection, an area of land must include or exhibit, in whole or in part, one or more of the criteria described in 7 Del.C. §7507A. Support staff of the Open Space Program evaluates a property based on a set of guidelines before presenting the same to the Open Space Council for consideration. These guidelines take into consideration the ecological value of a property, land use of the property and the surrounding properties, cultural and historic resources, water features, recreation, and descriptive evaluation.

The guidelines that staff uses for evaluation purposes were approved by the Open Space Council, as required by the LPA; however, the public expressed interest in having input as to how properties were evaluated as well. During the process of amending the LPA in 2016, legislators decided the best way to incorporate public comment was through notice and public hearing, pursuant to the Administrative Procedures Act ("APA"), pursuant to 29 Del.C. Chapter 101, Subchapter II.

In consultation with the Department of Justice, the Department crafted the proposed Open Space Regulations, which were developed to comply with the aforementioned APA requirement. As stated therein, the purpose of the proposed Regulations is to detail the *Guidelines to Evaluate Land Being Considered for Permanent Protection* that the State agencies, as defined in 7 Del.C. §7504(10), utilize to evaluate land(s) that have been offered for permanent protection, to ensure that such land(s) should be permanently protected, and that such permanent protection furthers the purposes of the Land Protection Act, pursuant to 7 Del.C. Ch. 75.

The Department has the statutory basis and legal authority to promulgate the proposed new Regulations, pursuant to 7 Del.C. §7507A(b) and 29 Del.C. §8003(7). The Department's Division of Parks and Recreation, Planning, Preservation and Development Section, commenced the regulatory development process with Start Action Notice #2017-01 (signed by then-DNREC Secretary David Small on February 7, 2017). The Department

published its initial proposed Open Space Regulations in the March 1, 2017 Delaware *Register of Regulations*. It should be noted that the Department's initial proposed new Regulations incorporated the now formally named "*Guidelines to Evaluate Land Being Considered for Permanent Protection*" in Section 4.1. The aforementioned proposed new Regulations were then presented and thoroughly vetted by the Department at the public hearing on March 23, 2017. Members of the public attended the public hearing, and comment was received by the Department regarding this proposed regulatory promulgation.

Subsequent to the public hearing of March 23, 2017, responsible Department staff reviewed the comments that were received prior to the hearing record closing for comment on April 8, 2017. As a result of that review, the Department determined that several revisions should be made to the proposed Regulations, in order to provide additional clarity and a greater understanding to the public with regard to how the Open Space Program evaluates land(s) that have been offered for permanent protection. Since these revisions were substantive in nature, and were made subsequent to the public hearing of March 23, 2017, the revised proposed Open Space Regulations were re-noticed and re-published in the Delaware *Register of Regulations* on August 1, 2017. Accordingly, the hearing record was re-opened for an additional thirty (30) days at that time in order to receive comment from the public.

The hearing record remained open for public comment through close of business on August 31, 2017. No additional comment was received by the Department concerning this proposed promulgation. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Vest prepared a Hearing Officer's Report dated April 25, 2018 ("Report"). The Report documents the proper completion of the required regulatory development process, establishes the record, and recommends the adoption of the revised proposed new Open Space Regulations as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the revised proposed new Regulation, to wit: **7 DE Admin. Code 109: Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection**, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the revised proposed new Open Space Regulations be promulgated as final. I further find that the Department's experts in the Division of Parks and Recreation in the Planning, Preservation and Development Section fully developed the record to support adoption of this revised proposed new Regulation.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the revised proposed new Regulations, to wit: **7 DE Admin. Code 109: Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection**, pursuant to **7 Del.C. §7507A(b)** and **29 Del.C. §8003(7)**;

2. The Department has jurisdiction under its statutory authority, pursuant to **7 Del.C. §7507A(b)** and **29 Del.C. §8003(7)**, to issue an Order adopting these revised proposed new Regulations as final;

3. The Department provided adequate public notice of the initial proposed new Regulations and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on March 23, 2017, and during the 15 days subsequent to the hearing (through April 8, 2017). Moreover, the Department provided the public an additional period of time in which to offer comment in this matter when the revised proposed Regulations were re-noticed and re-published in the *Register of Regulations* August 1 - 31, 2017, consistent with **29 Del.C. §10118(a)**, before making any final decision;

4. Promulgation of the revised proposed new Regulations will enable the Department to detail the *Guidelines to Evaluate Land Being Considered for Permanent Protection* that the State agencies, as defined in **7 Del.C. §7504(10)**, utilize to evaluate land(s) that have been offered for permanent protection, to ensure that such land(s) should be permanently protected, and that such permanent protection furthers the purposes of the Land Protection Act, pursuant to **7 Del.C. Ch. 75**;

5. The Department has reviewed the revised proposed new Regulations in the light of the Regulatory Flexibility Act, consistent with **29 Del.C. Ch. 104**, and has selected Exemption "A" regarding same, as this proposed promulgation is not subject to Chapter 104, Title 29 of the Delaware Code, because it will not apply to

small businesses or individuals at all;

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

7. The Department's initial proposed new Regulations, as initially published in the March 1, 2017 Delaware *Register of Regulations*, and then subsequently revised, re-noticed and re-published, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final revised new Regulations, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final the revised proposed new Regulations as final new Regulations, to wit: **7 DE Admin. Code 109: Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection**, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the August 2017 issue of the Register at page 130 (21 DE Reg. 130). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

109 Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection

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

ORDER

1700 Board of Medical Licensure and Discipline

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.

Summary of the evidence and information submitted

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. At its meeting on April 4, 2017, the Board deliberated on the comments received and determined that substantial changes were needed. The regulations were republished on March 1, 2018 and a second public comment period was held open. No public comment was received during the second public comment period. However, on July 12, 2017, legislation was enacted that changed the Board's enabling statute, 24 Del.C. §1769D.

Summary of the findings 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 that with the amendment to its enabling statute, the language of the proposed regulation must be changed to reflect that the first appointment with a physician and patient must be an appropriate in-person examination, but that an in-person examination need not occur thereafter, consistent with the new language at Section 1769D(i). Accordingly, consistent with the new statutory language, the reference in Regulation 19.1 to Section 1769D(h)(1) must be changed to reference Section 1769D(b)(4).

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 change required to conform to the change in the Board's enabling statute. The exact text of the regulations, as amended, are attached to this order as Exhibit A. This regulation will become effective ten days after publication in the *Register of Regulations*.

IT IS SO ORDERED this 3rd day of April, 2018 by the Delaware Board of Medical Licensure and Discipline.

Georges A. Dahr, M.D. President	Garrett H. Colmorgen, M.D., Vice-President
Stephen Lawless, M.D., Secretary	Stephen G. Cooper, M.D.
Mary Lomax, Public Member	Bryan D. Villar, M.D. (absent)
Sharon Williams-Mayo, Public Member	Karyl Rattay, M.D. (absent)
Malvine Richard, Public Member	Barry L. Bakst, D.O.
Joseph M. Parise, D.O.	Janice Truitt, Public Member
N.C. Vasuki, Public Member	

1700 Board of Medical Licensure and Discipline (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)]~~ §1769D(b)(4).

***Please note that no additional changes were made to the regulation as originally proposed and published in the March 2018 issue of the *Register* at page 684 (21 DE Reg. 684). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

1700 Board of Medical Licensure and Discipline

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 January 17, 2018 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 proposed changes include provisions for the use of telehealth for patient counseling and updates to the

requirements for continuing education audits. Section 8.0 is revised to clarify that its requirements apply to wholesalers, manufacturers, outsourcing facilities and third-party logistic providers. Section 10.0, pertaining to compounders, is stricken and replaced with the statement that compounders must be in compliance with current USP standards, except that, effective December 1, 2019, compliance with USP 800 will be required. Finally, the rules and regulations for training of pharmacy technicians are updated.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 21, Issue 6, on December 1, 2017. Notice of the January 17, 2018 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 February 1, 2018, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on February 21, 2018.

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: January 25, 2018 letter from Richard Green, Cardinal Health

Mr. Green commented, regarding proposed amendments to Section 10.0 pertaining to compounding, that USP 795 does not apply to radiopharmaceuticals and that USP standards pertaining to radiopharmaceuticals are pending.

Board Exhibit 4: January 30, 2018 letter from Richard Green, Cardinal Health

Mr. Green commented regarding subsection 19.1.2.1, which was not subject to proposed revision, and offered information about Cardinal Health's nuclear pharmacy technician training program.

Board Exhibit 5: February 1, 2018 letter from John Rocchio, CVS Health

Mr. Rocchio objected to proposed subsection 5.1.12.2.4, which requires that prescribers include on prescription orders the address and phone number of the office where the prescriber was located at the time the prescription was issued, on the basis that this requirement would cause delay in dispensing of medication. Mr. Rocchio similarly objected to the addition of a "diagnosis" requirement, as set forth in proposed subsection 5.1.12.2.6. Mr. Rocchio stated that a pharmacist has many ways of determining the patient diagnosis and the requirement that a diagnosis be included on the prescription order would lead to "critical lapses in therapy." Mr. Rocchio supported revisions incorporating telehealth into the Board's regulations, but offered his view that a Delaware pharmacist should be able to provide services to a patient located in another state, which is prohibited by proposed subsection 5.2.5.1. Finally, Mr. Rocchio commented on the revisions to subsection 19.1.1.1 pertaining to supervision of a pharmacy technician in training and objected to the definition of the required "direct supervision" on the basis that the standard will prohibit pharmacists from leaving the pharmacy area.

Board Exhibit 6: February 1, 2018 letter from Henry Lim, M.D. and Lisa Donofrio, M.D. of the American Academy of Dermatology and the American Society for Dermatologic Surgery

Dr. Lim and Dr. Donofrio requested that the Board reject amendments to Section 10.0 pertaining to compounding due to concerns regarding office compounding, a subject which is not addressed in Section 10.0.

In addition, during the hearing on January 17, 2018, the Board heard testimony from Marlene Scadden, District Pharmacy Manager, Rite-Aid, regarding proposed subsection 5.1.12.2.6, which would require a diagnosis on the prescription order. Ms. Scadden stated that there are no corresponding regulations or statutory language to support this change under the Board of Medical Licensure and Discipline. She also testified that concern for increased communication between the pharmacist and practitioner will cause undue burden on the pharmacist and thereby delay therapy. The Board of Pharmacy would be unable to enforce the diagnosis requirement and this type of change should come from the Board of Medical Licensure and Discipline.

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 at the public hearing on the proposed amendments to the Board's rules and regulations. In deliberations, the Board considered all comments presented by the public.

The Board first considered comments regarding proposed amendments to subsection 5.1.12.2, which sets forth the information which must be included on a prescription order. With respect to subsection 5.1.12.2.4, the Board proposed an amendment stating that the order must include the address and phone number of the office where the prescriber was located at the time that the prescription was issued. The Board disagreed with Mr. Rocchio's comment that this inclusion would delay therapy. To the contrary, absence of this information makes it extremely difficult for the pharmacist to contact the prescriber in the event of a question or concern. The Board accepts this revision as proposed.

The Board next considered the addition of "diagnosis" to the proposed subsection 5.1.12.2.6. The Board agreed with the public comments on this point and concluded that requiring that prescribers include the patient's diagnosis on the prescription order would not benefit patients and could lead to significant delays in providing care. If the diagnosis is not included, under the proposed subsection, the pharmacist would be required to contact the prescriber before filling the prescription, which could be a lengthy process. Further, as a highly trained professional, a pharmacist should be able to ascertain the diagnosis from a variety of sources, including a drug utilization review and discussion with the patient. The Board would have no authority to enforce the regulation, as prescribers would not fall within the Board's jurisdiction. Finally, as drafted, the proposed revision is confusing in that "diagnosis" is not defined and as such is open to interpretation.

The Board determines that requiring a "diagnosis" on a prescription order is not in the best interests of the public and that, other than re-numbering, the subsection should remain as written, prior to publication of the proposed revisions. This non-substantive change is reflected in Exhibit A, attached hereto.

The Board addressed Mr. Rocchio's view that a Delaware pharmacist should be able to provide services to a patient located in another state, which is prohibited by proposed subsection 5.2.5.1. The Board declines to make the change suggested by Mr. Rocchio. A Delaware licensed pharmacist is authorized to practice pharmacy in Delaware. Health care occurs where the patient is located. Therefore, a pharmacist who is only licensed in Delaware cannot treat patients located outside of Delaware. The Board also disagrees with Mr. Rocchio's comments regarding proposed subsection 19.1.1.1. The Board finds that a technician *in training* must be subject to direct supervision.

Finally, the Board considered comments regarding revisions to Section 10.0. The proposed amendments do not even address the concerns raised by the commenters, such as radiopharmaceuticals and office compounding. The Board determines that the comments on this topic do not justify further revisions to Section 10.0. The Board proposed striking Section 10.0 in its entirety, beyond clarifying that licensees engaged in compounding must comply with *current* USP standards. The Board accepts this revision as proposed.

The Board, having considered all public comments, adopts the amendments to the rules and regulations as proposed, with the exception of the addition of the word "diagnosis" to proposed subsection 5.1.12.2.6. The Board does not accept the addition of "diagnosis," and this non-substantive change is set forth in Exhibit A.

Decision and Effective Date

The Board finds that the rules and regulations shall be adopted as final in the form set forth in Exhibit A attached hereto. These changes will become effective ten days following publication of this Final Order in the Delaware *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 18th day of April, 2018 by the Delaware Board of Pharmacy.

Hooshang Shanehsaz, R.Ph., Professional Member, Susan Esposito, R.Ph., Professional Member
President

Tejal Patel, PharmD., Professional Member, Vice Nicholas Juliano, PharmD, Professional Member
President

Kimberly Robbins, R.Ph., Professional Member (term Jay Galloway, Public Member (absent)
expired)

Bonnie Wallner, R.Ph., Professional Member Gayle MacAfee, Public Member

2500 Board of Pharmacy
(Break in Continuity of Sections)

5.0 Dispensing

- 5.1 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist.

(Break in Continuity Within Section)

5.1.12 Automated Data Processing Systems (ADPS)

(Break in Continuity Within Section)

- 5.1.12.2 Prescription (Drug Order) Information. Prescription information (drug order) shall include, but not be limited to:

(Break in Continuity Within Section)

- ~~5.1.12.2.5~~ ~~5.1.12.2.6~~ Name, strength, dosage form and quantity, (or Stop Date), ~~and~~ **[and]** route of administration if other than oral form of drug prescribed **[and diagnosis]**.

***Please note that no additional changes were made to the regulation as originally proposed and published in the December 2017 issue of the *Register* at page 485 (21 DE Reg. 485). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

2500 Board of Pharmacy

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

REGISTER NOTICE

Source Category Permit for Outdoor Dry Abrasive Blasting of Water Tanks that have Lead-Containing Coatings

1. TITLE OF PERMIT:

Source Category Permit for outdoor dry abrasive blasting of water tanks that have lead containing coatings under 7 **DE Admin Code** 1102, Permits.

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

The Department is proposing to establish a Source Category Permit under existing provisions of 7 **DE Admin Code** 1102, "Permits". This action is the result of the Department's proposal to revise 7 **DE Admin Code** 1102, Section 15.0 "Outdoor painting and sand blasting equipment" of Appendix A to qualify that removal of lead-containing coatings from water tanks by dry abrasive blasting is no longer exempt from obtaining a permit.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Ch. 60 Environmental Control

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

N/A

6. NOTICE OF PUBLIC COMMENT:

There will be a hearing on this proposed amendment on July 12, 2018 beginning at 6pm at the Kent County Levy Court, located at 555 S. Bay Road, Room 220, Dover, DE 19901. Interested parties may present oral or written comments regarding the proposed changes at the public hearing or in writing to David Fees, Division of Air Quality, DNREC, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904, or by email to david.fees@state.de.us. The hearing record will remain open until July 27, 2018.

7. PREPARED BY:

David Fees david.fees@state.de.us (302) 739-9402

May 13, 2018

REMOVAL OF LEAD-CONTAINING COATINGS FROM OUTDOOR WATER TANKS BY DRY ABRASIVE
BLASTING

SOURCE CATEGORY PERMIT

DRAFT 5/11/2018

1.0 General Provisions

- 1.1 Dry abrasive blasting of an outdoor water tank with a lead-containing coating shall be carried out in accordance with the project as described in the application submitted by the tank owner or operator that served as the basis for the project being permitted under this source category.

- 1.2 Nothing in this permit relieves the permittee from the obligation to comply with all applicable federal, state, county, and municipal statutes, regulations, ordinances and policies.
- 1.3 The owner or operator shall not install, construct or alter any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to submitting an application to the Department pursuant to 7 **DE Admin. Code** 1102, and, when applicable 7 **DE Admin. Code** 1125, and receiving approval of such application from the Department; except as exempted in 7 **DE Admin. Code** 1102 Section 2.2.
- 1.4 Representatives of the Department may, at any reasonable time, inspect this facility.
- 1.5 This permit may not be transferred to another location or to another person, owner, or operator of an outdoor water tank.

2.0 Emission Limitations

- 2.1 No person shall cause or allow sandblasting or related abrasion operations unless sufficient containment measures are taken to prevent the sand or abrasive material from traveling beyond the property line where the operation is being conducted, or traveling beyond the containment system should the containment system be located, in whole or in part, beyond the property line.
- 2.2 No person shall cause or allow the emission of any visible air contaminant.
- 2.3 There shall be no measurable emissions of lead or lead-containing particles, compared to a previously determined background level, when measured in the ambient air at the water tank owner's property line, or beyond where the containment operation is being conducted if the containment operation, in whole or in part, extends beyond the property line.

3.0 Operational Limitations

- 3.1 Dry abrasive blasting shall not be operated unless the containment system ventilation, as described in condition 3.3.3 of this permit, is operating properly, and:
 - 3.1.1 if a Type A1 - Rigid system, as described in 3.3.1.1 of this permit, is maintaining a negative pressure of at least 0.03 inch of water relative to ambient conditions as measured by a manometer or magnehelic gage, or
 - 3.1.2 if a Type A2 -flexible system, as described in 3.3.1.1 of this permit, is maintaining a negative pressure throughout the containment system enclosure as determined by visual observation of the concave nature of the shrouding employed while taking into account wind effects.
- 3.2 For every start or restart of dry abrasive blasting, observe all areas of the containment system for visible emissions from the containment enclosure and from the exhaust stack. If emissions are observed which cannot be immediately controlled, dry abrasive blasting shall cease until the cause of emissions is found and corrected.
- 3.3 Containment and Ventilation Systems
 - 3.3.1 Containment shall be Class 1A, as described in Table A "Abrasive Blast Cleaning" of the Society for Protective Coatings (SSPC) Technology Guide No. 6 "Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations", dated May 4, 2015. The required components of the Containment System shall be as follows:
 - 3.3.1.1 Containment Materials shall be Type A1 - Rigid or Type A2 - Flexible, as described in section 5.3.1.1 or 5.3.1.2 respectively, of SSPC 6,
 - 3.3.1.2 Penetrability shall be Type B1 - Air Impenetrable, as described in section 5.3.2.1 of SSPC 6,
 - 3.3.1.3 Support Structure shall be Type C1 - Rigid or Type C2 - Flexible, as described in section 5.3.3.1 or 5.3.3.2 respectively, of SSPC 6,
 - 3.3.1.4 Joints shall be Type D1 - Full Seal, as described in section 5.3.4.1 of SSPC 6, and
 - 3.3.1.5 Entryway shall be Type E1 - Airlock or Type E2 - Resealable, as described in section 5.3.5.1 or 5.3.5.2 respectively, of SSPC 6.

- 3.3.2 Thorough cleanup of the containment system, the water tank exterior surface and all equipment within the containment system shall be performed prior to dismantling or moving any part of the containment system to a new location, lowering, or ceasing dry abrasive blasting operations at the end of the day,
- 3.3.2.1 with a vacuum equipped with a high efficiency particulate air filter that is capable of removing 99.97 percent of airborne particulate matter with a size of 0.3 microns or larger; or alternatively,
 - 3.3.2.2 with dry, low pressure compressed air (150 psi or less) from a hose to blow off deposited dust and coating chips on contaminated areas described in condition 3.3.2 of this permit, making such dust and chips airborne so the air flow through the containment area will pass these contaminants through the exhaust air filtration system.
- 3.3.3 Ventilation shall be Class 1A, as described in Table A "Abrasive Blast Cleaning" of the Society for Protective Coatings (SSPC) Technology Guide No. 6 "Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations", dated May 4, 2015. The required components of the Ventilation System shall be as follows:
- 3.3.3.1 Air Makeup shall be Type F1 - Controlled, as described in section 5.4.1.1 of SSPC 6,
 - 3.3.3.2 Input Air Flow shall be Type G1 - Forced or Type G2 - Natural, as described in section 5.4.2.1 or 5.4.2.2 respectively, of SSPC 6,
 - 3.3.3.3 Air Pressure Inside Containment shall be Type H1 - Instrument Verification or Type H2 - Visual Verification, as described in section 5.4.3.1 or 5.4.3.2 respectively, of SSPC 6,
 - 3.3.3.4 Air Movement shall be Type I1 - Minimum Specified, as described in section 5.4.4.1 of SSPC 6, and
 - 3.3.3.5 Exhaust Air Filtration shall be Type J1 - Filtration, as described in section 5.4.5.1 of SSPC 6, where all air in the containment system is a forced flow into dust collectors followed by a high efficiency particulate air filter that is capable of removing 99.97 percent of airborne particulate matter with a size of 0.3 microns or larger and the filtered air is then exhausted through a stack.
- 3.3.4 The containment system shall be inspected daily, as well as when the system is raised, lowered, or moved prior to conducting any dry abrasive blasting activity. The inspection shall ensure the containment system is free of tears and holes and all seals are in working order.
- 3.3.5 The fan, moving containment system air into, and located just before, the exhaust air filtration system, shall be equipped with an outlet static pressure sensor and the dry abrasive blasting system shall be immediately shut down whenever static pressure is noted to have been lost, such as in the case of a fan failure.
- 3.3.6 The discharge of the exhaust air filtration system shall be directed away from buildings, personnel working in the area, air intakes to the containment system, and the clean compressed air supply for dry air for the dry abrasive blasting equipment.
- 3.3.7 No fugitive emissions shall be generated as a result of removing collected dust from the exhaust air filtration system or any vacuums used in cleanup or as a result of subsequent handling of the collected dust on-site or during off-site transit.

4.0 Site Emergency and Release Response Plan

- 4.1 The water tank owner or operator shall submit a Site Emergency and Release Response Plan to the Department a minimum of thirty (30) days prior to the start of on-site work. This plan shall include all aspects of foreseeable events likely causing environmental hazards to the public, describing proposed resolution, and including notification of the public likely to be impacted. Considerations must be site specific and should include, at a minimum:
- 4.1.1 Contractor's Lead and Health safety program;
 - 4.1.2 Contractor's procedures to address a release or discharge;
 - 4.1.3 Activities in response to a suspected or impending severe weather event;
 - 4.1.4 Notification tree (including phone numbers and email addresses);

- 4.1.5 Procedures to be implemented to ensure adequate clean-up of off-site and on-site environmental consequences of event;
- 4.1.6 Procedures to be implemented to review system performance to ensure prevention of future similar environmental events;
- 4.1.7 List of on-site equipment to be used for clean-up;
- 4.1.8 Addresses and contact information for the lab used for certified air monitoring analyses; and,
- 4.1.9 Post-incident report to be submitted to the Department.

5.0 Monitoring Requirements

- 5.1 The Department reserves the right to require the owner or operator to perform emission tests using methods approved in advance by the Department. The owner or operator may submit a request to the Department to use a different method.
- 5.2 Visible Emission Observations
 - 5.2.1 Upon initiation of dry abrasive blasting, observe all areas of the containment system for visible fugitive emissions and emissions from the stack(s) of the exhaust air filtration system. The observation shall be conducted using a trained observer in EPA Method 22 (EPA 40 CFR 60, Appendix A) for a period of at least five minutes. If visible emissions are observed from any point, the dry abrasive blasting operation shall cease until the cause is determined and corrected. A list of trained observers shall be posted on site.
 - 5.2.2 Observations shall be recorded to include the date, name of observer, time, and the presence or absence of visible emissions. In the event that emissions are observed, record the actions taken to eliminate the emissions. Upon resumption of dry abrasive blasting, record observations until a successful startup is attained.
 - 5.2.3 Observations of the containment system shall continue throughout the day so that for every two hour period of continuous dry abrasive blasting there is a recorded observation of at least five minutes in duration. If visible emissions are observed at any time, the dry abrasive blasting operation shall cease until the cause is determined and corrected.
- 5.3 Air Monitoring
 - 5.3.1 Prior to initial startup of dry abrasive blasting, background air monitoring for lead shall be conducted for at least a three-day period as described in section 9.5 "Background Monitoring" of SSPC Technology Update No.7 "Conducting Ambient Air, Soil, and Water Sampling of Surface Preparation and Paint Disturbance Activities", dated May 4, 2015. The determination of the type and number of monitors and the locations and height above ground of each monitor shall be based on SSPC Technology Update No. 7. Operation of these same monitor sites shall be continued during dry abrasive blasting activity. This activity requires the use of a laboratory certified under the National Lead Laboratory Accreditation Program (NLLAP) of the EPA or an equivalent independent national accreditation program, to set-up the monitors, start and stop operation and analyze for lead in air monitor and HEPA filters. The laboratory report shall contain evidence of certification and limit of detection for each analysis performed.
 - 5.3.2 The set of air monitors established in condition 5.3.1 of this permit shall be operated continuously during dry abrasive blasting and shall include a half hour prior to the start of dry abrasive blasting and a half hour following the termination of dry abrasive blasting, and during periods when lowering the shroud and until the area exposed by lowering the shroud has been cleaned of blasting debris.
 - 5.3.3 The water tank owner or operator shall use either EPA 40 CFR Part 50, Appendix B method for high volume air sampling or 40 CFR Part 50, Appendix G method for low volume air sampling.
 - 5.3.4 Air monitor filters shall be replaced daily when in operation. Filters shall be analyzed for lead by EPA Method 7010 "Graphite Furnace Atomic Absorption Spectrophotometry" or EPA Method 6020 A "Inductively Coupled Plasma Mass Spectrometry". The analysis shall be performed by an EPA accredited lead air monitor analysis laboratory. Upon initial startup of dry abrasive blasting for the first time (or after an extended shutdown of more than two weeks), the performance of the

containment system, as described in conditions 2.0, 3.0 and 5.2 of this permit, shall be closely observed for compliance and if all systems are found to be performing as required and there are no visible emissions over a two-hour period of operation, then that day's air monitor samples shall be submitted for analysis on a standard sample turnaround basis. Subsequent samples may be accumulated for up to one week before submission for analysis on a standard sample turnaround basis. If the system is shut down due to any system upset or visible fugitive emissions, start-up of abrasive blasting shall be closely observed to ensure all operating parameters are under control for two hours and the air monitor samples for that day's operation shall be submitted for analysis on an expedited basis. Any samples found to contain lead above the background level shall require the dry abrasive blasting operation to cease until the cause is determined and corrected.

5.4 Static Pressure Monitoring

- 5.4.1 A visual observation, or instrument verification, of the negative pressure inside the containment enclosure shall be recorded every two hours during dry abrasive blasting on a data sheet and the times negative pressure is lost due to restricted air flow through the exhaust air filtration system or significant fugitive air loss noted along with any dry abrasive blasting shutdown and startup times.
- 5.4.2 A static pressure reading of the exhaust air filtration system shall be recorded every two hours of dry abrasive blasting on a data sheet or through the use of a recording monitor. Each instance when static pressure is lost and dry abrasive blasting is shut down shall be recorded on the data sheet.

6.0 Recordkeeping and Reporting Requirements

- 6.1 Records produced as required by Section 5.0 of this permit shall be maintained on-site for the duration of the project.
- 6.2 Analytical results of the filters from air monitoring, as required by condition 5.3 of this permit, shall be maintained on-site for the duration of the project. Test results showing the presence of lead above the background level shall be reported to the Department within two business days. If lead above background levels is detected in the samples, dry abrasive blasting shall be shut down until the cause is determined and corrected, unless such action has already been taken.
- 6.3 The owner or operator of the water tank shall maintain all records as required by Section 5.0 of this permit and any other records necessary for determining compliance with this permit for three years after completion of the project and shall make these records available to the Department upon written or verbal request.

7.0 Public Notification and Reporting Requirements

- 7.1 No less than thirty (30) days prior to commencement of initial dry abrasive blasting the owner or operator of the water tank shall prepare and distribute a notice to the Department and to the public located within one-thousand feet of the water tank, including, but not limited to, residences, schools, child care facilities, businesses and social service providers. The notice shall contain, at a minimum, the following items:
 - 7.1.1 a summary of the activities which are proposed to take place on the site;
 - 7.1.2 expected start and end dates of the overall project and expected dates of dry abrasive blasting;
 - 7.1.3 water tank owner company name;
 - 7.1.4 contact information for the tank owner and project contractor;
 - 7.1.5 the DNREC complaint line (1-800-662-8802);
 - 7.1.6 air quality permit issuance date,
 - 7.1.7 the presence of lead in the coatings to be removed;
 - 7.1.8 steps taken to protect the public;
 - 7.1.9 disposition of blasting waste generated;
 - 7.1.10 the Department website address for dry abrasive blasting of water tanks; and,
 - 7.1.11 the location of the water tank.

- 7.2 Delays in the project timeline of one month or more shall be communicated to the Department and to the public receiving notice per condition 7.1 of this permit.
- 7.3 Any complaints received by the water tank owner, operator or project contractor related to dry abrasive blasting shall be relayed to the Department by contacting the complaint line at 1-800-662-8802 as soon as practical.
- 7.4 Emissions in excess of any permit condition or emissions that create a condition of air pollution shall be reported to the Department upon discovery by calling the complaint line at 1-800-662-8802.
- 7.5 One original and one copy of all required reports shall be sent to the address below:
Division of Air Quality Attn. Division Director
State Street Commons
100 West Water Street, Suite 6A
Dover, Delaware 19904

8.0 Administrative Conditions

- 8.1 This permit shall be made available on the premises.
- 8.2 Failure to comply with the conditions of this permit may be grounds for suspension or revocation.
- 8.3 This permit will expire within one year of issuance unless the water tank owner submits a request to the Division of Air Quality (DAQ) for an extension within 45 days of the expiration date, with an explanation of why the extension is needed. The DAQ may approve one such extension of six months, after which, if the project is not completed, the permit will be closed. A new application will be required to restart the project.

9.0 Completion of Dry Abrasive Blasting

- 9.1 Within thirty (30) days of completion of dry abrasive blasting, the water tank owner or operator shall submit to the Department a post-project checklist certifying all conditions of this permit have been met and all citizen complaints, if any, have been addressed. The post-project checklist shall be signed by a responsible official of the company owning the water tank. Upon acceptance of the checklist, the Department shall close this permit.
-

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION
PUBLIC NOTICE

1001 Thoroughbred Racing Rules and Regulations

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend rule 15 to add new Rule 15.25 relating to the adoption by reference of the ARCI definition of the responsible person for an adverse finding in an out-of-competition test, new Rule 15.26 relating to the adoption by reference of the ARCI requirement for trainers to keep up-to-date records of all medications and treatments administered and to maintain 30-day records documenting all corticosteroid or other intra-articular injections to horses in their care, and new Rule 15.27 relating to the adoption by reference of the ARCI requirement for any veterinarian who treats a race horse on Commission grounds to submit a Veterinarian's Medication Report to the Commission Veterinarian. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the June 1, 2018 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before July 2, 2018. Written materials submitted will be available for inspection at the above address.

On or after July 2, 2018, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, June 21, 2018 at 5:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE
OFFICE OF THE STATE LOTTERY
PUBLIC NOTICE

205 Charitable Video Lottery Rules and Regulations

The Director of the Office of the Delaware State Lottery (Director) hereby gives notice of proposed new Delaware Charitable Video Lottery Regulations.

The Director seeks to adopt main rules of the Office of the Delaware State Lottery (29 Del. Admin. C. §205) to govern charitable gaming organizations and charitable gaming vendors. These rules are both substantive and procedural in nature and apply to the licensing process, appeals, duties and rights of charitable gaming organizations and charitable gaming vendors, and the required operating procedures of charitable gaming organizations and charitable gaming vendors. The rules also serve in part to clarify the intent of the Director as enacted through these regulations. These new rules should not pose additional burdens on licensees or consumers. The Delaware Code authority for these proposed regulations is 29 **Del.C.** §4819A and well as 29 **Del.C.** §§4805(a)(14), (a)(20), (a)(33) and (b)(14).

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

Any person may submit written comments, suggestions, or other materials regarding the proposed rules to the Office of the Delaware State Lottery at the same address noted above. Any written submission in response to this notice and the relevant proposed rules must be received by the Office of the Delaware State Lottery by no later than 4:30 p.m. (EST) on July 2, 2018.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Home Health Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Home Health Services, specifically, *to add accreditation as an option to Medicare certification for Medicaid providers.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on July 2, 2018. Please identify in the subject line: **Home Health Services.**

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

DIVISION OF PUBLIC HEALTH**PUBLIC NOTICE****4465 Delaware Radiation Control Regulations**

On June 1, 2018, the Department of Health and Social Services, Division of Public Health, Office of Radiation Control, plans to publish revised Regulations Governing Radiation Control and hold them out for public comment per Delaware law. The Authority on Radiation Protection is authorized to promulgate these regulations in 16 **Del.C.** §7406.

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 Parts F and H of the Delaware Radiation Control Regulations. Additional changes to formatting, numbering and definitions have been made throughout the 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.

A public hearing will be held on Tuesday, June 26, 2018 at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Monday, July 16, 2018 to:

Elisabeth Scheneman, Executive Assistant

Office of the Director

Delaware Division of Public Health

Jesse Cooper Building
417 Federal St.
Dover, DE 19901
Email: elisabeth.scheneman@state.de.us
Fax: 302-739-3984

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER
PUBLIC NOTICE

1318 Compensation for Chiropractic Services

At 21 DE Reg. 19 (July 1, 2017), the Department of Insurance (the Department) published a notice of its intent to codify proposed new Regulation 1318, Compensation for Chiropractic Services and solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** § 10118(a). The Delaware Code authority for the proposed new regulation is 24 **Del.C.** §716(c) and 18 **Del.C.** §§102, 311 and 329.

The Department received several timely submitted comments, copies of which are on file with the Department. In response to the comments received, the Department redrafted the proposed new regulation, and gave notice of its re-proposal at 21 DE Reg. 610 (February 1, 2018). The proposed new regulation as redrafted prohibits insurance carriers and third party administrators who are regulated by the Department from including in any insurance policy terms and conditions that unreasonably discriminate against access to chiropractic care or services. It also prohibits compensation of doctors of chiropractic that is unreasonable or discriminatory, as detailed in the proposed new regulation. Comments on the re-proposal were accepted until March 5, 2018. The Department did not hold a public hearing on the re-proposal.

The Department received comments on the re-proposal from two commenters, copies of which are on file with the Department.

In addition to several non-substantive changes to the text for consistency, the Department has determined to make four changes which are substantive in nature and therefore require the Department to solicit public comment pursuant to the Delaware Administrative Procedures Act.

First, the Department has determined to delete subsection 5.1.5.3, which prohibits an insurance carrier from including in any insurance policy, contract or certificate any provision that unreasonably discriminates against access to chiropractic care or services, including but not limited to "a provision that requires a patient who wishes to seek the care or services of a doctor of chiropractic to first obtain a referral or other approval from a health-care provider who is not a doctor of chiropractic." This subparagraph added unnecessary confusion to the regulation. Additionally, the concept of prohibiting unreasonable discrimination concerning access to care is already clearly set forth in subsection 5.1.

Second, the Department has determined to delete subsection 6.3, which prohibited carriers and third party administrators (TPAs) from utilizing "a cost containment or managed care strategy concerning reimbursement for chiropractic care or services, when any one of chiropractic, medical, osteopathic or pharmaceutical care would be a medically suitable treatment for a patient's particular condition and would otherwise be eligible for reimbursement." This subsection could arguably be considered contrary to the underlying statute at 24 **Del.C.** §716(b), which states "nothing shall prevent the operation of reasonable and nondiscriminatory cost containment or managed care provisions"

Third, the Department has determined that subsections 5.2 and 6.3 address the same issue, which is the statutory provision at 24 **Del.C.** §716(b) that allows carriers and TPAs to implement reasonable and nondiscriminatory cost containment and managed care provisions. Accordingly, the Department is combining these two paragraphs into a new section 7.0 entitled "Reasonable and Nondiscriminatory Provisions."

Fourth, the Department has determined to change the effective date of the regulation. As proposed, Section 5.0 of this regulation would have become effective on or after January 1, 2019, for any policy newly written or renewed, while all other sections of the regulation would have become effective on or after the effective date of this regulation. The Department has determined to make the entire regulation effective on or after January 1, 2019.

The Department does not plan to hold a public hearing on the redrafted version of the proposed new

regulation. The proposed new regulation appears below and may also be viewed at the Department's website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2nd day of July, 2018. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
841 Silver Lake Drive
Dover, 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

PUBLIC NOTICE

1101 Definitions and Administrative Principles

The purpose of this action is to add three definitions in 7 **DE Admin. Code** 1101 needed for the new Source Category Permit "Removal of Lead-containing Coatings from Outdoor Water Tanks by Dry Abrasive Blasting"

There will be a hearing on this proposed amendment on July 12, 2018 beginning at 6pm at the Kent County Levy Court, 555 S. Bay Road, Room 220, Dover, DE 19901. Interested parties may present oral or written comments regarding the proposed changes at the public hearing or in writing to David Fees, Division of Air Quality, DNREC, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904, or by email to david.fees@state.de.us. The hearing record will remain open until July 27, 2018.

DIVISION OF AIR QUALITY

PUBLIC NOTICE

1102 Permits

The purpose of this action is to revise 7 **DE Admin. Code** 1102, Section 15.0 "Outdoor painting and sand blasting equipment" of Appendix A to qualify that removal of lead-containing coatings from water tanks by dry abrasive blasting is no longer exempt from obtaining a permit.

There will be a hearing on this proposed amendment on July 12, 2018 beginning at 6pm at the Kent County Levy Court, 555 S. Bay Road, Room 220, Dover, DE 19901. Interested parties may present oral or written comments regarding the proposed changes at the public hearing or in writing to David Fees, Division of Air Quality, DNREC, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904, or by email to david.fees@state.de.us. The hearing record will remain open until July 27, 2018.

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

2600 EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

PUBLIC NOTICE

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

Revisions to Section 7.0 modify the examination process for physical therapist and physical therapist assistant

applicants. Specifically, subsection 7.3.1.3 gives the Board the discretion to identify a third-party as its authorized designee to approve applicants to sit for the examination. In addition, subsection 7.3.1.3.1 authorizes a physical therapist student or physical therapist assistant student to take the examination up to 90 days prior to graduation from a CAPTE accredited program.

A public hearing will be held on June 26, 2018 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be July 11, 2018, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING AND POLICY

PUBLIC NOTICE

2309 Development Coordination Manual

Pursuant to the authority provided by 17 **Del.C.** §§132(e), 507, and 508, as well as 29 **Del.C.** §8404(8), the Delaware Department of Transportation (DelDOT) adopted the Development Coordination Manual.

The Department, through its Division of Planning and Public Policy, seeks to adopt general revisions to its existing regulations, the Development Coordination Manual, to address procedural changes, add or modify technical requirements and clarify and amend design criteria. These collective changes are both technical and administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

DelDOT will take written comments on these proposed general revisions to Section 2309 of Title 2, Delaware Administrative Code, from June 1, 2018 through July 2, 2018. The public may submit their comments to:

Wendy Polasko, P.E., Process and Quality Control Engineer, Planning Development Coordination
via email (Wendy.Polasko@state.de.us) or in writing to her attention,

Division of Planning

Delaware Department of Transportation

P.O. Box 778 Dover, DE 19903
